1983 S.C. Op. Atty. Gen. 156 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-93, 1983 WL 142762

Office of the Attorney General

State of South Carolina
Opinion No. 83-93
December 7, 1983

***1** Honorable Joseph W. Board
Judge
Family Court
Post Office Box 777
Pickens, South Carolina 29671

Dear Judge Board:
Several questions have been presented to this office by various Family Court Judges. The responses herein are provided to you as President of the Family Court Council.

I.

Are Family Court records of abuse cases confidential?

This office concludes that Family Court records pertaining to child abuse are confidential. The Family Court's jurisdiction to entertain child abuse cases is primarily pursuant to Article 9 Chapter 7 of Title 20, particularly § 20–7–736, CODE OF LAWS OF SOUTH CAROLINA, 1876 (1982 Cum.Supp.). Jurisdiction in child abuse matters may also be maintained pursuant to § 20–7–400(A), CODE OF LAWS OF SOUTH CAROLINA, 1976 (1982 Cum.Supp.). Nonetheless, without regard to the particular provision authorizing jurisdiction of child abuse matters in the Family Court, it is clear that the court maintains jurisdiction over such matters relative to its juvenile jurisdiction.

All Family Court matters relative to the Court's juvenile jurisdiction are declared confidential by § 20–7–780, CODE OF LAWS OF SOUTH CAROLINA, 1976 (1982 Cum.Supp.). This provision provides, inter alia, that '[t]he official juvenile records of the court . . . shall be open to inspection only by consent of the judge to persons having a legitimate interest . . ..' To further insure confidentiality, hearings held pursuant to the juvenile jurisdiction of the court are closed to the general public. § 20–7–755.

The maintenance of confidentiality of child abuse proceedings in the Family Court is consistent with all respects with the legislative intent to ensure the confidentiality of reports of child abuse made pursuant to Article 7, Chapter 7, Title 20 of the amended Code. § 20–7–690, CODE OF LAWS OF SOUTH CAROLINA, 1976 (1982 Cum.Supp.). Subsection (B) of said section appears to impress the reports of child abuse with confidentiality regardless of whether the reports, or any information contained therein, are maintained by the Department of Social Services or some other entity. In addition, this confidentiality provision is specifically made applicable to records maintained by the Family Court. § 20–7–1360(D), CODE OF LAWS OF SOUTH CAROLINA, 1976 (1982 Cum.Supp.). Thus, § 20–7–690 appears applicable as well to child abuse records maintained in the Family Court.

II.

Will the Attorney General's Office represent an employee of the Department of Social Services if such employee is cited with contempt by the Family Court, or will the Attorney General's Office represent the Family Court in a contempt action?

At the outset it must be advised that the response to this inquiry is qualified with the realization that each situation would depend upon the particular facts therein and this office's participation would be subject to many variables. However, I will herein address one reasonable scenario that appears most probable.

***2** Pursuant to § 1–7–50, CODE OF LAWS OF SOUTH CAROLINA, 1976, the Attorney General maintains the duty when requested in writing by a public employee or officer to appear and defend such person in any civil or criminal action. Section 1–7–60 of the Code requires this office to conduct an investigation to determine prior to representation whether the officer or employee was acting in good faith, without malice and in the course of his employment. Therefore, dependent on the factual circumstances, and the outcome of the investigation, this office most probably will represent an employee of DSS in a contempt proceeding. In most situations wherein a DSS employee would be cited for contempt in the Family Court for violation of a Family Court order, the contempt citation would be punitive in nature and, therefore, the contempt action would be characterized as a criminal contempt proceeding. See Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982), for discussion of the distinctions between criminal and civil contempt.

Section 20–7–1470, CODE OF LAWS OF SOUTH CAROLINA, 1976, (1982 Cum.Supp.) places the responsibility of all prosecutorial functions and duties in the Family Court upon the Circuit Solicitor. Our State Supreme Court has on two occasions held that there is no inherent conflict of interest or unethical duty imposed on the Attorney General wherein he is called upon to defend a public employee or officer pursuant to § 1–7–50 in a criminal proceeding and his position as chief prosecuting officer of the State. Langford v. McLeod, 269 S.C. 466, 238 S.E.2d 161 (1977); State of South Carolina, etc., et al. v. Snipes, et al., 266 S.C. 415, 223 S.E.2d 853 (1976). However in a situation wherein this office undertook representation of a public employee or official cited in contempt it is likely that this office would defer to the solicitor for prosecution of that contempt in light of § 20–7–1470.

III.

May a Sheriff or a Deputy Sheriff arrest an individual for violation of a Family Court order where the Sheriff or Deputy Sheriff has probable cause that the individual is or has been violating the Family Court order?

It is the opinion of this office that absent a statute making a violation of a Family Court order a crime [either a misdemeanor or a felony] that a Sheriff may not arrest without some process an individual for violation of a Family Court order. [1]

It is clear that willful disobedience of a Family Court order constitutes contempt of the Family Court. Edwards v. Edwards, 254 S.C. 466, 176 S.E.2d 123 (1970); Hornsby v. Hornsby, 187 S.C. 463, 198 S.E. 29 (1938). Willful violations of a court order may constitute either criminal or civil contempt, depending primarily upon whether the court opts to impose a punitive or remedial sanction respectively. Curlee v. Howle, supra. If the contemptuous conduct is treated as criminal contempt as opposed to civil contempt by the court, the contemptuous conduct is considered a specific criminal offense in South Carolina. Long v. McMillan, 226 S.C. 598, 86 S.E.2d 477 (1955); State v. Johnson, 249 S.C. 1, 152 S.E.2d 669 (1967). However on the other hand, contempt is unique, and deemed ‘sui generis, neither exclusively a criminal procedure, nor solely a civil process.’ 17 AM.JUR.2d ‘Contempt’, § 77, p. 71; Blackmer v. U.S., 284 U.S. 421, 76 L.Ed. 375, 52 S.Ct. 52. Thus, the procedural rules governing contempts are likewise unique, although similar in some respects to the civil and criminal procedures followed in the courts.

