

Case Summary

Allen Marshall (“Father”) appeals the trial court’s order emancipating his daughter, Karlee. We reverse and remand.

Issue

The sole restated issue raised by Father is whether the trial court erred by selecting the date that Father filed his emancipation request petition as the date of Karlee’s emancipation, rather than an earlier date.

Facts

Father and Kris Marshall (“Mother”) were married in 1982 and divorced in 2005. They had two children during the marriage, including Karlee,¹ who was born on March 11, 1989. After the parties’ divorce, Mother was granted primary physical custody of Karlee. Karlee had a child of her own while still in high school, and she graduated in June 2007. She has not attended any post-secondary educational institution. Father stopped paying child support to Mother in 2007 and has not paid any since then. Father recalls that Mother consented to this action, but Mother instead recalls that she agreed to permit Father to temporarily, not permanently, stop paying support.

In September 2007, Karlee moved out of Mother’s home to live with the father of her child. However, she moved back in with Mother in March 2008. Karlee again moved out of Mother’s home in January 2009, and has not returned. Karlee had another

¹ Karlee’s name also is spelled with a “C” in some parts of the record and briefs. We apologize if we have misspelled her name.

child in May 2009. Mother contends that she has always and continues to provide significant financial support to Karlee, even when she has not been living at home, including support for rent, a vehicle, utilities, and clothing. Karlee also receives government assistance, and Mother believes it would be highly difficult for Karlee to find full-time employment that would pay her enough to cover childcare for two children and permit her to be financially independent.

On December 21, 2009, Father filed a petition to find Karlee emancipated and, thus, terminate his child support obligation. On March 31, 2010, after Karlee had turned twenty-one, the trial court held a hearing on this and other matters, including a claim by Father that Mother still owed him money for an equalization payment required by the dissolution decree, and a claim by Mother for back child support. On April 7, 2010, the trial court entered an order declaring that Karlee was emancipated as of the date Father filed his petition, i.e. December 21, 2009, and that his child support obligation terminated as of that date. It then ordered the amount of any support arrearage owed by Father that accrued before that date to be credited against the amount of the equalization payment Mother still owed Father. Father now appeals.

Analysis

Father contends the trial court erred in fixing the date of Karlee's emancipation as of the date he filed his petition, instead of an earlier date. Emancipation of children for whom a parent has been ordered to pay child support is governed by Indiana Code Section 31-16-6-6, which states:

(a) The duty to support a child under this chapter ceases when the child becomes twenty-one (21) years of age unless any of the following conditions occurs:

(1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in section 2(a)(1) of this chapter, terminates at the time of emancipation, although an order for educational needs may continue in effect until further order of the court.

(2) The child is incapacitated. In this case the child support continues during the incapacity or until further order of the court.

(3) The child:

(A) is at least eighteen (18) years of age;

(B) has not attended a secondary school or postsecondary educational institution for the prior four (4) months and is not enrolled in a secondary school or postsecondary educational institution; and

(C) is or is capable of supporting himself or herself through employment.

In this case the child support terminates upon the court's finding that the conditions prescribed in this subdivision exist. However, if the court finds that the conditions set forth in clauses (A) through (C) are met but that the child is only partially supporting or is capable of only partially supporting himself or herself, the court may order that support be modified instead of terminated.

(b) For purposes of determining if a child is emancipated under subsection (a)(1), if the court finds that the child:

- (1) is on active duty in the United States armed services;
- (2) has married; or
- (3) is not under the care or control of:
 - (A) either parent; or
 - (B) an individual or agency approved by the court;

the court shall find the child emancipated and terminate the child support.

