1980 S.C. Op. Atty. Gen. 150 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-96, 1980 WL 81978

Office of the Attorney General

State of South Carolina
Opinion No. 80-96
September 10, 1980

SUBJECTS: Mental Health, Mental Retardation, Courts, Jurisdiction, Juveniles

***1** (1) The family court has no jurisdiction to commit a mentally ill person to the Department of Mental Health for treatment.

(2) The probate court has concurrent jurisdiction with the family court over the commitment of mentally retarded children to the Department of Mental Retardation, in accordance with the statutes pertaining to that Department.

TO: Dr. William S. Hall
Commissioner
Department of Mental Health

QUESTIONS:

1. What jurisdiction does § 14–21–510(A)(2), Code of Laws of South Carolina (1976), confer upon the family court?

2. Does the probate court have concurrent jurisdiction with the family court over the commitment of mentally retarded children?

AUTHORITIES:

1. Constitution and Statutes: 1868 Constitution, Art. 4, § 20; §§ 14–21–415, 14–21–510(A)(2), 14–21–620, 14–21–640, 14–21–810(b)(13) 14–23–240, 14–23–1150, 44–21–30(4), 44–21–90, 44–23–10, 44–23–240, 44–23–410, 44–25–20, Code of Laws of South Carolina (1976), as amended; Title 44, Ch. 17 Code of Laws of South Carolina (1976); §§ 15–444, 15–1101 through 15–1276, 15–1281.6, 15–1291.6, 15–1301.6, 15–1311.5, 15–1351 through 15–1428, 32–911(2) and (15), 32–931(2), 32–958, 32–982, 32–1061, 32–1083, Code of Laws of South Carolina (1962), as amended; § 208, Code of Laws of South Carolina (1952), § 208, Code of Laws of South Carolina (1942); Act 690 of 1976; Act 1158 of 1974; Act 1070 of 1970; Act 1195 of 1968; Act 228 of 1967; Act 322 of 1965; Act 863 of 1964; Act 314 of 1963; Act 188 of 1959; Act 744 of 1954; Act 836 of 1952; Act 422 of 1944; Act 136 of 1941; Act 189 of 1939; Act 809 of 1936; Act 173 of 1927; Act 148 of 1923; Act 398 of 1918; Act 300 of 1870.

2. Cases: Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956), Bell v. South Carolina State Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944); Cain v. South Carolina Public Service Authority, 222 S.C. 200, 72 S.E.2d 177 (1952); City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 (1953); Criterion Insurance Co. v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); Garey v. City of Myrtle Beach, 263 S.C. 247, 209 S.E.2d 893 (1974); Halderman v. Pennhurst, 446 F.Supp. 1295 (E.D.Pa. 1977); Hartford Accident & Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979); North Carolina Association for Retarded Children v. State of North Carolina, 420 F.Supp. 451 (M.D.N.C. 1976); Richland County Department of Public Welfare v. Mickens, 246 S.C. 113, 142 S.E.2d 737; Ruby v. Massey, 452 F.Supp. 361 (D.Conn. 1978); Tiger v. Western Investment Co., 221 U.S. 286, 51 S.Ct. 578, 55 L.Ed. 738 (1911); U.S. v. Hansel, 474 F.2d 1120 (8th Cir. 1973).

3. References: Mason & Menolascino. 'The Right to Treatment for Mentally Retarded Citizens: An Evolving Legal and Scientific Interface', 10 Creighton L.Rev. 124 (1976); Murdock, 'Civil Rights of the Mentally Retarded—Some Critical Issues', 7 Fam. L.Q. 1 (1973); 2A Sutherland Statutory Construction §§ 45.10, 46.06, 51.01–.08 (4th ed Sands 1973).

DISCUSSION:

***2** 1. Section 14–21–510(A)(2), Code of Laws of South Carolina (1976), states:
Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action . . . For the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child. Provided, that nothing herein is intended to conflict with the authority of probate courts in dealing with mental cases.

This is the only statutory or constitutional provision that might imply that the family court is given jurisdiction to commit the mentally ill. [1] It is the opinion of this office that the General Assembly intended, by enacting this section, to grant jurisdiction to the family court over commitment of the mentally retarded to institutions under the aegis of the Department of Mental Retardation; the General Assembly intended that jurisdiction over the commitment of the mentally ill would remain in the probate court.

This opinion is reached by considering the usual meaning of the words in § 14–21–510(A)(2) and by considering prior [2] and subsequent [3] legislation on the commitment and treatment of the mentally ill and mentally retarded. Legislation considered includes that on the jurisdictions of the family and probate courts and that on the historical authorities of the Department of Mental Health and the Department of Mental Retardation.

