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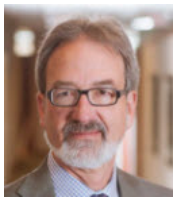
When Does a Child Emancipate?

by Alan C. Eidsness and Jaime Driggs



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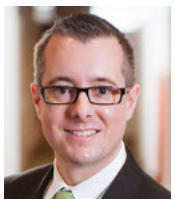

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Eye-rolling and groaning: the mere suggestion that custody and parenting time issues do not end when a child turns 18 is likely to provoke these reactions. Most attorneys and judges take this legal conclusion for granted because, after all, isn't 18 the age of majority? Although the law on this point used to be quite clear, the issue is no longer so straightforward. When the Legislature enacted the child support guidelines in 2005, it made important changes to the law that have gone largely unnoticed.

To understand the issue, we need to examine what the law used to be, which is illustrated well by the Court of Appeals decision, *In re Anwiler*, 2000 WL 1240203 (Minn. Ct. App. Sept. 5, 2000). The parents of a disabled boy were divorced before he turned 18 and custody was granted to the boy's father. Based on that custody determination, the district court later appointed the boy's father as his guardian. At the time of the district court's decision, the word "child" was defined as "an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support." Minn. Stat. § 518.54, subd. 2. (1998). The district court reasoned that because the boy was disabled and incapable of self-support, he was a "child" over whom his father continued to have custody and, as such, it was appropriate to appoint the father as guardian. The Court of Appeals rejected this reasoning and reversed:

> The legislature limited the application of the definition of "child" to the support section of the dissolution statute by including the following clause: "[f]or the purposes of sections 518.54 to 518.66, the terms defined in this section shall have the meanings respectively ascribed to them." Minn. Stat. § 518.54, subd. 1 (1998). Sections 518.54-.66 deal with maintenance, child support, and property. The portion of the statute that applies to custody orders is Minn. Stat. § 518.17 (1998). Because guardianship is not a maintenance, support, or property matter, the district court erred in borrowing the definition of "child" from section 518.54 and applying it to this guardianship proceeding. Although there is no definition of "child" in the custody section of the statute, custody determinations apply only to the parties' "minor children." See Minn. Stat. § 518.17, subd. 3 (providing for custody orders for parties' "minor children"). Moreover, a person generally becomes an adult under the law at age 18. Minn. Stat. § 645.45 (1998). As an adult, Anwiler is no longer subject to the custody order from his parents' dissolution.
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> *Anwiler*, 2000 WL 1240203, at *1.

Anwiler made it clear that district courts had no authority to address custody or parenting time issues concerning children once they turned 18 since the definition of "child" applied only for support purposes and not custody.

When the new child support statute was enacted in 2005, the definition of "child" did not change but it was moved to the new definitional section of chapter 518A. Minn. Stat. § 518A.26, subd. 5. That section contains the following proviso: "For the purposes of this chapter and chapter 518, the terms defined in this section shall have the meanings respectively ascribed to them." Minn. Stat. § 518A.26, subd. 1. Thus, the definition of "child" was expanded from applying only for child support purposes, to applying to all of chapter 518, including custody and parenting

time. This means that the court has the authority to issue orders concerning custody and parenting time of an 18-year-old who falls within the statutory definition of "child."

The Court of Appeals reached this conclusion in a contested guardianship proceeding between divorced parents who had been granted joint legal custody of their mentally disabled daughter. *Guardianship of Vizuete*, 2013 WL 3368334 (Minn. Ct. App. Jul. 8, 2013), *rev. denied* (Minn. Sept. 17, 2013). In the months leading up to their daughter's 18th birthday, both parents filed competing petitions to become her guardian. By the time of the hearing in 2012, the daughter was a senior in high school and planning on graduating. *Id*. at *1. The district court appointed mother as guardian and father appealed, arguing that the appointment functionally terminated his rights as a joint legal custodian which he continued to have since his daughter was a "child." The Court of Appeals considered the definition of "child," noted that it applied to both chapter 518A and chapter 518, and concluded that the district court had erred because the daughter was a "child" at the time of the hearing both because she was still attending high school and because she was incapable of self-support. *Id*. at *3-4. Since the father continued to be a joint legal custodian over his 18-year-old daughter, any modification of his rights as a joint legal custodian was governed by the custody modification statute, Minn. Stat. § 518.18. *Id*. at *5. The Court of Appeals reversed and remanded for consideration of the guardianship petitions in view of this standard. *Id*. at *7.

