

1979 WL 42860 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 13, 1979

*1 Ms. Patricia W. Wells
Staff Assistant
Children's Foster Care
Review Board System
2221 Devine St., Suite 418
Columbia, SC 29205

Dear Ms. Wells:

You recently requested the opinion of this Office concerning the termination of parental rights, pursuant to § 31-61 of the South Carolina Code of Laws, of a mother who left her children for over a year with no verbal or written contact with the children.

Statutory authority prescribes the conditions for termination of parental rights in this State. § 31-61 of the 1962 South Carolina Code of Laws, which you cite, has been repealed. What is commonly referred to as the abandonment statute has been codified in § 20-11-10 through § 20-11-60 of the 1976 South Carolina Code of Laws. Chapter 11 provides for the termination of parental rights and establishes the procedure for such termination.

When a child is voluntarily abandoned for a period in excess of six months, . . . , the agency may petition a court of competent jurisdiction in the county in which the child resides for an order determining whether or not the child has been abandoned or severely abused. § 20-11-30 of the 1976 Code.

This Section was amended, effective August 2, 1978, authorizing any interested party to petition for such an order. 1978 Act No. 634. The major difference between the statute you cite and the current abandonment statute is that the period of abandonment has been reduced from one year to six months. The abandonment must have been for six consecutive months immediately preceding the action for termination of parental rights. § 20-11-20 describes an abandoned child as, '[a] child whose parents have willfully failed to visit or have willfully failed to support or make payments toward his support for six consecutive months immediately preceding institution of an action or proceeding to declare the child to be an abandoned child.'

The South Carolina Supreme Court has stated that the question of what constitutes abandonment is to be determined on a case by case basis. Since we are not apprised of all the facts in the situation you describe and in view of the wide discretion allowed to judges, it would be impossible to conclude that you would prevail in an action for termination of parental rights. However, you should look at the facts and circumstances of your situation in light of the following legal considerations:

- 1) The burden of proof will be on you to show abandonment;
- 2) The abandonment should have been willful and not done as a result of 'dire necessity or force of circumstances';
- 3) The best interest of the child is considered as well as the rights of the parents.

You do not mention the father of the minor children. It will be necessary to join him as a party in an action for termination of parental rights.

Based on the situation you described of the mother's negligible contact with the children since 1974 coupled with her failure to support the children, it is the opinion of this Office that this fact situation is sufficient to proceed in an action for termination of parental rights.

Sincerely,

*2 Ruby E. Brice
Assistant Attorney General

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