Section 14–21–510(A)(2) was enacted as part of the Family Court Act of 1968 (Act 1195, 1968 Acts), effective May 22, 1968. The first sentence in the quotation above is a grant of jurisdiction to the family court. The second sentence is a proviso, which limits or qualifies the first sentence: "The natural and appropriate office of a proviso is to modify the operation of that part of the statute immediately preceding the proviso, or to restrain or qualify the generality of the language that it follows." Cain v. South Carolina Public Service Authority, 222 S.C. 200, 72 S.E.2d 177, 183 (1952) (citation omitted). The proviso should be given effect and presumed to have meaning under the rule that all words and clauses of a statute are to be given effect if possible. See 2A Sutherland Statutory Construction § 46.06 (4th ed. Sands 1973).

Thus it is presumed that the probate court's authority over 'mental cases' must refer to a different class of cases than that referred to by 'mentally defective or mentally disordered or emotionally disturbed'. Otherwise, the proviso would completely wipe out the preceding grant of jurisdiction.

What is the meaning of 'mentally defective or mentally disordered or emotionally disturbed'? 'Mentally defective' is generally synonymous with 'mentally deficient' and 'mentally retarded', and all these terms are contrasted in law with 'mentally ill'. U.S. v. Hansel, 474 F.2d 1120 (8th Cir. 1973); North Carolina Association for Retarded Children v. State of North Carolina, 420 F.Supp. 451 (M. D. N. C. 1976); Ruby v. Massey, 452 F.Supp. 361 (D. Conn. 1978); Halderman v. Pennhurst, 446 F.Supp. 1295 (E.D. Pa. 1977) (affirmed in part, reversed in part, 612 F.2d 84); § 32–911(2), Code of Laws of South Carolina (1962) as amended by Act 322, 1965 Acts (in force in 1968). [4]

***3** The terms 'mentally disordered' and 'emotionally disturbed' are more difficult to define. The Code does not contain a definition of either. However, 'state training schools', which were for the mentally retarded, had among their purposes the care of the 'emotionally disturbed'. See § 32–911(15), Code of Laws of South Carolina (1962); § 32–931(2), Code of Laws of South Carolina (1962); Act 136, 1941 Acts. There is no suggestion in the statutes that these schools were for the mentally ill.

That the terms 'mentally deficient, mentally disordered and emotionally disturbed' are meant to exclude the 'mentally ill' is reinforced by the legislative history of the terms. The Family Court Act took the terms from Act 744, 1954 Acts, which created the Juvenile and Domestic Relations Court of Greenville County. The relevant jurisdictional provision in that act, codified as part of § 15–1281.6, Code of Laws of South Carolina (1962), is: '[T]he court shall have exclusive original jurisdiction and

shall be the sole agency for initiating action concerning any child living or found within the county . . . who, because of a mentally defective, mentally disordered or emotionally disturbed condition, is in need of treatment or commitment.' The same language is found in the statutes dealing with the juvenile and domestic relations courts of several other counties. See §§ 15–1291.6, 15–1301.6, 15–1311.5, Code of Laws of South Carolina (1962). Act 744 of the 1954 Acts repealed all the previous acts on the Children's Court for Greenville County (Act 173, 1927 Acts; Act 189, 1939 Acts; Act 422, 1944 Acts). The repealed jurisdictional provision had given the Children's Court jurisdiction over a whole range of disorders:
[The court] shall have jurisdiction . . . of any case of a child . . . Who is dependent upon public support, or who is destitute, homeless or abandoned, or whose custody is subject to controversy, or who is insane or feeble minded or idiotic or epileptic or so far mentally deficient as to be unable to exercise proper control over his own affairs, or whose mind is so deranged or impaired as to endanger the health, person or property of himself or others. (emphasis added).

§ 1, Act 173, 1927 Acts.
The emphasized language is left out of Act 744 of the 1954 Acts. Therefore the Family Court Act, in picking up the language of Act 744 of the 1954 Acts, was incorporating that act's repeal of previous legislation and was further recognizing the jurisdiction of several courts that had been in effect for fourteen (14) years as of 1968.

The view that the proviso refers to the 'mentally ill' is further supported by the jurisdiction of the probate court, both before and after 1968. That jurisdiction has traditionally been over both the mentally ill and the mentally retarded. See § 14–23–1150(e), Code of Laws of South Carolina (1979 Cum.Supp.); § 15–444, Code of Laws of South Carolina (1962); §§ 32–958, 32–982, Code of Laws of South Carolina (1962) § 208, Code of Laws of South Carolina (1952); § 208, Code of Laws of South Carolina (1942); Act 300 (§§ 38, 72), 1870 Acts; 1868 Constitution, Art. 4, § 20. Again, assuming that the proviso and the preceding sentence refer to different things, the proviso must refer to the mentally ill.