Consistent with *Vizuete*, the Court of Appeals commented last month that court-ordered custodial designations would continue so long as the parties' disabled child satisfied the definition of "child." *Ferrell v. Ferrell*, No. A13-2005, at *14 (Minn. Ct. App. Nov. 24, 2014). Although this was only a passing comment in the case and clearly dictum, it is another example of the Court of Appeals interpreting the proviso at Minn. Stat. § 518A.26, subd. 1 to mean the definition of "child" in that section applies to custody issues arising from chapter 518.

Although *Vizuete* and *Ferrell* are unpublished decisions from the Court of Appeals, it is likely that the Supreme Court would reach the same conclusion because it has already determined that the definitions in chapter 518A apply to chapter 518:

> The court of appeals concluded that the definition of "gross income" contained in Minn. Stat. § 518A.29 applies to the calculation of child support but not maintenance. *See Lee*, 749 N.W.2d at 58-59. Although much of chapter 518A governs child support matters, Minn. Stat. § 518A.26, subd. 1 (2008) expressly states that "[f]or the purposes of this chapter and chapter 518, the terms defined in this section shall have the meanings respectively ascribed to them." We conclude that the legislature intended section 518A.29's definition of gross income to apply to chapter 518, which governs maintenance.
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> *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009).

These decisions show that the statute really means what it says and that because the definition of "child" was expanded to all of chapter 518, district courts now have authority to address custody and parenting time regarding 18-year-olds who still meet the definition of "child." Although we believe this conclusion is compelled by the plain language of the statutes, we realize it is unpopular and one which many will challenge.

Some may argue that the expansion of the definition of "child" to the custody statutes is simply an oversight on the part of the Legislature, an unintended consequence of renumbering. Although such accidents certainly can happen, a consideration of the substance of the child support statute shows this is not the case. The Legislature needed "child" to have the same meaning for both custody and child support purposes in order to apply the parenting expense adjustment. The parenting expense adjustment is based on "the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order." Minn. Stat. § 518A.36, subd. 1(a). For that reason, every child support order must "specify the percentage of parenting time granted to or presumed for each parent." Minn. Stat. § 518A.36, subd. 1(a). How can a district court comply with this requirement if it lacks the power to address parenting time for 18-year-olds? Moreover, the Court of Appeals has rejected any notion that the parenting expense adjustment may be based on anything other than parenting time that has been ordered by a court. *Hesse v. Hesse*, 778 N.W.2d 98, 103 (Minn. Ct. App. 2009). Thus, child support and court-ordered parenting time are inextricably linked by the parenting expense adjustment, which explains why "child" needed to have the same definition for child support in chapter 518A and parenting time in chapter 518. We believe this shows that the expansion of the definition of "child" to all of chapter 518 was not a legislative accident.

Some may view the Supreme Court's decision in *Rew v. Bergstrom*, 845 N.W.2d 764 (Minn. 2014) as an indication that the Supreme Court

believes that custody and parenting time issues end at the age of 18. In the context of constitutional challenges to an order for protection, the Supreme Court had occasion to interpret the phrase "minor children" and made the following statement: "Because the extended OFP repeatedly refers to the parties' 'minor' children in describing the terms and conditions of the extended OFP, we interpret the restrictions on Bergstrom's contact with each child as applicable only until the child reaches the age of 18, at which point the child will no longer be a minor." *Id*. at 782. While this may appear to undermine the reasoning outlined above, this statement was made in a limited context. Additionally, OFPs are governed by chapter 518B and the definition of "child" in chapter 518A applies only to that chapter and chapter 518.

