CHAPTER 3

Family Court

ARTICLE 1

Family Court and Family Court Judges

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑3‑10 | 20‑7‑1460 |
| 63‑3‑20 | 20‑7‑1360 |
| 63‑3‑30 | 20‑7‑1370 |
| 63‑3‑40 | 20‑7‑1410 |
| 63‑3‑50 | 20‑7‑1380 |
| 63‑3‑60 | 20‑7‑1430 |

**SECTION 63‑3‑10.** Family courts created.

There hereby are created courts of limited jurisdiction to be known and designated in this title as “family courts.” The number and boundaries of such family courts shall be the same as the judicial circuits. Each court shall bear the name of “The Family Court of \_\_\_\_\_\_\_\_\_\_ Judicial Circuit.”

HISTORY: 2008 Act No. 361, Section 2.

Library References

Courts 41.

Westlaw Topic No. 106.

C.J.S. Courts Sections 121 to 124.

Attorney General’s Opinions

The Family Court does not have jurisdiction to order a respondent to pay the fees or costs incurred by the Solicitor’s Office, County Attorney’s Office, or county, in actions brought under the Uniform Reciprocal Enforcement of Support Act absent statutory authority or a common fund. 1983 Op. Atty Gen, No. 83‑80, p. 129.

**SECTION 63‑3‑20.** Family court judges.

(A) Each family court shall have one or more family court judges who shall devote full time to their duties as judges, shall be prohibited from engaging directly or indirectly in the practice of law except in the performance of their judicial duties and shall be bound by the Code of Judicial Conduct.

(B) One family court judge in each circuit shall be designated chief family court judge which designation shall be made by the Chief Justice of the Supreme Court. Such chief family court judge, in addition to his other judicial duties, shall perform such administrative duties as may be prescribed by the Chief Justice.

(C) The family courts shall be courts of record, and each family court judge shall appoint a court reporter and a secretary who shall hold office at the pleasure of the judge. The court reporter shall take down and record the testimony and judge’s rulings and charges, and transcribe such portion of the proceedings as may be required. The court reporter and the secretary shall perform such other duties as the judge may prescribe.

(D) Records in the family court concerning juveniles shall be kept confidential as prescribed in Sections 63‑7‑1990 and 63‑19‑2020.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Appropriation by the General Assembly for salaries of personnel authorized by this section, see Section 63‑3‑360.

Removal of court reporters by Judicial Department or judge only for just cause, see Section 14‑15‑15.

Library References

Courts 48, 57, 70.

Westlaw Topic No. 106.

C.J.S. Courts Sections 6, 169 to 170.

C.J.S. Stenographers Sections 2 to 21.

LAW REVIEW AND JOURNAL COMMENTARIES

Suing Judges: History and Theory. 31 S.C. L. Rev. 201.

Attorney General’s Opinions

A mandatory reporter would not have to report pursuant to Section 63‑7‑310 when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in Section 63‑3‑20(3)) has been or may be abused or neglected as defined in Section 63‑7‑20(4), and as long as there is no other law that would require the abuse to be reported. S.C. Op.Atty.Gen. (June 30, 2014) 2014 WL 3352174.

Federal funds received by the Department of Social Services under the auspices of the Child Support Enforcement Act must be placed under the custody of the appropriate county treasurer. Only such funds are as necessary to implement and operate the provisions of Section 20‑7‑1315 are to be used by the county clerks of court. Any excess funds should be placed in the counties’ general funds. 1986 Op. Atty Gen, No. 86‑100, p 305.

Since the repeal of Section 14‑21‑340, by Act No. 71 of 1981, there appear to be no other statutory provisions authorizing the position of constable of the family court. While assertions could be made that the position of constable is a position that inherently a court is authorized to designate and fill, the better practice is to enact legislation specifically authorizing the position. 1986 Op. Atty Gen, No. 86‑51, p 150.

**SECTION 63‑3‑30.** Judges’ qualifications and terms.

(A)(1) No person shall be eligible to the office of family court judge who is not at the time of his assuming the duties of such office a citizen of the United States and of this State, and has not attained the age of thirty‑two years, has not been a licensed attorney at law for at least eight years, and has not been a resident of this State for five years next preceding his election, and is not a resident of the circuit wherein the family court of which he is a judge is located. Notwithstanding any other provision of law, any former member of the General Assembly may be elected to the office of family court judge.

(2) Any family court judge serving in office on the effective date of the provisions of this section requiring a family court judge to be at least thirty‑two years of age and to have at least eight years of service as a licensed attorney at law who is not of that age or who has not been licensed for this required period of time may continue to serve for the remainder of his current term and is considered to have the requisite age and years of service as a licensed attorney at law for purposes of future re‑elections to the office of family court judge.

(B) Family court judges must be elected by the General Assembly for terms of six years and until their successors are elected and qualify.

(C) The terms of all family court judges expire on the thirtieth day of June of the year in which their terms are scheduled to expire.

(D) For the purpose of electing family court judges, if more than one judge is to be elected from a circuit, each judgeship in that circuit shall be serially numbered beginning with the number (1) and the General Assembly shall elect a judge for each such judgeship. Any candidate for the office of family court judge in a circuit shall specifically file and run for a serially‑numbered judgeship in that circuit.

(E) When a vacancy occurs for an unexpired term in an office of family court judge, the Governor, upon recommendation of the Chief Justice, shall commission a temporary family court judge to fill such vacancy until such time as the General Assembly shall elect a successor who shall serve for the remainder of the unexpired term. Such temporary family court judge shall receive as compensation for his services the salary paid to a regular family court judge and in addition thereto shall also receive the subsistence and mileage as authorized by law for family court judges.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Judges 1 to 12.

Westlaw Topic No. 227.

C.J.S. Judges Sections 1 to 135.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 21, Constitutional Control of Judicial Operations.

Attorney General’s Opinions

Qualifications of family court judge must be met at time of election and not time of assumption of office. 1980 Op. Atty Gen, No. 80‑26, p 53.

Where there is an instance of filling two vacancies in the circuit court judgeships within the same judicial circuit at the same time, each judgeship should be treated as a separate office and one wishing to be a candidate for a judgeship would declare his candidacy for a particular judgeship rather than running “at large” from the circuit. 1987, Op. Atty Gen, No. 87‑100, p 265.

NOTES OF DECISIONS

In general 1

1. In general

Judicial Merit Selection Commission (JMSC), which by statute contained members of the legislature and determined whether judicial candidates were qualified before the legislature elected judges from list submitted by JMSC, did not violate separation of powers provision in South Carolina Constitution by finding that family court judge was unfit for re‑election upon a complaint submitted by disgruntled family court litigant after judge denied litigant’s motion to recuse herself in divorce action, though judge’s decision refusing to recuse herself was affirmed on appeal and litigant’s ethics complaint against judge was dismissed; the legislature had plenary authority over the political aspects of its constitutional authority in the election of judges, and the Supreme Court, in action by judge challenging JMSC’s decision, could not under the allure of separation of powers intervene in a political question. Segars‑Andrews v. Judicial Merit Selection Com’n (S.C. 2010) 387 S.C. 109, 691 S.E.2d 453. Constitutional Law 2382; Constitutional Law 2585; Judges 3

**SECTION 63‑3‑40.** Initial election.

(A) The General Assembly shall elect a number of family court judges from each judicial circuit as follows:

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| --- | --- | --- |
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|  | First Circuit | Three Judges |
|  | Second Circuit | Two Judges |
|  | Third Circuit | Three Judges |
|  | Fourth Circuit | Three Judges |
|  | Fifth Circuit | Four Judges |
|  | Sixth Circuit | Two Judges |
|  | Seventh Circuit | Three Judges |
|  | Eighth Circuit | Three Judges |
|  | Ninth Circuit | Six Judges |
|  | Tenth Circuit | Three Judges |
|  | Eleventh Circuit | Three Judges |
|  | Twelfth Circuit | Three Judges |
|  | Thirteenth Circuit | Six Judges |
|  | Fourteenth Circuit | Three Judges |
|  | Fifteenth Circuit | Three Judges |
|  | Sixteenth Circuit | Two Judges |

(B) In the following judicial circuits at least one family court judge must be a resident of each county in the circuit: fifth, seventh, tenth, twelfth, thirteenth, fifteenth, and sixteenth. In those judicial circuits made up of three or more counties, at least one family court judge must be a resident of one of the counties which does not have the largest population in the circuit. In the ninth circuit, both counties in the circuit must have at least two resident family court judges.

(C) No county in the sixth circuit shall have more than one resident family court judge.

(D) In addition to the judges authorized by this section, there must be eight additional family court judges elected by the General Assembly from the State at large for terms of office of six years. These additional judges must be elected without regard to county or circuit of residence. Each office of the at‑large judges is a separate office and is assigned numerical designations of Seat No. 1 through Seat No. 8, respectively.

HISTORY: 2008 Act No. 361, Section 2; 2012 Act No. 241, Section 2, eff June 18, 2012; 2016 Act No. 253 (H.4877), Section 1, eff June 7, 2016.

Editor’s Note

2012 Act No. 241, Section 3, provides as follows:

“The Judicial Merit Selection Commission shall begin the process of nominating candidates for the judicial offices authorized by the provisions of SECTIONS 1 and 2, and the General Assembly then shall elect these judges from the nominees of the commission; except that, the nominating process may not begin until funding for the additional judges is provided in the general appropriations act.”

Effect of Amendment

The 2012 amendment added subsection (D).

2016 Act No. 253, Section 1, amended (D), adding two additional family court judges.

Library References

Judges 3.

Westlaw Topic No. 227.

C.J.S. Judges Sections 20 to 29.

**SECTION 63‑3‑50.** Compensation of judges.

Family court judges shall receive such compensation as shall be provided by the General Assembly. The compensation of a family court judge shall not be reduced during his term of office. All family court judges shall also receive such subsistence and mileage as may be authorized by law for circuit court judges while holding court without the county in which the judge resides.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Expenses of family court, see Section 63‑3‑360.

Library References

Judges 22.

Westlaw Topic No. 227.

C.J.S. Judges Sections 181 to 206, 330.

**SECTION 63‑3‑60.** Retirement for abolished officers.

A judge or master whose judicial office is eliminated by the provisions of this act shall be given credit for state retirement purposes for the time in which he served as judge or master under a formula to be determined by rule and regulation of the Public Employee Benefit Authority.

HISTORY: 2008 Act No. 361, Section 2.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

CROSS REFERENCES

Expenses of family court, see Section 63‑3‑360.

Library References

Judges 22(11).

Westlaw Topic No. 227.

C.J.S. Judges Sections 204 to 206.

ARTICLE 3

Administrative Matters of the Family Court

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

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|  |  |
| New  Section | Former  Section |
| 63‑3‑310 | 20‑7‑1480 |
| 63‑3‑320 | 20‑7‑1390 |
| 63‑3‑330 | 20‑7‑1400 |
| 63‑3‑340 | 20‑7‑1420 |
| 63‑3‑350 | 20‑7‑1490 |
| 63‑3‑360 | 20‑7‑1500 |
| 63‑3‑370 | 20‑7‑1440 |

**SECTION 63‑3‑310.** Administration of family court system.

The Supreme Court by rule shall provide for the administration of the family court system.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Courts 47, 80(1), 81.

Westlaw Topic No. 106.

C.J.S. Courts Sections 1, 3, 175 to 178.

**SECTION 63‑3‑320.** Rotation of judges.

All family court judges in a circuit, including the chief family court judge, shall rotate among all counties in the circuit as directed by the chief family court judge under the direction and supervision of the Chief Justice.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Courts 45, 47.

Westlaw Topic No. 106.

C.J.S. Courts Sections 1, 133.

**SECTION 63‑3‑330.** Assignment of cases.

If two or more family court judges are presiding in the same county at the same time, the chief family court judge shall make assignments of the cases in such county to those judges.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Courts 70.

Westlaw Topic No. 106.

C.J.S. Courts Sections 169 to 170.

NOTES OF DECISIONS

In general 1

1. In general

Where the chief family court judge presiding in a circuit entered a default judgment in an adoption proceeding, but when the defendant moved to vacate the default judgment, the chief family judge assigned the case to another judge pursuant to his authority under Section 20‑7‑1400, the second judge had authority to vacate the default judgment on the basis of facts which had not been considered originally by the chief judge, and the principle that one trial judge cannot ordinarily set aside an order of another judge did not apply. Mann v. Walker (S.C.App. 1985) 285 S.C. 194, 328 S.E.2d 659.

**SECTION 63‑3‑340.** Temporary assignment of judges.

The Chief Justice, in his discretion and based upon caseload requirements and need, may temporarily assign a family court judge to preside in another circuit other than the one in which he is a resident.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Courts 70.

Westlaw Topic No. 106.

C.J.S. Courts Sections 169 to 170.

**SECTION 63‑3‑350.** Physical facilities.

Each county shall provide sufficient physical facilities for the operation of the statewide Family Court system in that county, including facilities necessary for the provision of intake and probation services by the Department of Juvenile Justice.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Courts 55, 72.

Infants 192, 225.

Westlaw Topic Nos. 106, 211.

C.J.S. Courts Sections 136 to 144, 166 to 168.

C.J.S. Infants Sections 24 to 25, 41 to 43, 46 to 48, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 97, Intake.

S.C. Jur. Clerks of Court Section 14, Budget.

NOTES OF DECISIONS

In general 1

1. In general

The legislature did not restrict the location of the family court to the county courthouse or to the county seat. Baker v. Dorchester County Council (S.C. 1993) 315 S.C. 143, 432 S.E.2d 468. Courts 74

Although a county does not have unbridled discretion to place the family court anywhere in the county, it’s locating the family court outside the city where the county seat of government is located was acceptable where the location was readily accessible to the majority of the residents of the county. Baker v. Dorchester County Council (S.C. 1993) 315 S.C. 143, 432 S.E.2d 468.

**SECTION 63‑3‑360.** Expenses of family courts.

The General Assembly shall in the annual general appropriations act provide for the salaries, equipment and supplies of family court judges and the court reporters and secretaries authorized by the provisions of subsection (C) of Section 63‑3‑20. All other costs necessary for the operation of the family court system in a county including the salaries of necessary support personnel shall be provided for by the governing body of that county.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Compensation of family court judges, see Section 63‑3‑50.

Retirement benefits of abolished officers, see Section 63‑3‑60.

Library References

Counties 136.

States 129.

Westlaw Topic Nos. 104, 360.

C.J.S. Counties Sections 264 to 274.

C.J.S. States Sections 390 to 417.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 14, Budget.

**SECTION 63‑3‑370.** Fees and costs.

(A) In delinquency and neglect actions no court fee may be charged against and no witness fee is allowed to a party to a petition. No officer of this State or of a political subdivision of this State may receive a fee for the service of process or for attendance in court in the proceeding, except that in divorce proceedings the officer is allowed the fee provided by law and except when the sheriff or clerk of court has entered into a cooperative agreement with the South Carolina Department of Social Services pursuant to Title IV‑D of the Social Security Act for the reimbursement of federal matching funds. All other persons acting under orders of the court may be paid for services or service of process fees provided by law for like services in cases before the circuit court, to be paid from the appropriation provided when the allowances are certified to by the judge.

(B) The sheriff, municipal police, constable, or any peace officer shall serve all papers in delinquency, dependency, and neglect cases without costs, except as provided for in subsection (A).

(C) In actions for support for the spouse or dependent children, when paid through the court or through a centralized wage withholding system operated by the Department of Social Services and not directly, the court shall assess costs against the party required to pay the support in the amount of five percent of the support paid, which costs must be in addition to the support money paid. The revenue from the costs must be remitted as provided in Section 14‑1‑203.

By making the additional five percent payment on child support required by this subsection to the court or through the centralized wage withholding system operated by the Department of Social Services, the payor agrees:

(1) that this payment is in satisfaction of court costs assessed;

(2) that this payment is not child support under 45 CFR 302.51 but is in addition to all child support paid;

(3) to the distribution of this payment to the State for court costs.

(D) In actions initiated by the department pursuant to Section 63‑7‑1650 or 63‑7‑1660, the court, only after a hearing on the merits, may impose a fee of one hundred dollars against the defendant. If the court does not order removal of custody or intervention and protective services with the child remaining in the home, the fee must be waived. The court may assess the fee against any one defendant or apportion the fee among multiple defendants. The fee may be paid in installments as the court may order; however, the court may not assess a defendant a fee if the defendant’s legal assistance is paid for with public funds or if the defendant is qualified for court appointment in accordance with Section 63‑7‑1620. The clerk of court shall collect the fee and remit it to the department. The department shall retain the fees remitted to be used to offset the expenses associated with its legal representation in child abuse and neglect cases.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Entry of costs pursuant to this section on notices to withhold for purposes of satisfying child support delinquency. See Sections 63‑17‑1410 et seq.

Federal Aspects

Title IV‑D of the Social Security Act is codified in 42 U.S.C.A. Sections 651 et seq.

Library References

Child Support 607.

Infants 198, 212.

Sheriffs and Constables 33, 87.

Westlaw Topic Nos. 76E, 211, 353.

C.J.S. Infants Sections 43, 49 to 50, 71 to 95.

C.J.S. Sheriffs and Constables Sections 80 to 88, 481.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 157, Department of Social Services (DSS) Guidelines.

S.C. Jur. Clerks of Court Section 10, Duties.

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

Treatises and Practice Aids

Employment Coordinator Compensation Section 34:462, South Carolina.

Attorney General’s Opinions

Dependency action within the meaning of Section 3, Article III, Act 690 of 1976, refers to those actions where a minor is dependent upon the public for support or likely to become a public charge. 1976‑77 Op. Atty Gen, No. 77‑259, p 193.

ARTICLE 5

Jurisdiction and Court Powers and Procedures

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

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|  |  |
| New  Section | Former  Section |
| 63‑3‑510 | 20‑7‑400 |
| 63‑3‑520 | 20‑7‑410 |
| 63‑3‑530 | 20‑7‑420 |
| 63‑3‑540 | 20‑7‑1450 |
| 63‑3‑550 | 20‑7‑435 |
| 63‑3‑560 | 20‑7‑440 |
| 63‑3‑570 | 20‑7‑745 |
| 63‑3‑580 | 20‑7‑750 |
| 63‑3‑590 | 20‑7‑755 |
| 63‑3‑600 | 20‑7‑760 |
| 63‑3‑610 | 20‑7‑1470 |
| 63‑3‑620 | 20‑7‑1350 |
| 63‑3‑630 | 20‑7‑2220 |
| 63‑3‑640 | 20‑7‑450 |
| 63‑3‑650 | 20‑7‑460 |

**SECTION 63‑3‑510.** Exclusive original jurisdiction.

Section effective until July 1, 2019. See, also, section 63‑3‑510 effective July 1, 2019. See Editor’s Note for contingency.

(A) Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction:

(a) who is neglected as to proper or necessary support or education as required by law, or as to medical, psychiatric, psychological or other care necessary to his well‑being, or who is abandoned by his parent or other custodian;

(b) whose occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others;

(c) who is beyond the control of his parent or other custodian;

(d) who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 63‑3‑520;

(e) whose custody is the subject of controversy, except in those cases where the law now gives other courts concurrent jurisdiction. In the consideration of these cases, the court shall have concurrent jurisdiction to hear and determine the issue of custody and support.

(2) For the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child. Provided, that nothing herein is intended to conflict with the authority of probate courts in dealing with mental cases.

(3) Concerning any child seventeen years of age or over, living or found within the geographical limits of the court’s jurisdiction, alleged to have violated or attempted to violate any State or local law or municipal ordinance prior to having become seventeen years of age and such person shall be dealt with under the provisions of this title relating to children.

(4) For the detention of a juvenile in a juvenile detention facility who is charged with committing a criminal offense when detention in a secure facility is found to be necessary pursuant to the standards set forth in Section 63‑19‑820 and when the facility exists in, or is otherwise available to, the county in which the crime occurred.

(B) Whenever the court has acquired the jurisdiction of any child under seventeen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty‑one years. Any child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may expire before but not after the eighteenth birthday of the child.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑3‑510.** Exclusive original jurisdiction.

Section effective July 1, 2019. See, also, section 63‑3‑510 effective until July 1, 2019. See Editor’s Note for contingency.

(A) Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction:

(a) who is neglected as to proper or necessary support or education as required by law, or as to medical, psychiatric, psychological, or other care necessary to his well‑being, or who is abandoned by his parent or other custodian;

(b) whose occupation, behavior, condition, environment, or associations are such as to injure or endanger his welfare or that of others;

(c) who is beyond the control of his parent or other custodian;

(d) who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 63‑3‑520;

(e) whose custody is the subject of controversy, except in those cases where the law now gives other courts concurrent jurisdiction. In the consideration of these cases, the court shall have concurrent jurisdiction to hear and determine the issue of custody and support.

(2) For the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child. Provided, that nothing herein is intended to conflict with the authority of probate courts in dealing with mental cases.

(3) Concerning any person eighteen years of age or over, living or found within the geographical limits of the court’s jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become eighteen years of age and such person shall be dealt with under the provisions of this title relating to children.

(4) For the detention of a juvenile in a juvenile detention facility who is charged with committing a criminal offense when detention in a secure facility is found to be necessary pursuant to the standards set forth in Section 63‑19‑820 and when the facility exists in, or is otherwise available to, the county in which the crime occurred.

(B) Whenever the court has acquired the jurisdiction of any child under eighteen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty‑two years. Any child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may expire before but not after the twentieth birthday of the child.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 268 (S.916), Section 1, eff July 1, 2019.

Editor’s Note

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

2016 Act No. 268, Section 1, in (A)(3), substituted “any person eighteen years of age or over” for “any child seventeen years of age or over”, and substituted “having become eighteen years of age” for “having become seventeen years of age”; in (B), substituted “any child under eighteen years of age” for “any child under seventeen years of age”, substituted “child attains the age of twenty‑two years” for “child attains the age of twenty‑one years”, and substituted “not after the twentieth birthday of the child” for “not after the eighteenth birthday of the child”; and made other nonsubstantive changes.

CROSS REFERENCES

Constitutional provisions regarding jurisdiction in matters pertaining to minors, see SC Const, Art V, Section 12.

Family court enforcement or modification of orders of other courts, see Section 63‑17‑320.

Jurisdiction of probate court over protective proceedings and guardianship proceedings, see Section 62‑5‑102.

Juvenile delinquency and child neglect cases, see Family Ct Rules of Practice and Procedure, Rules 29.5 et seq.

Library References

Courts 472.1.

Infants 196, 225.

Westlaw Topic Nos. 106, 211.

C.J.S. Courts Sections 255 to 257.

C.J.S. Infants Sections 24 to 25, 41, 43, 46 to 48, 71 to 95.

RESEARCH REFERENCES

ALR Library

163 ALR 1358 , Governmental Control of Actions or Speech of Public Officers or Employees in Respect of Matters Outside the Actual Performance of Their Duties.

Encyclopedias

22 Am. Jur. Proof of Facts 3d 203, Termination or Demotion of a Public Employee in Retaliation for Speaking Out as a Violation of Right of Free Speech.

77 Am. Jur. Trials 1, Representing Law Enforcement Officers in Personnel Disputes and Employment Litigation.

S.C. Jur. Children and Families Section 92, Jurisdiction.

S.C. Jur. Children and Families Section 94, Status Offenses.

S.C. Jur. Children and Families Section 101, Family Court Jurisdiction.

S.C. Jur. Children and Families Section 102, Transfer of Jurisdiction.

LAW REVIEW AND JOURNAL COMMENTARIES

Parens Patriae: From Chancery to the Juvenile Court. 23 S.C. L. Rev. 205.

Attorney General’s Opinions

Family court may commit a mentally retarded child to the Department of Mental Retardation for treatment, in accordance with the procedures and conditions prescribed in Title 44, Chapter 21. 1983 Op. Atty Gen, No. 83‑50, p. 72.

The family court has jurisdiction over persons under the age of seventeen at the time of a commission of an offense. 1967‑68 Op. Atty Gen, No. 2475, p 144.

The family court has no jurisdiction to commit a mentally ill person to the Department of Mental Health for treatment; the probate court has concurrent jurisdiction with family court over the commitment of mentally retarded children to the Department of Mental Retardation, in accordance with the statutes pertaining to that Department. 1980 Op. Atty Gen, No 80‑96, p 150.

NOTES OF DECISIONS

In general 1

Commitment to mental institution 5

Constitutional issues 1.5

Joinder 6

Juvenile records 7

Murder 3

Sexual offenses 4

Transfer of jurisdiction 2

1. In general

The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute. The jurisdictional authority of the court is set forth in the Children’s Code. South Carolina Dept. of Mental Health v. State (S.C. 1990) 301 S.C. 75, 390 S.E.2d 185. Courts 175

The family court did not have jurisdiction to determine the custody of the plaintiff’s 18 year old daughter or to issue a protective order at the plaintiff’s request. The family court’s jurisdiction to determine custody matters applies only to children, and “child” is statutorily defined as a person under 18 years of age. Similarly, the family court’s jurisdiction to issue a protective order at the request of a person other than the victim of the alleged abuse is limited to situations involving children. Furthermore, no statute applies to these causes of action which would extend jurisdiction beyond a child’s eighteenth birthday. Holcombe v. Kennison (S.C. 1990) 300 S.C. 479, 388 S.E.2d 807.

The Family Court had jurisdiction of an action brought by the parents of a handicapped and profoundly retarded 11 year old girl seeking a court order permitting the sterilization of the child. Brode v. Brode (S.C. 1982) 278 S.C. 457, 298 S.E.2d 443.

1.5. Constitutional issues

Deputy clerk of court who lost election to incumbent county clerk of court, her boss, was a public employee in a confidential, policymaking, or public contact role who spoke out as a private citizen on a matter of public concern but in a manner that communicated a lack of political loyalty to county clerk, which could have interfered with or undermined the operation of the clerk’s office, and therefore party affiliation or political allegiance was to be considered in analyzing deputy clerk’s Section 1983 claim that she was terminated for exercising her freedom of speech; county clerk appointed deputy clerk, and deputy clerk was a direct representative of county clerk in her role as supervisor within the family court division of clerk’s office. Lawson v. Gault, 2014, 63 F.Supp.3d 584, vacated and remanded 828 F.3d 239, as amended. Clerks of Courts 6; Constitutional Law 1947

2. Transfer of jurisdiction

Evidence was sufficient to establish the existence of the eight Kent v. United States factors, when family court waived its jurisdiction and allowed 12 year old defendant to be tried as an adult for the murder of his grandparents; defendant had used shotgun to kill his grandparents after grandfather paddled defendant and locked him in a room for choking another student on school bus and kicking chair of church musician, and there was evidence that defendant engaged in escape plans, made shanks and caused other disruptions while in the custody of the Department of Juvenile Justice (DJJ). State v. Pittman (S.C. 2007) 373 S.C. 527, 647 S.E.2d 144, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 1872, 552 U.S. 1314, 170 L.Ed.2d 751. Infants 2989(4)

On a motion to transfer jurisdiction of a child accused of criminal activity, the family court must consider the following eight factors: (1) the seriousness of the alleged offense; (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire offense in one court; (6) the sophistication and maturity of the juvenile; (7) the record and previous history of the juvenile; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile, if he is found to have committed the alleged offense, by the use of procedures, services and facilities currently available. State v. Pittman (S.C. 2007) 373 S.C. 527, 647 S.E.2d 144, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 1872, 552 U.S. 1314, 170 L.Ed.2d 751. Infants 2988

Upon a motion to transfer jurisdiction of a child accused of criminal activity, the family court must determine if it is in the best interest of both the child and the community before granting the transfer request. State v. Pittman (S.C. 2007) 373 S.C. 527, 647 S.E.2d 144, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 1872, 552 U.S. 1314, 170 L.Ed.2d 751. Infants 2988

3. Murder

Circuit court had jurisdiction to accept juvenile’s guilty plea to murder and armed robbery; juvenile was 16 when offenses were committed, and murder and armed robbery were charges that could be brought in circuit court without first bringing charges in family court and obtaining transfers. State v. Graham (S.C. 2000) 340 S.C. 352, 532 S.E.2d 262, habeas corpus denied 2007 WL 397465. Infants 2958; Infants 2959

Certain former statutes were never intended to vest the children’s court of Spartanburg County with jurisdiction to try cases of murder or manslaughter, nor is any such intention suggested by the language of these sections. State v. Gorey (S.C. 1959) 235 S.C. 301, 111 S.E.2d 560.