***4** The family court and its predecessors (children's courts, juvenile and domestic relations courts), on the other hand, have traditionally emphasized jurisdiction over the mentally retarded rather than the mentally ill. See, for instance, Act 809, 1936 Acts, the 'Domestic Relations Court Act' (codified, as amended, at §§ 15–1101 through 15–1276, Code of Laws of South Carolina (1962)). This act granted the court jurisdiction to commit 'mentally defective' children only; the act does not mention the 'insane', or 'mentally ill', or 'deranged'. See also the discussion of the Juvenile and Domestic Relations Court of Greenville County, supra.

One set of courts did however have jurisdiction over the mentally ill—the children's courts created by Act 148, 1923 Acts. (see §§ 15–1351 through 15–1428, Code of Laws of South Carolina (1962)). These courts were, though, a division of the probate court and a probate judge presided. Although a precursor of the family court, the children's court was still part of the probate court and thus its jurisdiction over the mentally ill is in part explainable by that fact.

The interpretation of § 14–21–510(A)(2) expressed herein is further supported by the authorities of the Department of Mental Health and the Department of Mental Retardation, both before and after 1968.

Until 1967 the Department of Mental Health and its predecessors (Mental Health Commission, State Hospital) had authority in the areas of both the mentally ill and mentally retarded. See Act 863, 1964 Acts; Act 836, 1952 Acts; Act 398, 1918 Acts. In 1967 the authority of the Department of Mental Health in the area of the mentally retarded, and authority over all the institutions for the mentally retarded, was given to the Department of Mental Retardation. Act 228, 1967 Acts. Since that time the Department of Mental Health has had exclusive authority over the mentally ill; the Department of Mental Retardation has had exclusive authority over the mentally retarded.

The Code specifically mentions the probate court and the Department of Mental Health (or Mental Health Commission) in connection with the commitment of the mentally ill. See Title 32, Ch. 4, Code of Laws of South Carolina (1962); Title 44, Ch. 17, Code of Laws of South Carolina (1976). Commitment of the mentally ill is expressly stated to be by the probate court to

the Department of Mental Health, or to an institution licensed by the Department of Mental Health. Id. Yet the family court is not mentioned in the Code in connection with the Department of Mental Health.

The family court is however expressly given jurisdiction over the commitment of the mentally retarded to the Department of Mental Retardation. § 44–21–90, Code of Laws of South Carolina (1976) (from Act 1070, 1970 Acts). [5] The probate court is also given jurisdiction. Id. Therefore the family court is linked more clearly in the Code with the Department of Mental Retardation than with the Department of Mental Health. As previously stated, and to conclude this part of the discussion, it is the opinion of this office that § 14–21–510(A)(2) grants the family court jurisdiction to commit mentally retarded children to the Department of Mental Retardation.

***5** 2. A secondary question arises from the above conclusion: whether the probate court has concurrent jurisdiction over the commitment of mentally retarded children. The question arises because of the apparent conflict between the phrases, 'exclusive original jurisdiction' and 'sole court for initiating action', in § 14–21–510(A)(2), and the language of § 14–23–1150, Code of Laws of South Carolina (1979 Cum.Supp.) especially the following: 'Every judge of probate, in his county, shall have jurisdiction: . . . To inquire into and adjudge, in such proceedings as may be authorized by law, the involuntary commitment of persons suffering from mental illness, mental retardation . . .'. § 14–23–1150(e). This section also gives the probate court jurisdiction to 'appoint and remove guardians of minors and committees of persons mentally incompetent . . .'. § 14–23–1150(b). [6] The section was enacted as part of the Judicial Reform Act, Act 690 of 1976.

Section 14–23–1150 is in irreconcilable conflict with, and was enacted subsequent to, § 14–21–510(A)(2). Therefore the later legislation should prevail and the language of 'exclusive original jurisdiction' and 'sole court for initiating action' should be considered repealed insofar as it pertains to the commitment of the mentally retarded. See Garey v. City of Myrtle Beach, 263 S.C. 247, 209 S.E.2d 893 (1974); City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 (1953). It would also be anomalous for the probate court to have authority to appoint a committee for a mentally retarded child (see § 14–23–1150[b]), yet not be able to commit that child to an institution

CONCLUSION:

1. The family court is a court of limited jurisdiction and may only exercise that jurisdiction expressly conferred by, or necessarily implied from, statute. Richland County Department of Public Welfare v. Mickens, 246 S.C. 113, 142 S.E.2d 737 (1965). Section 14–21–510(A)(2) is ambiguous and should not be interpreted to extend the jurisdiction of the family court to the commitment of the mentally ill. It is the opinion of this office that the family court does not have jurisdiction to commit for treatment a mentally ill person to the Department of Mental Health.