But since Minn. Stat. § 518.17 still uses the phrase "minor children" rather than children, doesn't the word "minor" limit the definition of "child" to a person who is under 18? That was the view of the Court of Appeals in *Castle-Heaney v. Heaney*, No. A13-1776 (Minn. Ct. App. Sept. 22, 2014). Following a trial, mother was granted physical custody of the parties' two younger children and father was granted physical custody of the oldest child, who was 17 at the time of trial and 18 when the district court issued its amended findings. Father appealed and argued that the split custody arrangement required heightened scrutiny. Citing Minn. Stat. § 518.17, the Court of Appeals disagreed with father's characterization of the custodial arrangement as involving split custody because it concluded that no jurisdiction existed to determine custody with respect to the oldest child, who had turned 19 by that time. *Id*. at *6. Although this rationale has some appeal, it is difficult to attach much significance to "minor" since the phrase "child" and "minor child" are used interchangeably throughout key sections of chapter 518. The statute which defines custody and parenting time (Minn. Stat. § 518.003, subds. 3 & 5), the custody evaluation statute (Minn. Stat. § 518.167), the statute governing chambers interviews of children (Minn. Stat. § 518.166), the parenting plan statute (Minn. Stat. § 518.1705), and the parenting time expeditor statute (Minn. Stat. § 518.1751) all use some derivation of "child" while the custody statute (Minn. Stat. § 518.17), parenting time statute (Minn. Stat. § 518.175), and guardian ad litem statute (Minn. Stat. § 518.165) use some derivation of "minor child." The fact that these important statutes use "child" and "minor child" with no rhyme or reason dispels any notion that the Legislature intended there to be a distinction between them.

In addition to Minn. Stat. § 518.17, the Court of Appeals in *Castle-Heaney* also cited Minn. Stat. § 645.45(14) which defines "minor" as an individual under 18 and Minn. Stat. § 518D.102(c) which defines "child" under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as an individual under 18. Although arguments can be made based on those statutes, they are not very persuasive. The definitions in Minn. Stat. § 645.45 are general definitions that apply to all of Minnesota Statutes "unless the context clearly indicates otherwise." The general definition of "minor" in that section was passed in 1973 and does not trump the more recently enacted chapter 518A's definition of "child." See Minn. Stat. § 645.26, subd. 1 (directing that a special provision in a law prevails over a general provision in a law when the two are in conflict if the special provision was enacted after the general provision). And the UCCJEA's definition of "child" does not have any impact on intrastate custody disputes.

In final analysis, our view is that the amendments to chapters 518 and enactment of chapter 518A changed the law represented by *Anwiler* and that the district court's power to address custody and parenting time is not cut off when a child turns 18. But let's be clear about what this means. We do not intend to suggest that an 18-year-old lacks the various rights that go along with having attained the age of majority. While the district court retains the authority to address custody and parenting time for an 18-year-old "child," such custodial rights are enforceable only vis-a-vis the parties themselves. For example, a district court could still order the various remedies and sanctions outlined in Minn. Stat. § 518.175, subd. 6 if a parent interferes with the other parent's parenting time. And a district court could still modify parenting time. For example, let's say that father's original court-ordered parenting time consists of 7 out of every 14 overnights and he is ordered to pay support to mother based on the 45.1-50% parenting expense adjustment. The child ends up spending more time with his mother and by the time he turns 18 in October of his senior year of high school, he is spending time with his father only a couple times per month. The district court could modify parenting time in conjunction with modifying child support and applying the parenting expense adjustment. But what about modifying parenting time and not child support? Using the example above, let's say the reason the boy spends more time with his mother is that she allows him to use drugs and have parties in her home and father brings a motion for sole custody and limited parenting time for mother. The district court can grant father's motion and order mother not to allow the boy to live in her home, even though it

cannot require the boy to live with father. As a practical matter, it will rarely make sense to litigate custodial issues outside of the context of child support because most 18-year-olds are going to "vote with their feet." But it is important to understand the nuances of what the court has the power to order and not just assume that it lacks any authority on custody and parenting time issues involving an 18-year-old "child."

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