4. Sexual offenses

Sexual offense committed by petitioner when he was under 14 years of age could not be transferred to general sessions court; intervening statute providing that any person under age of 14 should be tried as juvenile for sexual offenses was unaffected by later repeal and simultaneous reenactment of provision limiting transfer of sexual offenses to those committed by juveniles fourteen years of age and over. Slocumb v. State (S.C. 1999) 337 S.C. 46, 522 S.E.2d 809. Infants 2971

5. Commitment to mental institution

The Family Court had no authority to commit a juvenile to the Reception and Evaluation Center for evaluation where the juvenile was only 10 years old. In Interest of Doe (S.C.App. 1995) 318 S.C. 527, 458 S.E.2d 556.

The family court is expressly granted the authority to commit a child to the Department of Mental Health for the purposes of examination or treatment. This authority, however, may not conflict with that of the probate courts; Section 62‑1‑302(a)(6) vests the probate court with exclusive jurisdiction over the involuntary commitment of a person. Accordingly, the family court has the authority to order treatment or an evaluation for a child, but may not involuntarily commit a child for an indefinite period of time; absolutely no authorization is given for the detention of a child in the Department of Mental Health in the absence of the need for an examination or treatment. Furthermore, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed. To comply with this requirement, the reasons for committing the child must be established and set forth in the order and the confinement must cease when those reasons no longer exist. South Carolina Dept. of Mental Health v. State (S.C. 1990) 301 S.C. 75, 390 S.E.2d 185.

The family court may not commit a child to the Department of Mental Health (DMH) for safekeeping or protective custody. Juveniles who are sent to DMH for safekeeping are not provided with adequate due process protection. In most cases, there is no finding that the juvenile is mentally defective, that he or she is in need of an examination or that he or she will benefit from treatment. Most of these children are sent to DMH until “adequate housing” can be found. However, it is impermissible to confine children in a mental institution just because an adequate detention facility is unavailable. The family court may order the treatment or evaluation of a child; however, the reasons for such an order must be clearly established. When the treatment or evaluation has ended, then the child’s confinement in DMH must cease. South Carolina Dept. of Mental Health v. State (S.C. 1990) 301 S.C. 75, 390 S.E.2d 185.

6. Joinder

Juvenile criminal charges may be joined if they arise out of a single chain of circumstances, are proved by the same evidence, are of the same general nature, and no real right of the defendant would be jeopardized. In Interest of James L. (S.C. 1989) 299 S.C. 470, 385 S.E.2d 838. Infants 2552

7. Juvenile records

In a prosecution for kidnapping and murder in which a juvenile participant in the crimes was granted immunity from prosecution in return for her testimony against the defendants, the trial court could not order access to the juvenile’s records in the possession of the Department of Juvenile Placement and After Care since only the Family Court had power to order production of the records; moreover, the solicitor could not be required to release the records pursuant to defendants’ motion for access to exculpatory material where he was forbidden by Section 14‑21‑500 from obtaining them. State v. Plath (S.C. 1981) 277 S.C. 126, 284 S.E.2d 221.

**SECTION 63‑3‑520.** Traffic and wildlife jurisdiction.

(A) The magistrate courts and municipal courts of this State have concurrent jurisdiction with the family courts for the trial of persons under seventeen years of age charged with traffic violations or violations of the provisions of Title 50 relating to fish, game, and watercraft when these courts would have jurisdiction of the offense charged if committed by an adult.

(B) The family court shall report to the Department of Motor Vehicles all adjudications of a juvenile for moving traffic violations and other violations that affect the juvenile’s privilege to operate a motor vehicle including, but not limited to, controlled substance and alcohol violations as required by other courts of this State pursuant to Section 56‑1‑330 and shall report to the Department of Natural Resources adjudications of the provisions of Title 50.

HISTORY: 2008 Act No. 361, Section 2.

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Infants 68.5.

Westlaw Topic Nos. 48A, 187, 211.

C.J.S. Game; Conservation and Preservation of Wildlife Sections 70 to 72, 76 to 80.

C.J.S. Infants Sections 26 to 29, 298.

C.J.S. Motor Vehicles Sections 1320, 1363, 1395 to 1396, 1442, 1507, 1531.

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S.C. Jur. Children and Families Section 102, Transfer of Jurisdiction.

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

**SECTION 63‑3‑530.** Jurisdiction in domestic matters.

(A) The family court has exclusive jurisdiction:

(1) to hear and determine matters which come within the provisions of the Uniform Interstate Family Support Act;

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney’s fees, if requested by either party in the pleadings;

(3) to hear and determine actions for and related to the adoption of children and adults;

(4) to hear and determine actions for termination of parental rights, whether such action is in connection with an action for adoption or apart therefrom;

(5) (Reserved)

(6) to hear and determine actions for the annulment of marriage;

(7) (Reserved)

(8) to hear and determine actions for changing names, whether in connection with a divorce or a separate support and maintenance action or apart therefrom;

(9) to hear and determine actions for the correction of birth records;

(10) to consent to the enlistment of a minor in the military service or the employment of a minor, if a minor has no one standing in loco parentis to do so;

(11) to hear and determine proceedings within the county to compel the support of a spouse or child, whether legitimate or illegitimate;

(12) for the protection, guardianship and disposition of neglected or dependent minors in proceedings properly brought before it for the support of a spouse or child;

(13) in all cases or proceedings within the county against persons charged with failure to obey an order of the court made pursuant to authority conferred by law;

(14) to order support of a spouse or child, or both, irrespective of whether they are likely to become a public charge;

(15) to include in the requirements of an order for support the providing of necessary shelter, food, clothing, care, medical attention, expenses of confinement, both before and after the birth, the expense of educating his or her child and other proper and reasonable expenses;

(16) to require of persons legally chargeable with the support of a spouse or child, who are possessed of sufficient means or who are able to earn such means, the payment weekly, or at other fixed periods, of a fair and reasonable sum for such support, or as a contribution toward such support, according to the means of the persons so chargeable;

(17) To make all orders for support run until further order of the court, except that orders for child support run until the child turns eighteen years of age or until the child is married or becomes self‑supporting, as determined by the court, whichever occurs first, or past the age of eighteen years if the child is enrolled and still attending high school, not to exceed high school graduation or the end of the school year after the child reaches nineteen years of age, whichever is later; or in accordance with a preexisting agreement or order to provide for child support past the age of eighteen years; or in the discretion of the court, to provide for child support past age eighteen when there are physical or mental disabilities of the child or other exceptional circumstances that warrant the continuation of child support beyond age eighteen for as long as the physical or mental disabilities or exceptional circumstances continue. When child support is terminated due to the child turning eighteen years of age, graduating from high school, or reaching the end of the school year when the child is nineteen, no arrearage may be incurred as to that child after the date of the child’s eighteenth birthday, the date of the child’s graduation from high school, or the last day of the school year when the child is nineteen, whichever date terminated the child support obligation.

(18) to make an order for support of a husband or wife and children by his or her spouse, even though he or she may have left the home, in cases where the spouse’s conduct or condition or his or her cruel or inhuman behavior made it unsafe or improper for the deserting spouse to continue to live with him or her.

Such orders may require either spouse or any other party to the proceeding:

(a) to stay away from the home or from the other or either spouse or children;

(b) to permit either spouse to visit the children at stated periods;

(c) to abstain from offensive conduct against the other spouse or either of them, or against the children;

(d) to give proper attention to the care of the home;

(e) to refrain from acts of commission or omission that tend to make the home not a proper place for the other, or either spouse, or the children;

(19) in furtherance of the complete disposition of cases in the jurisdiction of the court, to bring in and make parties to any proceedings pending in the court any person or persons charged with or alleged to be interfering with the marital relationship between a husband and wife, in violation of the law or of the rights of either party to the marriage, or whose presence to the proceedings may be found necessary to a complete determination of the issues therein, or the relief to which the parties thereto, or any of them, may be entitled; and shall have the power to enjoin and restrain such interference and to punish for contempt of court violations of such injunctions or restraining orders;

(20) to award the custody of the children, during the term of any order of protection, to either spouse, or to any other proper person or institution;

(21) to determine the manner in which sums ordered paid for support shall be paid and applied, either to a person through the court, through the clerk of court, or through a centralized wage withholding system if required by federal statute or regulation;

(22) to require a person ordered to support another to give security by a written undertaking that he will pay the sums ordered by the court for such support and, upon the failure of any person to give such security by a written undertaking when required by order of the court, to punish such person for contempt and, when appropriate, to discharge such undertaking;

(23) in lieu of requiring an undertaking, to suspend sentence and place on probation a person who has failed to support another as required by law, and to determine the conditions of such probation and require them to be observed; to revoke such suspension of sentence and probation, where circumstances warrant it; and to discharge a respondent from probation;

(24) to release on probation prior to the expiration of the full term a person committed to jail for failure to obey an order of the court, where the court is satisfied that the best interest of the family and the community will be served thereby;

(25) to modify or vacate any order issued by the court;

(26) to order either before, during or after a hearing a mental, physical and psychiatric examination as circumstances warrant;

(27) to exclude the public from the courtroom in a proper case;

(28) to send processes or any other mandates in any matter in which it has jurisdiction into any county of the State for service or execution in like manner and with the same force and effect as similar processes or mandates of the circuit courts, as provided by law;

(29) to compel the attendance of witnesses;

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such a prohibition;

(31) to require spouse to furnish support or to be liable for nonsupport, as provided above, if, at the time of the filing of the petition for supports:

(a) he is residing or domiciled in the county or when such area is the matrimonial domicile of the parties; or

(b) he is not residing or domiciled in the area referred to in subsection (A), but is found therein at such time, provided the petitioner is so residing or domiciled at such time; or

(c) he is neither residing or domiciled nor found in such area but, prior to such time and while so residing or domiciled, he shall have failed to furnish such support, or shall have abandoned his spouse or child and thereafter shall have failed to furnish such support, provided that the petitioner is so residing or domiciled at that time;

(32) the petitioner need not continue to reside or be domiciled in such area where the cause of action arose, as provided in subitems (a) and (b) of item (31) of this section, if the conduct of the respondent has been such as to make it unsafe or improper for her to so reside or be domiciled, and the petitioner may bring action in the court of the jurisdiction wherein she is residing or has become domiciled;

(33) to order visitation for the grandparent of a minor child where either or both parents of the minor child is or are deceased, or are divorced, or are living separate and apart in different habitats, if the court finds that:

(1) the child’s parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child, including denying visitation of the minor child to the grandparent for a period exceeding ninety days; and

(2) awarding grandparent visitation would not interfere with the parent‑child relationship; and:

(a) the court finds by clear and convincing evidence that the child’s parents or guardians are unfit; or

(b) the court finds by clear and convincing evidence that there are compelling circumstances to overcome the presumption that the parental decision is in the child’s best interest.

The judge presiding over this matter may award attorney’s fees and costs to the prevailing party.

For purposes of this item, “grandparent” means the natural or adoptive parent of a natural or adoptive parent of a minor child.

(34) to order custody with all rights of guardianship as described in Section 21‑21‑55;

(35) to hear and determine actions for protection from domestic abuse;

(36) to issue orders compelling public officials and officers to perform official acts under Title 63, the Children’s Code, Protection from Domestic Abuse Act, and Chapter 35, Title 43, Omnibus Adult Protection Act;

(37) to appoint guardians ad litem in actions pertaining to custody or visitation pursuant to Section 63‑3‑810;

(38) to hear and determine an action where either party in his or her complaint, answer, counterclaim, or motion for pendente lite relief prays for the allowance of suit money pendente lite and permanently. In this action the court shall allow a reasonable sum for the claim if it appears well‑founded. Suit money, including attorney’s fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court. An award of temporary attorney’s fees or suit costs must not be stayed by an appeal of the award;

(39) to require the parties to engage in court‑mandated mediation pursuant to Family Court Mediation Rules or to issue consent orders authorizing parties to engage in any form of alternate dispute resolution which does not violate the rules of the court or the laws of South Carolina; provided however, the parties in consensual mediation must designate any arbiter or mediator by unanimous consent subject to the approval of the court;

(40) to require the parent of a child brought before the court for adjudication of a delinquency matter and agencies providing services to the family to cooperate and participate in a plan adopted by the court to meet the needs and best interests of the child and to hold a parent or agency in contempt for failing to cooperate and participate in the plan adopted by the court. In imposing its contempt powers the Family Court must take into consideration mitigating circumstances including the parent’s or legal custodian’s participation in the treatment plan, the level of services being offered by the lead and participating agencies, and the level of cooperation by the lead and participating agencies as the court may deem appropriate;

(41) to order a person required to pay support under a court order being enforced under Title IV‑D of the Social Security Act who is unemployed or underemployed and who is the parent of a child receiving Temporary Assistance to Needy Families benefits to participate in an employment training program or public service employment pursuant to regulations promulgated by the department. The Division of Child Support Enforcement of the State Department of Social Services also has jurisdiction under this item in cases under Title IV‑D of the Social Security Act brought pursuant to Article 5, Chapter 17, Title 63 of the 1976 Code;

(42) to order joint or divided custody where the court finds it is in the best interests of the child;

(43) to enforce an administrative subpoena or subpoena duces tecum issued by the Department of Social Services pursuant to Section 63‑17‑850 and to enforce fines assessed by the department pursuant to Sections 63‑17‑850, 63‑17‑2310(C), and 43‑5‑598(G);

(44) to order sibling visitation where the court finds it is in the best interest of the children;

(45) to hear and determine actions concerning control of the person of a minor, including guardianship of the minor;

(46) to order custody of a minor child to the de facto custodian under the circumstances specified in Section 63‑15‑60.

(B) Notwithstanding another provision of law, the family court and the probate court have concurrent jurisdiction to hear and determine matters relating to paternity, common‑law marriage, and interpretation of marital agreements; except that the concurrent jurisdiction of the probate court extends only to matters dealing with the estate, trust, and guardianship and conservatorship actions before the probate court.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 332, Section 7; 2010 Act No. 267, Section 1, eff June 24, 2010; 2012 Act No. 273, Section 1, eff June 26, 2012; 2014 Act No. 270 (H.4348), Section 1, eff June 9, 2014.

Effect of Amendment

The 2010 amendment rewrote paragraph (A)(33).

The 2012 amendment rewrote subsection (A)(17).

2014 Act No. 270, Section 1, in subsection (A)(33), deleted former paragraph (2), relating to the grandparent maintaining a parent‑child relationship with the minor child; in paragraph (2), deleted “that” before “awarding”; and in the last paragraph, substituted “a natural or adoptive parent of” for “any parent to”.

CROSS REFERENCES

Adoption, see Section 63‑9‑30 et seq.

Arbitration, generally, see Section 15‑48‑10 et seq.

Authority of Family Court to enforce decrees, judgments, or orders regarding child support, including cases with jurisdiction based on the Uniform Reciprocal Enforcement of Support Act, see Section 63‑17‑310.

Children in foster care, Department of Social Services’ responsibility to provide assistance, see Section 63‑7‑2310.

Constitutional provisions regarding jurisdiction in matters pertaining to minors, see SC Const Art. V, Sections 8, 12.

Family court enforcement or modification of orders of other courts, see Section 63‑17‑320.

Family Court orders awarding temporary suit costs or attorney’s fees in divorce, separation or other marital proceedings are not subject to automatic stay upon service of a notice of appeal, see Rule 241, SCACR.

Obligation to support spouse and children, see Section 63‑5‑20.

Proceedings for determination of paternity, see Section 63‑17‑10 et seq.

Provisions for relief which may be included in an order of protection issued pursuant to the Protection from Domestic Abuse Act, see Section 20‑4‑60.

Rules of practice in the Family Courts for domestic relations matters, see Rule 16, SCRFC et seq.

Support of spouse and children, see Section 63‑5‑10.

Uniform Interstate Family Support Act, generally, see Section 63‑17‑2900 et seq.

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C.J.S. Adoption of Persons Sections 78 to 79.

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C.J.S. Health and Environment Sections 24, 74.

C.J.S. Infants Sections 24 to 25, 41, 46 to 48.

C.J.S. Marriage Sections 63, 67.

C.J.S. Names Sections 7, 21 to 28.

C.J.S. Parent and Child Sections 99 to 104, 205 to 206, 211, 246, 251 to 253.

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S.C. Jur. Children and Families Section 25, Overview.

S.C. Jur. Children and Families Section 121, Compensation of Guardian Ad Litem.

S.C. Jur. Children and Families Section 142, Joint Custody.

S.C. Jur. Children and Families Section 151, Grandparents and Other Nonparental Visitation.

S.C. Jur. Children and Families Section 153, Jurisdiction.

S.C. Jur. Children and Families Section 154, Commencement, Expiration and Nature of Support Obligation.

S.C. Jur. Children and Families Section 161, Security for Support.

S.C. Jur. Children and Families Section 162, Prospective Modification of Child Support.

S.C. Jur. Children and Families Section 167, Contempt.

S.C. Jur. Children and Families Section 168, Post‑Emancipation Support.

S.C. Jur. Children and Families Section 174, Post‑Emancipation Rights and Responsibilities.

S.C. Jur. Costs Section 34, Guardian Ad Litem Expenses.

S.C. Jur. Criminal Domestic Violence Section 11, Separation.

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S.C. Jur. Divorce Section 39, Post‑Emancipation Support.

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Parens Patriae: From Chancery to the Juvenile Court. 23 S.C. L. Rev. 205.

Personal jurisdiction asserted over nonresident defendant in support proceedings. 39 S.C. L. Rev. 107 (Autumn 1987).

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

Attorney General’s Opinions

If a minor child gets married or becomes self‑supporting, as determined by the court, then parents or guardians are not required to continue support. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

Pursuant to Section 14‑21‑830(b), a wife need not continue to reside in the county where a cause of action arose. If the conduct of the husband has been such as to make it unsafe or improper for her to so reside, she may bring an action in the Family Court in a jurisdiction into which she moves. 1976‑77 Op. Atty Gen, No. 77‑371, p 296.

A parent’s legal obligation to support his non‑handicapped child does not extend beyond that child’s minority, age 18. 1978 Op. Atty Gen, No. 78‑89, p 114.

The Family Courts of South Carolina, being statutorily created Courts of limited jurisdiction, have only that jurisdiction which is expressly conferred by the statute or that which is incidentally necessary for the exercise of statutorily conferred jurisdiction; the Family Courts of South Carolina have no jurisdiction to order judicial sales of real property incident to divorce cases. 1980 Op. Atty Gen, No. 80‑23, p 48.

The family court has no jurisdiction to commit a mentally ill person to the Department of Mental Health for treatment; the probate court has concurrent jurisdiction with family court over the commitment of mentally retarded children to the Department of Mental Retardation, in accordance with the statutes pertaining to that Department. 1980 Op. Atty Gen, No. 80‑96, p 150.

Family Courts in this State are not empowered to place a support contemnor on probation under the supervision of an adult criminal probation officer. 1982 Op. Atty Gen, No. 82‑55, p 60.

A commitment order issued for contempt of court for non‑support orders may be modified by the court. 1987, Op. Atty Gen, No. 87‑94, p 252.

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1. In general

The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction; its jurisdiction is limited to that expressly or by necessary implication conferred by statute. Katzburg v. Katzburg (S.C.App. 2014) 410 S.C. 184, 764 S.E.2d 3, rehearing denied. Courts 175

The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute. The jurisdictional authority of the court is set forth in the Children’s Code. South Carolina Dept. of Mental Health v. State (S.C. 1990) 301 S.C. 75, 390 S.E.2d 185. Courts 175

The family court did not have subject matter jurisdiction to determine a wife’s interest in the property of her marriage where the wife only sought to have the court adjudicate her rights and property and did not seek to have the court alter or terminate her marital status. The fact that her motivation for bringing the suit arose out of marital tensions did not transform her cause of action from nonmarital litigation to marital litigation. When distinguishing marital litigation from nonmarital litigation, it is the nature of the cause of action, not the reason for bringing it which controls. Brown v. Brown (S.C.App. 1988) 295 S.C. 354, 368 S.E.2d 475, certiorari granted 297 S.C. 73, 374 S.E.2d 897.

Agreement prior to Moseley v Mosier (1983) 279 SC 348, 306 SE2d 624, which has not become part of court decree so as to lose its separate contractual character, cannot be enforced in family court, where agreement evidences parties intent to withhold from county court authority to determine any of their rights and obligations created by their agreement; language in agreement evidenced intent of parties to be bound solely by support agreement in determining their rights and liabilities; therefore, family court was without subject‑matter jurisdiction. Austelle v. Austelle (S.C.App. 1987) 294 S.C. 19, 362 S.E.2d 181.

While the code clearly authorizes the family court to settle property rights in marital litigation, it does not give a former spouse the right to institute a separate action in family court where the relief requested is not incidental to the divorce decree. Eichor v. Eichor (S.C.App. 1986) 290 S.C. 484, 351 S.E.2d 353. Courts 175

It was beyond the jurisdiction of the family court to enter an order for money damages requiring the husband to reimburse the wife for wages she lost during the time she cared for the husband while he recuperated from injuries suffered in an accident. Peake v. Peake (S.C.App. 1985) 284 S.C. 591, 327 S.E.2d 375.

2. Personal jurisdiction

Family court had subject matter jurisdiction and there was sufficient contact to warrant asserting personal jurisdiction over former wife where former wife had filed judgments in two counties of South Carolina, despite having left state to reside in Virginia. Barth v. Barth (S.C. 1987) 293 S.C. 305, 360 S.E.2d 309.

Family court which had entered a 1977 divorce decree had in personam jurisdiction over the former husband, who had moved to and resided in Texas since his divorce, to enter the 1978 order reinstating wife’s alimony, where the former husband had petitioned the family court to modify its earlier orders, and notice of a 6 month review hearing had been served on the former husband’s attorney of record. Stamey v. Stamey (S.C.App. 1986) 289 S.C. 507, 347 S.E.2d 112. Divorce 590

Family Court had personal jurisdiction over, and could enter personal judgment for alimony and suit money against, a former husband who had abandoned his wife and children and moved to another state 20 years ago, where South Carolina was the parties’ domicil, the place where the former husband’s conduct created the cause of action for divorce, and remained the domicile of the wife and the former husband’s children. Crowe v. Crowe (S.C. 1986) 289 S.C. 330, 345 S.E.2d 498. Divorce 65

3. Divorce

Family court had the authority to include husband’s proceeds from rental property when calculating his gross income for child support purposes, and thus, there was no error in the family court’s decision to impute $100 to husband as rental income; husband earned $250 per month from the rental property after taking into consideration deductions for maintenance and use of the surrounding property. Susan R. v. Donald R. (S.C.App. 2010) 389 S.C. 107, 697 S.E.2d 634. Child Support 89

Wife’s surgery, which was a result of her miscarriage of parties’ child, was not a marital debt because it occurred prior to parties’ marriage, but since the $18,542.13 debt for this surgery would not have occurred but for husband’s and wife’s relationship, family court had authority in divorce action to require husband to participate in repayment of this debt; wife’s hospital bill was a direct result of her pregnancy and ensuing miscarriage, and the procedure was necessary to wife’s health, and not requiring husband to share in the responsibility for defraying this expense would thwart the ultimate goal of ensuring a just, equitable, and fair outcome to both parties. Susan R. v. Donald R. (S.C.App. 2010) 389 S.C. 107, 697 S.E.2d 634. Divorce 831; Divorce 837

Fact that recrimination was pled by former husband in divorce proceeding did not affect the family court’s subject matter jurisdiction to enter a divorce decree. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 59

The Family Court had subject matter jurisdiction over a divorce action even though the husband and wife continued to reside in the marital home at the time the action was commenced. Watson v. Watson (S.C. 1995) 319 S.C. 92, 460 S.E.2d 394.

An order granting a divorce was void and the court properly vacated its own order, where the wife committed suicide 2 days before the judged signed the final decree granting the divorce even though at the end of the hearing the trial judge had announced from the bench that the wife had proved her case and that a divorce would be granted. Bayne v. Bass (S.C.App. 1990) 302 S.C. 208, 394 S.E.2d 726.

The family court committed no error in refusing to grant a wife a legal separation since there is neither a constitutional provision nor a statute that states the grounds for a limited divorce and, unlike an action for separate maintenance or alimony, an action for legal separation cannot be maintained in South Carolina in the absence of constitutional or statutory authority. Section 20‑3‑140, the statute pursuant to which the wife brought the action and which authorizes the award of alimony in actions for legal separation, does not provide statutory authority for a court to grant a limited divorce. Neither does Section 20‑7‑420(2), which confers jurisdiction upon the family court to hear and determine actions for legal separation, provide such authority. Ariail v. Ariail (S.C.App. 1988) 295 S.C. 486, 369 S.E.2d 146.

4. Marital property

Family court has exclusive jurisdiction to hear and determine actions for separate support and maintenance, legal separation, other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions related to the real and personal property of the marriage. Meehan v. Meehan (S.C.App. 2014) 407 S.C. 471, 756 S.E.2d 398. Courts 472.1

Family court lacked subject matter jurisdiction to determine property rights of former husband and former wife in any way, and thus, court could not award wife the cost of storing husband’s belongs after he moved out of former marital home following post‑divorce cohabitation with wife, where parties resumed cohabitation without the benefit of marriage or remarriage. Tipton v. Tipton (S.C.App. 2002) 351 S.C. 456, 570 S.E.2d 195. Divorce 871

A wife’s action for the division of marital property was not abated upon the husband’s death where the property had been identified and divided by the family court, both parties had appealed, but the husband died during the appeal, at which time a representative for the husband’s estate was substituted; upon the filing of marital litigation, property acquired during the marriage becomes vested in an estate called marital property, in which the parties have a vested interest subject to equitable distribution. Hodge v. Hodge (S.C.App. 1991) 305 S.C. 521, 409 S.E.2d 436.

The trial court erred in an action for divorce in finding that the husband was the equitable owner of the house in which he was living where the title to the house was in the name of the husband’s sister and she was not a party to the action; however this was not reversible error where the record showed that the division of the marital property was equitable. Seawright v. Seawright (S.C.App. 1991) 305 S.C. 167, 406 S.E.2d 386. Divorce 691

A reconciliation agreement which provided that “neither party shall have any interest of any kind or nature whatsoever in or to any property of the other party to this agreement, whether now owned by such party or hereafter acquired...,” did not preclude the division of property which was either jointly acquired, transmuted, or increased in value due to the joint efforts of the parties; the provision in the agreement was merely an incorporation of the terms of former Section 20‑7‑473(5), which provides for the division of the increase in value of separate property where such increase is attributable to the efforts of the non‑title party, and does not preclude the transmutation of separately titled property. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

The family court properly denied a wife’s supplemental motion to alter or amend a judgment equitably dividing the parties’ marital property in order to have the family court apportion the husband’s civil service retirement fund, since a party cannot use Rule 59(e), SCRCP, to present to the court an issue the party could have raised prior to judgment but did not. Hickman v. Hickman (S.C.App. 1990) 301 S.C. 455, 392 S.E.2d 481.

