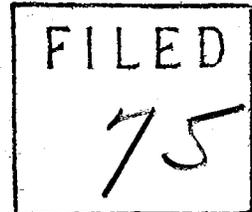


PARENT & CHILD: Valid marriage affects emancipation of child from parental control, and parental consent for vaccination of married minor not necessary.

July 18, 1941

7-19



Dr. Mary M. Richardson,
Supervisor, State-wide Health Project
National Youth Administration for Missouri
412 East High Street
Jefferson City, Missouri

Dear Doctor Richardson:

Under date of July 2, 1941, you wrote this office requesting an opinion as follows:

"On May 9, 1941, you gave us a ruling in regard to the vaccination of minors who are working on the National Youth Administration program. According to this ruling it is necessary that we have the written permission of the parent or guardian for the vaccination.

"Beginning with the new fiscal year the NYA will register married men and women between the ages of 17 and 25 years. Heretofore only single men and women have been eligible for this program work.

"We would, therefore, like your opinion as to whether or not we will need the written permission of the parent or guardian to vaccinate a youth who is married but still a minor."

Section 374, Article XVI, Chapter 1, R. S. Missouri, 1939, declares who are minors. This section is as follows:

"All person of the age of twenty-one years shall be considered of full age for all purposes, except as otherwise provided by law, and until that age is attained they shall be considered minors: provided, however, that when any person under twenty-one years of age is married to an adult who has or claims any interest in real estate and wishes to convey, encumber, lease, or otherwise dispose or affect the same, such minor shall be deemed of age for the purpose of joining with his or her adult spouse in the execution of any instrument affecting such spouse's real estate."

It will be observed that this section contains no exception and only one proviso releasing a minor from the disabilities of minority, which permits minors, when married to an adult, to join with the adult spouse in the execution of an instrument affecting the real estate of the adult spouse.

Section 375 of the same article and chapter declares the parents to be the natural guardians of their children, and to be entitled to custody and control of them.

Section 378 of the same article and chapter provides generally for the appointment of guardians for minors. This section is as follows:

"If a minor have no parent living, or the parents be adjudged incompetent or unfit for the duties of guardianship, the probate court, or judge or clerk thereof in vacation, subject to the confirmation or rejection of said court of the county of the minor's domicile, or if the minor have no domicile in this state, then the probate court, or judge thereof in vacation, of the county where the minor may at the time be actually

residing, shall appoint guardians to such minors under the age of fourteen years, and admit those above that age to choose guardians for themselves, subject to the approval of the court at its next term thereafter. Unfitness or incompetency of parents, after ten days' notice to the parents shall be decided in the probate court by the judge thereof, or by a jury, if one be demanded."

Section 394 of the same article and chapter defines the powers of guardians and curators. This section is as follows:

"The guardian of the person, whether natural or legal, shall be entitled to the charge, custody and control of the person of his ward, and the care of his education, support and maintenance; the curator shall have the care and management of the estate of the minor, subject to the superintending control of the court; and the guardian of the person and estate of the minor shall have all the powers and perform all the duties both of a guardian of the person and a curator."

There are other sections of the statutes relating to guardians of minors, which are not mentioned or set out, as the matters pertinent to this opinion are covered by the above quoted and referred to sections.

The question to be determined is what effect, if any, the marriage of a minor has upon the relation of parent and child, with reference to the right of custody and control by the parent, when the new status of husband or wife is established for the minor.

The Laws of Missouri recognize the right of minors to marry by authorizing the issuance of marriage licenses to minors under certain conditions. The section of the statute

which does this is Section 3370, Chapter 20, R. S. Missouri, 1939, and is as follows:

"No recorder shall in any event except as herein provided issue a license authorizing the marriage of any person under fifteen years of age: Provided, however, that said license may be issued on order of the circuit or probate court of the county in which said license is applied for, such license being issued only for good cause shown and by reason of such unusual conditions as to make such marriage advisable, and no recorder shall issue a license authorizing the marriage of any male under the age of twenty-one years or of any female under the age of eighteen years, except with the consent of his or her father, mother or guardian, which consent shall be given at the time in writing, stating the residence of the person giving such consent, signed and sworn to before an officer authorized to administer oaths. The recorder shall state in every license whether the parties applying for same, one or either of both of them, are of age, or whether the male is under the age of twenty-one years, or the female under the age of eighteen years, and if the male is under the age of twenty-One years or the female is under the age of eighteen years, the name of the father, mother or guardian consenting to such marriage."
(Underscoring ours)

By marriage a minor takes on a new status, one that is incompatible with that of a child under the laws relating to parents and children. A parent is entitled to the care, custody and control of a child and the benefit of the child's services. Under the marriage relationship, a male minor owes to his wife the duty to provide for and maintain his wife. A married

female owes her services to her husband, and the husband is entitled to the benefit of them.