***3** The power to punish for contempt is inherent in all courts. McLeod v. Hite, 272 S.C. 303, 251 S.E.2d 746 (1979); State v. Goff, 228 S.C. 17, 88 S.E.2d 788 (1955). Section 20–7–1350, CODE OF LAWS OF SOUTH CAROLINA, 1976 (1982) Cum.Supp.) codifies at least to some extent, the contempt authority of the Family Court. This provision, however, does little more than define a violation of a Family Court order as contempt and authorizes a specific sanction. Importantly, § 20–7–1350 does not make a violation of a Family Court order a statutory crime. Thus, the procedural rules relative to the prosecution of contempts control, rather than the rules of criminal procedures.

There is but a single procedure recognized in South Carolina to redress a constructive contempt.[2] A contempt should be initiated by the issuance of a rule to show cause which must be based upon an affidavit or verified petition sufficient to warrant the issuance of such order. State v. Johnson, supra; State v. Nathans, 27 S.E. 57 (1897); Hornsby v. Hornsby, 187 S.C. 463, 198 S.E. 29 (1938). The initiation of a prosecution to redress a constructive contempt in any other manner would appear to be without authority.[3]

In Hornsby v. Hornsby, supra, at 31, the South Carolina Supreme Court addressed 'whether a court may issue an order directing the Sheriff to commit a party to jail on the certificate of an attorney, or may commit a party in contempt without a rule to show cause or an affidavit to support such a rule.' The court held that '[t]his was not the correct procedure.' Commitment to jail for constructive contempt, such as the violation of a court order, without prior notice and a right to be heard may violate as well the due process clause of the Fourteenth Amendment.[4] Petition of Greene, 369 U.S. 689, 8 L.Ed.2d 198, 82 S.Ct. 1114 (1962).

While cases in other jurisdictions relative to this inquiry are rare, the few identified conclude likewise that an order which directs a law enforcement officer to imprison an individual upon a violation of a court order, where the contemptuous conduct occurs sometime in the future, is defective. In Strauser v. Strauser, (Fla.) 303 So.2d 663 (1974) the Florida Supreme Court held that a Family Court order of contempt which operated prospectively violated due process. The order under scrutiny by the Court directed the Sheriff to imprison an individual if he became delinquent in support payments.

The Alabama Supreme Court has concluded similarly that a provision in an injunction that directs, prospectively, that a violator of the injunction shall be detained is contrary to due process. Jim Walter Resources, Inc. v. Local Union No. 12014, etc., et al., (Ala.) 356 So.2d 640 (1978). In addition, a warrantless arrest of a violator of a court ordered injunction committed in the presence of an officer was determined to be invalid. International Brotherhood of Electrical Workers v. Davis Construction And Engineers, Inc., (Ala.) 334 So.2d 892 (1976). The Alabama court noted therein that due process is not satisfied if alleged contemnors are advised of the charges against them after they have been arrested without process. The court noted that Alabama cases have long required that actions for indirect contempt be initiated by a rule nisi or an arrest warrant.[5] At 896. See also, Altemose Construction Co. v. Building and Construction Trades Council, 449 Penn. 194, 296 A.2d 504 (1972); but compare, State v. United Mine Workers of America, (Oh.) 110 N.E.2d 162 (1952).

***4** This office will continue to keep you advised of opinions issued at the request of the Family Court Judges. Please call upon us if we may be of further assistance.
Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

1 This conclusion does not interfere with the authority of Sheriffs and Deputy Sheriffs to make warrantless arrests for violations of the criminal laws of this State that may be attendant to violations of a Family Court order. See, e.g., § 17–30–30, CODE OF LAWS OF SOUTH CAROLINA, 1976.

2 A violation of a court order generally constitutes constructive contempt, 'that is, the alleged contemptuous conduct did not occur in the presence of the court.' State v. Johnson, supra at 672.

3 However, there is at least some authority to the contrary. In the Federal system, it has been held that contempt proceedings may be initiated by indictment, United States v. Leyva, 513 F.2d 774 (5th Cir. 1976); United States v. Avery, 447 F.2d 978 (4th Cir. 1981), and thus, a warrantless arrest for contemptuous conduct committed in the presence of an officer may be made. See, United States v. Williams, 622 F.2d 830 (5th Cir. 1980); 18 U.S.C.A. § 401 (1966). Although in South Carolina it has been held that contempt is an offense against the State, State v. Nathans, 49 S.C. 199, 27 S.E. 52 (1897), South Carolina has not heretofore recognized that contempt may be initiated in any manner other than that heretofore identified. Thus, while there are similarities in the characterization of contempt in the federal and South Carolina systems, it is doubtful that South Carolina would follow the federal provisions for initiating a contempt.

See also, Rule 53, Family Court Rules of Practice.

4 But see, Gerstein v. Pugh, 420 U.S. 103 (1974)

5 § 20–7–880 of the amended code authorizes, inter alia, the Family Court of this State to issue an arrest warrant wherein the Judge has determined that a rule to show cause cannot be served, or that respondent is likely to leave the jurisdiction.

1983 S.C. Op. Atty. Gen. 156 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-93, 1983 WL 142762

End of Document