Gifts of money totalling between $25,000 and $30,000, made during the marriage by the husband to his mother over the course of 20 years, did not constitute marital property, even though the wife knew nothing about the gifts and did not consent to them, because the money no longer belonged to either the husband or the wife at the time the divorce action was filed and there was no evidence that the husband gave his mother money in contemplation of divorce or with intent to deprive the wife of her right to equitable distribution; in the absence of fraudulent intent, it is not unlawful for spouses to make outright gifts to others during the marriage. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376. Divorce 718; Divorce 1015

Transmutation of nonmarital property into marital property is a matter of intent to be determined from the facts of each case. Property, nonmarital at the time of its acquisition, may be transmuted if it is utilized by the parties in support of the marriage so as to evidence an intent by the parties to make it marital property. The burden of proving transmutation is on the party asserting it. Pappas v. Pappas (S.C.App. 1989) 300 S.C. 62, 386 S.E.2d 301.

Before requiring the sale of marital property and a division of the proceeds in order to effect an equitable apportionment, the family court should first attempt an “in‑kind” distribution of the assets. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

When property is alleged to be marital property but is owned by a third party, the family court has the subject matter jurisdiction to join all persons with a possible interest in the property as parties to the action and to determine if the property constitutes marital property as defined in Section 20‑7‑473. If it is determined that the property is marital property, then the family court has the authority to determine the parties’ equitable rights therein. Appeal of Sexton (S.C. 1989) 298 S.C. 359, 380 S.E.2d 832. Divorce 70

The family court did not have the authority, under Section 20‑7‑420, to award a husband $10,000 against his wife as “specific damages” to “compensate for the loss of his membership” in a country club. Thompson v. Ballentine (S.C. 1989) 298 S.C. 289, 379 S.E.2d 896.

A trial court’s determination that a wife should receive 55 percent of the marital property was proper, even though the husband earned most of the marital income, where the wife maintained the home, the wife was a frugal person which helped in the accumulation of marital assets, the wife had little job potential other than bartending, and the court did not find that the adulterous conduct of the wife after the parties’ separation affected the economic circumstances of the marriage. Martin v. Martin (S.C.App. 1988) 296 S.C. 436, 373 S.E.2d 706.

The spouse claiming an equitable interest in property upon dissolution of the marriage has the burden of proving that the property is part of the marital estate. If the spouse carries this burden, he or she establishes a prima facie case that the property is marital property. If the opposing spouse then wishes to claim that the property so identified is not part of the marital estate, he or she has the burden of presenting evidence to establish its nonmarital character. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

In certain circumstances, nonmarital property may be transmuted into marital property during the marriage. Property, nonmarital at the time of its acquisition, may be transmuted (1) if it becomes so commingled with marital property as to be untraceable, (2) if it is titled jointly, or (3) if it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. As a general rule, transmutation is a matter of intent to be gleaned from the facts of each case. The spouse claiming transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Such evidence may include placing the property in joint names, transferring the property to the other spouse as a gift, using the property exclusively for marital purposes, commingling the property with marital property, using marital funds to build equity in the property, or exchanging the property for marital property. The mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

A decree apportioning a business was defective where the decree made no finding on the value of the business and the record did not support a finding that the business had any value. Roberson v. Roberson (S.C. 1988) 296 S.C. 56, 370 S.E.2d 612.

A $25,000 payment to the wife within 30 days of the decree was not a “reasonable means” of effectuating apportionment of a business where the record reflected that at the time of trial the husband owned only a business with no value, a used boat and a mortgaged mobile home. Roberson v. Roberson (S.C. 1988) 296 S.C. 56, 370 S.E.2d 612.

Under Section 20‑7‑420(2), Family Court has jurisdiction to apportion property of marriage, and marital property includes personal injury and workers’ compensation awards, as marital property includes all real and personal property which has been acquired during marriage, with certain exceptions. Orszula v. Orszula (S.C. 1987) 292 S.C. 264, 356 S.E.2d 114. Divorce 714; Divorce 717

Award to the wife of 50 percent of the marital property, based primarily on her contribution as a homemaker, was not an abuse of discretion on the record as a whole. Winchell v. Winchell (S.C.App. 1987) 291 S.C. 321, 353 S.E.2d 309.

The date on which the parties to a marriage finally separate is determinative for identifying marital property, at least when there is no showing that later acquired property was purchased with marital funds or was received as compensation for work performed prior to the separation. Bungener v. Bungener (S.C.App. 1987) 291 S.C. 247, 353 S.E.2d 147. Divorce 691

Actual title ownership is not an impediment to the division of marital property. Berry v. Berry (S.C.App. 1986) 290 S.C. 351, 350 S.E.2d 398, affirmed 294 S.C. 334, 364 S.E.2d 463.

A gift to one spouse during marriage retains its separate identity as nonmarital property unless transmuted into marital property. Berry v. Berry (S.C.App. 1986) 290 S.C. 351, 350 S.E.2d 398, affirmed 294 S.C. 334, 364 S.E.2d 463. Divorce 718

The Family Court may employ any reasonable means to equitably divide the marital property, so long as it bears a reasonable relationship to the respective contributions of the parties in acquiring the property or the financial and material success of the family. Bowyer v. Sohn (S.C. 1986) 290 S.C. 249, 349 S.E.2d 403. Divorce 653

While, ordinarily, a gift from a third party intended to benefit only one spouse is not subject to equitable division, a gift of real estate to one spouse may lose its nonmarital character if used in support of the marriage or otherwise utilized in such a manner as to evidence an intent by the parties to make it marital property. Canady v. Canady (S.C.App. 1986) 289 S.C. 512, 347 S.E.2d 115.

An irrevocable trust established by the parties for the benefit of their children was not marital property. Luthi v. Luthi (S.C.App. 1986) 289 S.C. 489, 347 S.E.2d 102. Divorce 700

Money received by the husband from the sale of nonmarital assets when used to enclose the marital home’s garage lost its nonmarital property character and became marital property subject to equitable distribution. Cooper v. Cooper (S.C.App. 1986) 289 S.C. 377, 346 S.E.2d 326.

Land acquired by the husband as a gift from his father during the marriage lost its nonmarital character and therefore became subject to equitable distribution when the husband, 9 years before the parties separated, erected a marital home thereon and thereby used the 1.4 acre tract in support of the marriage. Cooper v. Cooper (S.C.App. 1986) 289 S.C. 377, 346 S.E.2d 326. Divorce 718

A husband’s medical degree or license is not marital property subject to equitable distribution so as to entitle a wife, on divorce, to “fruits” of the professional degree or license. Helm v. Helm (S.C. 1986) 289 S.C. 169, 345 S.E.2d 720. Divorce 696

Husband’s mother was a necessary party to a divorce action in order to determine whether an automobile, title of which husband had transferred to his mother before wife filed for divorce, was marital property, and the matter would be remanded to the family court to bring in the mother as a party and afford her the opportunity to appear as a litigant. Slatton v. Slatton (S.C. 1986) 289 S.C. 128, 345 S.E.2d 248.

Family court had subject matter jurisdiction to determine whether an automobile was marital property and to determine the parties’ equitable rights therein, even though the husband had transferred title to the vehicle to his mother before the wife filed for divorce. Slatton v. Slatton (S.C. 1986) 289 S.C. 128, 345 S.E.2d 248.

Marital property is all the property accumulated during the marriage as the result of the parties’ marital efforts and endeavors and, with respect to the distribution of marital property upon divorce, the court should make specific findings of fact concerning the relative incomes of the parties and what the material contributions of the parties have been to the acquisition of the marital property and the weight which the court accords those contributions. Voelker v. Hillock (S.C.App. 1986) 288 S.C. 622, 344 S.E.2d 177.

It was error to divide the personal property of parties to a divorce on the basis of a numbered list with one party receiving the odd‑numbered items and the other party receiving the even‑numbered items. Bauer v. Bauer (S.C. 1985) 287 S.C. 217, 337 S.E.2d 211.

A farm constituted marital property and was correctly treated as part of the marital estate for purposes of equitable distribution where it was titled jointly in the names of the husband and wife when it was transferred from the estate of the wife’s father, it was used as the marital residence of the parties, the house was built with their joint funds, and both contributed to the building and maintenance of the rental units on the property. Rampey v. Rampey (S.C.App. 1985) 286 S.C. 153, 332 S.E.2d 213. Divorce 693

An interest in a business may constitute marital property, and one spouse’s contribution of services to the other’s business may create a special equity in the contributing spouse’s favor. Bannen v. Bannen (S.C.App. 1985) 286 S.C. 24, 331 S.E.2d 379. Divorce 794

5. Equitable distribution

An equitable distribution order which awarded the husband personal property in his possession and a 1⁄2 interest in the marital home, but denied him any interest in the wife’s profit sharing plan, was proper where the husband was physically abusive toward his wife throughout the marriage, the parties separated on numerous occasions because of the husband’s conduct, his physical abuse finally drove the wife and children from the home, the profit sharing plan was the only source of retirement security the wife had, and the plan was available to her only upon leaving her employment. Williams v. Williams (S.C.App. 1988) 297 S.C. 208, 375 S.E.2d 349.

Fault is a factor for the court to consider in an equitable division award although it does not justify a severe penalty. Noll v. Noll (S.C.App. 1988) 297 S.C. 190, 375 S.E.2d 338. Divorce 745

In performing an equitable division of a money market account, the court should have taken into account and appropriately offset the portion of the money market fund used to pay taxes, with the remainder being available for equitable distribution. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178.

Where a trial judge held that the entire marital estate should be apportioned equally and left it up to the parties to petition the court for a determination of the division scheme of certain assets, the wife, who failed to do this, could not complain of any alleged omission in the equitable division. Gambrell v. Gambrell (S.C.App. 1988) 295 S.C. 457, 369 S.E.2d 662. Divorce 1216

Even if a trial judge incorrectly ruled that he did not have jurisdiction to dissolve a family corporation, no prejudice was shown where the parties were equal shareholders and could petition for dissolution in the circuit court. Gambrell v. Gambrell (S.C.App. 1988) 295 S.C. 457, 369 S.E.2d 662. Divorce 1300

Equitable distribution of a professional degree or license is improper since such a degree or license is not classified as marital property. Heath v. Heath (S.C.App. 1988) 295 S.C. 312, 368 S.E.2d 222. Divorce 696

Equitable distribution is based on a recognition that marriage is, among other things, an economic partnership. Upon dissolution of the marriage, property accumulated during the marriage should be divided and distributed in a manner which fairly reflects each spouse’s contribution to its acquisition, regardless of which spouse holds legal title. Walker v. Walker (S.C.App. 1988) 295 S.C. 286, 368 S.E.2d 89.

Where the family court recognized that a wife contributed her earnings (homemaker services and moral support) to the family but appeared to emphasize the husband’s financial input at her expense in dividing the marital estate, 59‑41 percent in the husband’s favor, the family court’s failure to consider fully the wife’s contributions was error, especially when perceived against the 41‑year duration of the marriage and the fact that the party’s accumulation of wealth resulted mainly from their real estate investments rather than active efforts by the husband. Polis v. Polis (S.C.App. 1988) 295 S.C. 184, 367 S.E.2d 465.

A distribution of the marital estate based solely upon the parties’ respective incomes is improper. Canady v. Canady (S.C.App. 1986) 289 S.C. 512, 347 S.E.2d 115. Divorce 738

An order providing for the joint ownership of restaurant businesses in requiring the parties to maintain a joint account and equally divide any income from the businesses violated a general rule as to avoiding continuing interaction between the parties and the achievement of finality in the divorce, and, absent compelling reasons not to do so, the property should be equitably divided between the parties. Hunn v. Hunn (S.C.App. 1986) 289 S.C. 499, 347 S.E.2d 108. Divorce 883

Award of greater portion of the marital property to the husband was justified by evidence showing that the husband’s material contribution to the acquisition of the marital property somewhat outweighed the wife’s during their 15 year marriage. Cooper v. Cooper (S.C.App. 1986) 289 S.C. 377, 346 S.E.2d 326. Divorce 742

A strict mathematical approach to equitable distribution is discouraged, and marital property should not be divided solely on the basis of each party’s monetary contributions to the acquisition of that property. Porcher v. Porcher (S.C.App. 1986) 289 S.C. 200, 345 S.E.2d 737. Divorce 741

Award to the former wife of only 35 percent, instead of 50 percent, of the marital property was not error in view of the differences between the parties with respect to age, health, income and prospective income. Brooks v. Brooks (S.C.App. 1986) 289 S.C. 352, 345 S.E.2d 510.

Family Court was without jurisdiction to award 50 percent of a loan award plus interest to wife and to order wife to assign her interest in loan to husband, whether the loan award was a money judgment, and the obligation was one to be enforced against the husband’s mother. Bair v. Bair (S.C. 1986) 288 S.C. 452, 343 S.E.2d 445. Marriage And Cohabitation 1220

Family court erred in its equitable distribution award where the award utilized appraisal values not in evidence, the award distributed the former husband’s nonmarital property, including certain inherited property and his retirement account, the award incorrectly valued the former wife’s bank accounts, and the former wife was given an unidentified cash payment of $70,000. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811.

In determining an equitable division of property, the trial judge should make findings of fact as to identity, value and proper division of all marital property. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811. Divorce 726; Divorce 879

The power of the family court to distribute equitably spousal property is restricted by the requirement that the court distribute only the property found to be property of the marriage. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811. Divorce 681

The trial judge properly exercised his discretion in awarding the wife 62% of the marital property where the wife’s sole source of support, her income, was dependent on her ability to work while the husband’s income, disability benefits, was guaranteed; the wife’s financial contributions greatly exceeded the husband’s in the last years of the marriage; the burden of maintaining the family assets often fell solely on the wife due to the husband’s alcohol problem; and the wife was responsible for the majority of the family debts. Gay v. Gay (S.C.App. 1986) 288 S.C. 74, 339 S.E.2d 532. Divorce 738; Divorce 741; Divorce 843

The factors a judge should consider in the equitable distribution of marital property are the relative incomes of the parties, their material contributions and debts, and the facts and circumstances of the particular case. Gay v. Gay (S.C.App. 1986) 288 S.C. 74, 339 S.E.2d 532.

Section 20‑7‑420 gives broad discretion to family court judges in the equitable distribution of marital property. The trial judge may use any reasonable means to divide the estate equitably. The court’s judgment will not be disturbed absent an abuse of discretion. Gay v. Gay (S.C.App. 1986) 288 S.C. 74, 339 S.E.2d 532. Divorce 653; Divorce 1283(1)

The family court judge may use any reasonable means to distribute marital assets. Bauer v. Bauer (S.C. 1985) 287 S.C. 217, 337 S.E.2d 211. Divorce 820

An equitable distribution of marital property is not necessarily an equal one. The relative contributions of the parties is an important factor to consider in determining the proper portion of property owned in equity by each party. Barr v. Barr (S.C.App. 1985) 287 S.C. 13, 336 S.E.2d 481. Divorce 728; Divorce 741

Although fault does not justify a severe penalty in making a division of marital property, it is a factor the court may consider in determining the equities between spouses. Rampey v. Rampey (S.C.App. 1985) 286 S.C. 153, 332 S.E.2d 213. Divorce 745

Where both parties accepted as accurate an appraisal report on the value of the marital estate, the record disclosed no other evidence of value, and the family court judge ordered an equal division of the marital property, it was an abuse of discretion to award to the husband property shown on the appraisal report to have a value of $191,460, while awarding to the wife property valued at $109,920. Rampey v. Rampey (S.C.App. 1985) 286 S.C. 153, 332 S.E.2d 213.

Equitable distribution is based on a recognition that marriage is, among other things, an economic partnership. On dissolution of a marriage, property accumulated during the marriage should be divided and distributed in a manner which fairly reflects each spouse’s contribution to its acquisition, regardless of which spouse holds legal title. Bannen v. Bannen (S.C.App. 1985) 286 S.C. 24, 331 S.E.2d 379.

Ownership of shares in a professional corporation is restricted by Section 33‑51‑100 to duly licensed members of the profession concerned, and therefore a wife in a divorce action could not be awarded an interest, legal or equitable, in the husband’s professional medical association. In an action in which an equitable division is appropriate, but distribution of an interest in a professional association would be contrary to law, the court, in lieu of granting the wife an interest in the professional association, should consider its value in valuing the marital estate and then make a distributive award from other marital assets equivalent to the wife’s equity in the professional association. Bannen v. Bannen (S.C.App. 1985) 286 S.C. 24, 331 S.E.2d 379.

A family court judge has authority to make equitable distribution of the real estate of a marital estate regardless of the name in which the title to the property is held. Barth v. Barth (S.C.App. 1985) 285 S.C. 316, 329 S.E.2d 446, affirmed in part, reversed in part 293 S.C. 305, 360 S.E.2d 309. Divorce 691

Broad jurisdiction is granted family court judges in matters of equitable distribution by Section 20‑7‑420, and trial judges may employ any reasonable means to effectuate an equitable division of the marital estate. In making equitable distribution, it is proper to consider the debts of the parties. Bass v. Bass (S.C.App. 1985) 285 S.C. 178, 328 S.E.2d 649. Divorce 653

It was doubtful whether a trial court had jurisdiction over a motel property in a divorce action, where neither of the parties had requested in the pleading equitable distribution of the real property of the marital estate. Bailey v. Bailey (S.C.App. 1984) 283 S.C. 482, 323 S.E.2d 63.

Interspousal gifts are subject to equitable distribution. Burgess v. Burgess (S.C. 1982) 277 S.C. 283, 286 S.E.2d 142.

6. Award of marital home pursuant to equitable distribution

If the marital house is awarded to a spouse as part of the equitable distribution of the marital estate in divorce action, not as incident to support, then no showing of special circumstances need be shown. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 850

After husband and wife were divorced pursuant to a decree which incorporated separation agreement, family court lacked jurisdiction to award husband any interest in the former marital home that was previously awarded to wife in decree, even though husband and wife resumed cohabitation and husband apparently contributed to the mortgage following divorce; court’s authority was limited to enforcing provisions of its prior order. Tipton v. Tipton (S.C.App. 2002) 351 S.C. 456, 570 S.E.2d 195. Divorce 1001

Family court could not award ex‑wife credit for expenses necessary to sell marital home and for car repairs, where these expenses were not part of pleadings. Perry v. Estate of Perry (S.C.App. 1996) 323 S.C. 232, 473 S.E.2d 860. Divorce 875

A court order directing the wife to vacate the marital residence on a specified date approximately 40 days from the date of the order would be affirmed, even though the court expressly found that 90 days was a reasonable time for her to find other accommodations, where the wife made no showing that she could not find other accommodations by the date she was ordered to vacate the residence, and she actually obtained another place to live on or before that date and thus she was not prejudiced by the judge’s order. The wife was not entitled to remain in the marital residence any particular length of time; as long as she received a reasonable time, in fact, to leave the marital residence, her interest was fully protected. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376.

A trial judge erred in holding that an order resulting from an action for separate maintenance and support constituted an equitable distribution of the marital estate where the order awarded possession of the marital home to the wife as an incident of support without identifying or evaluating the marital estate, and therefore the disposition of property was merely incidental to the separation and was not a true property settlement. Stafford v. Stafford (S.C.App. 1988) 296 S.C. 423, 373 S.E.2d 699.

A wife failed to show transmutation of the marital home into marital property where, although the parties lived in the house for 9 years and performed substantial remodeling, the remodeling was performed when the house was owned by the husband’s stepmother and the husband subsequently acquired title to the house as a gift from his stepmother. Matter of Warlick (S.C. 1988) 296 S.C. 350, 372 S.E.2d 910.

Even if the down payment on the parties’ marital residence was traceable to money the wife received from the sale of her nonmarital property, the residence clearly became marital property where it was being used in support of the marriage, both parties had contributed substantially to the equity, and joint funds were used to pay the entire indebtedness on the property. Bryan v. Bryan (S.C.App. 1988) 296 S.C. 305, 372 S.E.2d 116.

The Family Court did not err in ordering the former husband to pay one‑half of the cost of painting and roofing the marital home which was found by the court to constitute major maintenance or repair as contemplated by the original divorce decree which dictated that such costs were to be borne equally by the parties. Harmon v. Harmon (S.C.App. 1986) 290 S.C. 396, 350 S.E.2d 925.

Trial judge abused his discretion in awarding the middle‑aged husband of the 19 year old marriage only 25 percent in the equity in the marital home and, so, the Court of Appeals modified the trial judge’s order to award the husband a 50 percent in the marital home equity. Chastain v. Chastain (S.C.App. 1986) 289 S.C. 281, 346 S.E.2d 33. Divorce 863

A wife was entitled to the full equity in a marital home, not a fifty percent interest, where the wife worked full‑time for more than half of the parties’ sixteen‑year marriage while the husband completed college and law school, the wife’s income and money from her parents supported the family during the husband’s schooling, and the wife’s parents assisted the family financially in many ways throughout the marriage, including furnishing the down payment on the first marital home and paying medical bills for the wife and the two children. Bauer v. Bauer (S.C. 1985) 287 S.C. 217, 337 S.E.2d 211.

A house is either marital property or separate property; there is no feasible way of characterizing a house as being part separate property and part marital property. However, the source of the acquisition of a house is a relevant criterion in the distribution of marital property, and may justify an unequal distribution. Barr v. Barr (S.C.App. 1985) 287 S.C. 13, 336 S.E.2d 481.

It was reversible error for the family court to order a division of the marital home in post‑divorce proceedings where the husband’s pleadings did not request that the court dispose of the marital home nor allege facts on which such relief might be predicated, and the judge specifically ruled at trial that the question of possession of the home was not before him. Although pleadings in the family court must be liberally construed, this rule cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings. Loftis v. Loftis (S.C.App. 1985) 286 S.C. 12, 331 S.E.2d 372. Divorce 1117(2); Divorce 1316(2)

A wife’s request in her pleadings for the “home as alimony” was properly disregarded because a court may not unconditionally order the transfer of property as alimony or in lieu thereof; however, there was no error in giving the wife the home as an equitable distribution where her petition also stated that she “is entitled to an equitable division of all the real and personal property acquired during the marriage of the parties.” Hendricks v. Hendricks (S.C.App. 1985) 285 S.C. 591, 330 S.E.2d 553.

Final disposition of property interests should be made by family court judges where possible; failing in this, the trial court must state compelling reasons for leaving loose ends. Where no compelling reasons were stated by the trial judge, his order that the husband convey to the wife his half interest in the marital home, with the wife permitted more than fifteen years in which to pay the husband for his interest, would be reversed. If no compelling reasons existed for the delayed payment, the trial judge should order the wife to pay the husband for his interest in the home forthwith, and in the event that the wife should be unable to do so, the trial judge should order that the house be sold within a reasonable time so as to obtain the best price reasonably possible. Bass v. Bass (S.C.App. 1985) 285 S.C. 178, 328 S.E.2d 649.

7. Improvements to marital home

Improvements to marital home owned by the former husband’s parents were not subject to equitable distribution. Abernathy v. Abernathy (S.C. 1986) 288 S.C. 322, 342 S.E.2d 595. Divorce 693

One spouse does not have an equitable interest in property acquired by the other spouse prior to the marriage. However, a spouse does have an equitable interest in improvements to property acquired before the marriage to which he or she contributed. Where the marital home was bought and paid for by the husband prior to the parties’ marriage, the husband paid for improvements on the house during the marriage, and the husband and his father constructed the improvements, the wife was adequately compensated for any equitable interest she had in the home by the court’s award to her of a lot valued at $3,500. Sauls v. Sauls (S.C.App. 1985) 287 S.C. 297, 337 S.E.2d 893.

Under the special equity doctrine, where a wife has made a material contribution to the husband’s acquisition of property during coverture, she acquires a special equity in the property. Although one spouse does not have an equitable interest in property acquired by the other spouse prior to the marriage, a spouse has an equitable interest in improvements to property to which he or she contributed, even if the property is nonmarital. Webber v. Webber (S.C.App. 1985) 285 S.C. 425, 330 S.E.2d 79.

8. Goodwill

Goodwill in a professional practice cannot be included in the marital estate subject to equitable distribution because of the intangible nature of goodwill which inevitably results in a speculative valuation. Thus, where an expert testified that the only value of a husband’s dental practice was its goodwill, the wife was not entitled to any money from the practice. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Goodwill in a business based upon the owner’s future earnings is too speculative for inclusion in the marital estate. Wood v. Wood (S.C.App. 1989) 298 S.C. 30, 378 S.E.2d 59.

Goodwill of a sole proprietorship may constitute a marital asset subject to equitable division. Casey v. Casey (S.C.App. 1986) 289 S.C. 462, 346 S.E.2d 726, certiorari granted in part 291 S.C. 284, 353 S.E.2d 287, reversed 293 S.C. 503, 362 S.E.2d 6. Divorce 706

9. Inherited property

Inherited property is not marital property subject to equitable distribution, but may properly be considered as a factor in determining what constitutes an equitable division of the marital property. Luthi v. Luthi (S.C.App. 1986) 289 S.C. 489, 347 S.E.2d 102. Divorce 718; Divorce 726

Money inherited by wife was not part of the marital estate subject to equitable distribution. Brooks v. Brooks (S.C.App. 1986) 289 S.C. 352, 345 S.E.2d 510.

Improvements made to inherited property during the marriage are subject to equitable distribution. Johnson v. Johnson (S.C.App. 1986) 289 S.C. 150, 345 S.E.2d 261. Divorce 718

Property inherited by a spouse is not property of the marriage subject to equitable distribution. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811. Divorce 718

10. Gifts

In determining the character of disputed antenuptial gifts, the family court should first consider all of the evidence relevant to the donor’s intent. If the donor’s intent is apparent from the clear preponderance of the evidence, his or her intent controls. If, however, the evidence as a whole is inconclusive, then the court should apply the English rule, under which the source of the gift is considered; if money or gifts in kind come from the family or friends of one party, the gift is the separate property of that party. Under the English rule, the donor is presumed to have given the gift to the party to whom he or she is more closely related. The rule rests on an objective fact, easily and reliably proven without raising issues of witness credibility and, in most cases, the rule will carry out the actual intent of the donor. Pappas v. Pappas (S.C.App. 1989) 300 S.C. 62, 386 S.E.2d 301. Divorce 718

A gift from a third party solely to one spouse retains its character as separate property. Barr v. Barr (S.C.App. 1985) 287 S.C. 13, 336 S.E.2d 481. Divorce 718

11. Retirement accounts

Although husband could not obtain relief from support order under rule governing relief from judgment, husband was entitled by statute to a supplemental order to avoid the inequitable effect of the Department of Defense Finance and Accounting Service (DFAS) calculating wife’s share of husband’s retirement pay on the basis of husband’s entire time of military service, rather than up to the time of divorce. Mullarkey v. Mullarkey (S.C.App. 2012) 397 S.C. 182, 723 S.E.2d 249, rehearing denied. Divorce 891

A husband’s civil service retirement fund was property acquired during the marriage and, therefore, was part of the marital estate subject to equitable apportionment even though the retirement account was not vested and the husband could not begin receiving his retirement funds immediately. Kneece v. Kneece (S.C.App. 1988) 296 S.C. 28, 370 S.E.2d 288.

Even though the record justified an equal division of their marital estate, stock in the former husband’s retirement account which had been financed by his employer would be excluded from such distribution. Wingard v. Wingard (S.C.App. 1986) 288 S.C. 644, 344 S.E.2d 191.

A spouse’s noncontributory retirement account is not marital property subject to equitable distribution. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811. Divorce 712

A Nevada Decree was enforceable in this State by the family court of Spartanburg County in such manner, and by all remedies available for the enforcement of its own domestic decrees and the court also had the right to require the payment of all installments for the support and maintenance of the wife and child which had become due and payable during the pendency of the action. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372. Child Support 508(1); Divorce 1443; Divorce 1452(1)

12. Alimony

Where a divorce decree does not provide for alimony and there is no reservation of jurisdiction in the decree, the decree is final and absolute and alimony cannot be allowed in any subsequent proceeding. While reservation of alimony is a mechanism available to family court judges in proper cases, it is not to be used to avoid reaching the issue of whether alimony should or should not be awarded under the facts of a particular case. It should not be routinely included in a decree of divorce, as this unnecessarily prolongs the marital litigation. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Family Court was without authority to award former wife alimony in former husband’s subsequent action for divorce where final order granting wife’s earlier petition for separate maintenance stated that the parties had reached an agreement regarding all matters raised in the pleadings and neither granted former wife alimony nor reserved to her any right to future alimony, even though the former wife had requested alimony in her petition. Lawter v. Lawter (S.C. 1986) 289 S.C. 298, 345 S.E.2d 479.