The State of Missouri has no statute bearing directly on the question, and we have failed to find any Missouri cases directly in point. However, in Tiffany on Domestic Relations, Third Edition, where the emancipation of children is under discussion, we find the following at page 360:

"Emancipation may also be effected by operation of law, and even against the will of the parent. It is so effected by the valid marriage of the child. * * * * *"

There are cases in other states which bear directly on the point under consideration. The leading case in the United States seems to be a Minnesota Case - State ex rel. Scott v. Lowell, reported in 78 Minnesota Reporter, at page 116, and in the Northwestern Reporter, Volume 80, at page 877. We quote from this case, l. c. 878:

"Now the question of the right of the respondent, as father of the relator's wife, to restrain her from going to her husband, must be determined upon the basis that the marriage is valid. The marriage of a minor, even without the parent's consent, emancipates the child from the custody of the parent; for the marriage creates relations inconsistent with subjection to the control of the parent. Parental rights must yield to the necessities of the new status of the child. 1 Bish. Mar. & Div. Sec. 275; Schouler, Dom. Rel. Sec. 267. The correctness of this proposition as a general rule is admitted, but it is claimed on behalf of the father that it does not apply to this case, because the husband cannot enforce his marital rights without the consent of the wife, and that she cannot, by giving her consent to a voidable marriage, free herself from parental

control, and, further, that she cannot do so until she reaches the age when she can legally affirm the marriage; that to hold otherwise would enable a girl under 12 and over 7 years of age to emancipate herself by consenting to a voidable marriage. This course of reasoning ignores the fact that the marriage, until set aside, must be, for all civil purposes, treated as valid, and that it is her new and inconsistent status as a wife which emancipates her from the control of her father. A wife -- and this girl must be regarded as such for the purposes of this case -- certainly has the capacity to consent to live with her husband. Whether the marriage of a child under 12 years of age and over 7 years would emancipate her, we need not determine. It would seem, however, that the operation of natural laws would incapacitate her in fact from assuming the new and inconsistent relations which emancipate a minor from parental control. Our conclusion is that the respondent is not legally entitled to detain his daughter, if she elects to return and live with her husband. Therefore it is ordered that Sadie Scott, the wife of the relator, Alex W. Scott, be freed from the restraint of her father, the respondent Fred L. Lowell, and that he surrender her to the relator, if she elects to live with him as her husband. Let judgment be so entered."

The Statutes of Missouri, while containing no direct provision on the matter, at least in one instance recognize the changed status of a married minor. This is in the law relating to divorce and alimony, where it is provided that parents living apart are entitled to an order of court respecting the custody, control, services and earnings of their unmarried minor children. This recognition of the different

status of a married minor is in Section 1526, Article III, Chapter 8 of R. S. Missouri, 1939.

From the foregoing it would seem that the contracting of a valid marriage by a minor would effect an emancipation of the minor from the parental control. The following brief quotation on emancipation is taken from the case of *Brosius v. Barker*, 154 Mo. App. 657, at l. c. 662:

"Complete emancipation is an entire surrender of all the rights to the care, custody and earnings of the child, as well as a renunciation of parental duties. (*Lowell v. Newport*, 66 Me. 78.) And the test to be applied is that of the preservation or destruction of the parental and filial relations. (*Sanford v. Lebanon*, 31 Me. 124.)

"There are two kinds of emancipation--express and implied. Express emancipation takes place when the parent agrees with his child, who is old enough to take care of and provide for himself, that he may go away from home and earn his own living and do as he pleases with the fruits of his labor. Implied emancipation is where the parent, without any express agreement by his acts or conduct, impliedly consents that his infant child may leave home and shift for himself. (*Rounds Bros. v. McDaniel*, supra, *Lowell v. Newport*, supra.)

"Emancipation was in early time, evidenced and perfected by the formality of an imaginary sale. Subsequently this was abolished, and the simple process of manumission before a magistrate substituted. (*Everett v. Sherfrey*, 1 La. 358.) In Louisiana the matter is expressly regulated by statute.

But in the absence of statute, the rule now is that emancipation need not be evidenced by any formally executed instrument, or by any record act, but is a question of fact which may be proven from circumstances and direct proof is not required. (Canover v. Cooper, 3 Barb. 115; Benson v. Remington, 2 Mass. 115; Everett v. Sherfrey, supra.)

"The question of emancipation must be determined upon the peculiar facts and circumstances of each case, and nothing more than general rules can be declared which will be applicable in all cases. (Inhabitants of Carthage v. Inhabitants of Canton, 54 Atl. 1104.)

"Emancipation is never presumed, and if relied upon as a defense, must be proven. (Singer v. Railroad, 119 Mo. App. 112, 95 S. W. 944.)"

CONCLUSION.

It is the conclusion of this Department that it would not be necessary to have the consent of the parents to vaccination of a married minor, because of the emancipation affected by marriage.

Respectfully submitted,

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APPROVED:

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