1983 S.C. Op. Atty. Gen. 72 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-50, 1983 WL 142721

Office of the Attorney General

State of South Carolina
Opinion No. 83-50
July 26, 1983

***1 Re: Commitment of Children by the Family Court**

Charles D. Barnett, Ph.D.
Commissioner
South Carolina State Department of Mental Retardation
Post Office Box 4706
Columbia, South Carolina 29240

Dear Dr. Barnett:
You have inquired whether the Family Court must follow the procedure of Title 44, Chapter 21 of the Code of Laws of South Carolina, (1976), in the commitment of a child to the Department of Mental Retardation. This office has previously concluded that the Family Court possesses concurrent jurisdiction with the Probate Court over the commitment of mentally retarded children to the Department of Mental Retardation in accordance with the statutory procedures pertaining to the Department of Mental Retardation. 1980 Op.Atty.Gen. No. 96, at p. 150. The conclusion reached therein that the commitment must be in accordance with the statutes pertaining to the Department of Mental Retardation is reaffirmed.

Axiomatic in construing statutory language is that the intent of the Legislature must prevail if it may be reasonably ascertained. In determining legislative intent, it is presumed that the Legislature is familiar with prior legislation on the subject, Belle v. South Carolina State Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944), and, thus, all legislation pertaining to a particular subject matter should be considered in giving its appropriate effect. Hartford Accident & Indemnity Company v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979).

That the Family Court maintains jurisdiction to entertain a petition for the commitment of a mentally retarded child is without doubt. [1] Likewise, the Family Court may assume jurisdiction over a child pursuant to Section 20–7–400(A)(1) or (A)(3) i.e., where the child is delinquent or neglected, etc. and in the course of its proceedings involving the child, determine that disposition to the Department of Mental Retardation may be advisable. Moreover, the Family Court's juvenile dispositional authority includes the authority to commit to an appropriate public institution. [2]

The procedures for the commitment or admission for treatment of a mentally retarded person to the Department of Mental Retardation are prescribed in Title 44, Chapter 21 of the South Carolina Code of Laws, 1976. Section 44–21–90 thereof specifies the statutory procedural safeguards intended to ensure the fairness and adequacy of any decision to involuntary commit a mentally retarded individual to the Department. In addition, Sections 44–21–40 and 44–21–50 prescribe considerations requisite to commitment or admission. Importantly, Section 44–21–60 places final authority for the commitment decision in the State Commissioner of Mental Retardation. These Provisions are intended to ensure that the Department's finite resources are best used for the most effective service to the public. These provisions additionally ensure that those persons committed are appropriately in need of the services of the Department and require the State's involvement through an involuntary commitment.

***2** A review of Title 44, Chapter 21 and the Children's Code reveals a harmonious construction given all related provisions their intended effect. No indication exists that the Legislature intended that the Family Court be authorized to commit a retarded child to the Department of Mental Retardation in a manner not prescribed by Title 41, Chapter 21. On the contrary, a fair

reading of the Family Court's statutory powers, together with Title 44, Chapter 21, suggests otherwise. First, Section 44–21–90 recognizes that the filing of the commitment petition may be in the Family Court. This is consistent in all respects with Section 20–7–400. Moreover, the Family Court's enabling authority and its dispositional statutes do not prescribe the procedures to determine whether a child is retarded and whether commitment of a mentally retarded child to the Department of Mental Retardation is proper. Thus, adherence to the commitment and admission procedures in Title 41, Chapter 21 is consistent with the Family Court's maintenance of jurisdiction and authority to commit a mentally retarded child to the Department of Mental Retardation. [3]

Construing Title 41, Chapter 21 in conjunction with the Family Court's dispositional powers [Section 20–7–1330] is consistent in all respects with the prior opinions of this State's Supreme Court. The Supreme Court has recognized on several occasions that Section 20–7–1330 is not a plenary grant of dispositional authority, but is constrained by other enactments of the General Assembly relating to the particular authority of various public agencies.

