

1980 S.C. Op. Atty. Gen. 48 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-23, 1980 WL 81907

Office of the Attorney General

State of South Carolina

Opinion No. 80-23

FEBRUARY 22, 1980

***1 SUBJECT: Family Courts, jurisdiction of; Courts of limited jurisdiction generally.**

(1) 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.

(2) The Family Courts of South Carolina have no jurisdiction to order judicial sales of real property incident to divorce cases.

TO: Honorable David H. Maring
Chief Judge
Family Court
Fifteenth Judicial Circuit

QUESTIONS:

(1) Does the Family Court have the authority to order real estate sold at public sale under § 14-21-1020, when both husband and wife hold joint legal titles?

(2) If the answer to the above question is yes, who should the Court order to sell the property?

STATUTES CITED:

§ 14-21-10 et seq., [SOUTH CAROLINA CODE OF LAWS](#) (1976); § 31-51.1 et seq., [CODE](#) (1952).

CASES CITED:

[McCullough v. McCullough](#), 242 S.C. 108, 130, S.E.2d 77 (1963); [Richland County Department of Public Welfare v. Mickens](#), 246 S.C. 113, 142 S.E.2d 737 (1965).

OTHER MATERIALS CITED:

[Constitution of the State of South Carolina](#), Article V, § 1; [Corpus Juris Secundum](#), 'Courts', § 244, 249; [American Jurisprudence](#), 'Courts', § 169.

DISCUSSION:

The Family Courts were created by § 14-21-10 et seq., [SOUTH CAROLINA CODE OF LAWS](#) (1976), pursuant to [Article V, § 1 of the Constitution of the State of South Carolina](#). As a statutory entity, the Court may exercise only those powers which were specifically conferred by statute or such other powers that are implicit from the statute as being incidentally necessary to the execution of the powers so conferred. [McCullough v. McCullough](#), 242 S.C. 108, 130 S.E.2d 77 (1963); [Richland County](#)

Department of Public Welfare v. Mickens, 246 S.C. 133, 142 S.E.2d 737 (1965), Corpus Juris Secundum, 'Courts', § 244, 249. The task at hand, then, is to examine the statute for the requisite grant of jurisdiction.

A recent amendment to § 14–21–1020 confers jurisdiction upon the Family Court to settle questions concerning real property incident to divorce cases. The statute states, in pertinent part,:

‘. . . (1) For divorce a vinculo matrimonii and a mensa et thoro and for settlement of all legal and equitable rights of the parties in such actions in and to the real and personal property of the marriage, if prayed for in the pleadings thereto.’

Nowhere in the statute is there found a specific grant of authority to order judicial sales. Therefore, it is necessary to determine whether or not the power to order a judicial sale is incidentally necessary to the exercise of the Court's jurisdiction in settling questions regarding realty.

The South Carolina Supreme Court used this approach in the Mickens case, which involved the termination of parental rights by the Richland County Family Court purportedly pursuant to § 31–51.1 et seq., SOUTH CAROLINA CODE OF LAWS (1952). The Court found that no express grant of jurisdiction was to be found in the statute. Counsel for Respondent argued that the power to termination parental rights was incidentally necessary for the Court to exercise its expressly granted jurisdiction in adoption cases. Under the particular facts of that case, the Supreme Court found that the authority to terminate parental rights in the manner requested by the Plaintiff was not incidentally necessary for the Court to exercise its statutorily conferred jurisdiction over adoption cases.

*2 In the McCullough case the Juvenile and Domestic Relations Court of Lexington County sought to entertain an action for the support of legitimate children. There was no prayer for a divorce, the only issues before the Court being alimony and child support. The Supreme Court interpreted the statute as having expressly conferred no jurisdiction to hear such cases. Citing 14 Am. Jur. 369, 'Courts', § 169, the Court also considered whether or not the authority to hear such cases was incidentally necessary to the execution of powers which were expressly conferred by the statute. This question was decided in the negative. The Court went on to say:

‘In view of the other jurisdictional powers expressly granted to this particular Court by statute, it may very well be that the failure to grant jurisdiction to the said Court in a case of this kind was an error of omission or oversight, but it is not within the power or duty of this or any other Court to supply the omission.’

Applying the reasoning behind Mickens and McCullough to the problem at hand, it is clear that some implicit grant of authority must be found in the statute before the Family Court may be said to have jurisdiction to order judicial sales. In order to find this grant it must be determined that such authority is incidentally necessary for the exercise of the statutory granted jurisdiction to settle questions of realty in divorce cases.

The Family Court unquestionably has the authority to order the equitable settlement of questions of realty in divorce cases. Such authority is expressly granted in the statute. The Court has the discretionary power to order the parties to make conveyances and to take other measures regarding the realty in order to reach equitable results in domestic cases. This authority is incidentally necessary for the exercise of the Court's jurisdiction over matters of realty. Such is not the case with the authority to order judicial sales of the same type of property. The Court's jurisdiction may be satisfactorily exercised without the power to order judicial sales. In the event that the Court's orders regarding realty are not obeyed, the Court may resort to its contempt powers to ensure itself of the ability to exercise satisfactorily its statutorily granted jurisdiction.

CONCLUSION:

Being statutorily created Courts of limited jurisdiction, the Family Courts of South Carolina have only that jurisdiction which is expressly or implicitly conferred by the creating statute. It is the opinion of this office that § 14–21–1020 contains neither

an express nor an implied grant of jurisdiction to order realty sold by judicial sale incident to divorce cases. Having answered your first question in the negative, it will not be necessary to address your second question.

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