2. It is also the opinion of this office that the probate court has concurrent jurisdiction with the family court over the commitment of mentally retarded children to the Department of Mental Retardation, in accordance with § 44–21–90, Code of Laws of South Carolina (1976) (see note 6) and the other statutes concerning that Department.

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Footnotes

1 In this opinion, 'commitment' shall mean both voluntary and involuntary commitment. Further, 'commitment' shall mean 'commitment for treatment' unless the context otherwise requires. Other statutes that touch upon the family court's authority over the mentally ill can be explained as not necessarily granting jurisdiction over commitment of these persons. See § 14–21–620, Code of Laws of South Carolina (1976) [dispositional only; not a grant of jurisdiction]; § 14–21–810(b)(13), Code of Laws of South Carolina (1976) [applies to examination only, not to treatment]; § 14–21–640, Code of Laws of South Carolina (1976) [not a grant

of jurisdiction, but only express authority for the court to order support for a child if he is committed to custody of others than his parents for medical reasons]; § 44–23–410, Code of Laws of South Carolina (1976) [on examination for fitness to stand trial]

2 The legislature is presumed familiar with prior legislation on the same subject. Bell v. South Carolina State Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944). It is proper in construing a statute to consider legislation dealing with the same subject matter as an aid to construction. Hartford Accident & Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979); see generally 2A Sutherland Statutory Construction § 45.10, §§ 51.01–.08 (4th ed. Sands 1973).

3 'Subsequent legislation may be of service as indicating the construction given to the former by the legislature itself.' Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548, 550 (1956); see also Tiger v. Western Investment Co., 221 U.S. 286, 51 S.Ct. 578, 55 L.Ed. 738, 747 (1911). Furthermore, legislation subsequent to the enactment of § 14–21–510(A)(2) is relevant to the family court's jurisdiction at present.

4 See also § 44–25–20, Code of Laws of South Carolina (1976) [from Act 188, 1959 Acts]; § 44–21–30(4) [from Act 1070, 1970 Acts]; § 44–23–10 [from Act 1158, 1974 Acts]; § 32–911(2), Code of Laws of South Carolina (1962) [from Act 836, 1952 Acts]; § 32–1061, Code of Laws of South Carolina (1962) Act 314, 1963 Acts; Act 398, 1918 Acts; Mason & Menolascino, 'The Right to Treatment for Mentally Retarded Citizens: An Evolving Legal and Scientific Interface', 10 Creighton L.Rev. 124 (1976); Murdock, 'Civil Rights of the Mentally Retarded—Some Critical Issues', 7 Fam. L.Q. 1 (1973).

5 Before 1970, commitment to some institutions for the mentally retarded was by the probate court 'or any other court having jurisdiction'. § 32–1083, Code of Laws of South Carolina (1962); Act 314, 1963 Acts. This language might have contemplated the family or juvenile and domestic relations court. Yet there is not such language in the Code sections on the commitment of the mentally ill.

6 The conflict was also apparent when § 14–21–510(A)(2) was enacted (Act 1195, 1968 Acts), when the probate court's general jurisdictional section read: 'Every judge of probate, in his county, shall have jurisdiction in all matters testamentary and of administration, in business appertaining to minors, in the allotment of dower and in cases of mental incompetency' § 14–23–240, Code of Laws of South Carolina (1976); same as § 15–444, Code of Laws of South Carolina (1962) [from Act 836, 1952 Acts]. See also § 32–982, Code of Laws of South Carolina (1962), in force when the Family Court Act was passed.

Other sections that bear on this question are § 44 –21–90, Code of Laws of South Carolina (from Act 1070, 1970 Acts, the South Carolina Mentally Retarded Persons Act), and § 14–21–415, Code of Laws of South Carolina (1979 Cum.Supp.) [from Act 690, 1976 Acts]. Section 44–21–90 specifies the procedure for involuntary commitment of a person to the Department of Mental Retardation. The section says that the procedure may be 'initiated by the filing of a verified petition with the probate or the family court . . .'.

Section 14 –21–415, part of the Judicial Reform Act of 1976, is a general section on the jurisdiction of the family court. The section says, in part, 'Except as otherwise provided by this title, the family court shall have the same authority and jurisdiction as that contained in Chapter 21 of Title 14 of the Code of Laws of South Carolina (1976) [Act 1195, the Family Court Act of 1968]; which jurisdiction shall be exclusive to all other courts including the circuit court . . .'. This language was enacted as part of the same act in which § 14–23–1150 was enacted. The language pertaining to the probate court, being more specific than that pertaining to the family court, should prevail. See Criterion Insurance Co. v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972).

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