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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEBRA MANNING, et al.,)

Plaintiffs.)

v.)

HOUSING AUTHORITY OF THE)
CITY AND COUNTY OF SAN)
FRANCISCO, et al.,)

Defendants.)

Civil No. 74-0266 GEN

MEMORANDUM OF DECISION

This case poses the question of whether defendant Housing Authority of the City and County of San Francisco may refuse to process the applications for low-rent public housing of that class of plaintiffs consisting of all unmarried mothers residing in San Francisco who are under the age of 18, and their children.

Plaintiffs filed their First Amended Civil Rights Complaint on April 5, 1974. The parties thereafter stipulated as to the definition of the plaintiff class and that the matter should properly proceed as a class action. The parties have also stipulated to an agreed statement of facts.

1 plaintiffs were surprised by this court's reliance on
2 Section 33 of the California Civil Code ["Cal. Civ. C. §33"]
3 in deciding the matter contrary to plaintiffs' position:

4 What counsel mistakenly considered
5 a peripheral issue, and therefore fail-
6 ed to adequately brief, has now become
7 an essential component of the Court's
8 decision.

9 This contention is not well taken; as noted in
10 defendants' memorandum in opposition, the question of the
11 scope and applicability of Cal. Civ. C. §33 was discussed
12 throughout plaintiffs' papers and was the subject of specific
13 argument before the court. There is no foundation for the
14 claim that plaintiffs were not given ample opportunity to
15 present their position on this issue or that the court's
16 resolution thereof was in any manner a surprise.

17 The sole substantive contention now urged by
18 plaintiffs is one not heretofore raised: namely that plaint-
19 iffs are, or would become, emancipated minors under California
20 law and therefore not subject to the strictures of Cal. Civ.
21 C. §33.

22 Cal. Civ. C. §211 provides for the emancipation
23 of a minor as follows:
24

25 The parent, whether solvent or insolvent,
26 may relinquish to the child the right
27 of controlling him and receiving his
28 earnings. Abandonment by the parent is
29 presumptive evidence of such relinquish-
30 ment.

31 Emancipation deals primarily with the reordering
32 of rights and obligations between the parent and his child.
33 Thus, for example, in California a completely emancipated min

1 has the right to sue a parent for simple negligence. Parsons
2 v. Robertson, 140 Cal.App.2d 536, 540, 295 P.2d 972 (1956).
3 The term "completely" is not surplusage, for emancipation may
4 be express or implied, conditional or absolute, complete or
5 partial. Id. at 540. No matter what the degree of emancipa-
6 tion, however, the minor may still disaffirm certain contracts
7 37 Cal.Jur.2d Parent and Child §58 at 225. See also Rieker
8 v. Fred Howe Motors, Inc., 39 Wis.2d 20, 158 N.W.2d 288, 290
9 (Wis. 1968) (general rule is that contract of minor, other
10 than for necessities, is void or voidable at his option;
11 emancipation statutes are irrelevant to such right); Schoenauer
12 v. Gallet, 206 Wis. 521, 238 N.W. 852, 853 (Wis. 1931) (emanci-
13 pation of minor does not remove or affect a minor's incapacity
14 to subject himself to contractual liability for things
15 other than necessities); Shellabarger v. Jacobs, 316 Ill.App.
16 191, 45 N.E.2d 184, 186 (Ill.Ct.App. 1942) (emancipation does
17 not prevent minor from disaffirming contracts). As the matter
18 is summarized in Am.Jur 2d:

21
22 Emancipation does not remove the dis-
23 abilities of infancy or operate to make
24 the child sui juris. Thus, the fact
25 that an infant's father has emancipated
26 him by giving up his right to the in-
27 fant's services does not affect the val-
28 idity of the infant's contracts or lia-
29 bilities. [Footnotes omitted.] 39 Am.Jur.
30 2d Parent and Child §93 at 193.

31 While parental emancipation or emancipa-
32 tion by marriage or by enlistment affects
the parent's rights and obligations to
the infant, such emancipation does not
otherwise remove the incapacity of his
infancy or affect the avoidability of
his contracts. Thus, it has been said
that emancipation does not remove or af-
fect a minor's incapacity to subject himself

1 to contractual liability for things
2 which are not necessities, or that
3 emancipation does not in and of
4 itself operate to make the infant sui
5 juris. [Footnotes omitted.] 42 Am.Jur.
6 2d Infants §3 at 10-11.

7 The conclusion to be drawn from the foregoing
8 authorities is that a minor, even if emancipated, cannot
9 enter into the kind of contractual lease arrangement required
10 by defendant San Francisco Housing Authority and within the
11 purview of Cal. Civ. C. §33.

