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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1628**

Sara Corinne Kysylyczyn,
Appellant,

vs.

Teresa MacNabb,
Respondent,

John Michael Kysylyczyn,
Respondent.

**Filed June 29, 2020
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-FA-19-984

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Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-child challenges the rule 12 dismissal of her petition seeking emancipation from respondent-mother. Because (1) the child did not serve the summons as required to commence this action and (2) the petition does not state a legally sufficient claim, we affirm.

FACTS

Appellant Sara Kysylyczyn is the eldest of two children born to respondent Teresa MacNabb (mother) and respondent John Kysylyczyn (father).¹ When their marriage was dissolved in 2010, mother and father agreed to share joint legal and physical custody of both children. That arrangement continues, although they have disputed custody and parenting time, and Kysylyczyn's relationship with mother has become contentious. See *MacNabb v. Kysylyczyn*, No. A19-0376 (Minn. App. Feb. 18, 2020) (affirming denial of father's motion for full custody of Kysylyczyn), *review denied* (Minn. Apr. 28, 2020).

In April 2019, 16-year-old Kysylyczyn filed a petition seeking "emancipation from" mother. In a supporting affidavit, Kysylyczyn averred that she is a successful student; she has earned income and has her own investments; she finds mother's behavior toward her

¹ Father filed a brief urging this court to reverse the dismissal of Kysylyczyn's petition, but he neither appealed the dismissal nor joined Kysylyczyn's appeal. As such, he is neither an appellant nor a respondent, and we need not address his arguments. See Minn. R. Civ. App. P. 143.01 (defining respondent as the "adverse party"); *In re Welfare of Child of J. R. R.*, ___ N.W.2d ___, ___, 2020 WL 1845256, at *9 (Minn. App. Apr. 13, 2020) (declining to address questions raised by the guardian ad litem on appeal because she did not appeal or join the child's appeal and was thus neither an appellant nor a respondent).

verbally and emotionally abusive; mother has refused to provide financial support for several of her musical activities; she prefers to live full-time with father; and she will move in with her paternal grandparents and “break off all communication with . . . mother” if the court finds father in contempt in the dissolution proceeding and “imprison[s]” him.

After an initial case-management conference, the district court noted that Kysylyczyn had not filed or served a summons. The court ordered Kysylyczyn to do so and to file proof of service. Kysylyczyn thereafter filed an unsigned summons and an unsigned affidavit of service stating that mother and father were personally served with the petition on May 2.

Mother moved to dismiss the petition on the grounds that it was not properly served and fails to state a claim for which relief can be granted because Minnesota does not recognize a cause of action for a child to emancipate from her parent. Kysylyczyn and father opposed the motion, and Kysylyczyn again filed an unsigned summons and an unsigned affidavit of service stating that mother and father were personally served with the petition on May 2.

The district court dismissed the petition, concluding that Kysylyczyn failed to commence this action by serving the summons. And the court determined that the petition does not state a claim for emancipation under Minnesota law because it does not allege that Kysylyczyn is married, mother agreed to her emancipation, or mother’s conduct implies an intent to relinquish her custodial rights. Kysylyczyn appeals.

DECISION

I. Dismissal is warranted because Kysylyczyn did not serve the summons.

In Minnesota, a plaintiff commences a civil action by serving the summons upon the defendant or obtaining the defendant's waiver of service. Minn. R. Civ. P. 3.01. Service of the summons confers personal jurisdiction over the defendant. *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). "Absent proper service of process or a waiver thereof, the district court must dismiss the action." *Koski v. Johnson*, 837 N.W.2d 739, 742 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Dec. 17, 2013). When a defendant claims that the plaintiff failed to effectuate proper service of the summons, the plaintiff "must submit evidence of effective service." *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 271 (Minn. 2016). "Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that this court reviews de novo." *Id.* at 270.

Kysylyczyn contends she satisfied rule 3.01 because she filed the summons and mother and father "acknowledged service." We disagree. After the district court ordered Kysylyczyn to serve the summons and file proof of service, she filed the summons and an affidavit indicating that mother and father acknowledged service of the *petition*. There is no evidence that they were served with the *summons* or waived service. On this record, the district court did not err by concluding that Kysylyczyn failed to serve the summons and dismissing the action accordingly.

II. Kysylyczyn failed to state a legally sufficient emancipation claim.

A district court may dismiss a complaint when the plaintiff fails to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e). On appeal, we review de novo whether the complaint sets forth a legally sufficient claim for relief. *Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786, 790 (Minn. 2019). We take the facts alleged in the complaint as true and “draw reasonable inferences in favor of the nonmoving party.” *Id.* (quotation omitted).

