

Children Who "Divorce" Their Parents: Emancipation in NC

By Amy A. Edwards

In North Carolina, the age of majority is eighteen. At that age, a person is deemed an adult for legal purposes, such as voting or signing a binding lease or other contract. Anyone under the age of eighteen is considered a minor child. There are several circumstances that create emancipation automatically, such as marriage. There is also a legal process, which is the topic of this article.

What is Emancipation?

Sometimes casually referred to as children divorcing their parents, emancipation is a legal process that allows minors who are at least sixteen years old to file a petition with the court, asking for a decree of emancipation. Of course, emancipation from one's parents or legal guardian is not a divorce in North Carolina. A divorce decree is only awarded to people who are married. An emancipation decree legally recognizes the minor child as an adult.

What's at Stake?

Parents have a legal obligation to support and care for, their minor children. Accordingly, children must be in the custody of parent(s) and are required to yield to parental authority. A parent has the legal authority to make the child's medical decisions, determine which school a child attends, give consent to extracurricular activities and the like. Parents are required to provide housing, food, clothing, medical care and other necessities for their children. Care of children includes proper supervision and creating a reasonably safe environment. When Parents fail to care for their children, or they abuse them, they lose their parental rights and authority, and the State takes custody of their children.

How Does it Work?

A minor filing a petition for emancipation must explain his or her circumstances to the court, and give the reasons for asking the court for such a decree. Both the minor and the parents have an opportunity to participate in the trial. The minor must have a plan to show he or she can support himself or herself. Additionally, the minor must disclose his or her future living arrangements and persuade the judge that he or she fully understands the consequences of being emancipated. Most importantly, a judge will rule on whether the emancipation is in the minor's best interest.

What Does the Court Consider When Deciding if Emancipation is in the Minor's Best Interest?

The court must take into account the minor's ability to function as an adult. Does she have the maturity to make adult decisions? Is he being manipulated by an adult who

may be pushing the child into the emancipation process for personal gain? Another major concern is the quality of parental supervision or support, assuming the minor has surviving parents.

No two homes are exactly alike. Just as the court must carefully evaluate a child's home during a child custody case, it must do so when ruling on emancipation. If the minor child has any earnings, the court looks at the need of the parents for those earnings. For example, the petitioner could be a teenage celebrity, although there is a specific North Carolina statute that deals with minors who are in the entertainment business. The court must also consider the extent of family discord which may threaten the future reconciliation of the minor with his or her family. After all, the minor is still a child in the eyes of the court, unless and until a court says otherwise. The court is ultimately responsible for the minor child in this matter.

What does an emancipation decree really mean?

By state statute, it means the child "has the same right to make contracts and conveyances, to sue and to be sued, and to transact business as if the petitioner were an adult." It also cancels any right of the parent to exercise control over the child, as well as any obligations. Emancipation is a unique and quite drastic measure for those who pursue it.

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