12 Plaintiffs cite several cases in support of their
13 contention, relying most heavily on Jolicœur v. Mihaly,
14 5 Cal.3d 565, 96 Cal.Rptr.697, 488 P.2d 1 (1971). The
15 Supreme Court of California found several grounds there on
16 which to base its decision that unmarried minors who were
17 18 or older and resided apart from their parents could estab-
18 lish their own legal residence for voting purposes despite
19 the dictates of California Government Code ["Cal. Gov. C."]
20 §244 which made the residence of a minor that of his parents
21 regardless of where he in fact lived. The court found that
22 Cal. Gov. C. §244 was not absolute, but was instead to be
23 read against a background of exceptions created by case and
24 statutory law. Cal. Gov. C. §244 was thus found subject to
25 Cal. Civ. C. §211 so that an emancipated minor could establish
26 his own residence for purposes of voting.

27 The conflict created in Jolicœur was due in part
28 to the hiatus caused by the fact that the Twenty-Sixth Amend-
29 ment to the United States Constitution guaranteed the right
30 to vote to persons 18 or older while the relevant California
31

1 statute continued to declare only those 21 or older to be
2 adults with respect to establishment of legal residence.
3 There can be no quarrel with the decision in Jolicœur in
4 view of the policies to be furthered there, but Jolicœur
5 will not support a decision here which abrogates Cal. Civ.
6 C. §33.
7

8 At the outset there arises a question of proof
9 because of the class nature of the instant action. The law
10 is settled that the proof of emancipation is a question of
11 fact. Martinez v. Southern Pacific Co., 45 Cal.2d 244, 253,
12 288 P.2d 868 (1955), and that emancipation will not be pre-
13 sumed but must be proved. Perkins v. Robertson, *supra* at
14 540. The burden of proof is on the one claiming to have been
15 emancipated. 37 Cal.Jur.2d Parent and Child §16 at 160.
16

17 The court in Jolicœur recognized the foregoing
18 principles but found that establishment of a separate abode,
19 as was true of the Jolicœur plaintiffs, was evidence of
20 emancipation, and that a finding of emancipation was further
21 strengthened by reason of the other rights which accrued
22 to persons 18 or older (but under 21). The court in Jolicœur
23 noted that emancipation could be for a limited purpose only,
24 and that whether total or partial, it was still sufficient
25 to meet the needs of the parties before it.
26

27 The situation before this court is not apposite.
28 It is far from clear that the class of plaintiffs--or even
29 the named plaintiffs--are emancipated within the meaning of
30 the law. That they would achieve emancipation by being given
31 that which they seek by the instant lawsuit is a bootstrap
32

1 argument which does not satisfy the prerequisites for emanci-
2 pation.

3 Jolicœur gave substance to the idea expressed
4 hereinabove that the primary purpose of emancipation is to
5 regulate the correlative rights and obligations of parent
6 and child: by permitting a minor to establish his own resi-
7 dence for purposes of voting the court was abolishing the
8 fiction that the residence of a parent and his child must
9 be identical. In the instant case, however, the relief
10 sought would effectively undermine the state's statutory
11 scheme related to classification by age and would grant
12 the minor new rights not contemplated--indeed forbidden--
13 by statute.
14

15
16 It is noteworthy that the court in Jolicœur
17 did not attempt to abrogate existing statutory law by de-
18 claring that emancipated minors under 18 could vote.
19 Clearly the court would not countenance any such enlarge-
20 ment of rights in violation of law, and the court's de-
21 cision supported the view that emancipation may be partial
22 and/or for a specific purpose only. A minor under 18 may
23 not vote whether emancipated or not, and nothing in the
24 Jolicœur decision holds to the contrary.
25

26 Following the submission of the instant case,
27 counsel for plaintiffs tendered for consideration a recent
28 decision of another District Court. In Hill v. Howards
29 Authority of Kansas City, Missouri, No. 20563-2 (W.D. Mo.
30 July 16, 1974), the plaintiff, a woman under 18, sued for
31 injunctive and declaratory relief to secure admission to
32

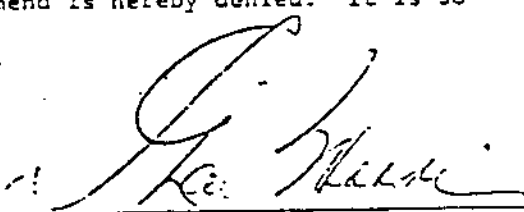
1 Kansas City's low-cost public housing.

2 The court in Hill found that when the plaintiff had
3 attempted to apply for such housing and was refused because
4 she was too young, no admission standard relating to age
5 had been published or posted. The court concluded that
6 the defendant's conduct in refusing plaintiff the right to
7 apply for housing had violated her Fourteenth Amendment due
8 process rights and HUD Circular 7465.1.
9

10 The decision in Hill is not dispositive. The court's
11 conclusionary opinion does not reach the major points
12 argued herein, such as the role of state law with respect
13 to the rights of minors and the issue of emancipation.
14 Nothing in Hill mandates that this court must alter its
15 Conclusions of Law pursuant to the instant motion.
16

17 Accordingly, the court finds that plaintiffs herein,
18 even if emancipated within the meaning of California law,
19 remain subject to the strictures of Cal. Civ. C. §33.
20 Plaintiffs' motion to amend is hereby denied. It is so
21 ordered.
22

23 Dated: SEP 20 1974

24 
25 United States District Judge
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