Under the South Carolina Divorce Act, a court of equity has authority to make such orders touching maintenance and alimony for the wife and support for the children as is equitable and just. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372. Child Support 11; Divorce 559

13. Rehabilitative alimony

Rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference for permanent periodic support. The purpose of rehabilitative alimony is to encourage a dependent spouse to become self‑supporting after a divorce. However, it should be approved only in exceptional circumstances, in part because it seldom suffices to maintain the level of support that the dependent spouse enjoyed as an incident to the marriage. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

An award of rehabilitative alimony must be based on facts which support its temporary nature, as well as facts which also demonstrate the recipient’s self‑sufficiency at the expiration of the ordered payments. Canady v. Canady (S.C.App. 1986) 289 S.C. 512, 347 S.E.2d 115.

Award to former wife of rehabilitative alimony was not enough and, although she was capable of obtaining a job and contributing to her own support and to the support of her family, the former wife was entitled to permanent periodic alimony, where it was doubtful that she would ever match her former husband in earning capacity and that, on her own, she could ever achieve the high standard of living to which she and her children were accustomed during the marriage. Crim v. Crim (S.C.App. 1986) 289 S.C. 360, 345 S.E.2d 515. Divorce 606

14. Modification of alimony

Oral agreement by ex‑wife to allow ex‑husband to pay less alimony than decree required after he refused to pay alimony according to decree was not enforceable; decree had been merged into court order, and order contained provision barring oral modification, and thus, oral modification was unenforceable. Messer v. Messer (S.C.App. 2004) 359 S.C. 614, 598 S.E.2d 310, rehearing denied, certiorari denied. Divorce 624

There was no error in the family court’s reduction, due to changed circumstances, of the amount of monthly support an ex‑husband was to pay his ex‑wife where, since entry of the divorce decree, the ex‑husband remarried, the parties’ daughter became emancipated, the family court awarded custody of the parties’ son to the ex‑husband, the ex‑wife for a period of time had a live‑in boyfriend who was unemployed and paid her no rent, and the ex‑wife had no health problems, at 41 was still young, and (although unemployed) was fully capable of earning a livelihood. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614. Divorce 627(15); Divorce 634

While husband’s appeal from divorce decree on several issues, including alimony issue was pending in the Supreme Court, the family court was without jurisdiction to change the amount of the alimony. Wingate v. Wingate (S.C. 1985) 289 S.C. 574, 347 S.E.2d 878.

Family court erred in granting alimony relief to former husband whose financial condition was as good or better than at the time of the divorce decree, and the former wife, although seeking a job, was unemployed. Gore v. Gore (S.C.App. 1986) 288 S.C. 438, 343 S.E.2d 51. Divorce 627(15)

The fact that a divorced father’s physician advised him to stop work because of his congestive heart condition and high blood pressure constituted a sufficient change of circumstances to warrant the modification of a child support award. Justice v. Scruggs (S.C.App. 1985) 286 S.C. 165, 332 S.E.2d 106. Child Support 339(2); Child Support 339(3)

15. Use of marital home incident to support

Award of the marital home incident to support in divorce action requires a showing that compelling interests exist, such as (1) the need for adequate shelter for minors, (2) the occupying spouse has a special need for the house because of a handicap or other infirmity, (3) the inability of the occupying spouse to otherwise obtain adequate housing, or (4) other special circumstances exist. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Child Support 140(1); Divorce 602

A party who is granted possession of a residence as an incident of support does not obtain a vested right to remain in the home for his or her lifetime. Rather, changed circumstances may necessitate a future change in such a provision. Stafford v. Stafford (S.C.App. 1988) 296 S.C. 423, 373 S.E.2d 699. Marriage And Cohabitation 1220; Marriage And Cohabitation 1234

The fact that an award of exclusive possession of the marital home to the wife was for an indefinite period of time did not invalidate the award or make it any less an incident of support. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21. Divorce 856

The family court may require one spouse to provide another with necessary shelter as an incident of support, but there are limitations on the award of exclusive use of a marital home and exclusive use may not be awarded unless warranted by special circumstances. Patterson v. Patterson (S.C.App. 1986) 288 S.C. 282, 341 S.E.2d 819.

An award of the exclusive right to occupy the marital home is in the nature of support. Thus, in a former wife’s action for an increase in alimony, the former husband had the right to have his request for possession of the marital home heard and decided on the basis of his allegations of altered circumstances. Holme v. Holme (S.C.App. 1985) 287 S.C. 68, 336 S.E.2d 508.

In granting a spouse possession of the marital home as an incident of support under Section 20‑7‑420(15), the following principles apply. If possible, the division and distribution of the marital home should be accomplished at the time of entry of the judgment of divorce. However, the court must carefully consider the claim of a party that the interests of that party or the children are so predominant, when balanced against the interests of the other spouse, that an award of exclusive possession of the marital home is compelled. Some of the interests which may be considered compelling include: (1) adequate shelter for minors; (2) suitable housing for a handicapped or infirm spouse; and (3) the inability of the occupying spouse to otherwise obtain adequate housing. The court must also consider the interests of the non‑occupying spouse, who may suffer from the fact that the realization of his share of the value of the marital home will be deferred. Before imposing such a burden, the court should consider the size and expansiveness of the home in relation to the expected use and the cost of maintaining the home in comparison to the benefits received. The court must also consider the potential duration of the exclusive possession. The court may not award exclusive possession of the marital home for an unlimited period of time. Finally, the court must make some provision for the eventual distribution of the marital home and must state the terms on which such distribution will be made. Johnson v. Johnson (S.C.App. 1985) 285 S.C. 308, 329 S.E.2d 443.

The Family Court had the authority under Section 20‑7‑420(15) to modify a provision of a prior divorce decree regarding possession of the marital home on a proper showing of changed conditions and in the immediate case the supported spouse did not challenge the sufficiency of the evidence presented by the supporting spouse to establish a material change in circumstances. Whitfield v. Hanks (S.C. 1982) 278 S.C. 165, 293 S.E.2d 314.

16. Exclusive use of marital home

The family court may award exclusive use and possession of the marital residence as an incident of support. In making such an award, the court is to balance competing interests between the claim of the dependent spouse and/or children for exclusive possession against the claim of the non‑occupying spouse for his or her share of the marital home. The court should consider such factors as (1) the need for adequate shelter for minors; (2) suitable housing for a handicapped or infirm spouse; and (3) the inability of the occupying spouse to otherwise obtain adequate housing. In making an award, the court must make the award for a reasonable time based on the circumstances warranting the award in the first instance. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165. Divorce 853; Divorce 856

A court order entitling the wife in a divorce action to continue to reside in the marital home with the parties’ children until the youngest child was 18 or was out of high school, which effectively awarded approximately 13 years of exclusive use to the wife and children in that there were 4 children ranging in age from 18 to 5, would be modified to provide that the husband could petition the family court for modification of this exclusive use provision after the 2 oldest children reached the age of majority. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165.

A wife was entitled to sole possession of the marital residence rather than merely exclusive possession until the parties’ child completed his education where the amount of equity in the house was de minimis, the husband was physically abusive during the marriage, and the wife was unable to find comparable housing for herself and the parties’ minor child. Roof v. Roof (S.C. 1989) 298 S.C. 58, 378 S.E.2d 251.

An award to a wife of the exclusive use of the marital home for a period of 3 years was error where the marital home was the only major asset of the marriage and the husband’s equity in the home represented nearly all of the marital property awarded to him, the house was in need of repair and seemed likely to decline with a resulting decrease in value especially over a 3‑year period, shelter for minor children was not involved, the wife suffered from some disability but was not critically handicapped, and nothing in the record indicated that a suitable alternative housing arrangement for the wife was not available or that the marital home specially met the wife’s needs as a result of her disability. Cehen v. Cehen (S.C.App. 1988) 295 S.C. 452, 369 S.E.2d 659.

The family court should have awarded a husband exclusive possession of the marital home as an incident of child support rather than ordering the marital home to be sold and the proceeds divided evenly where the husband was awarded custody of the parties’ minor child and the wife was not required to pay child support. Stevenson v. Stevenson (S.C. 1988) 295 S.C. 412, 368 S.E.2d 901.

As an incident of support, an award of exclusive possession of the marital home to the wife for an indefinite period of time was subject to modification upon the showing of a change in circumstances despite its award for an indefinite term. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21.

Special circumstance existed supporting award to wife of exclusive use and possession of marital home until either she remarried or the parties’ son died, where the son, who was mentally retarded, occasionally wandered off and was assisted by caring neighbors, and there was no showing that a similar circumstance would exist should the wife be forced to relocate. Chastain v. Chastain (S.C.App. 1986) 289 S.C. 281, 346 S.E.2d 33. Divorce 853; Divorce 856

In deciding whether to award a spouse exclusive use of the marital home, among the factors which should be considered are: whether the home is to be used to provide shelter for minor children; whether the occupying spouse is handicapped or has some special need for the home; whether the occupying spouse cannot reasonably obtain other housing; the amount of equity the other spouse has in the home; the length of time the equity of the other spouse will be tied up; and the total amount of support otherwise awarded. Patterson v. Patterson (S.C.App. 1986) 288 S.C. 282, 341 S.E.2d 819. Divorce 853

Award to the former wife of exclusive use of the marital home until the youngest child of the parties was 22 years of age was unjustified, where the youngest child was 15 years old at the time of the decree, the former wife was not handicapped, had no special need for the property and could reasonably obtain other housing, and the amounts otherwise awarded for child support and alimony were also substantial. Patterson v. Patterson (S.C.App. 1986) 288 S.C. 282, 341 S.E.2d 819.

Exclusive possession of a residence should not be given to a spouse as an incident of support under Section 20‑7‑420(15) where a substantial portion of the other spouse’s assets are invested in the home and there is no evidence that the spouse to be supported has custody of the parties’ minor children or is severely handicapped, or that some other special circumstances exist which would warrant such an award. Barone v. Barone (S.C. 1985) 289 S.C. 411, 338 S.E.2d 149. Divorce 853; Divorce 856

Under Section 20‑7‑420, a spouse may, under certain circumstances, be granted the exclusive use of the marital home as an incident of support. Thompson v. Brunson (S.C.App. 1984) 283 S.C. 221, 321 S.E.2d 622.

17. Insurance

Absent special circumstances or specific statutory authority, the family court does not have the inherent power to require a supporting spouse to obtain or maintain a life insurance policy solely as an incident of periodic support. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

The law requires a compelling reason, amounting to a necessity, before a supporting spouse will be required to maintain life insurance to secure a child’s future support. Shambley v. Shambley (S.C.App. 1988) 296 S.C. 405, 373 S.E.2d 689.

Absent special circumstances or specific statutory authority,the family court does not have the inherent power to require a supporting spouse to obtain or maintain, solely as an incident of periodic support, a life insurance policy naming the defendant spouse as beneficiary, the rationale being that such a requirement is in the nature of alimony, for which the liability ceases upon the death of the supporting spouse. Hardin v. Hardin (S.C.App. 1987) 294 S.C. 402, 365 S.E.2d 34. Divorce 603

While separation agreement obligated husband to assign all his right, title and interest in and to insurance policies to former wife, provision was subject to requirement that children be named irrevocable contingent beneficiaries, husband intended that policies be held by wife for benefit of children thus, wife’s ownership was circumscribed by interest of children; since both parties agreed there was no ambiguity in disputed provision, it was unnecessary for court to take testimony on issue; court has broad discretion in award of attorneys’ fees in domestic matter; where husband continued to offer to convey policies to wife, subject to her acquiescence in preserving rights of children, and in light of fact that condition on her absolute ownership was imposed by agreement between parties, wife’s institution of suit was unnecessary and she was not entitled to attorneys’ fees. Edens v. Edens (S.C. 1979) 273 S.C. 303, 255 S.E.2d 856.

18. Settlement agreements

Family court had exclusive jurisdiction over divorce settlement agreement pursuant to statutory provision that granted jurisdiction over all contracts relating to property involved in a divorce proceeding and over the construction and enforcement of those contracts, as well as statutory provision that granted exclusive jurisdiction to the family court to hear marital litigation, and to hear and determine any questions of support, custody, and separation. Hammer v. Hammer (S.C.App. 2012) 399 S.C. 100, 730 S.E.2d 874, rehearing denied. Divorce 917

If a support and property settlement agreement is executory as to support and a continuance of the separation, while it is executed as to property rights, reconciliation and resumption of cohabitation may terminate the executory support provision while having no effect on the executed property provisions. Thus, a property settlement agreement and reconciliation agreement precluded reapportionment of the property covered by them except to the extent that such property had increased in value due to the joint effort of the parties, where the reconciliation agreement indicated that the parties agreed that they had complied with the provisions of the property settlement agreement. However, the reconciliation of the parties nullified the provisions of the separation and reconciliation agreements regarding the parties’ agreements not to be liable for the support of each other, and therefore the husband’s argument that the trial court should not have awarded alimony to the wife was without merit. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

Statute allows Family Court to modify or vacate order issued by it only where Family Court otherwise has subject matter jurisdiction, and it cannot be invoked to confer jurisdiction upon Family Court to modify or vacate order approving property settlement agreement where parties have contracted away continuing jurisdiction of Family Court to supervise their settlement agreement, Family Court has approved settlement agreement as fair and equitable, and order approving settlement agreement has become final. Roberts v. Roberts (S.C.App. 1987) 293 S.C. 439, 361 S.E.2d 341.

Because Family Court’s decree approving settlement agreement was final, subject matter jurisdiction as to all matters relating to settlement agreement rested with Circuit Court, and Family Court committed reversible error in reopening case for purpose of entertaining issues raised by wife in amended petition. Roberts v. Roberts (S.C.App. 1987) 293 S.C. 439, 361 S.E.2d 341.

Where one party seeks family court approval of a settlement agreement between a husband and wife and the other party repudiates it, the court must first determine if the agreement was freely and voluntarily entered into and next determine if it is fair under all circumstances. An agreement was freely and voluntarily entered into where both parties had the benefit of legal advice before signing it, the wife paid an attorney to draft the agreement and discussed its terms with her attorney, the husband discussed the agreement with the wife and her attorney, and the husband also had another attorney review the agreement. Sauls v. Sauls (S.C.App. 1985) 287 S.C. 297, 337 S.E.2d 893.

The family court had jurisdiction to determine whether a wife’s attorney was guilty of overreaching with regard to a property settlement agreement, to evaluate the agreement’s fairness, and to incorporate it into the divorce decree if fair. Where one party seeks to incorporate an agreement, and the other seeks to repudiate it, the court should assume jurisdiction over the agreement. If the court concludes that the agreement is fair, the court shall incorporate it into the divorce decree; if the court finds it to be unfair under all of the circumstances, the court shall void it and equitably divide the property. Funderburk v. Funderburk (S.C. 1985) 286 S.C. 129, 332 S.E.2d 205.

An agreement entered into on divorce cannot prejudice the rights of the children. Therefore, in a divorced father’s action to establish specific visitation privileges, it was error for the family court judge to rule that he had no jurisdiction to consider the issues of child support, visitation, or custody, by virtue of the settlement agreement which the parties had entered into at the time of their divorce. Martin v. Ross (S.C.App. 1985) 286 S.C. 43, 331 S.E.2d 785.

19. Premarital agreements

Family court had jurisdiction to determine validity of premarital agreement in divorce action; litigation between parties was marital in nature, husband asserted premarital agreement as defense to causes of action for alimony and equitable distribution, and so family court was required to determine whether premarital agreement was valid and enforceable, and family court did not attempt to distribute nonmarital property or provide support in contravention of agreement. Holler v. Holler (S.C.App. 2005) 364 S.C. 256, 612 S.E.2d 469, rehearing denied. Divorce 965

20. Child custody

Father’s failure to expressly invoke the issue of paternity in seeking custody of out‑of‑wedlock child did not deprive the family court of subject matter jurisdiction over father’s child custody action; the family court had jurisdiction over child custody disputes. Altman v. Griffith (S.C.App. 2007) 372 S.C. 388, 642 S.E.2d 619, rehearing denied, certiorari denied. Child Custody 404

A trial court did not abuse its discretion in awarding custody of the parties’ children to the husband, even though the wife loved the children and was a fit parent, where the husband had had primary custody of the children since he and the wife separated, he lived with his mother who helped him take care of the children, the children had been well cared for during that period, the husband loved the children, and the wife had tended to put her active social life before the interests of the children. Husband v. Wife (S.C.App. 1990) 301 S.C. 531, 392 S.E.2d 811.

The family court did not have jurisdiction to determine the custody of the plaintiff’s 18‑year‑old daughter or to issue a protective order at the plaintiff’s request. The family court’s jurisdiction to determine custody matters applies only to children, and “child” is statutorily defined as a person under 18 years of age. Similarly, the family court’s jurisdiction to issue a protective order at the request of a person other than the victim of the alleged abuse is limited to situations involving children. Furthermore, no statute applies to these causes of action which would extend jurisdiction beyond a child’s eighteenth birthday. Holcombe v. Kennison (S.C. 1990) 300 S.C. 479, 388 S.E.2d 807.

Flagrant promiscuity on the part of a custodial parent will inevitably affect the welfare of the child and establish a watershed in the court’s quest to protect the best interest of a minor child. Thus, a change of custody of a minor child to the father was warranted where the mother was accustomed to partying with various friends, had previously, on occasion, smoked marijuana, and admitted that she had sexual relations with at least 5 men during a period of less than a year, on one occasion with an airman in a barracks at an air force base. Boykin v. Boykin (S.C.App. 1988) 296 S.C. 100, 370 S.E.2d 884.

Since split custody of minor children is not favored, because it is not in the best of the child, award of visitation privileges to the former husband which had the effect of split custody would be reversed and remanded for re‑evaluation. Lassiter v. Lassiter (S.C.App. 1986) 289 S.C. 341, 345 S.E.2d 504, affirmed in part, reversed in part 291 S.C. 136, 352 S.E.2d 486.

Transfer of custody of minor child to mother from maternal grandmother and step‑grandfather was proper upon a finding of changed circumstances, supported by a preponderance of the evidence, that mother had substantially improved her living style in order to accommodate a family and that negative developments had occurred in the grandparents’ home. Bramlett v. Davis (S.C.App. 1986) 289 S.C. 85, 344 S.E.2d 867.

Remarriage of a non‑custodial parent is not of itself a sufficient change of circumstances to warrant change of custody of minor. Fisher v. Miller (S.C. 1986) 288 S.C. 576, 344 S.E.2d 149.

In action by former husband to obtain custody of children from former wife, where alleged sexual act of wife with another man was isolated occurrence and her subsequent conduct was not indicative of moral laxity such as to affect welfare of children, custody would not be given to husband; nor was illegitimate child born to wife after marriage untouchable outcast whose mere presence in mother’s home made it unfit for her to rear her legitimate children; nor was temporary emotional stress suffered by wife which occurred at time of her separation from husband and which was not of permanent nature grounds for change of custody to husband; if it later develops that presence of illegitimate child in home creates circumstances detrimental to best interests of children, continuing jurisdiction of court will afford opportunity to reconsider question of custody. Dent v. Dent (S.C. 1979) 273 S.C. 387, 256 S.E.2d 743.

21. Joint custody

Joint or divided custody should only be awarded where there are exceptional circumstances. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Child Custody 122

Exceptional circumstances existed to warrant award of joint custody of minor child in divorce case, since trial court’s decision to alternate custody every four weeks was fashioned to be least disruptive for child, husband and wife both loved and wanted child, and sole‑custody arrangement had potential for custodial parent to effectively alienate child from non‑custodial parent. Scott v. Scott (S.C. 2003) 354 S.C. 118, 579 S.E.2d 620, rehearing denied. Child Custody 122

Only under exceptional circumstances should joint custody of child be ordered. Scott v. Scott (S.C. 2003) 354 S.C. 118, 579 S.E.2d 620, rehearing denied. Child Custody 120

Enactment of statute granting family court exclusive jurisdiction to order joint or divided custody of child did not change law in state that joint custody is generally disfavored. Scott v. Scott (S.C. 2003) 354 S.C. 118, 579 S.E.2d 620, rehearing denied. Child Custody 3

Four‑week interval for alternating custody of child was not a “brief period,” for purposes of courts’ reluctance to award custody of child in brief alternating periods between estranged and quarrelsome persons. Scott v. Scott (S.C. 2003) 354 S.C. 118, 579 S.E.2d 620, rehearing denied. Child Custody 147

22. Modification of custody

A husband was not entitled to have his alimony payments terminated or reduced, even though his ex‑wife was living in an illicit relationship and the husband was in bankruptcy, where the parties had entered into an agreement which was approved and adopted as the order of the court, and which provided (1) for a set amount of alimony, (2) that alimony would be terminated only on the death of a party or the remarriage of the wife, (3) that the agreement could not be modified without the written consent of both parties, and (4) that either party could “date” and neither would seek divorce for adultery; thus, the alimony provision was not modifiable by the court, by reason of either changed circumstances or equitable considerations. Croom v. Croom (S.C.App. 1991) 305 S.C. 158, 406 S.E.2d 381, certiorari denied.

Spousal “support” and “alimony” are synonymous. Thus, an agreement unambiguously providing for periodic alimony was subject to subsequent modification by the family court upon a showing of altered circumstances. Medlin v. King (S.C.App. 1988) 294 S.C. 406, 365 S.E.2d 36.

Change in circumstances requiring a reduction of former husband’s alimony payments was not shown where, even though the former wife’s income had doubled to $16,000 per year since the divorce decree and although the former husband’s salary had decreased from $65,884 in 1981 to $39,936 in 1986, the husband had received substantial yearly bonuses which were tied to his employer’s financial condition and, further, due to acquisitions and gifts under his father’s will, the former husband’s net worth had increased from $79,800 in 1979 to $302,225 in 1983. Harmon v. Harmon (S.C.App. 1986) 290 S.C. 396, 350 S.E.2d 925.

Family Court judge was without jurisdiction to modify a final order in a divorce action more than a month after its rendition where neither party appealed from the order which purported to make a final distribution of the marital assets. Doran v. Doran (S.C. 1986) 288 S.C. 477, 343 S.E.2d 618.

Former wife was not denied due process because of lack of notice of hearing on modification of alimony where she was represented by counsel at the hearing, and, upon the failure of the parties to reach agreement, the court modified the alimony payments pursuant to the stipulation of the parties entered into at the hearing. Williams v. Williams (S.C.App. 1986) 288 S.C. 161, 341 S.E.2d 645. Constitutional Law 4387

23. Child support

Ex‑wife would not be credited for child support payments made directly to her child; the original support order stated that ex‑wife shall make semi‑monthly child support payments to ex‑husband, it was the obligation of ex‑wife to pay the specified amounts according to the terms of the decree, and she should not be permitted to vary those terms as a matter of convenience. Blackwell v. Fulgum (S.C.App. 2007) 375 S.C. 337, 652 S.E.2d 427. Child Support 454

Once child turns 18, a parent’s obligation to pay child support generally ends by operation of law. Blackwell v. Fulgum (S.C.App. 2007) 375 S.C. 337, 652 S.E.2d 427. Child Support 390

Generally, a parent’s obligation to pay child support extends until the child reaches majority, becomes self‑supporting, or marries, then ends by operation of law. Purdy v. Purdy (S.C.App. 2003) 353 S.C. 400, 578 S.E.2d 30. Child Support 386; Child Support 387; Child Support 390

Divorced husband was properly ordered to pay two‑thirds of the cost of placing minor child in therapeutic boarding school to treat her oppositional defiant disorder, as divorced husband had an income almost three times that of his former wife and also had retirement savings, whereas former wife had substantially larger assets but no retirement accounts or plans. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Child Support 117

Question of child support is largely within the discretion of the trial judge whose decision will not be disturbed on appeal unless an abuse of discretion is shown. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Child Support 9; Child Support 556(1)

It was within trial court’s discretion to order father to pay child support payments to stepfather while stepfather had physical custody of children following death of mother, who had custody of children under divorce decree. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Support 441

Although both parents are obligated to support their child under former Section 20‑7‑40, financial assistance is just one aspect of a support obligation. Another aspect of support includes the services parents provide for a child. Thus, a family court did not abuse its discretion in failing to require a custodial parent to contribute to the support of the minor child since the custodial parent has the responsibility of performing the daily services the child requires such as preparing meals, helping with homework and washing clothes. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178.

The family court had jurisdiction to decide whether a mother was entitled to child support retroactively even though the child was no longer a minor. Hallums v. Hallums (S.C. 1988) 296 S.C. 195, 371 S.E.2d 525. Child Support 470

In an action for legal separation, child custody and other relief, the family court did not abuse its discretion in failing to award custody of the parties’ minor children to the wife and to award her child support where both parties remained in the marital home and nothing in the record suggested that the husband was not providing for the support of the parties’ children. Ariail v. Ariail (S.C.App. 1988) 295 S.C. 486, 369 S.E.2d 146. Divorce 108

The family court retains continuing jurisdiction to enforce and modify child support despite any provisions of an agreement between the parties. Where there is an agreement regarding child support, however, the family court should not decide support issues as if there is no agreement. A parent can contractually obligate himself or herself beyond the support requirements imposed by law. Ratchford v. Ratchford (S.C.App. 1988) 295 S.C. 297, 368 S.E.2d 214.

A trial court did not abuse its discretion in ordering a non‑custodial mother to contribute 45 percent of the cost of her son’s orthodontic care where an agreement which was incorporated into the parents’ divorce decree provided that any medical expenses for the children not otherwise covered would be equally divided between them, both parents agreed that the dental treatment was necessary and the mother was financially able to contribute to her son’s orthodontic expenses. Thornton v. Thornton (S.C.App. 1988) 294 S.C. 512, 366 S.E.2d 37.

A husband who consents for his wife to conceive a child through artificial insemination, with the understanding that the child will be treated their own, is the legal father of the child born as a result of the artificial insemination and will be charged with all of the legal responsibilities of paternity, including support. In re Baby Doe (S.C. 1987) 291 S.C. 389, 353 S.E.2d 877. Child Support 63; Parent And Child 242

A parent’s obligation to feed, clothe and otherwise support a minor child, being correlative to the parent’s rights in and to the child, does not exist where the parent’s reciprocal rights in and to the child have been terminated. Coffey v. Vasquez (S.C.App. 1986) 290 S.C. 348, 350 S.E.2d 396. Child Support 375; Infants 2184

Trial judge considered the relevant factors in determining that the husband should pay $250 per month in child support for 2 children, including the wife’s $31,000 per year income and the $8,000 educational fund established by the parties. Chastain v. Chastain (S.C.App. 1986) 289 S.C. 281, 346 S.E.2d 33. Child Support 140(1)

Since the husband voluntarily removed himself from the job market in order to attend law school full time, the trial judge properly considered the husband’s earning potential rather than simply his current income and properly disallowed the husband’s diminished income as an excuse either for relieving the husband from any child support obligations at all or for reducing the amount the husband should otherwise pay in child support. Chastain v. Chastain (S.C.App. 1986) 289 S.C. 281, 346 S.E.2d 33. Child Support 159

A disabled father, obligated by a divorce decree to make monthly child support payments to the children’s mother, was entitled to credit on his child support payments for social security disability benefits being paid to the mother for support of the children on account of the father’s disability. Justice v. Scruggs (S.C.App. 1985) 286 S.C. 165, 332 S.E.2d 106.