Father appears to contend that by virtue of Karlee moving out of Mother's house in 2007, she was legally emancipated under either subsection (a)(3) or subsection (b)(3) of the emancipation statute. What constitutes emancipation is a question of law, while whether emancipation has occurred as to a particular child is a question of fact. Tew v. Tew, 924 N.E.2d 1262, 1265 (Ind. Ct. App. 2010), trans. denied. A party seeking emancipation of a child before age twenty-one must establish by competent evidence that emancipation has occurred. Id. Specifically, a party seeking to have a child declared emancipated under the criteria of subsection (a)(3) bears the burden of proving the capacity of self-support. Connell v. Welty, 725 N.E.2d 502, 504-05 (Ind. Ct. App. 2000). For emancipation under subsection (b)(3), there must be evidence both that the child initiated the action putting himself or herself outside the parents' control and that the child is in fact self-supporting. Tew, 924 N.E.2d at 1267.

Generally, when reviewing a trial court's determination regarding the date of emancipation, we will neither reweigh the evidence nor assess the credibility of witnesses, and we will not set aside the finding of the trial court unless it is clearly erroneous. Connell, 725 N.E.2d at 504. "We will not reverse unless there is a total lack of supporting evidence or the evidence is undisputed and leads solely to a contrary conclusion." Id. It is clear, however, that unlike an ordinary claim of changed circumstances requiring a modification of child support, a child's emancipation is effective as of the date the emancipation actually occurred rather than as of the date of filing of an emancipation petition. Donegan v. Donegan, 605 N.E.2d 132, 133 (Ind. 1992). Where there have been no material changes in the facts and circumstances relevant to the issue of emancipation, a trial court finding that a child was emancipated as of a certain arbitrary date, such as the date the emancipation petition was filed, and not before, is clearly erroneous. Summerville v. Summerville, 679 N.E.2d 1344, 1346 (Ind. Ct. App. 1997). See also Beckler v. Hart, 660 N.E.2d 1387, 1389 (Ind. Ct. App. 1996).

The trial court here did not enter any specific findings on the issue of emancipation. After reviewing the record, we can find nothing to support the conclusion that Karlee's emancipation occurred upon the date Father filed his emancipation petition, December 21, 2009, as opposed to a different date. To the extent the trial court might have concluded Karlee was emancipated by virtue of her moving out of Mother's house at some point, those events occurred in September 2007 and again in January 2009, not December 2009. There is no evidence that Karlee obtained a well-paying job in

December 2009 or anything of that nature; rather, she continued to be largely reliant on Mother's and the government's financial support as of that time and as of the time of the emancipation hearing. In other words, there was no material change in Karlee's circumstances that occurred on or about December 21, 2009, that would support a finding that she was emancipated on that date.

The trial court's selection of December 21, 2009 as the date of Karlee's emancipation appears to have been arbitrary and is clearly erroneous. However, we are not in a position to weigh the conflicting evidence and inferences therefrom that potentially could lead to a wide range in emancipation dates, from sometime in 2007 up until the date Karlee turned twenty-one.² There also is the possibility, pursuant to subsection (a)(3) of the emancipation statute, of a finding that Karlee was not capable of being wholly self-supporting, despite moving out of Mother's house, which would permit a modification of Father's child support obligation until the date Karlee turned twenty-one, rather than a complete elimination of that support.³ Under the circumstances, we conclude that we must reverse and remand to the trial court to select an emancipation date for Karlee that is supported by the evidence. See Borders v. Noel, 800 N.E.2d 586, 592 (Ind. Ct. App. 2003) (remanding for the trial court to select an appropriate date for child's emancipation under subsection (a)(3) of emancipation statute).

² We express no opinion at this time regarding what might be an appropriate emancipation date.

³ The practical effect of the trial court's selection of December 21, 2009 as the date of Karlee's emancipation would be to create a partial modification of Father's child support arrearage that he accumulated before she turned twenty-one.

Conclusion

There is no evidence to support the trial court's selection of December 21, 2009, as the date of Karlee's emancipation. We reverse and remand for the trial court to establish a non-arbitrary date for Karlee's emancipation that is supported by the evidence.

Reversed and remanded.

FRIEDLANDER, J., and CRONE, J., concur.