Kysylyczyn argues that the district court erred by concluding that her allegations “fall short of any common law basis for emancipation,” because the court’s authority to “grant emancipation is rooted in common law and has been recognized by the Minnesota Appellate Courts.” This argument is unavailing.

Minnesota courts have long recognized a common-law concept of “emancipation,” referring to the “severance of . . . ties, rights, and obligations between parent and child.” *County of Becker v. County of Hennepin (In re Sonnenberg)*, 99 N.W.2d 444, 447 (Minn. 1959). Emancipation “traditionally and usually” refers to complete severance between a parent and a minor child who is “old enough to work and earn a living” when the child (1) marries or (2) is “given his freedom to contract with others for wages and to support himself as if he were of age.” *Id.* The principle underlying emancipation is that a parent has rights to a child’s “services” and to “custody and control” of the child, and the parent may relinquish those rights. *County of St. Louis v. County of Scott (Application to Determine Settlement of Fiihr)*, 184 N.W.2d 22, 25 (Minn. 1971) (quoting *Taubert v. Taubert*, 114 N.W. 763, 764 (Minn. 1908)). “A minor may be emancipated by an

instrument in writing, by verbal agreement, or by implication from the conduct of the parties.” *Id.* (quotation omitted).

Contrary to Kysylyczyn’s argument, *Sonnenberg* and *Fiihr* do not authorize a district court to order emancipation at the request of a minor child. Rather, the cases apply the principle that emancipation “is the act of the parent” to the unique factual circumstances of each case. *Id.* (quotation omitted). And the cases establish that the district court’s role is to determine whether the parent has—by words or conduct—relinquished her parental rights. Far from asserting that mother has done so, Kysylyczyn’s petition alleges that mother actively asserts her custodial rights, contrary to Kysylyczyn’s wishes. We discern no error in the district court’s conclusion that the petition fails to state a legally sufficient claim for emancipation.

Kysylyczyn presents additional arguments suggesting that we should recognize a cause of action permitting a child to emancipate from a custodial parent against the parent’s wishes. We first observe that “the task of extending existing law falls to the supreme court or the legislature, not to this court.” *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 472 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). But we also conclude that her arguments fail on their merits.

First, Kysylyczyn contends that a district court should defer to an older child’s “choice,” pointing to *Ross v. Ross*, 477 N.W.2d 753 (Minn. App. 1991), and similar caselaw. But *Ross* and the other cases on which she relies address a child’s choice between parents or other legal custodians in a family law case. None of the cases support the argument that a child may unilaterally choose to sever her legal relationship to a parent.

Second, Kysylyczyn asserts that it is inequitable to deprive a 16-year-old child of the right to emancipate herself from a parent when she has the right to possess a gun, have an abortion, or marry. But all of the rights she identifies are carefully circumscribed and are at least implicitly contingent on a parent's supervision or consent. See Minn. Stat. §§ 97B.021, subd. 1 (providing that "a person under the age of 16 may not possess a firearm, unless accompanied by a parent or guardian," except in four specific circumstances), 144.343, subds. 2, 4 (requiring notice to the parents of an "unemancipated minor" before an abortion, unless parents consent or other specific exemptions apply), 517.02 (providing that a 16-year-old may marry "with the consent of[her] legal custodial parents") (2018).

Finally, Kysylyczyn argues that she is entitled to emancipation because mother is "abusive." As noted above, emancipation is effectively a voluntary relinquishment of parental rights. *Sonnenberg*, 99 N.W.2d at 447. Involuntary termination of parental rights may be warranted in instances of severe or pervasive abuse. See Minn. Stat. § 260C.301, subd. 1(b) (2018) (listing grounds for involuntary termination of parental rights, including that a parent is "palpably unfit" or has caused a child "egregious harm"). But Kysylyczyn did not petition for involuntary termination of mother's parental rights. Nor does she claim that mother's conduct—criticizing her, declining to fully support her activities, and seeking to enforce her custodial rights over Kysylyczyn's objection—rises to the level that would justify such drastic action. See *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 409 (Minn. App. 2011) (stating that parental rights "may be terminated only for grave and weighty reasons" (quotation omitted)), *review denied* (Minn. July 28, 2011).

In sum, because Kysylyczyn does not allege that mother has, by words or conduct, relinquished her custodial rights, the district court did not err by concluding that her allegations “fall short of any common law basis for emancipation” and dismissing her petition for failure to state a claim for which relief can be granted.

Affirmed.