Pursuant to Sections 20‑3‑160 and 20‑7‑420(17), the trial judge’s order in a divorce action providing that the amount of child support would automatically increase from $390 per month to $540 per month after 24 months was without precedent and an abuse of discretion, since it arbitrarily increased the amount of support without any showing of a change of conditions. Condon v. Condon (S.C.App. 1984) 280 S.C. 357, 312 S.E.2d 588. Child Support 164

Action to establish child support obligation on part of alleged father of illegitimate child not barred by 6‑year statute of limitations in South Carolina Code Section 10‑143 (1962) [Section 15‑3‑530 (1976)] where child was born more than 6 years prior to action, since new causes of action arise over years with each instance of putative father’s failure to support child. South Carolina Dept. of Social Services v. Lowman (S.C. 1977) 269 S.C. 41, 236 S.E.2d 194.

1962 Code Sections 15‑1095.24, 15‑1095.25, and 20‑303 [1976 Code Sections 14‑21‑810, 14‑21‑820, and 20‑7‑40], make it manifestly clear that a father who, though not in possession of sufficient means, is able to earn such means, is required to pay reasonable sum for the support of his minor children, and family courts have the powers provided therein to enforce child support orders. Redick v. Redick (S.C. 1976) 266 S.C. 241, 222 S.E.2d 758. Child Support 82

24. —— College expenses

Requiring father to pay, as an incident of child support, for post‑secondary education under the appropriate and limited circumstances outlined by Risinger would have been rationally related to the State’s interest in ensuring that its youth are educated such that they can become more productive members of society; overruling Webb v. Sowell, 387 S.C. 328, 692 S.E.2d 543. McLeod v. Starnes (S.C. 2012) 396 S.C. 647, 723 S.E.2d 198, certiorari denied 133 S.Ct. 198, 568 U.S. 822, 184 L.Ed.2d 39. Child Support 119

Risinger, which held that a family court was statutorily permitted to award college expenses incident to child support if certain criteria were met, did not violate the Equal Protection Clause because there was a rational basis to support any disparate treatment Risinger and its progeny created, to ensure children of divorce had the benefit of the college education they would have received had their parents remained together. McLeod v. Starnes (S.C. 2012) 396 S.C. 647, 723 S.E.2d 198, certiorari denied 133 S.Ct. 198, 568 U.S. 822, 184 L.Ed.2d 39. Child Support 119; Constitutional Law 3738

While the cost of a child’s education is a relevant consideration with regard to a child support award in light of the factors identified in Risinger and subsequent cases, attendance at a private school does not foreclose an award of expenses; instead, the tuition amount is to be factored in with the child’s attainment of scholarships, grants, and loans as well as the parents’ ability to pay when determining whether to make such an award and in what amount. McLeod v. Starnes (S.C. 2012) 396 S.C. 647, 723 S.E.2d 198, certiorari denied 133 S.Ct. 198, 568 U.S. 822, 184 L.Ed.2d 39. Child Support 117

Post‑divorce order that required father to contribute to son’s college expenses violated the equal protection clause; there was no rational basis to permit a family court to order a parent subject to a child support order to contribute to an emancipated child’s post‑secondary education. Webb v. Sowell (S.C. 2010) 387 S.C. 328, 692 S.E.2d 543. Child Support 120; Constitutional Law 3738

If certain factors are met, family court may order divorced parent to pay college expenses of emancipated child. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Child Support 393

Generally, family court should employ Risinger test, not “change of circumstances” analysis, in determining whether divorced parent’s support obligation should extend past child’s eighteenth birthday when child chooses to attend college. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Child Support 390

Former husband would not be permitted to petition court, just as children were entering college, to challenge provision of divorce decree entered approximately 15 years earlier ordering him to pay child support until children completed their college educations; former husband should have sought such relief years earlier. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Child Support 304

Under certain exceptional circumstances, parents may be required to provide support for educational expenses of emancipated children; under such circumstances, award of college expenses is form of child support; provision of separation agreement which was incorporated into 1974 Haitian divorce in which father agreed to pay college expenses of children was not form of child support but rather was contractual obligation, and thus, family court did not have subject matter jurisdiction to modify college education expenses. Treadaway v. Smith (S.C.App. 1996) 325 S.C. 367, 479 S.E.2d 849, rehearing denied, certiorari denied.

The law of South Carolina, rather than the law of the state of the father’s residence, governed the question of whether a daughter was entitled to continued child support to allow her to attend college, even though her parents’ divorce decree was rendered in the state of her father’s residence, since the daughter was residing in South Carolina at the time she reached 18 years of age, and thus the exceptional circumstances which vested the Family Court with jurisdiction of the subject matter arose in South Carolina. West v. West (S.C.App. 1992) 309 S.C. 28, 419 S.E.2d 804.

Where there is an agreement regarding the support of an adult child, the family court should not decide support issues as if there were no agreement. Parents can contractually obligate themselves beyond the support required by law. A parent can contractually obligate himself or herself to support or pay the educational expenses of a child past majority and such an agreement is not modifiable by the court without the consent of the parties. Petition of White (S.C.App. 1989) 299 S.C. 406, 385 S.E.2d 211.

When addressing the issue of the obligation of a divorced parent to help pay for a college education for a child over 18 years of age, in considering the factor of whether the child cannot otherwise go to school without the financial assistance of the parent, the availability of grants and loans and the ability of the child to earn income during the school year or on vacation are relevant factors to be considered because an emancipated child has a duty to help minimize college expenses when a parent’s financial support for these expenses is sought. Thus, the issue of whether a divorced father should be required to contribute to his son’s college education would be remanded to the family court for a consideration of these factors where there was no evidence in the record to support the conclusion that the son could not attend college without the financial assistance of his father and the family court made no findings on the availability of grants and loans or the ability of the son earn an income. Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254.

An appeal from a family court order, a portion of which required a divorced father to contribute to his son’s college expenses, did not automatically stay the provision for payment of college expenses. An award of college expenses is made pursuant to the authority of the family court to order support for a child and, therefore, as a form of support, college expenses are not automatically stayed under Supreme Court Rule 41. Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254.

Although an ex‑spouse’s duty to support a child of the marriage ends by operation of law when the child turns 18, the family court may order a divorced parent to pay for the educational expenses of an emancipated child under certain “exceptional circumstances.” Thus, the family court erred in applying a “change of circumstances” test in determining whether a divorced mother should provide support for her daughter’s educational expenses after the daughter’s eighteenth birthday. Bull v. Smith (S.C. 1989) 299 S.C. 123, 382 S.E.2d 905.

A father was not required to pay a portion of his two sons’ college education expenses where, concerning the older son, there were no findings by the trial court regarding his financial ability to attend college without his father’s assistance, there were no findings regarding the availability of grants and loans, there were no findings regarding his ability to earn income during the school year and during vacation periods, and there were no findings regarding what the reasonable costs of his education would be and, concerning the younger son, the requirement that the father pay a portion of his college expenses was premature since the son was only in ninth grade at the time of the hearing. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21.

Family court erred in ordering the former husband to set aside $300 per month to purchase an annuity for the children’s college education or post‑high school training in absence of a showing that the characteristics of the children indicate they will benefit from college; the children demonstrate the ability to do well, or at least to make satisfactory grades; the children cannot otherwise go to school; and the parent has a financial ability to help pay for such education. Voelker v. Hillock (S.C.App. 1986) 288 S.C. 622, 344 S.E.2d 177. Child Support 149

Although one of the children of the parties for whom child support was awarded was 18 years of age at the time of the decree, continued child support was justified due to the fact that the child was in college, and the evidence otherwise met the criteria for continued support. Patterson v. Patterson (S.C.App. 1986) 288 S.C. 282, 341 S.E.2d 819.

Need for education is exceptional circumstance which warrants that Family Court make support order continue beyond child’s majority under Section 20‑7‑420(17). McKinney v. McKinney (S.C.App. 1984) 282 S.C. 96, 316 S.E.2d 728. Child Support 120

Where the parties had not contracted to support their older children beyond the age of 18, and the record contained no evidence of any exceptional circumstances, the issues of reimbursement of past college expenses for the parties’ emancipated son and payment of further college expenses would be remanded to determine the existence of circumstances to justify payment of those expenses. The issue of child support for the minor child would be remanded to redetermine each parties’ appropriate share, on the basis that the former husband appeared to have a much lower income than the former wife, and the former husband was not allowed to examine the business records of the former wife’s corporation to determine the true extent of her assets and earning potential. LaFitte v. LaFitte (S.C.App. 1984) 280 S.C. 473, 313 S.E.2d 41.

Family Courts may make support orders continuing beyond the child’s majority where warranted by exceptional circumstances and the need for an education constitutes such an exceptional circumstance. Parental contributions toward four years of college education may be required if (1) the characteristics of the child indicate that he or she will benefit from college, (2) the child demonstrates the ability to do well, or at least make satisfactory grades, (3) the child cannot otherwise go to school, and (4) the parent has the financial ability to help pay for such an education. Dunnavant v. Dunnavant (S.C. 1982) 278 S.C. 445, 298 S.E.2d 442.

A family court judge may require a parent to contribute that amount of money necessary to enable a child over 18 to attend high school and four years of college where there is evidence that (1) the characteristics of the child indicate that he or she will benefit from college; (2) the child demonstrates the ability to do well, or at least make satisfactory grades; (3) the child cannot otherwise go to school; and (4) the parent has the financial ability to help pay for such an education. Risinger v. Risinger (S.C. 1979) 273 S.C. 36, 253 S.E.2d 652. Child Support 119

25. —— Disabled adult child

Family court had jurisdiction to order former husband to pay child support for disabled adult‑child, where there was no challenge to fact that adult‑child was not emancipated and adult‑child’s disability prevented her emancipation. Riggs v. Riggs (S.C. 2003) 353 S.C. 230, 578 S.E.2d 3, rehearing denied. Child Support 111; Child Support 173

Where a disability prevents a child from becoming emancipated, the presumption of emancipation upon reaching majority is inapplicable, for child support purposes. Riggs v. Riggs (S.C. 2003) 353 S.C. 230, 578 S.E.2d 3, rehearing denied. Child Support 194

For purposes of statute governing family court’s jurisdiction to provide child support past age of 18, legislature intended that a noncustodial parent share burden of supporting a child who cannot be deemed emancipated because of a disability that arose before majority but was diagnosed only after child turned 18. Riggs v. Riggs (S.C. 2003) 353 S.C. 230, 578 S.E.2d 3, rehearing denied. Child Support 111

Award of child support for disabled adult‑child was not against best interests of adult‑child on grounds that award would cause adult‑child to lose Social Security Income (SSI) and Medicaid; record indicated that administrative law judge ruled that child support payment did not make adult‑child ineligible for SSI, and references in record as to how adult‑child’s eligibility for other government programs could be affected were mere speculation. Riggs v. Riggs (S.C. 2003) 353 S.C. 230, 578 S.E.2d 3, rehearing denied. Child Support 111

Under Section 14‑21‑810(b)(4), recodified as Section 20‑7‑420, the Family Court properly ordered a divorced father to continue support payments for his child, notwithstanding the fact that the child had reached his 18th birthday and had graduated from high school, where, two weeks after his graduation, he was severely injured in an automobile accident which rendered him totally disabled, on the basis that the child’s situation was an “exceptional circumstance” as well as a “disability” and would justify continuing support. Crenshaw v. Thompson (S.C.App. 1984) 280 S.C. 203, 311 S.E.2d 742.

26. —— Arrearages

Although there was eighteen‑month delay in ex‑husband’s filing his rule to show cause action, ex‑husband would not be precluded from collecting child support arrearage on grounds of estoppel or unconscionability; ex‑wife was free to petition court for a change in her support obligation at any time, but she instead opted to unilaterally reduce her support payments when child turned 18 in violation of family court order, and in both a letter from ex‑husband and a letter from ex‑husband’s attorney, ex‑wife was informed that her actions were in violation of the family court order and the means by which she could remedy this problem. Blackwell v. Fulgum (S.C.App. 2007) 375 S.C. 337, 652 S.E.2d 427. Child Support 451; Child Support 452

Former husband was entitled to reimbursement of overpayments of child support, even though former wife had filed for bankruptcy, where at temporary hearing, which was held three days prior to younger child’s emancipation, former husband sought to terminate child support payments, but former wife urged court to continue payments with understanding that if former husband’s position was correct, then issues of arrearage and support would be established and adjusted, former husband overpaid child support, former husband was not in better position to forego repayment, former husband had net income of $794.40 per month and former wife had net income of $5,614 per month, including $412 in child support. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Child Support 454

Father who owed child support arrearage pursuant to divorce decree, and subsequently reacquired custody of his children after their mother died, was no longer required to pay arrearage. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Support 468

Family courts do not have subject matter jurisdiction to determine a parent’s liability for past support paid by the South Carolina Department of Social Services; such an action is one based on a contract for the payment of a debt, and jurisdiction is vested in the circuit court. Lighty v. South Carolina Dept. of Social Services (S.C. 1985) 285 S.C. 508, 330 S.E.2d 529.

Where a divorce decree had been entered in 1970 by the court of common pleas, jurisdiction over a subsequent action to recover child support arrearages under the decree was transferred to the family court by virtue of Section 20‑7‑420, and there was no need for an order by the court of common pleas transferring jurisdiction to the family court. South Carolina Dept. of Social Services on Behalf of Fingerlin v. Fingerlin (S.C. 1985) 285 S.C. 73, 328 S.E.2d 71.

In action to establish child support obligation brought by Department of Social Services against alleged father of illegitimate child more than 6 years old, court should determine whether defendant is or is not father of child, but defendant may not be required to reimburse department for support supplied more than 6 years before commencement of action. South Carolina Dept. of Social Services v. Lowman (S.C. 1977) 269 S.C. 41, 236 S.E.2d 194.

27. Modification of support

Where one of multiple children becomes emancipated, the family court does not extend the parent’s support obligation on behalf of the emancipated child; the court simply continues the existing support agreement for the benefit of the other minor children until such time as the court, upon request of the supporting parent, can calculate a proper reduction in the support obligation based on a showing of changed circumstances. Blackwell v. Fulgum (S.C.App. 2007) 375 S.C. 337, 652 S.E.2d 427. Child Support 293; Child Support 390

While a trial judge has the discretion to consider the income of a parent’s new spouse in making a determination regarding a modification of child support, the fact that a parent has remarried and had other children is not, in and of itself, sufficient to show a change of circumstances warranting modification of child support. Thus, a father’s child support obligation for his minor daughter would not be modified, even though the mother had remarried and had another child, where the daughter’s needs had not changed, there had been no substantial change in either parent’s income, and the record was devoid of any evidence of the mother’s husband’s income. Fischbach v. Tuttle (S.C.App. 1990) 302 S.C. 555, 397 S.E.2d 773.

A trial court did not abuse its discretion in increasing a father’s child support obligation from $275 per month to $400 per month and crediting him with the amount of social security benefits received on behalf of the child, where the father had been unaware of his daughter’s eligibility for benefits under his social security record at the time he entered the settlement agreement incorporating the $275 monthly support provision. Ward v. Marturano (S.C.App. 1990) 302 S.C. 112, 394 S.E.2d 16. Child Support 363

A family court has authority to modify the amount of a child support award upon a showing of a substantial or material change of circumstances. The burden is upon the party seeking the change to prove the change in circumstances warranting a modification. A substantial or material change in circumstances might result from changes in the needs of the children or the financial ability of the supporting parent to pay, among other reasons. Generally, however, changes in circumstances within the contemplation of the parties at the time the initial decree was entered do not provide a basis for modifying a child support award. A downward modification in child support based upon a decrease in the non‑custodial parent’s income is not warranted absent a strong showing by the party seeking the change that he or she is no longer in a condition to make the support payments prescribed by an earlier family court order. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715.

Although there had been a reduction in the father’s income, the reduction was insufficient to allow a reduction in child support where the father had the means to contribute to the support of his child, and the father had voluntary assumed the financial responsibility of a new wife and her three children, for which his own child should not be forced to suffer the consequences. Vestal v. Vestal (S.C.App. 1988) 297 S.C. 215, 375 S.E.2d 355.

Changes of circumstances resulting from a divorce decree that were within the contemplation of the parties at the time the decree was entered do not provide an adequate basis for modifying a child support award. The effects of a division of property in a divorce proceeding are ordinarily an anticipated change of circumstances that will not provide a sufficient basis for modifying a child support award. Kneece v. Kneece (S.C.App. 1988) 296 S.C. 28, 370 S.E.2d 288.

The record reflected a substantial change in the needs of a child, warranting an increase in the amount of child support, where, at the time of the divorce, the child was only 6 years old but had reached the age of 14 at the time of the support modification hearing, and the child’s mother, with whom he lived, testified to an increase in expenses for the child’s food, clothes, school and social activities. Nicholson v. Lewis (S.C.App. 1988) 295 S.C. 434, 369 S.E.2d 649.

A father was properly required to pay an increased amount of child support pursuant to former Section 20‑7‑40, which provides that a parent may be required to pay for the support of his or her child according to his or her means “if possessed of sufficient means or able to earn such means,” where the father was evasive to questions dealing with his financial condition and failed to report income and other assets in a deliberate attempt to avoid payment of child support obligations, but the record reflected his capability to pay. Nicholson v. Lewis (S.C.App. 1988) 295 S.C. 434, 369 S.E.2d 649.

In determining whether to modify a parent’s child support obligation, the trial judge has the discretion to consider the income of a new spouse, depending upon the facts of each particular case. Broome v. Larkin (S.C.App. 1988) 295 S.C. 498, 369 S.E.2d 153. Child Support 265

The Family Court erred in failing to modify retroactively a 1979 Texas Court support order to require that the divorced father pay a portion of his child’s past extraordinary medical expenses, where the Texas court order was silent as to medical expenses not covered by the father’s insurance, and there was no evidence that the child’s medical problems were anticipated at the time the order was entered. Marsh v. Hancock (S.C. 1986) 288 S.C. 341, 342 S.E.2d 607. Child Support 364

Increased school costs and related expenses resulting from the mother’s voluntary enrollment of the parties’ 4 children in a private school upon the removal of herself and children to her new husbands residence required an increase in the father’s allocated support, rather than a reduction in such support as determined by the family court, since the children would benefit from the excellent academic and extracurricular activities available at the private school and the father, who was in good health, was financially able to meet the increased expenses, while the mother was unable to make any significant contribution towards the tuition costs. Rabon v. Rabon (S.C. 1986) 288 S.C. 338, 342 S.E.2d 605.

Family Court erred in reducing the frequency in the amount of child support payments, where reduction in child support was not requested by the pleadings. Dake v. Painter (S.C. 1986) 288 S.C. 118, 341 S.E.2d 620.

28. Visitation

Week‑to‑week visitation was not in best interest of child with special needs. Matter of Brown (S.C. 1997) 326 S.C. 138, 484 S.E.2d 875.

A trial judge did not abuse his discretion in limiting a father’s visitation with his child to only 6 hours per month where the record was replete with evidence of the father’s irrational rage and uncontrollable temper. Hyde v. Hyde (S.C.App. 1990) 302 S.C. 280, 395 S.E.2d 186.

There was no abuse of discretion in a judge’s suspension of a father’s visitation privileges until he underwent counseling and reestablished his relationship with his child where the father had refused to work to resolve visitation problems, the father had spurned the child’s psychologist’s invitations to meet with him to attempt to resolve the visitation conflicts, and he had simply demanded his visitation rights without regard for the feelings and sensitivities of the child. Nash v. Byrd (S.C.App. 1989) 298 S.C. 530, 381 S.E.2d 913.

A court order granting custody of a child to a family acquaintance was not a court determination of the issue of the mother’s visitation where the order stated that the mother consented to the custody arrangement but said nothing about visitation. Duck v. Jenkins (S.C.App. 1988) 297 S.C. 136, 375 S.E.2d 178. Child Custody 577

Modification of former husband’s visitation rights was error in former wife’s action seeking to have former husband held in contempt for nonpayment of alimony and child support, wherein former husband counterclaimed for custody of parties’ elder child, but neither party requested change in visitation rights. Aiken v. Aiken (S.C. 1986) 289 S.C. 370, 345 S.E.2d 710.

Family court judge erred in reducing mother’s visitation rights, where, even though the reduction was intended to overcome visiting right implementation problems, there was no finding as to which of the parents was responsible for the implementation problems, and there was no finding that a reduction of the mother’s visitation was in the best interest of the child. Fisher v. Miller (S.C. 1986) 288 S.C. 576, 344 S.E.2d 149. Child Custody 577

29. —— Grandparents

The fact that a child may benefit from contact with the grandparent, or that the parent’s refusal is simply not reasonable in the court’s view, does not justify government interference in the parental decision not to allow grandparent visitation. Marquez v. Caudill (S.C. 2008) 376 S.C. 229, 656 S.E.2d 737. Child Custody 286

The presumption that a fit parent’s decision not to allow grandparent visitation is in the best interest of the child may be overcome only by showing compelling circumstances, such as significant harm to the child, if visitation is not granted. Marquez v. Caudill (S.C. 2008) 376 S.C. 229, 656 S.E.2d 737. Child Custody 463

Before visitation may be awarded to grandparents over a parent’s objection, parental unfitness must be shown by clear and convincing evidence. Marquez v. Caudill (S.C. 2008) 376 S.C. 229, 656 S.E.2d 737. Child Custody 473

A court considering grandparent visitation over a parent’s objection must allow a presumption that a fit parent’s decision is in the child’s best interest. Marquez v. Caudill (S.C. 2008) 376 S.C. 229, 656 S.E.2d 737. Child Custody 463

Order that allowed maternal grandmother visitation with children following mother’s suicide was in the children’s best interest and would not excessively interfere in stepfather’s relationship with the children. Marquez v. Caudill (S.C. 2008) 376 S.C. 229, 656 S.E.2d 737. Child Custody 289

Maternal grandparents were not entitled to some form of autonomous visitation with child, in proceeding to modify child custody; there was no evidence that mother was unfit or evidence of a compelling circumstances that would overcome the presumption that the parental decision was in child’s best interest, and granting maternal grandparents visitation would only further deteriorate mother’s relationship with grandparents. Latimer v. Farmer (S.C. 2004) 360 S.C. 375, 602 S.E.2d 32. Child Custody 579

Ordering mother and her husband to allow visitation by maternal grandparents unduly interfered with due process rights in the care, custody, and control of the children; although the family court concluded that visitation would be in the children’s best interest as a stabilizing factor in their lives in light of mother’s perceived instability, no clear and convincing evidence indicated that mother or husband was unfit, and no compelling circumstances overcame the presumption that the decision by fit parents was in the children’s best interest. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 286; Child Custody 473; Constitutional Law 4396

Before visitation may be awarded over a parent’s objection, one of two evidentiary hurdles must be met: the parent must be shown to be unfit by clear and convincing evidence, or there must be evidence of compelling circumstances to overcome the presumption that the parental decision is in the child’s best interest. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 461; Child Custody 465

Maternal grandparents had right of visitation with children derived from mother, who had custody of children pursuant to divorce decree, after mother died and custody reverted back to father. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 283

Award of child visitation rights to maternal grandparents was not same as court award of reasonable visitation to noncustodial parent, and one weekend per month and two weeks in the summer was sufficient visitation period for grandparents, where mother who had custody of children died, and custody reverted back to father. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 638; Child Custody 641

Grandparents’ right to visitation stems from natural parent’s right for such visitation; visitation by grandparents should be derivative. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 284

The bond of love and affection existing between grandparents and a child does not, in and of itself, justify carving out of the custody and visitation of the natural parents another visitation right and vesting it in the grandparents. Grandparents are not entitled to contend for autonomous visitation privileges absent a showing of exceptional circumstances. Thus, a child’s paternal grandparents were not entitled to court‑ordered visitation rights where the father maintained strong parental ties with the child following the divorce of the child’s parents, the father was awarded regular visitation with the child, the grandparents saw the child on visits with her father, and there was no evidence that the grandparents would be unable to continue their relationship with their grandchild without court‑ordered visitations. Brown v. Earnhardt (S.C. 1990) 302 S.C. 374, 396 S.E.2d 358.

Issues presented by grandfather’s appeal from a denial of visitation rights and an injunction against continuance of adoption proceeding had been effectively mooted by the final adoption decree, since the appeal had not stayed the adoption proceeding, and the grandfather had neither petitioned the Supreme Court for supersedeas and a reinstatement of the previous temporary injunction as to the adoption proceeding nor did he petition to intervene in the adoption action. Whetstone v. Whetstone (S.C.App. 1986) 289 S.C. 403, 346 S.E.2d 532.

The legislature granted to family court judges the exclusive discretionary power to grant visitation rights to grandparents under Section 20‑7‑420. The family court may grant such visitation rights despite the fact that there is no pending divorce, child custody or child support issue before the court. Chavis v. Witt (S.C. 1985) 285 S.C. 77, 328 S.E.2d 74.

30. —— Stepparents

Mother’s ex‑boyfriend, whom mother allowed to have visitation with out‑of‑wedlock child for over nine years even after testing proved that he was not the biological father of child, had standing to seek visitation with child; statute allowed third parties to bring an action for custody of child, and visitation was a lesser included right of custody. Middleton v. Johnson (S.C.App. 2006) 369 S.C. 585, 633 S.E.2d 162, rehearing denied. Child Custody 409

Stepfather of 19 months had no autonomous right of custody or visitation over children after mother died and custody reverted back to father; stepfather derived no right to visitation from mother. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 272

31. Contempt

Contempt action would be remanded to trial court for determination of attorney fees, in light of fact that ex‑husband was no longer in contempt on any issues and had prevailed on six issues and, in contrast, ex‑wife was found in contempt on five issues and had prevailed on one. Abate v. Abate (S.C.App. 2008) 377 S.C. 548, 660 S.E.2d 515. Contempt 66(8)

Although ex‑wife owed ex‑husband child support under the unmodified terms of the original support order, there was no error by the family court in failing to find ex‑wife in contempt when she reduced her child support by one‑half because daughter had reached eighteen years of age and graduated from high school; ex‑wife had a good faith belief that she was entitled to a reduction based upon the emancipation of daughter. Blackwell v. Fulgum (S.C.App. 2007) 375 S.C. 337, 652 S.E.2d 427. Child Support 444

Contempt results from the willful disobedience of a court order. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Contempt 20

Divorced husband was properly found to be in willful contempt of order requiring him to pay two‑thirds of child’s tuition for therapeutic boarding school; divorced husband contended that he did not have the financial ability to comply with order, yet he obtained and spent $37,311.90 during the period in which he was ordered to contribute to his child’s tuition. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Child Support 444

Court of Appeals will reverse a trial judge’s determination regarding contempt only if it is without evidentiary support or is an abuse of discretion. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Contempt 66(7)

The record before the court must clearly and specifically exhibit the contemptuous conduct to sustain a finding of contempt. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Contempt 60(3)

Although family court is empowered to find and punish for contempt, there is no requirement that sanctions be imposed upon such finding. Judge, who found that husband was in perilous financial situation and sentenced him to 6 months in jail, but provided he could purge himself by paying $60 per month, was insuring child support payments could be made by husband; primary purpose of civil contempt is to exact compliance with court’s order, not to punish contempt nor contemnor. Taylor v. Taylor (S.C.App. 1987) 294 S.C. 296, 363 S.E.2d 909.

Former wife made out prima facie case of contempt by pleading the Order for the payment of child support and default in payment, and the burden was upon the former husband to establish his defense and to show his inability to comply with the divorce order. Redick v. Redick (S.C. 1976) 266 S.C. 241, 222 S.E.2d 758. Child Support 484

32. Out‑of‑state orders

Once former wife registered in circuit court, under Uniform Enforcement of Foreign Judgments Act (UEFJA), New York divorce judgment, pursuant to which husband was ordered to pay wife alimony of $3,200 per month and to pay her $662,770.50 for her equitable share of marital assets, and initiated action resulting in supplemental proceedings to discover husband’s assets, family court lacked subject matter jurisdiction to find husband in contempt for noncompliance with judgment. Katzburg v. Katzburg (S.C.App. 2014) 410 S.C. 184, 764 S.E.2d 3, rehearing denied. Courts 475(15)

Final order of Texas Court establishing divorced father’s child support obligations, even though modifiable, was entitled to full faith and credit. Marsh v. Hancock (S.C. 1986) 288 S.C. 341, 342 S.E.2d 607.

