1978 S.C. Op. Atty. Gen. 114 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-89, 1978 WL 22569

Office of the Attorney General

State of South Carolina
Opinion No. 78-89
May 9, 1978

***1 SUBJECT: Child Support**
A parent's legal obligation to support his nonhandicapped child does not extend beyond that child's minority, age 18.

TO: The Honorable S. Norwood Gasque
Chief Judge
The Family Court of the Fourth Judicial Circuit

QUESTION:

1. Does South Carolina Code of Laws (1976), § 14–21–810(b)(4) extend the legal obligation of a parent to support his child to that child's twenty-first birthday in spite of the fact that since the enactment of § 14–21–810(b)(4) the legal age of majority in South Carolina has been reduced from twenty-one to eighteen?

STATUTES AND CASES:

South Carolina Code of Laws (1976), § 14–21–810(b)(4); Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956); Campbell v. Campbell, 200 S.C. 67, 20 S.E.2d 237 (1942). Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1945); Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970); Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976); Parker v. Parker, 230 S.C. 28, 94 S.E.2d 12 (1956); Smith v. Todd, 155 S.C. 323, 152 S.E. 506 (1930).

DISCUSSION:

It is well established in the case law of this state that all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). The question presented here can be resolved by a determination of whether the legislature intended in South Carolina Code of Laws (1976), § 14–21–810(b)(4) that the words 'twenty-one years of age' extend the child support obligation to that age regardless of what the legal age of majority may be, or whether those words should be interpreted as meaning 'the age of majority,' which was twenty-one at the time of the passage of § 14–21–810(b)(4).

The language of the statute itself gives some indication that its purpose is to require support for a child until that child is emancipated, and not beyond that point. The statute states that orders for support shall run 'until the child is twenty-one years of age, or until the child is sooner married or becomes self supporting.' The marriage or self sufficiency of a child results in the emancipation of that child, as does the child's attaining the age of majority. It can be argued that the legislature was listing the three conditions which result in emancipation and used 'twenty-one years of age' to mean the age of majority.

At common law, a parent must support his legitimate children until they attain the age of majority or are otherwise emancipated. Campbell v. Campbell, 200 S.C. 67, 20 S.E.2d 237 (1942), Parker v. Parker, 230 S.C. 28, 94 S.E.2d 12 (1956).

Statutes are not presumed to make any alterations in the common law further than is expressly declared. The rules of the common law are not to be changed by doubtful implication, nor overturned except by clear and unambiguous language. Smith v. Todd, 155 S.C. 323, 152 S.E. 506 (1930). There is nothing in § 14–21–810(b)(4) which indicates an intention on the part of the legislature to change the common law. Rather, the statute seems to be a restatement of the common law.

***2** Where the language of the statute gives rise to doubt or uncertainty as to the legislative intent, the search for that intent may range beyond the borders of the statute itself; for it must be gathered from a reading of the statute as a whole in light of the circumstances and conditions existing at the time of the enactment. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). At the time of the enactment of § 14–21–810(b)(4), the age of majority in South Carolina was twenty-one. It is arguable that the legislature was using the words 'twenty-one years of age' to mean termination of minority, and there is a strong indication that this was the legislature's intention in the fact that the same code section goes on to state that in the case of a handicapped child, the court may order support 'beyond the child's minority.' Had the intention of the legislature been to make the support obligation run to age twenty-one regardless of the age of termination of minority, then the word 'minority' would not have been used in the latter part of the statute.

An ambiguous statute should not be construed literally if such construction would produce an absurd result. Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976). A literal construction of § 14–21–810(b)(4) would mean that non-handicapped children are entitled to support from their parents until their twenty-first birthday, while handicapped children are entitled to support from their parents only until their eighteenth birthday except where there is a court order extending the obligation past minority. This is clearly absurd.

A further rule of construction which is helpful in resolving the question presented is the 'last legislative expression' rule. That rule, recognized in this state in the case of Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1945), states that where it is impossible to harmonize two sections of a statute, the subsequent provision of the statute should prevail over the prior one, the latter being the last in point of time or order of arrangement. In § 14–21–310(b)(4), the use of the words 'twenty-one years of age' and later 'beyond the child's minority' as ages for termination of support create an inconsistency which is resolved under the above stated rule by using the last term in order of arrangement, 'beyond the child's minority,' as the intended age for termination of the support obligation.

CONCLUSION:

A parent's legal obligation to support his non-handicapped child does not extend beyond that child's minority.

Nan L. Black
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