In State v. Robinson, 272 S.C. 180, 249 S.E.2d 907 (1978), the court noted that the Family Court, despite its jurisdiction over juveniles and its dispositional authority, lacks the authority to alter a juvenile's status after he has been conditionally released from the Department of Youth Services. The Court recognized the explicit authority vested in the Board of Juvenile Placement and Aftercare [currently designated as the Board of Juvenile Parole], pursuant to Section 24–15–380 of the 1976 Code [currently Sections 20–7–2125 and 20–7–2135 of the 1976 Code (1982 Cum.Supp.)] to determine the violations of the conditions of parole or conditional release. Likewise, in the situation herein, the Commissioner of the Department of Mental Retardation maintains final authority over admissions and commitments to the Department of Mental Retardation. Section 44–21–60, CODE OF LAWS OF SOUTH CAROLINA, 1976. The Family Court's authority to commit a mentally retarded child is subject to the Commissioner's authority.

In Ex Parte South Carolina Department of Social Services, 266 S.C. 435, 223 S.E.2d 861 (1976), the court noted that the Family Court could not compel the South Carolina Department of Social Services to expend its public funds in an unauthorized manner. This decision represents a recognition by the court that the Family Court's dispositional authority, while very broad, does not permit it to order a State agency to perform an unauthorized function. To compel the Department of Mental Retardation to involuntarily detain a child not determined to be mentally retarded or suitable for commitment pursuant to Title 44, Chapter 21 would require the Department to exceed its statutory authority and jurisdiction.

***3** At least two other jurisdictions have reviewed the precise issue presented herein. The Arizona Court of Appeals In The Matter of Maricopa County, 15 Ariz.App. 536, 489 P.2d 1238 (1971) concluded that the Arizona Juvenile Courts must comply with the commitment statutes relative to the Department of Mental Retardation when committing a mentally retarded child. The Juvenile Court in Arizona maintains an authority similar to that here to commit to the public agencies, including the Arizona Department of Mental Retardation. However, the Court therein noted that adjudication of delinquency and a finding of mental retardation was insufficient since the statutes applicable to the Department of Mental Retardation must be followed. The Arizona Mental Retardation Act required conditions similar to those in Title 44, Chapter 21, particularly as to the availability of bed space. A similar result was reached by the California Supreme Court In Re Michael E., 123 Cal.Rptr. 103, 538 P.2d 231 (1975).

Lastly, to construe the Family Court's authority to commit to public agencies otherwise creates a manifest incongruity. The Family Court's dispositional authority must be construed as being constrained by the statutory authority of the applicable public agency. To suggest otherwise would create inappropriate dispositions and would ignore the General Assembly's mandated jurisdiction of particular departments. Here, a commitment by the Family Court which ignores the procedures and conditions mandated by Title 44, Chapter 21 likewise may result in a very inappropriate placement.

In summary, while it is clear that the Family Court may commit a mentally retarded child to the Department of Mental Retardation for treatment, such determination of mental retardation and the resulting commitment must be in accord with the statutory procedures and conditions prescribed in Title 44, Chapter 21.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

1 Section 20–7–400(A)(2), CODE OF LAWS OF SOUTH CAROLINA, 1976 (1982 Cum.Supp.); 1980 Op.Atty.Gen., supra.

2 Section 20–7–1330(b) and (d), CODE OF LAWS OF SOUTH CAROLINA, 1976 (1982 Cum.Supp.).

3 Further, to construe Section 20–7–1330 as permitting involuntary commitment of a minor child without following prescribed procedures may violate the due process clause. See, i.e., Parham v. J.R., 442 U.S. 584, 61 L.Ed.2d 101, 99 S.Ct. 2493 (1979); Jackson v. Indiana, 402 U.S. 715, 33 L.Ed.2d 435, 92 S.Ct. 1845 (1972).

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