A divorced father’s failure to plead Texas Law in his answer to an action brought to retroactively modify child support which had been established by a final order of a Texas court precluded the father from relying on Texas law to establish a defense to the action, and, therefore, South Carolina law was applicable to resolve the retroactive modification issue. Marsh v. Hancock (S.C. 1986) 288 S.C. 341, 342 S.E.2d 607.

A decree for alimony granted by a foreign court may be established and enforced by and through the equity courts of this State, and South Carolina equity courts may assume jurisdiction thereof. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372.

A decree for alimony granted by a Florida court may be established in this State as a local judgment, and enforced by equitable remedies as are customary in the enforcement of domestic decrees for alimony in our local courts. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372.

33. Construction with other laws

Uniformed Services Former Spouse’s Protection Act’s (USFSPA) limitation on the percentage of retirement benefits family court was permitted to allocate spoke to family court’s authority and not its subject matter jurisdiction to determine whether to treat former husband’s military retirement benefits as marital property and to award more than 50% of husband’s disposable military retirement pay. Coon v. Coon (S.C.App. 2003) 356 S.C. 342, 588 S.E.2d 624, rehearing denied, certiorari granted, affirmed as modified 364 S.C. 563, 614 S.E.2d 616, certiorari denied 126 S.Ct. 1025, 546 U.S. 1090, 163 L.Ed.2d 854. Divorce 804; Divorce 871

The Court of Common Pleas did not have subject matter jurisdiction over a former wife’s action, brought pursuant to Section 15‑61‑50, which sought a division of retirement benefits not previously divided, since separate actions to determine property rights would be considered “other marital litigation” within the meaning of Section 20‑7‑420(2), and thus the Family Court would have exclusive jurisdiction. Terry v. Lee (S.C. 1992) 308 S.C. 459, 419 S.E.2d 213.

34. Annulment

Family court’s exclusive jurisdiction over annulment proceedings extends, not just to the issue of the actual annulment, but to all matters in an annulment action, as in a divorce proceeding, including the equitable distribution of property. Rodman (Fried) v. Rodman (S.C.App. 2004) 361 S.C. 291, 604 S.E.2d 399. Marriage And Cohabitation 328

Family court, in response to wife’s petition for annulment, had subject matter jurisdiction to adopt property agreement specifying separate support and maintenance between husband and wife incident to marriage that was void since husband was not legally divorced from prior wife at time of marriage to wife, and thus, husband’s motion to vacate, filed more than one year following family court order of separate support and maintenance, was time‑barred. Rodman (Fried) v. Rodman (S.C.App. 2004) 361 S.C. 291, 604 S.E.2d 399. Marriage And Cohabitation 328; Marriage And Cohabitation 337

A husband seeking an annulment on the ground that his wife failed to disclose psychological problems resulting in her sexual incapacity failed to prove the invalidity of the marriage contract where he and his wife shared a bed on many occasions during their 5‑year courtship and agreed not engage in sexual relations, the wife told him about her problems before the marriage, the problem was revealed during an “engaged encounter” they attended before the marriage, and the full extent of the problem was not known until after the marriage; furthermore, the parties’ cohabitation would bar an annulment even if fraud had been proven, whether or not actual sexual intercourse had taken place. E.D.M. v. T.A.M. (S.C. 1992) 307 S.C. 471, 415 S.E.2d 812.

Vacation of annulment was improper, since, even if alleged representations by the husband’s attorney that the wife’s previous Mexican divorce was invalid amounted to a misrepresentation, wife’s reliance thereon in failing to answer husband’s petition for annulment was unjustified. Barber v. Barber (S.C.App. 1987) 291 S.C. 399, 353 S.E.2d 882. Marriage And Cohabitation 337

Under Section 20‑7‑420, a Family Court that grants an annulment has jurisdiction to resolve all other issues presented. White v. White (S.C. 1984) 283 S.C. 348, 323 S.E.2d 521.

35. Common law marriage

Automobile passenger claiming underinsured motorist (UIM) benefits as common‑law spouse and thus resident relative under his girlfriend’s automobile policy should have sought a declaration of common‑law marriage in the family court, and circuit court and Court of Appeals erroneously addressed the issue in passenger’s declaratory judgment action against insurer; determining the existence of a common‑law marriage was exclusive province of family court. Bell v. Progressive Direct Ins. Co. (S.C. 2014) 407 S.C. 565, 757 S.E.2d 399, rehearing denied. Courts 472.1; Courts 472.2

Although it would have been more judicially economical for petitioner to seek declaration in probate court that common law marriage existed between him and putative wife on date of her death, in action against personal representative of wife’s estate, family court did not lack subject matter jurisdiction to determine existence of marriage on date of death, even if such declaration would be subsequently used to determine petitioner’s inheritance rights. Thomas v. McGriff (S.C. 2006) 368 S.C. 485, 629 S.E.2d 359. Courts 472.4(2.1)

Jurisdiction to determine the existence of a common‑law marriage depends upon the ultimate issue before the court; if the ultimate issue is heirship, which is within the probate court’s exclusive jurisdiction, then the probate court has jurisdiction to resolve the threshold issue whether the decedent was a party to a common‑law marriage, but it the existence of a common‑law marriage is itself the ultimate issue, then the family court has exclusive jurisdiction. Thomas v. McGriff (S.C. 2006) 368 S.C. 485, 629 S.E.2d 359. Courts 472.4(2.1)

36. Paternity

Family courts do not have exclusive jurisdiction to determine paternity, given that probate courts have subject‑matter jurisdiction to decide paternity for the purpose of determining heirs. Neely v. Thomasson (S.C. 2005) 365 S.C. 345, 618 S.E.2d 884. Courts 472.4(8)

Probate court did not have jurisdiction to find that child was daughter of deceased father, and thus finding that child was daughter of father, which led to subsequent reopening of father’s estate and dividing of estate assets between that daughter and other child, was a nullity. Simmons v. Bellamy (S.C.App. 2002) 349 S.C. 473, 562 S.E.2d 687. Parent And Child 149; Parent And Child 172

Probate court does not have subject matter jurisdiction to determine the question of paternity; family court has exclusive jurisdiction to determine paternity. Simmons v. Bellamy (S.C.App. 2002) 349 S.C. 473, 562 S.E.2d 687. Parent And Child 149

Absent an express statutory restriction on the broad power of the Workers’ Compensation Commission to determine a deceased worker’s dependents under the workers’ compensation law, the Commission has jurisdiction to determine the issue of paternity when determining dependency. Although the family court has exclusive jurisdiction under Section 20‑7‑420 to hear and determine actions to determine the paternity of an individual, and the determination of dependency necessarily requires a resolution of the issue of paternity, nothing in Section 20‑7‑420 either gives the family court exclusive jurisdiction to determine dependency under the workers’ compensation law or restricts the Commission’s jurisdiction to determine the issue of dependency where death benefits are claimed by a “child” under the workers’ compensation law. Brown v. Ryder Truck Rental (S.C.App. 1990) 300 S.C. 530, 389 S.E.2d 161.

The legislature, in this statute, gave to the family court jurisdiction to determine the question of the paternity of an illegitimate child and to compel the support thereof by the father, and such was to be done without the intervention of a jury. McGlohon v. Harlan (S.C. 1970) 254 S.C. 207, 174 S.E.2d 753. Child Support 173; Parent And Child 149

37. Parental rights

Under Section 20‑7‑420, the family courts have jurisdiction over actions to terminate parental rights. In Interest of Tyson (S.C.App. 1984) 282 S.C. 212, 318 S.E.2d 279.

38. Nonmarital litigation

An action for partition of undivided interest is not marital litigation, and thus is not within the jurisdiction of the family court. Eichor v. Eichor (S.C.App. 1986) 290 S.C. 484, 351 S.E.2d 353.

Family court was without jurisdiction of action by wife to enforce money judgments for support where obligation of husband arose out of separation agreement entered into by and between parties prior to their divorce, since obligation did not arise from statutory duty of family support nor from duty judicially imposed as incident of divorce decree where separation agreement did not merge in decree; contractual nature of agreement was not changed by parties’ subsequent divorce; limited subject matter jurisdiction of family court does not extend to ordinary actions ex contractu. Zwerling v. Zwerling (S.C. 1979) 273 S.C. 292, 255 S.E.2d 850. Divorce 1457(1)

39. Third parties

Family court was justified in finding that husband’s paramour, whom wife had joined as a party to divorce action, was jointly and severally liable with husband to wife for $262,000 of the proceeds from the sale of marital property, with husband liable to wife for $336,210 of the proceeds; wife conceded that paramour was liable for $262,000 only, and, while husband and paramour testified that paramour repaid husband $100,000 of the $252,000 deposited in paramour’s certificate of deposit (CD), the family court specifically found their testimonies were not credible. Reiss v. Reiss (S.C.App. 2011) 391 S.C. 286, 705 S.E.2d 84. Divorce 1075

The family court did not have jurisdiction over an action by a hospital against a patient’s husband seeking to have the court order the husband to accept responsibility for the wife; the family court’s exclusive jurisdiction under former Sections 20‑7‑420 and 20‑7‑840 is limited to alimony and child support and does not extend to third party actions. Amisub of South Carolina, Inc. v. Passmore (S.C. 1994) 316 S.C. 112, 447 S.E.2d 207, rehearing denied. Courts 175

The family court did not lack the authority to require the father of the husband in an action for divorce, who held title to the marital home and had been made a party to the action, to insure the home until it was sold, and to order the husband and wife to reimburse the father for the cost of the insurance, since the family court may make such orders necessary to carry out and enforce its order concerning the division of the property. Sexton v. Sexton (S.C.App. 1992) 308 S.C. 37, 416 S.E.2d 649, rehearing denied, certiorari granted, reversed 310 S.C. 501, 427 S.E.2d 665.

Family Court lacked subject matter jurisdiction of former husband’s action to set aside a conveyance of real property to a third party, made by the former wife after the divorce, and to be granted an interest in the conveyed property based on a resulting or constructive trust allegedly grounded in an agreement between the former spouses, where such agreement was not incorporated in the divorce decree, and the divorce decree did not make any division of the property in dispute. Sims v. Sims (S.C. 1986) 290 S.C. 190, 348 S.E.2d 835. Courts 175; Trusts 363

The language in Section 20‑7‑420, authorizing the family court to settle the parties’ property rights “in such actions”, clearly referred to marital litigation, and the statute did not give a former husband an independent right to institute a separate action in the family court to determine his interest in property where the requested relief was not incidental to the divorce decree. Sims v. Sims (S.C. 1986) 290 S.C. 190, 348 S.E.2d 835. Courts 175

In divorce action during which husband conveyed marital property to third person, it is denial of such person’s due process rights to interplead her under S.C. Code Section 14‑21‑810(6) and order her to reconvey property while affording her no opportunity to appear or offer evidence. Jeffords v. Hall (S.C. 1981) 276 S.C. 271, 277 S.E.2d 703.

40. Litigation expenses

Wife was entitled to award of litigation expenses incident to appeals from and remand of custody, alimony, and child support orders, to extent such expenses were incident to husband’s unilateral decision to move to California. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Child Custody 942; Child Support 602; Divorce 1138; Divorce 1163

Award of costs of litigation to divorced wife, in addition to attorney fees, was reasonable, where divorced husband did not show that wife did not receive the benefit of costs charged to her. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Divorce 1155; Divorce 1156

An award to a wife of $10,000 in attorney fees and $11,000 in costs was not an abuse of discretion where the wife had retained counsel at an hourly rate of $100, she had incurred unpaid fees as of the date of the hearing totalling $10,043.26, she had paid $2500 in fees during the pendency of the case as required by court order, and the costs included private investigator fees, appraisal fees, and accounting fees. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

The family court erred in holding that an award of costs must be specified in the divorce decree since Rule 54(d) of the South Carolina Rules of Civil Procedure, which are applicable in family court divorce actions, provides that “ [c]osts may be taxed by the clerk on one day’s notice.” Finley v. Finley (S.C. 1989) 299 S.C. 99, 382 S.E.2d 890.

41. Attorney fees

Statutory authority existed for family court to award mother attorney fees in termination of parental rights proceeding brought against her by her sister and brother‑in‑law; statutory provision granted family court general jurisdiction to award attorney fees and there was no specific statute precluding attorney fees in a termination of parental rights proceeding instituted by a private party. Michael Scott B. v. Melissa M. (S.C. 2008) 378 S.C. 452, 663 S.E.2d 58. Infants 2112

In making attorney fee award in family court matter, the court should evaluate the requesting party’s ability to pay, the parties’ respective financial conditions, the effect of the award on each party’s standard of living, and the beneficial results achieved; a beneficial result will not secure an award of attorney fees where the other factors do not support such an award. Abate v. Abate (S.C.App. 2008) 377 S.C. 548, 660 S.E.2d 515. Costs 194.25

In determining whether to award attorney fees in a divorce case, the family court should consider each party’s ability to pay his or her own fee; the beneficial results obtained by the attorney; the parties’ respective financial conditions; and the effect of the fee on each party’s standard of living. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 1138

The award of attorney fees in a divorce case is within the sound discretion of the family court and, absent an abuse of discretion, will not be disturbed on appeal. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 1131; Divorce 1282

Family court did not abuse its discretion in divorce case by ordering husband to pay half of wife’s attorney fees and the cost of her certified public accountant, for a total of $83,0391.91; family court determined wife was unlikely to be able to earn more than $25,000 a year, while husband, a successful farmer, had the proven ability to earn $100,000 a year, and husband received 20% more of the marital estate. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 1144; Divorce 1147; Divorce 1168(1)

In deciding whether to award attorney’s fees in a child support modification action, the family court should consider: (1) each party’s ability to pay his or her own fees, (2) the beneficial results obtained by counsel, (3) the respective financial condition of each party, and (4) the effect of the fee on each party’s standard of living. Floyd v. Morgan (S.C.App. 2007) 375 S.C. 246, 652 S.E.2d 83, rehearing denied, certiorari granted, reversed 383 S.C. 469, 681 S.E.2d 570. Child Support 603

Father was not the prevailing party and thus was not entitled to attorney’s fees in mother’s post‑divorce action to modify custody and child support, where the parties settled the custody aspect of the case, and family court reduced mother’s child support obligation. Floyd v. Morgan (S.C.App. 2007) 375 S.C. 246, 652 S.E.2d 83, rehearing denied, certiorari granted, reversed 383 S.C. 469, 681 S.E.2d 570. Child Custody 943; Child Support 603

The family court, in determining whether to award attorney fees in a divorce action, should consider each party’s ability to pay his or her own fees, the beneficial results obtained, the parties’ respective financial conditions, and the effect of the fee on the parties’ standards of living; in determining the reasonable amount of attorney’s fees to award, the family court must take into account the nature, extent, and difficulty of the services rendered, the time necessarily devoted to the case, counsel’s professional standing, the contingency of compensation, the beneficial results obtained, and the customary legal fees for similar services. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 1138

Ex‑wife was entitled to award of attorney fees in divorce action; litigation involved multiple issues, lasted five days, and transpired over three month period, ex‑wife’s attorney fees were consistent with legal fees for similar services, ex‑wife obtained beneficial result, ex‑wife’s financial circumstances necessitated award of attorney fees, and family court evaluated reasonableness of attorney fees and costs, her attorney’s extensive experience and standing, and number of hours involved in litigation against backdrop of ex‑husband’s failure to comply with provisions of divorce decree and his failure to accurately report income in his financial declaration. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 1138; Divorce 1141

Award of $55,532.50 in attorney fees in dissolution action to wife was warranted; wife secured best interest of her children and obtained significant economic advantage as result of distribution of marital assets and support, although both husband and wife had significant assets from which to pay their costs, any fees or costs paid by wife would adversely impact children, and judge evaluated reasonableness of wife’s costs, her attorney’s extensive experience and standing, and number of hours involved in litigation against backdrop of husband’s failure to cooperate with discovery, failure to cooperate with guardian ad litem, and apparent failure to cooperate with his own attorney. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 1140; Divorce 1141; Divorce 1144; Divorce 1168(2)

In determining the reasonable amount of attorney fees to award, the family court should consider the nature, extent, and difficulty of the services rendered, the time necessarily devoted to the case, counsel’s professional standing, the contingency of compensation, the beneficial results obtained, and the customary legal fees for similar services. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 1168(1)

Wife was not required to pay husband’s attorney fees, in divorce proceeding; the court could not consider wife’s adultery in awarding fees, husband earned a comfortable living with his construction business, wife was entering the workforce after a 20‑year absence, and wife only had the equitable distribution from the divorce judgment from which to pay the fees. Doe v. Doe (S.C.App. 2006) 370 S.C. 206, 634 S.E.2d 51, rehearing denied. Divorce 1144; Divorce 1149

Beneficial result alone is not dispositive of whether a party is entitled to an award of attorney fees from the family court. Upchurch v. Upchurch (S.C. 2006) 367 S.C. 16, 624 S.E.2d 643. Divorce 1140

In determining whether to award attorney fees, the family court should evaluate the requesting party’s ability to pay, the parties’ respective financial conditions, the effect of the award on each party’s standard of living, and the beneficial results achieved. Upchurch v. Upchurch (S.C. 2006) 367 S.C. 16, 624 S.E.2d 643. Divorce 1138

Award of attorney fees rests within the sound discretion of the trial judge and should not be disturbed on appeal unless there is an abuse of discretion. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Appeal And Error 984(5); Costs 194.12

In determining amount of attorney fees to award, court should consider nature, extent, and difficulty of case, time necessarily devoted to the case, counsel’s professional standing, contingency of compensation, beneficial results obtained, and customary legal fees for similar services. Messer v. Messer (S.C.App. 2004) 359 S.C. 614, 598 S.E.2d 310, rehearing denied, certiorari denied. Costs 194.18

Family court’s award of attorney fees to ex‑wife, in contempt action against ex‑husband to collect alimony payable under a separation agreement incorporated into parties’ final divorce decree, was not abuse of discretion; court considered nature, extent, and difficulty of case, time necessarily devoted to case, counsel’s professional standing, contingency of compensation, beneficial results obtained, and customary legal fees for similar services and detailed its findings in its final order, and court’s findings were supported by affidavits of ex‑wife’s counsel submitted to court. Messer v. Messer (S.C.App. 2004) 359 S.C. 614, 598 S.E.2d 310, rehearing denied, certiorari denied. Divorce 1133; Divorce 1162; Divorce 1170(8)

Reversal of order entitling grandparents to visitation with grandchildren entitled mother and her husband to reversal of order to pay attorney fees and a certain percentage of fees for two guardians ad litem. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 924

Trial court was acting within its discretion when it denied award of attorneys’ fees to wife in divorce proceeding in which custody of minor child was disputed, even though wife obtained joint custody of child in divorce decree despite husband having earlier been awarded temporary custody of child. Scott v. Scott (S.C. 2003) 354 S.C. 118, 579 S.E.2d 620, rehearing denied. Child Custody 943

In determining whether to award attorney fees in a domestic case, the Family Court should consider the parties’ ability to pay their own fee, the beneficial results obtained by the attorney, the parties’ respective financial conditions, and the effect of the fee on each party’s standard of living. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Divorce 1138; Divorce 1144; Divorce 1153

In determining the amount of attorney fees to award in a domestic action, the court should consider the nature, extent, and difficulty of the case, the time necessarily devoted to the case, counsel’s professional standing, the contingency of compensation, the beneficial results obtained, and the customary legal fees for similar services. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Divorce 1139; Divorce 1153; Divorce 1168(1)

In child support dispute involving fees for minor child’s placement in therapeutic boarding school, divorced husband was properly ordered to pay $20,000 of former wife’s $36,000 in attorney fees; divorced husband had a superior income, and former wife was successful in defending divorced husband’s attempt to avoid the child’s continued placement in the school, as well as in her plea for substantial contribution from divorced husband toward school tuition. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Child Support 603; Child Support 609

Award of attorney fees in the amount of $4,000 to former husband in former wife’s post‑divorce action for an increase in child support was excessive, where amount of award represented approximately 16% of former wife’s annual income at time the case was heard. Rogers v. Rogers (S.C. 2001) 343 S.C. 329, 540 S.E.2d 840. Child Support 609

Pro se litigant, whether an attorney or layperson, does not become “liable for or subject to” fees charged by an attorney, so as to be entitled to attorney fees award. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Costs 194.46

There was no evidence that former husband actually became “liable for or subject to” attorney fees for services of attorney, who was also new wife, and thus former husband was not entitled to award of attorney fees in child support dispute with former wife, where there was no contract or fee agreement in record, nor was there any indication or testimony that attorney/new wife attempted or intended to collect fees. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Child Support 603

Wife’s paramour, whom husband joined as party defendant in husband’s action against wife for divorce on grounds of adultery, could not be held jointly and severally liable for all of husband’s attorney fees; primary relief which husband requested, i.e., divorce on grounds of adultery, could have been obtained without joining paramour. Heape v. Heape (S.C.App. 1999) 335 S.C. 420, 517 S.E.2d 1, rehearing denied, certiorari denied. Divorce 1134

Award of attorney fees to divorced wife who employed two attorneys in defending divorced husband’s action to reduce alimony and child support was reasonable, in absence of evidence of duplicated services, and where less‑experienced attorney performed more time‑consuming duties that did not require greater experience at cheaper cost than his more‑experienced, higher‑priced colleague. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Child Support 603; Divorce 1152

In determining appropriate attorney fee award, appellate court will not criticize a party for hiring more than one attorney, provided their work is not duplicated and the complexity of the case demands it. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Costs 194.18

The number of hours expended by divorced wife’s attorneys in defending divorced husband’s action to reduce alimony and child support was reasonable, where husband’s lack of cooperation forced wife to make a motion for discovery, as well as prepare a motion to compel discovery, husband produced boxes full of unorganized documents containing many irrelevant materials when he finally responded to discovery requests, husband’s deposition and cross‑examination at trial were lengthy and involved many exhibits, and husband’s transfer of assets required attorneys to review old depositions, search public records, and subpoena private records in order to determine what happened to assets. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Child Support 603; Divorce 1153

When evaluating a claim for attorney fees, the reasonableness of the number of hours billed is determined according to: (1) the nature, extent, and difficulty of the case, and (2) the time necessarily devoted to the case. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Costs 194.18

Affidavit in support of hours spent by divorced wife’s attorneys in preparing for attorney fee hearing was not required, where attorneys were both attendant at trial, under oath, and subject to cross‑examination. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Child Support 612; Divorce 1170(6)

Award of attorney fees to divorced wife, in absence of affidavit or request for bifurcated hearing as to attorney fees in divorced husband’s action to reduce alimony and child support, was permissible, where wife’s attorneys testified that decision was made between counsel and court to wait until court made a decision as to who would prevail in action before submitting evidence on attorney fees. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Child Support 614; Divorce 1170(7); Divorce 1170(8)

Finding that divorced husband did not prevail on the merits of his cases in which he sought to reduce alimony and child support was supported by evidence, in divorced wife’s claim for attorney fees following husband’s most recent action, even though he succeeded in previous action in reducing child support, where he was consistently unsuccessful in reducing alimony and he initially appealed from order in previous action. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Child Support 603; Divorce 1140

Finding that divorced wife’s standard of living would decrease should she have to pay her own attorney fees, and that divorced husband’s standard of living would not decrease if he were ordered to pay wife’s fees following his unsuccessful attempt to decrease child support and alimony, was supported by unappealed findings as to husband’s income, which demonstrated that husband was substantially wealthier than at time of divorce, and by wife’s financial declaration. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Child Support 603; Divorce 1144

Attorney’s motion for reconsideration of trial court’s order that he cease representing father in action for reduction of child support arose directly out of action, and so was marital litigation, such that trial court was entitled to award attorney fees. Townsend v. Townsend (S.C. 1996) 323 S.C. 309, 474 S.E.2d 424. Child Support 603

The award of attorney fees by the Family Court is limited to those fees incurred in actions brought in the Family Court; thus, the Family Court could not award a wife attorney fees incurred defending her interests in the husband’s bankruptcy action. Burns v. Burns (S.C.App. 1994) 323 S.C. 45, 448 S.E.2d 571.

The enactment of this section did not intend to repeal that portion of Section 15‑77‑300 precluding the assessment of attorney’s fees against the state in child abuse and neglect actions, despite the provision of former Section 20‑7‑736 giving the Family Court exclusive jurisdiction over proceedings brought to protect abused and neglected children, since (1) the legislature has determined that state intervention on behalf of abused and neglected children could be chilled if attorney’s fees were levied against the state, and (2) the Department of Social Services often must act quickly and without thorough investigation to remove children, who may have been abused or neglected, from potentially dangerous situations. Spartanburg County Dept. of Social Services v. Little (S.C. 1992) 309 S.C. 122, 420 S.E.2d 499.

An award of attorney fees to a mother who brought an action seeking an increase in child support was properly struck where the mother testified that her attorney was her brother and that she had no idea what fee he would charge her, and there was no evidence of the amount of the fee; the party seeking such attorney fees has the burden of showing that the request is well founded and the failure to offer any evidence on this issue precludes an award. Abbott v. Gore (S.C.App. 1991) 304 S.C. 116, 403 S.E.2d 154.

A trial judge did not err in awarding a wife only $300 in attorney’s fees, even though the wife requested $850 in attorney’s fees, where there was no affidavit in the record showing the amount of fees incurred, and the only evidence of the amount of fees owed by the wife was in the order of the trial judge noting “that the $600 charged [the wife] by [the attorney] was a reasonable attorney’s fee under the facts of this case.” Ward v. Marturano (S.C.App. 1990) 302 S.C. 112, 394 S.E.2d 16.

A trial court’s denial of a wife’s claim for attorney fees was not error where the wife did not recover on her prayer for “ [s]ole ownership, title and possession of the former marital home,” she did not succeed in having the husband held in contempt of court, and the parties had comparable gross incomes and were able to pay their respective attorney fees. Shannon v. Shannon (S.C.App. 1990) 301 S.C. 107, 390 S.E.2d 380. Marriage And Cohabitation 1242

In an action concerning a father’s visitation rights with his son, in which the father’s visitation rights were suspended, the judge did not err in requiring the father to pay attorney’s fees and the guardian ad litem fee, even though there was no financial showing that the mother was unable to pay, where the husband earned substantially more than he did at the time of the original decree, the son had greater needs, and although the mother was employed, she had no separate estate from which she could pay her attorney. Nash v. Byrd (S.C.App. 1989) 298 S.C. 530, 381 S.E.2d 913.

A court abused its discretion in awarding attorney’s fees to a wife in an amount less than actually incurred where (1) the husband had the ability to pay the fees, (2) the wife had no means to pay for defense of the action, (3) the husband initiated the law suit, (4) the husband attempted to enforce an invalid antenuptial agreement which rendered the case more difficult to defend, and (5) the husband failed to furnish discovery information and to file a proper financial declaration, as required by the rules of court, which further increased the time and expense of litigation for the wife. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 1168(1)

It was not error for the family court to refuse to award a wife attorney fees for her attorney’s services in the bankruptcy court to protect the attorney fees awarded by the family court in its divorce decree. Although a family court may award attorney fees in action for divorce, separate support and maintenance, and other marital litigation between the parties, a family court is not authorized to award attorney fees for services rendered a spouse in other litigation arising out of the marital troubles. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614.

A trial judge abused his discretion in failing to allow a more adequate fee to counsel for the wife where the wife was permanently hospitalized in a mental institution and had neither property nor income, and the action was commenced by the husband in spite of the fact that case law clearly stood by the proposition that the husband was not entitled to a divorce on the ground of one year separation as alleged in the complaint. Rish v. Rish By and Through Barry (S.C.App. 1988) 296 S.C. 14, 370 S.E.2d 102. Divorce 1168(2)

Attorney fees, costs and expenses were recoverable in post‑divorce litigation concerning visitation and support of the parties’ minor sons regardless of which party brought the action. Golden v. Gallardo (S.C.App. 1988) 295 S.C. 393, 368 S.E.2d 684.

Although a wife testified about her limited means, the family court, in determining if attorney fees were warranted, was free to consider additional factors, including most notably the result obtained in the action. Since the wife did not prevail at trial or on appeal, the family court did not abuse its discretion in denying her attorney fees. Medlin v. King (S.C.App. 1988) 294 S.C. 406, 365 S.E.2d 36.

Family court did not abuse its discretion in award of attorney’s fees to wife in amount of $3972.60, despite contention of husband that issues were not complicated enough to justify amount of fees awarded; although issues may not have been extremely complex, allegation of adultery was contested, necessitating much time be invested by wife’s attorney; while husband is not to be punished by award to wife of attorney’s fees, family court found breakup of marriage was fault of husband. Leatherwood v. Leatherwood (S.C.App. 1987) 293 S.C. 148, 359 S.E.2d 89. Divorce 1168(1)

Former wife was entitled to have former husband to pay for her attorney’s fees for both a hearing in the family court and for the appeal to the Court of Appeals necessitated by former husband’s suit. Gore v. Gore (S.C.App. 1986) 288 S.C. 438, 343 S.E.2d 51. Divorce 1163

Although the trial court had authority, pursuant to Sections 20‑3‑120, 20‑3‑130, and 20‑7‑420(2), to order payment of alimony and suit money to a former wife in a divorce action, it properly denied her request for attorneys’ fees, where the bare assertion that she had no funds with which to pay adequate attorneys’ fees was insufficient to justify an award. Miller v. Miller (S.C. 1984) 280 S.C. 314, 313 S.E.2d 288.

Although Section 20‑7‑420(2) provides for an award of attorney’s fees to a spouse in marital litigation, there is no provision allowing assessment of attorneys’ fees against a grandparent who petitions for custody of its grandchild. Snider v. Butler (S.C. 1982) 278 S.C. 231, 294 S.E.2d 246.

42. Private investigator fees

There was no abuse of discretion in a trial court’s refusal to require a husband to pay private investigator fees where the private investigator’s testimony failed to prove wrongdoing on the part of the husband prior to the parties’ separation and the sole purpose of the private investigator’s testimony was to prove that the husband committed adultery. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

Reasonable and necessary expenses incurred in obtaining evidence of a spouse’s adultery are recoverable as suit money. Stevenson v. Stevenson (S.C. 1988) 295 S.C. 412, 368 S.E.2d 901. Divorce 1157

43. Guardian ad litem fees

Former Section 20‑7‑420(37) vested the Family Court with authority to require the Department of Social Services (DSS) to pay the fees of a guardian ad litem appointed to represent an indigent mother in a termination of parental rights proceeding, even though DSS succeeded in having her parental rights terminated. South Carolina Dept. of Social Services v. Tharp (S.C. 1994) 312 S.C. 243, 439 S.E.2d 854, rehearing denied. Infants 2111

A trial court did not abuse its discretion in requiring a husband in a divorce action to pay 1⁄2 of the guardian ad litem’s fee, even though the guardian ad litem’s recommendations were more favorable to the wife and the husband contended that the guardian ad litem was not objective; the fact that a party does not like the recommendations of a court‑appointed guardian is no reason for excusing that party from liability for payment of the guardian’s fee. Hardwick v. Hardwick (S.C.App. 1990) 303 S.C. 256, 399 S.E.2d 791.

44. Expert witness fees

In child support dispute involving fees for minor child’s placement in therapeutic boarding school, divorced husband was not entitled to reimbursement from former wife for his expert witness fees, as divorced husband had the opportunity to have the child’s oppositional defiant disorder evaluated before her placement in the school, but failed to do so. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Child Support 604

Fee of $800 charged by expert witness, an attorney engaged by divorced wife to testify regarding the reasonableness of her attorneys’ billing rate and time expended in defending divorced husband’s action to reduce alimony and child support, was reasonable, given witness’ expertise and high professional standing. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Child Support 608; Divorce 1166

Family court acted within its discretion in taxing one‑half, rather than one‑third, of guardian ad litem fee to father is custody action arising from mother’s death; although maternal grandparents and stepfather were parties to custody action, grandparents and stepfather were effectively one party with single objective. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Infants 1318

45. Review

Stare decisis did not preclude the Supreme Court’s reconsideration of constitutional issue addressed in Webb, whether requiring a non‑custodian parent to pay college expenses was a violation of equal protection, where the decision in Webb rested on unsound constitutional principles when it was reviewed under the lens of strict scrutiny as opposed to rational basis. McLeod v. Starnes (S.C. 2012) 396 S.C. 647, 723 S.E.2d 198, certiorari denied 133 S.Ct. 198, 568 U.S. 822, 184 L.Ed.2d 39. Courts 90(3)

Recrimination is not a jurisdictional issue and the Supreme Court declines to address it for the first time on appeal. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 55; Divorce 179

It is unnecessary for a parent to file a petition for writ of certiorari with the Supreme Court after the Court of Appeals has affirmed the termination of parental rights pursuant to Cauthen, as the filing of a Cauthen appeal ensures that the trial transcript will be reviewed for any possible issues of arguable merit. South Carolina Dept. of Social Services v. Hickson (S.C. 2002) 350 S.C. 213, 565 S.E.2d 763. Infants 2361

In an action at law tried without a jury, the trial judge’s factual findings will not be disturbed on appeal unless wholly unsupported by the evidence or controlled by an error of law; however, the Court of Appeals may correct errors of law without deference to the lower court. Simmons v. Bellamy (S.C.App. 2002) 349 S.C. 473, 562 S.E.2d 687. Appeal And Error 846(1); Appeal And Error 1010.2

In appeals from the Family Court, the Court of Appeals has the authority to find the facts in accordance with its own view of the preponderance of the evidence; however, such broad scope of review does not require the Court of Appeals to disregard the findings of the Family Court or ignore the fact that the trial judge, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Divorce 184(6.1); Divorce 184(7); Divorce 184(10)

The decision whether to award attorney fees in a domestic case is a matter within the sound discretion of the Family Court and will not be overturned on appeal absent an abuse of discretion. Haselden v. Haselden (S.C.App. 2001) 347 S.C. 48, 552 S.E.2d 329, rehearing denied. Divorce 184(5); Divorce 1131

Award of attorney fees and costs in divorce cases is a matter within the sound discretion of the trial judge, and will not be reversed on appeal absent an abuse of discretion. Taylor v. Taylor (S.C.App. 1998) 333 S.C. 209, 508 S.E.2d 50. Divorce 1131; Divorce 1282

Although the Court of Appeals has jurisdiction in domestic matters to find facts based on its own view of the preponderance of the evidence, it is not required to disregard the findings of the trial judge, who saw and heard the witnesses and was in a better position to evaluate their testimony. Gambrell v. Gambrell (S.C.App. 1988) 295 S.C. 457, 369 S.E.2d 662. Divorce 186

The question of whether to award one spouse exclusive possession of the marital home is one addressed to the sound discretion of the trial court whose judgment will not be disturbed on appeal unless an abuse of discretion is clearly shown. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21. Divorce 853; Divorce 1283(1)

**SECTION 63‑3‑540.** Cooperation of agencies, government entities, and institutions.

The court is authorized to seek the cooperation of all societies or organizations, public or private, having for their object the protection or aid of delinquent or neglected children, to the end that the court may be assisted in every reasonable way to give to the children the care, protection, and assistance which will conserve their welfare. Every state, county, town, or municipal official or department shall assist and cooperate within his or its jurisdictional power to further the objects of this title. All institutions, associations, or other custodial agencies in which a child may be, coming within the provisions of this title, are required to give information to the court, or an officer appointed by it, the court or officer requires for the purposes of this title.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Courts 49.

Infants 17.

Westlaw Topic Nos. 106, 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Courts Section 6.

C.J.S. Infants Sections 6, 8 to 9.

**SECTION 63‑3‑550.** Standing to institute a proceeding regarding neglected or delinquent child.

The parent or custodian of any child, an official of a child welfare board, any public official charged by law with the care of the poor, the recognized agents of any duly authorized agency, association, society or institution, any person having knowledge or information of a nature which convinces such person that a child is neglected or delinquent or that a child, by reason of its condition, environment or its own acts, is, in accordance with the provisions of this article, subject to the jurisdiction of the court or any person who has suffered injury through the delinquency of any such child or is concerned in its guardianship or adoption or an officer having an arrested child in charge may institute a proceeding respecting such child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Proceedings to determine paternity, see Sections 63‑17‑10 et seq.

Library References

Infants 200.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 35, Protective Custody.

S.C. Jur. Children and Families Section 92, Jurisdiction.

LAW REVIEW AND JOURNAL COMMENTARIES

Juvenile Law, Before and After the Entrance of “Parens Patriae.” 22 S.C. L. Rev. 147.

NOTES OF DECISIONS

In general 1

1. In general

The Family Court was not required to consider arguments regarding the best interest of the child before determining whether the former foster parents had standing to initiate action to adopt their former foster child. Michael P. v. Greenville County Dept. of Social Services (S.C.App. 2009) 385 S.C. 407, 684 S.E.2d 211, rehearing denied, certiorari denied. Adoption 11

Former foster parents did not have standing to initiate a private adoption action to adopt their former foster child by virtue of being the child’s former foster parents once former foster child was placed by the Department of Social Services (DSS) into a different pre‑adoptive home; any rights foster parents had with regard to their former foster child ended after they declined to challenge removal of the child from their care. Michael P. v. Greenville County Dept. of Social Services (S.C.App. 2009) 385 S.C. 407, 684 S.E.2d 211, rehearing denied, certiorari denied. Adoption 11

Arguments and theories raised by former foster parents for the first time in a post‑trial motion in action to adopt their former foster child were not properly preserved for appellate review. Michael P. v. Greenville County Dept. of Social Services (S.C.App. 2009) 385 S.C. 407, 684 S.E.2d 211, rehearing denied, certiorari denied. Adoption 15

Custodian, who had custody of child before state Department of Social Services (DSS) took child into emergency protective custody, had standing to participate in dependency proceeding, although custodian was not related to child by blood or marriage, and although custodian failed to comply with treatment and placement plan; custodian had real, material, or substantial interest in long‑term custody and potential adoption of child. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2076

**SECTION 20‑7‑435 allows the Children’s Foster Care Review Board to institute a judicial proceeding respecting any child that it considered to be neglected or delinquent.** In Interest of Tyson (S.C.App. 1984) 282 S.C. 212, 318 S.E.2d 279.

**SECTION 63‑3‑560.** Venue.

Venue of actions in the family courts shall be in such county as may be provided by law. Trial of such actions shall be in such county unless a change of venue is granted as provided by law.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 407.

Child Support 176.

Divorce 66.

Infants 196.

Westlaw Topic Nos. 76D, 76E, 134, 211.

C.J.S. Divorce Sections 165 to 169.

C.J.S. Infants Sections 24 to 25, 41, 46 to 48.

C.J.S. Parent and Child Sections 105, 207.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 92, Jurisdiction.

**SECTION 63‑3‑570.** Service of summons.

Service of summons and any process of the court shall be made as provided by law for service in the court of common pleas. Provided, that if the judge is satisfied that it is impracticable to serve personally the summons or the process, he may order service by registered or certified mail, addressed to the last known address, or by publication thereof, or both. It shall be sufficient to confer jurisdiction if service is effected at least forty‑eight hours before the time fixed in the summons or process for the return thereof.

Service of summons, process or notice required by this title may be made by any suitable person under the direction of the court, and upon request of the court shall be made by any peace officer.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Filing and service of a summons to terminate parental rights of children being abused, neglected, or abandoned, see Section 63‑7‑2550.

Service of summons and other papers, generally, see SCRCP, Rules 3 et seq.

Library References

Child Custody 410.

Child Support 180.

Divorce 76.

Infants 198.

Westlaw Topic Nos. 76D, 76E, 134, 211.

C.J.S. Divorce Sections 178 to 179, 189 to 190, 1021.

C.J.S. Infants Sections 49 to 50.

C.J.S. Parent and Child Sections 95, 211.

**SECTION 63‑3‑580.** Failure to obey summons.

If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of court. In case the summons or process cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual, or that the welfare of the child requires that he be brought forthwith into custody of the court, a warrant may be issued for the child, parent or guardian of the child, or any person who may have control or possession of the child, to immediately bring the child before the court.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Child Custody 410.

Child Support 180.

Divorce 76.

Infants 198.

Westlaw Topic Nos. 76D, 76E, 134, 211.

C.J.S. Divorce Sections 178 to 179, 189 to 190, 1021.

C.J.S. Infants Sections 49 to 50.

C.J.S. Parent and Child Sections 95, 211.

**SECTION 63‑3‑590.** Conduct of hearings.

All cases of children must be dealt with as separate hearings by the court and without a jury. The hearings must be conducted in a formal manner and may be adjourned from time to time. The general public must be excluded and only persons the judge finds to have a direct interest in the case or in the work of the court may be admitted. The presence of the child in court may be waived by the court at any stage of the proceedings. Hearings may be held at any time or place within the county designated by the judge. In any case where the delinquency proceedings may result in commitment to an institution in which the child’s freedom is curtailed, the privilege against self‑incrimination and the right of cross‑examination must be preserved. In all cases where required by law, the child must be accorded all rights enjoyed by adults, and where not required by law the child must be accorded adult rights consistent with the best interests of the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Employment of court reporter by family court, see Section 63‑3‑20.

Hearings concerning termination of parental rights on basis of children being abused, neglected, or abandoned, see Section 63‑7‑2580.

Library References

Child Custody 500.

Child Support 210.

Infants 203.

Westlaw Topic Nos. 76D, 76E, 211.

C.J.S. Divorce Sections 1022, 1114.

C.J.S. Infants Sections 40, 44 to 45, 58 to 59, 62 to 63, 66, 69 to 70.

C.J.S. Parent and Child Sections 122, 216, 218.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 40, Hearings in General.

S.C. Jur. Children and Families Section 108, Adjudicatory Hearing.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional Law—An Infant’s Right to a Trial by Jury. 22 S.C. L. Rev. 423.

Criminal Law—Juvenile Prosecution—Admissibility of Confession When Juvenile Court Would Have Jurisdiction at the Time Crime Was Committed. 18 S.C. L. Rev. 513.

Juvenile Law, Before and After the Entrance of “Parens Patriae.” 22 S.C. L. Rev. 147.

Attorney General’s Opinions

The admissibility of certain evidence relating to computer privacy and the privacy of electronic communications in a family court proceeding. 2014 S.C. Op.Atty.Gen. (November 4, 2014) 2014 WL 6387161.

NOTES OF DECISIONS

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1. In general

The right to be present and to confront witnesses applies in juvenile court proceedings in the same manner as in criminal court proceedings. In Interest of Dwayne M. (S.C. 1986) 287 S.C. 413, 339 S.E.2d 130.

1.5. Constitutional issues

Statute providing, in part, that “[a]ll cases of children must be dealt with as separate hearings by the court and without a jury,” did not violate juvenile’s right to trial by jury, under state constitution, where family court judge denied juvenile’s request for jury trial at adjudicative stage in juvenile delinquency proceedings, and proceeded with bench trial; adjudication was not equivalent of adult conviction, there was no evidence that family court bench trial was less reliable than other family court proceedings, juveniles who object to adjudication procedure or ruling would have several avenues of recourse as he or she could file an appeal, application for post‑conviction relief, or petition for writ of habeas corpus, and allowing jury trial in such proceedings would defeat General Assembly’s intent to keep juvenile proceedings separate and distinct from adult proceedings. In re Kevin R. (S.C. 2014) 409 S.C. 297, 762 S.E.2d 387. Jury 19.5

2. Exclusion of general public

ARTICLE I, Section 9 of the Constitution of South Carolina, providing that all courts shall be public, means that the public, and likewise the press, has a right of access to court proceedings subject to a balancing of interests with the parties involved. The ARTICLE does not render unconstitutional the provision of Section 20‑7‑755 that the general public shall be excluded from cases involving children. However, when and if challenged by the public or the press, the decision of a judge to close any proceeding must be supported by findings which explain the balancing of interests and the need for closure of the proceeding. A conclusory statement that opening the proceedings to the public would have an adverse effect on the chances of rehabilitation of a juvenile is not a sufficient finding. Ex parte Columbia Newspapers, Inc. (S.C. 1985) 286 S.C. 116, 333 S.E.2d 337.

3. Transfer orders

Erroneous order transferring a juvenile from family court to general sessions court would be a judicial error, rather than a jurisdictional error. State v. Rice (S.C. 2013) 401 S.C. 330, 737 S.E.2d 485. Infants 2999

**SECTION 63‑3‑600.** Rules for conduct of hearings.

Hearings shall be conducted in accordance with the rules of court, and the court may consider and receive as evidence the result of any investigation had or made by the probation counselor; provided, that either party shall be entitled to examine the probation counselor under oath thereon. The court may adjourn the hearing from time to time for proper cause. Where a petitioner’s needs are so urgent as to require it, the court may make a temporary order for support pending a final determination.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Procedure, see South Carolina Rules of Family Court, Rule 9.

Library References

Child Custody 500.

Child Support 56, 210.

Divorce 208.

Infants 203.

Westlaw Topic Nos. 76D, 76E, 134, 211.

C.J.S. Divorce Sections 510 to 540, 666 to 669, 672 to 684, 988 to 989, 991, 1022, 1114.

C.J.S. Infants Sections 40, 44 to 45, 58 to 59, 62 to 63, 66, 69 to 70.

C.J.S. Parent and Child Sections 122, 209, 216, 218, 220.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 99, Detention Hearing.

**SECTION 63‑3‑610.** Prosecutorial functions.

All prosecutorial functions and duties in the family courts shall be a responsibility of and be vested in the solicitor of the circuit wherein the court is located.

HISTORY: 2008 Act No. 361, Section 2.

Library References

District and Prosecuting Attorneys 8 to 9.

Westlaw Topic No. 131.

C.J.S. District and Prosecuting Attorneys Sections 20 to 21, 29 to 32.

Attorney General’s Opinions

It is incumbent upon the office of the solicitor in each county, as part of their prosecutorial functions, to file the petition and subpoenas in child abuse cases and ensure that service of same is effected. 1979 Op. Atty Gen, No. 79‑102, p 143.

**SECTION 63‑3‑620.** Penalties for adult violating title.

An adult who wilfully violates, neglects, or refuses to obey or perform a lawful order of the court, or who violates any provision of this chapter, may be proceeded against for contempt of court. An adult found in contempt of court may be punished by a fine, by a public works sentence, or by imprisonment in a local detention facility, or by any combination of them, in the discretion of the court, but not to exceed imprisonment in a local detention facility for one year, a fine of fifteen hundred dollars, or public works sentence of more than three hundred hours, or any combination of them. An adult sentenced to a term of imprisonment under this section may earn good time credits pursuant to Section 24‑13‑210 and work credits pursuant to Section 24‑13‑230 and may participate in a work/punishment program pursuant to Section 24‑13‑910.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 237, Section 90, eff June 11, 2010.

Effect of Amendment

The 2010 amendment substituted “public works” for “public work” and “detention facility” for “correctional facility” in two instances in the first sentence, and in the second sentence, deleted after the reference to Section 24‑13‑910 “unless his participation in any of these programs is prohibited by order of the sentencing judge”.

CROSS REFERENCES

Application of this section to the penalty for disseminating or permitting the unauthorized dissemination of confidential reports and information maintained by the guardian ad litem program, see Section 63‑11‑550.

Eligibility of persons who have violated this section for work/punishment programs, see Section 24‑13‑910.

Library References

Child Custody 851.

Child Support 443.

Divorce 269.

Infants 221.

Westlaw Topic Nos. 76D, 76E, 134, 211.

C.J.S. Divorce Sections 215, 721 to 742, 950, 1045 to 1047, 1125 to 1129, 1132.

C.J.S. Infants Sections 43, 71 to 95.

C.J.S. Parent and Child Sections 137 to 138, 239, 241 to 242.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 101, Family Court Jurisdiction.

S.C. Jur. Children and Families Section 151, Grandparents and Other Nonparental Visitation.

S.C. Jur. Criminal Domestic Violence Section 18, Types of Relief Available.

S.C. Jur. Divorce Section 54, Enforcement.

Attorney General’s Opinions

Family Courts in this State are not empowered to place a support contemnor on probation under the supervision of an adult criminal probation officer. 1982 Op. Atty Gen, No. 82‑55, p 60.

Absent a state statute making a violation of a family court order a crime, a Sheriff may not arrest without some process an individual for violation of a Family Court order. 1983 Op. Atty Gen, No. 83‑93, p. 156.

The contempt power under 1962 Code Section 15‑1095.23 [1976 Code Section 14‑21‑650] defines the punishment for violations of 1962 Code Sections 1095.17(d), 15‑1095.40, 15‑1095.41, 1‑20, et seq. [1976 Code Sections 14‑21‑590, 14‑21‑30, 14‑21‑150], the Freedom of Information Act has no effect on these sections. 1975‑76 Op. Atty Gen, No. 4541, p 409.

NOTES OF DECISIONS

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1⁄2. Due process

Indigent father’s incarceration, following a civil contempt finding based on his failure to comply with a South Carolina child support order, violated the Due Process Clause, where father neither received counsel nor the benefit of alternative procedural safeguards, including clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding, a form, or the equivalent, designed to elicit information about his financial circumstances, and a court finding that he was able to pay his arrearage. Turner v. Rogers (U.S.S.C. 2011) 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Child Support 474; Child Support 491; Child Support 494; Constitutional Law 4495

Procedural safeguards which, if employed together, can significantly reduce the risk of an erroneous deprivation of liberty in the absence of counsel in civil contempt proceedings in child support cases where incarceration is threatened, include (1) notice to the defendant that his ability to pay is a critical issue in the contempt proceeding; (2) the use of a form or the equivalent to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status; and (4) an express finding by the court that the defendant has the ability to pay. Turner v. Rogers (U.S.S.C. 2011) 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Constitutional Law 4494

3⁄4. Right to counsel

The Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration for up to a year; in particular, the Clause does not require the provision of counsel where the opposing parent or other custodian to whom support funds are owed is not represented by counsel and the State provides alternative procedural safeguards equivalent to adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings; abrogating Pasqua v. Council, 186 N.J. 127, 892 A.2d 663; Black v. Division of Child Support Enforcement, 686 A.2d 164; Mead v. Batchlor, 435 Mich. 480, 460 N.W.2d 493; Ridgway v. Baker, 720 F.2d 1409; In re Grand Jury Proceedings, 468 F.2d 1368. U.S.C.A. Turner v. Rogers (U.S.S.C. 2011) 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Constitutional Law 4494

Indigent father’s sentence of twelve months in a detention center for contempt of child support order, of which he could purge himself and avoid by full payment of his child support arrearage, was a civil, rather than criminal, contempt sanction, and thus father was not constitutionally entitled to appointment of counsel. Price v. Turner (S.C. 2010) 387 S.C. 142, 691 S.E.2d 470, certiorari granted, certiorari granted 131 S.Ct. 504, 562 U.S. 1002, 178 L.Ed.2d 369, vacated 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Child Support 491

A child support obligor does not have a constitutional right to appointed counsel before being incarcerated for civil contempt for failure to pay child support. Price v. Turner (S.C. 2010) 387 S.C. 142, 691 S.E.2d 470, certiorari granted, certiorari granted 131 S.Ct. 504, 562 U.S. 1002, 178 L.Ed.2d 369, vacated 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Child Support 491

1. Contempt

“Willful act,” for contempt purposes, is defined as one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law. Sweeney v. Sweeney (S.C.App. 2017) 420 S.C. 69, 800 S.E.2d 148, rehearing denied. Contempt 60(3)

Husband was in contempt for withdrawing funds for the children’s education and other expenses in violation of temporary order prohibiting the parties in divorce action from disposing of any marital property. Sweeney v. Sweeney (S.C.App. 2017) 420 S.C. 69, 800 S.E.2d 148, rehearing denied. Contempt 2

To find one in contempt of court, the record must clearly reflect contemptuous conduct. Sweeney v. Sweeney (S.C.App. 2017) 420 S.C. 69, 800 S.E.2d 148, rehearing denied. Divorce 522

The purpose of civil contempt is to coerce the defendant to comply with the court’s order, and in contrast, criminal contempt is intended to punish a party for disobedience and disrespect; civil contempt sanctions are conditioned on compliance with the court’s order, while criminal contempt sanctions are unconditional. Price v. Turner (S.C. 2010) 387 S.C. 142, 691 S.E.2d 470, certiorari granted, certiorari granted 131 S.Ct. 504, 562 U.S. 1002, 178 L.Ed.2d 369, vacated 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Contempt 70; Contempt 72

Criminal contempt triggers additional constitutional safeguards not mandated in civil contempt proceedings. Price v. Turner (S.C. 2010) 387 S.C. 142, 691 S.E.2d 470, certiorari granted, certiorari granted 131 S.Ct. 504, 562 U.S. 1002, 178 L.Ed.2d 369, vacated 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Contempt 40

Although mistakenly referred to as criminal contempt, substantively the family court’s decision finding husband in contempt of temporary order, allowing and requiring wife to remove all marital property from the marital home, was civil in nature; family court’s contempt order did not subject husband to an unconditional, fixed term of imprisonment, and husband, if imprisoned, could obtain his release by complying with the court’s directive, and contempt ruling was intended to compel husband’s compliance with the requirements of the temporary order. Miller v. Miller (S.C.App. 2007) 375 S.C. 443, 652 S.E.2d 754. Divorce 1101

A “willful act,” as required to hold party in contempt, is one which is done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law. Miller v. Miller (S.C.App. 2007) 375 S.C. 443, 652 S.E.2d 754. Contempt 2

2. —— Marital property

Evidence supported trial court’s finding husband in contempt and ordering him to return vintage car to wife; temporary order allowed and required wife to remove all marital property from the marital home, husband wilfully interfered with wife’s attempts to effectuate the temporary order, and, when wife eventually gained access to the marital home, she discovered the remaining property, including the vintage car, had been removed, and car was included in the remaining property wife was to remove. Miller v. Miller (S.C.App. 2007) 375 S.C. 443, 652 S.E.2d 754. Divorce 1118(5)

Evidence that ex‑husband failed to pay ex‑wife’s share of equity in marital home supported contempt finding; ex‑husband’s friend calculated ex‑wife’s share of home equity by deducting from stipulated value of home closing costs, first mortgage, and balance on home equity loan that ex‑wife had used, then divided resulting net equity in half and again reduced her share by $30,000 for home equity loan, family court adopted ex‑wife’s analysis which reflected only one deduction of home equity loan from her share of net equity, and, at time modified final order was issued, ex‑husband had not paid ex‑wife balance of her equitable share. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 1118(5)

Former husband’s failure to comply with property settlement agreement, which was approved by court in divorce action and which required former husband to pay former wife her share of equity in marital residence within 30 days from when former wife vacated residence, warranted finding of contempt; former husband did not pay until approximately seven months after deadline. Browning v. Browning (S.C.App. 2005) 366 S.C. 255, 621 S.E.2d 389. Divorce 1105

3. —— Visitation

Mother should have been held in contempt for failing to produce parties’ child for visitation pursuant to previous visitation orders; after denying father month‑long summer visitation according to court orders, mother sent letter reducing summer visitation to approximately two weeks at times convenient to her, claimed that order was no good, did not make good faith effort to reconcile orders so father could receive month‑long ordered visitation, and mother had history of interfering with father’s visitation and violating court orders. Hawkins v. Mullins (S.C.App. 2004) 359 S.C. 497, 597 S.E.2d 897. Child Custody 854

Former wife should have been held in contempt for violating terms of a child visitation order, as divorced husband established a prima facie case by producing the order and testifying as to former wife’s noncompliance, and former wife failed to produce any evidence tending to establish a defense or explanation for failing to comply with the order. Eaddy v. Oliver (S.C.App. 2001) 345 S.C. 39, 545 S.E.2d 830, rehearing denied, certiorari denied. Child Custody 854

A wife was properly held in contempt by the trial court and was required to post a $5,000 bond to insure her future compliance with its orders, pursuant to Section 20‑7‑1350, where evidence supported her husband’s claim that she had violated the order of separate maintenance by refusing to permit him to visit the children on a designated weekend, by failing to assume her car payments, and by failing to allow him to obtain items that belonged to him. Satterwhite v. Satterwhite (S.C.App. 1984) 280 S.C. 228, 312 S.E.2d 21.

4. —— Harassment

Evidence that ex‑husband harassed ex‑wife supported contempt finding; ex‑wife submitted evidence of incidents during which ex‑husband harassed her by threatening to publish embarrassing photographs of her, by discussing her personal life with minor children, and by making harassing phone calls, testimony indicated ex‑husband and their youngest son went to ex‑wife’s home late one evening when ex‑wife’s boyfriend was present, ex‑husband later accused ex‑wife of exposing child to immoral behavior, and ex‑wife recounted another incident that arose when ex‑husband returned personal property to her in parking lot of her church, causing disturbance by shouting obscenities at her in presence of their youngest son. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Child Custody 852; Divorce 1118(5)

5. —— Disclosure

No evidence supported finding that wife was in contempt of family court for telling husband’s adult daughter from prior marriage about husband’s adulterous affair, even though family court ordered that contents of parties’ therapy files should not be disseminated except as needed in course of litigation and under no circumstances are were parties’ minor children to be told any of information in files, and that parties not disseminate any information learned in any deposition which related in any way to, or was derived from, information contained in records of parties’ therapists, with any person except lawyers, experts, and parents and siblings, where nothing barred wife from sharing information with adult daughter, and no evidence indicated that orders had been issued at time of conversation. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 1118(5)

Evidence supported finding that wife was in contempt of family court order which precluded parties from disclosing information learned as result of disclosure of parties’ therapy records or deposition testimony regarding therapy records, where notwithstanding orders, during very emotional phone conversation with husband’s parents, wife disclosed information of affair husband had, which she discovered after reviewing psychological records. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 1118(5)

Evidence did not support finding that wife was in contempt of family court order that directed estate planning attorneys for wife’s parents to disclose any trust for which wife was beneficiary, even though attorneys failed to timely disclose trust that was intended to pay estate taxes of parents’ estate, which would become effective only upon parents’ death, where no evidence indicated that wife was even aware of existence of trust, much less tried to conceal it, and where wife was not subject of husband’s motion to compel, nor was she included in family court’s order compelling disclosure of trust documents. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 1118(5)

6. Sanctions

When the court orders imprisonment for contempt, whether the sanction is civil or criminal depends upon whether the sentence is conditional or for a definite period. Price v. Turner (S.C. 2010) 387 S.C. 142, 691 S.E.2d 470, certiorari granted, certiorari granted 131 S.Ct. 504, 562 U.S. 1002, 178 L.Ed.2d 369, vacated 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Contempt 70; Contempt 72

The Family Court is not required to impose sanctions upon the finding of contempt. Sutton v. Sutton (S.C.App. 1987) 291 S.C. 401, 353 S.E.2d 884.

Trial judge did not abuse his discretion in failing to impose sanctions against the former wife for violating previous court orders by aiding her child in avoiding visits with the child’s father. Sutton v. Sutton (S.C.App. 1987) 291 S.C. 401, 353 S.E.2d 884.

A father who had custody of the parties’ children and who wilfully and voluntarily violated an order of the family Court requiring him to give the mother sixty days’ notice before moving out of state with them should have been held in contempt for the violation, but no sanction would be imposed under Section 20‑7‑1350, where, after receiving notice that the father intended to leave the state, the mother filed a verified petition for a restraining order and then waited 20 days, until the fifth‑fifth day of the sixty day notice period, before serving the father with the petition, and the father left on the fifty‑seventh day with the children. Scheibner v. Wonderly (S.C. 1983) 279 S.C. 212, 305 S.E.2d 232. Child Support 451; Child Support 468

7. Attorney fees

Wife necessarily incurred attorney fees and costs in securing husband’s compliance with the temporary order allowing and requiring wife to remove all marital property from the marital home and, as such, husband, who was found in civil contempt for preventing wife from removing items, was required to pay a portion of those fees and costs. Miller v. Miller (S.C.App. 2007) 375 S.C. 443, 652 S.E.2d 754. Divorce 1141; Divorce 1157; Divorce 1162

The court is not required to provide the contemnor with an opportunity to purge himself of attorney fees in order to hold him in civil contempt; award of attorney fees is not part of the punishment, but, instead, this award is made to indemnify the party for expenses incurred in seeking enforcement of the court’s order. Miller v. Miller (S.C.App. 2007) 375 S.C. 443, 652 S.E.2d 754. Contempt 81

In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court’s prior order, including reasonable attorney fees, and the award of attorney fees is not a punishment, but an indemnification to the party who instituted the contempt proceeding. Miller v. Miller (S.C.App. 2007) 375 S.C. 443, 652 S.E.2d 754. Contempt 68; Contempt 74

8. Review

A finding of contempt should not be disturbed on appeal unless it is unsupported by the evidence or the judge has abused his discretion. Price v. Turner (S.C. 2010) 387 S.C. 142, 691 S.E.2d 470, certiorari granted, certiorari granted 131 S.Ct. 504, 562 U.S. 1002, 178 L.Ed.2d 369, vacated 131 S.Ct. 2507, 564 U.S. 431, 180 L.Ed.2d 452. Contempt 66(7)

Family court properly found that former wife was not in contempt for noncompliance with final order and decree of divorce requiring her to pay income taxes, and provide former husband with a mortgage on the property; despite former husband’s alleged interference, former wife took appropriate measures to satisfy tax liabilities through obtaining a mortgage of her own, making former husband’s lien status essentially a non‑issue, and entering into an offer in compromise (OIC) with IRS. Tracy v. Tracy (S.C.App. 2009) 384 S.C. 91, 682 S.E.2d 14. Divorce 1103

In reviewing contempt sanction that required former husband to pay interest for seven‑month period in which former husband delayed complying with property settlement agreement’s 30‑day period to pay former wife her share of equity in marital residence after former wife vacated residence, Court of Appeals would modify sanction to reduce duration of interest period; since former wife did not expeditiously sign and return quitclaim deed to former husband, former husband should not be penalized for time period preceding his receipt of deed. Browning v. Browning (S.C.App. 2005) 366 S.C. 255, 621 S.E.2d 389. Divorce 1323(6)

In contempt action brought against former wife, divorced husband failed to preserve for appellate review contention that former wife should have been ordered to prospectively comply with child visitation order, where divorced husband first raised the issue in a motion to alter or amend the judgment. Eaddy v. Oliver (S.C.App. 2001) 345 S.C. 39, 545 S.E.2d 830, rehearing denied, certiorari denied. Child Custody 904

**SECTION 63‑3‑630.** Appeals.

(A) Any appeal from an order, judgment, or decree of the family court shall be taken in the manner provided by the South Carolina Appellate Court Rules. The right to appeal must be governed by the same rules, practices, and procedures that govern appeals from the circuit court.

(B) The pendency of an appeal or application may not suspend the order of the family court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution, or agency to whose care the child shall have been committed; nor shall it suspend payments for support and maintenance of the wife and child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Family court orders regarding a child or requiring payment of support for a spouse or child are not subject to automatic stay upon service of a notice of appeal, see Rule 225, SCACR.

Library References

Child Custody 903, 905 to 906.

Child Support 538, 540 to 541.

Divorce 178, 181 to 182.

Infants 242, 244.1.

Westlaw Topic Nos. 76D, 76E, 134, 211.

C.J.S. Divorce Sections 461 to 462, 472 to 477, 1164, 1166 to 1169.

C.J.S. Infants Sections 100 to 101, 104.

C.J.S. Parent and Child Sections 147 to 148.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 54, Exceptions to the Automatic Stay.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

S.C. Jur. Children and Families Section 111, Appeal and Post‑Conviction Review.

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

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1. In general

Generally, only final judgments are appealable. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Appeal And Error 68

The wife’s exception to the trial court’s award of the marital estate was too general to permit appellate review of the award on either “equal partnership” or “foregone career opportunities” theories where she merely alleged that “such award [was] an abuse of discretion in that it [was] wholly inadequate and contrary to statutory and case law guidelines.” Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604. Divorce 1250

An order affecting equitable division entered while the award is on appeal is void for lack of jurisdiction to enter it. Thus, a ruling that an equitable division award, which was on appeal, was a properly enrolled money decree and judgment pursuant to Section 34‑31‑20, and that the award should draw interest at the legal rate of 14 percent per annum, was void for lack of jurisdiction. Luthi v. Luthi (S.C.App. 1989) 297 S.C. 306, 376 S.E.2d 782.

2. Independent review of record

While the Court of Appeals has jurisdiction in equity matters to find facts based on its own view of the preponderance of the evidence, the Court of Appeals is not required to disregard the findings of the trial judge who saw and heard the witnesses and who was in a better position to evaluate the testimony. Bochette v. Bochette (S.C.App. 1989) 300 S.C. 109, 386 S.E.2d 475. Appeal And Error 1009(1)

As an action for divorce is an equitable action heard by a family court judge alone, the Supreme Court may, on appeal, find facts in accordance with its own view of the preponderance of the evidence. Roberts v. Roberts (S.C. 1989) 299 S.C. 315, 384 S.E.2d 719. Divorce 184(6.1)

In appeals from the family court, the Supreme Court has authority to correct errors of law and find facts in accordance with its own view of the preponderance of the evidence. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715. Courts 176.5

The Supreme Court may make an independent review of the record to make findings of fact where the family court’s order fails to make such findings in compliance with Family Court Rule 26(a). Bull v. Smith (S.C. 1989) 299 S.C. 123, 382 S.E.2d 905.

Although the Court of Appeals has jurisdiction in domestic matters to find facts based on its own view of the preponderance of the evidence, it is not required to disregard the findings of the trial judge, who saw and heard the witnesses and was in a better position to evaluate their testimony. Gambrell v. Gambrell (S.C.App. 1988) 295 S.C. 457, 369 S.E.2d 662. Divorce 186

3. Juvenile delinquency proceedings

In a juvenile delinquency proceeding, it is within the exclusive province of the trial judge to determine the credibility of witnesses and the truth or falsity of the facts on which a determination depends. In Interest of Doe (S.C.App. 1995) 318 S.C. 527, 458 S.E.2d 556. Infants 2917; Infants 2918

In a juvenile delinquency proceeding, the Court of Appeals must affirm the trial court’s adjudication of delinquency unless it is unsupported by the evidence. In Interest of Doe (S.C.App. 1995) 318 S.C. 527, 458 S.E.2d 556.

Where adverse collateral consequences may arise from an adjudication of delinquency, a juvenile may not be foreclosed from appeal simply because he is no longer in custody. In re Willie H. (S.C. 1985) 284 S.C. 436, 327 S.E.2d 76. Infants 2878

4. Stay pending appeal

A temporary family court order requiring a husband to make weekly payments to the wife was not automatically stayed pending appeal since the payments constituted temporary alimony, rather than a distribution of marital assets, where the payments were to be made for an indefinite, though temporary, period of time and for an indefinite total sum. Bochette v. Bochette (S.C.App. 1989) 300 S.C. 109, 386 S.E.2d 475. Divorce 884; Divorce 1233

An appeal from a family court order, a portion of which required a divorced father to contribute to his son’s college expenses, did not automatically stay the provision for payment of college expenses. An award of college expenses is made pursuant to the authority of the family court to order support for a child and, therefore, as a form of support, college expenses are not automatically stayed under Supreme Court Rule 41. Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254.

5. Remand

Although a husband in a divorce action failed to file a motion under Rule 59(e) of the South Carolina Rules of Civil Procedure in the family court to draw the court’s attention to its failure to specifically distribute certain items of personal property, and ordinarily the issue would not be properly preserved because of the failure to file the motion, the issue would be remanded for disposition in the interest of concluding the matter where the court of appeals was remanding another issue regarding the valuation of property. Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254.

6. Attorney fees

An award of attorney fees and costs is a discretionary matter not to be overturned absent abuse by the trial court. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Appeal And Error 984(5)

**SECTION 63‑3‑640.** Post conviction proceedings.

Post conviction proceedings, including habeas corpus actions, shall be instituted in the court in which the original action was concluded; provided, however, that the family courts shall also have original jurisdiction of habeas corpus actions if the person who is the subject of the action would otherwise be within the jurisdiction of the family court.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Habeas Corpus 614, 624.

Infants 230.1.

Westlaw Topic Nos. 197, 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Habeas Corpus Sections 240, 242 to 243, 246, 249 to 250, 272.

C.J.S. Infants Sections 43, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 111, Appeal and Post‑Conviction Review.

S.C. Jur. Post‑Conviction Relief Section 17, Jurisdiction and Venue.

**SECTION 63‑3‑650.** Power to issue writ of habeas corpus.

Any judge shall have the power to issue a writ of habeas corpus to produce any person under the age of seventeen in court where necessary.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Witnesses 1, 18.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 1 to 6, 65 to 66.

ARTICLE 7

Private Guardians ad Litem

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑3‑810 | 20‑7‑1545 |
| 63‑3‑820 | 20‑7‑1547 |
| 63‑3‑830 | 20‑7‑1549 |
| 63‑3‑840 | 20‑7‑1551 |
| 63‑3‑850 | 20‑7‑1553 |
| 63‑3‑860 | 20‑7‑1555 |
| 63‑3‑870 | 20‑7‑1557 |

**SECTION 63‑3‑810.** Appointment.

(A) In a private action before the family court in which custody or visitation of a minor child is an issue, the court may appoint a guardian ad litem only when it determines that:

(1) without a guardian ad litem, the court will likely not be fully informed about the facts of the case and there is a substantial dispute which necessitates a guardian ad litem; or

(2) both parties consent to the appointment of a guardian ad litem who is approved by the court.

(B) The court has absolute discretion in determining who will be appointed as a guardian ad litem in each case. A guardian ad litem must be appointed to a case by a court order.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 78(7), 80(1).

Westlaw Topic No. 211.

C.J.S. Infants Sections 321 to 322, 328 to 329, 331 to 333.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 34, Guardian Ad Litem Expenses.

NOTES OF DECISIONS

In general 1

1. In general

In child custody proceeding, family court did not abuse its discretion in failing to appoint a guardian ad litem or consider child’s preference as to custody; both physician and another witness who interviewed the parties and their children expressed concern that the relationship between mother and 13‑year‑old child was becoming enmeshed, physician specifically recommended that the family court assign child’s custody preference no weight, and no basis existed for appointing a guardian ad litem. Sheila R. v. David R. (S.C.App. 2011) 396 S.C. 41, 719 S.E.2d 682. Child Custody 78; Infants 1238(9)

Remand was required for determination of whether statutory requirements were met in authorizing fees for guardian ad litem (GAL) and GAL’s attorney and determination of reasonableness, where family court failed to apply factors mandated by statute. Loe v. Mother, Father, and Berkeley County Dept. of Social Services (S.C.App. 2009) 382 S.C. 457, 675 S.E.2d 807, rehearing denied, certiorari denied. Infants 2435

Trial court’s refusal to appoint guardian ad litem for child strictly for medical determinations was not abuse of discretion, where guardian ad litem had been appointed whose duties included authority to review medical records and to conduct independent, balanced, and impartial investigation of facts relevant to child’s situation and family. Arnal v. Fraser (S.C. 2007) 371 S.C. 512, 641 S.E.2d 419, rehearing denied, certiorari denied 128 S.Ct. 136, 552 U.S. 821, 169 L.Ed.2d 29. Infants 1238(9)

An award of guardian ad litem fees lies within the sound discretion of the family court judge and will not be disturbed on appeal absent an abuse of that discretion. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Infants 115

**SECTION 63‑3‑820.** Qualifications.

(A) A guardian ad litem may be either an attorney or a layperson. A person must not be appointed as a guardian ad litem pursuant to Section 63‑3‑810 unless he possesses the following qualifications:

(1) a guardian ad litem must be twenty‑five years of age or older;

(2) a guardian ad litem must possess a high school diploma or its equivalent;

(3) an attorney guardian ad litem must annually complete a minimum of six hours of family law continuing legal education credit in the areas of custody and visitation; however, this requirement may be waived by the court;

(4) for initial qualification, a lay guardian ad litem must have completed a minimum of nine hours of continuing education in the areas of custody and visitation and three hours of continuing education related to substantive law and procedure in family court. The courses must be approved by the Supreme Court Commission on Continuing Legal Education and Specialization;

(5) a lay guardian ad litem must observe three contested custody merits hearings prior to serving as a guardian ad litem. The lay guardian must maintain a certificate showing that observation of these hearings has been completed. This certificate, which shall be on a form approved by Court Administration, shall state the names of the cases, the dates and the judges involved and shall be attested to by the respective judge; and

(6) lay guardians ad litem must complete annually six hours of continuing education courses in the areas of custody and visitation.

(B) A person shall not be appointed as a guardian ad litem pursuant to Section 63‑3‑810 who has been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person; in Chapter 15 of Title 16, Offenses Against Morality and Decency; in Chapter 25 of Title 16, Criminal Domestic Violence; in Article 3 of Chapter 53 of Title 44, Narcotics and Controlled Substances; or convicted of the crime of contributing to the delinquency of a minor, provided for in Section 16‑17‑490.

(C) No person may be appointed as a guardian ad litem pursuant to Section 63‑3‑810 if he is or has ever been on the Department of Social Services Central Registry of Abuse and Neglect.

(D) Upon appointment to a case, a guardian ad litem must provide an affidavit to the court and to the parties attesting to compliance with the statutory qualifications. The affidavit must include, but is not limited to, the following:

(1) a statement affirming that the guardian ad litem has completed the training requirements provided for in subsection (A);

(2) a statement affirming that the guardian ad litem has complied with the requirements of this section, including a statement that the person has not been convicted of a crime enumerated in subsection (B); and

(3) a statement affirming that the guardian ad litem is not nor has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect pursuant to Subarticle 13, Article 3, Chapter 7.

(E) The court may appoint an attorney for a lay guardian ad litem. A party or the guardian ad litem may petition the court by motion for the appointment of an attorney for the guardian ad litem. This appointment may be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 81.

Westlaw Topic No. 211.

C.J.S. Infants Sections 321, 332 to 333.

**SECTION 63‑3‑830.** Responsibilities.

(A) The responsibilities and duties of a guardian ad litem include, but are not limited to:

(1) representing the best interest of the child;

(2) conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family. An investigation must include, but is not limited to:

(a) obtaining and reviewing relevant documents, except that a guardian ad litem must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian ad litem shall have access to the child’s school records and medical records. The guardian ad litem may petition the family court for the medical records of the parties;

(b) meeting with and observing the child on at least one occasion;

(c) visiting the home settings if deemed appropriate;

(d) interviewing parents, caregivers, school officials, law enforcement, and others with knowledge relevant to the case;

(e) obtaining the criminal history of each party when determined necessary; and

(f) considering the wishes of the child, if appropriate;

(3) advocating for the child’s best interest by making specific and clear suggestions, when necessary, for evaluation, services, and treatment for the child and the child’s family. Evaluations or other services suggested by the guardian ad litem must not be ordered by the court, except upon proper approval by the court or by consent of the parties;

(4) attending all court hearings related to custody and visitation issues, except when attendance is excused by the court or the absence is stipulated by both parties. A guardian must not be compensated for attending a hearing related solely to a financial matter if the matter is not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court;

(5) maintaining a complete file, including notes. A guardian’s notes are his work product and are not subject to subpoena; and

(6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the child’s best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the court and all parties no later than twenty days prior to the merits hearing, unless that time period is modified by the court, but in no event later than ten days prior to the merits hearing. The ten‑day requirement for the submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the guardian ad litem make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The guardian ad litem is subject to cross‑examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation.

(B) A guardian ad litem may submit briefs, memoranda, affidavits, or other documents on behalf of the child. A guardian ad litem may also submit affidavits at the temporary hearing. Any report or recommendation of a guardian ad litem must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 85.

Westlaw Topic No. 211.

C.J.S. Infants Sections 321, 334.

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1. Investigation

In child custody case, guardian ad litem (GAL) must conduct an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family, which should include: reviewing relevant documents; meeting with and observing the child in the home setting and considering the child’s wishes, if appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 421

Family court properly considered all the relevant factors and circumstances when it awarded custody of child to husband; wife never objected to the sufficiency of guardian ad litem’s (GAL) investigation, she never attempted to request a continuance or sought to remove the GAL, despite knowing the GAL had not contacted her until the eve of the final hearing, wife’s failure to cooperate with the GAL by not returning phone calls and failing to communicate with the GAL contributed to the tardiness of GAL’s interview as well as his observations of wife and child, and family court’s order neither referenced the GAL’s findings nor stated the family court placed any reliance on the GAL’s report or investigation, and doctor, who interviewed both parties and child, gave husband high marks. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 421

In child custody case, guardian ad litem (GAL) properly expressed his concerns to the family court based on his observations; GAL couched his concern over how child was disciplined as it related to both parents’ discipline styles, and one of GAL’s main concerns when parents divorced was that rules the child was required to follow be the same in both homes and the only way that happened was that both parents had to agree to communicate with each other and set those boundaries. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 421

In child custody case, it was incumbent upon the guardian ad litem (GAL) to bring wife’s prior mental “episode” to the family court’s attention as any relapse could affect child’s wellbeing; GAL stated his only concern was, if another episode happened, it could possibly put child in danger. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 421

Trial court’s refusal to appoint guardian ad litem for child strictly for medical determinations was not abuse of discretion, where guardian ad litem had been appointed whose duties included authority to review medical records and to conduct independent, balanced, and impartial investigation of facts relevant to child’s situation and family. Arnal v. Fraser (S.C. 2007) 371 S.C. 512, 641 S.E.2d 419, rehearing denied, certiorari denied 128 S.Ct. 136, 552 U.S. 821, 169 L.Ed.2d 29. Infants 1238(9)

Evidence supported finding that guardian ad litem (GAL) conducted an independent, balanced, and impartial investigation, during proceeding to modify child custody; (GAL) interviewed mother on several occasions and observed child and mother on one occasion, GAL met with mother’s new husband, GAL requested photographs of mother’s new home, GAL observed father with child on two occasions, and GAL requested that father send information on the town where he lived, the schools, and his house rather than have the GAL travel out of state to personally observe the situation. Latimer v. Farmer (S.C. 2004) 360 S.C. 375, 602 S.E.2d 32. Child Custody 616; Infants 1246(1)

2. Custody recommendations

Mother failed to preserve for appellate review claim that family court erred by failing to set forth in record specific grounds for requesting guardian ad litem’s (GAL) custody recommendation, where mother did not object when GAL gave her recommendation. Payne v. Payne (S.C.App. 2009) 382 S.C. 62, 674 S.E.2d 515, rehearing denied. Child Custody 904

2.5. Evidence

Substantial evidence supported Board of Social Work Examiners’ findings, in prohibiting licensed social worker from working as a guardian ad litem (GAL) and barring her from all independent social work practice, that social worker committed fraud and represented that she performed services that she had not performed in violation of Social Work Examiners Practice Act; Board’s expert witness described how social worker had failed to comply with statutory requirements in her investigations of cases in which social worker had worked as a GAL. Forman v. South Carolina Department of Labor (S.C.App. 2016) 419 S.C. 64, 796 S.E.2d 138, rehearing denied. Licenses 38

3. Review

Wife’s claim that her due process rights were violated because the guardian ad litem’s (GAL) report did not comply with statutory notice requirements was not preserved for appellate review, where wife did not object in child custody case when the GAL submitted his report and testified before the family court. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Child Custody 904

**SECTION 63‑3‑840.** Mediation prohibition.

A guardian ad litem must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed. However, nothing in this section shall prohibit a guardian ad litem from participating in a mediation or a settlement conference with the consent of the parties.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 84, 85.

Westlaw Topic No. 211.

C.J.S. Infants Sections 321, 334 to 336.

**SECTION 63‑3‑850.** Compensation.

(A) At the time of appointment of a guardian ad litem, the family court judge must set forth the method and rate of compensation for the guardian ad litem, including an initial authorization of a fee based on the facts of the case. If the guardian ad litem determines that it is necessary to exceed the fee initially authorized by the judge, the guardian must provide notice to both parties and obtain the judge’s written authorization or the consent of both parties to charge more than the initially authorized fee.

(B) A guardian appointed by the court is entitled to reasonable compensation, subject to the review and approval of the court. In determining the reasonableness of the fees and costs, the court must take into account:

(1) the complexity of the issues before the court;

(2) the contentiousness of the litigation;

(3) the time expended by the guardian;

(4) the expenses reasonably incurred by the guardian;

(5) the financial ability of each party to pay fees and costs; and

(6) any other factors the court considers necessary.

(C) The guardian ad litem must submit an itemized billing statement of hours, expenses, costs, and fees to the parties and their attorneys pursuant to a schedule as directed by the court.

(D) At any time during the action, a party may petition the court to review the reasonableness of the fees and costs submitted by the guardian ad litem or the attorney for the guardian ad litem.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 83.

Westlaw Topic No. 211.

C.J.S. Infants Sections 321, 338 to 341.

NOTES OF DECISIONS

In general 1

1. In general

In private custody action between mother and father, in which Department of Social Services (DSS) filed an intervention action against mother and father, family court erred in ordering mother to pay $2,500 in guardian ad litem (GAL) fees at the conclusion of the initial intervention portion of the action; while GAL was entitled to appropriate fees for her services as set forth in the family court’s initial appointment order, the family court explicitly reserved ruling on her fees until it resolved the private custody action. South Carolina Dept. of Social Services v. Mary C. (S.C.App. 2011) 396 S.C. 15, 720 S.E.2d 503, rehearing denied. Infants 1244

Remand for reconsideration of order requiring husband and wife to split the cost of the guardian ad litem’s fee was required, in divorce proceeding, where the Court of Appeals determined that the guardian ad litem failed to conduct an independent, balanced, and impartial investigation. Pirayesh v. Pirayesh (S.C.App. 2004) 359 S.C. 284, 596 S.E.2d 505. Child Custody 924

**SECTION 63‑3‑860.** Disclosure.

A guardian ad litem appointed by the family court in a custody or visitation action must, upon notice of the appointment, provide written disclosure to each party:

(1) of the nature, duration, and extent of any relationship the guardian ad litem or any member of the guardian’s immediate family residing in the guardian’s household has with any party;

(2) of any interest adverse to any party or attorney which might cause the impartiality of the guardian ad litem to be challenged;

(3) any membership or participation in any organization related to child abuse, domestic violence, or drug and alcohol abuse.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 80(1), 81.

Westlaw Topic No. 211.

C.J.S. Infants Sections 321, 328 to 329, 331 to 333.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 133, The Age of the Child and the Tender Years Doctrine.

S.C. Jur. Children and Families Section 149, Restricted Visitation.

S.C. Jur. Divorce Section 26, Age‑ Tender Years Doctrine.

**SECTION 63‑3‑870.** Removal.

A guardian ad litem may be removed from a case at the discretion of the court.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 82.

Westlaw Topic No. 211.

C.J.S. Infants Sections 321, 342 to 343.