

1978 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-8, 1978 WL 22495

Office of the Attorney General

State of South Carolina

Opinion No. 78-8

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*1 TO: Roy R. Loyd

Chief

Division of Public Assistance

South Carolina Department of Social Services

QUESTIONS

Where a minor unmarried female has a child and is receiving Aid to Families with Dependent Children (AFDC) for herself and her child:

1) Does [Section 20–7–40, CODE OF LAWS OF SOUTH CAROLINA](#), 1976 and Section 15–1385, CODE, 1962 obligate the minor's legal parent to support her?

2) What legal rights does the minor have to assign her rights to child support for her own child?

3) Would the answer to the above questions be conditioned upon whether or not the minor and her child were living in the minor's parental home?

STATUTES AND CASES

[Sections 20–7–40](#), 59–101–70, [14–21–10](#), et. seq., 32–5–10, CODE, 1976; Section 15–1385, CODE, 1962; [Timmerman v. Brown](#) 268 S.C. 303, 233 S.E.2d 106 (1977); [Parker v. Parker](#), 230 S.C. 94 S.E.2d 12 (1956); [Salinas v. Bennett](#), 33 S.C. 285, 292, 11 S.E. 969 (1890); [Ihley v. Padgett](#), 27 S.C. 300, 3 S.E. 468 (1887).

DISCUSSION

In order to answer your first question it will be necessary to determine whether the minor child in the situation which you have described is emancipated. Section 59–101–70, CODE, provides a definition of an emancipated child in the educational setting. This also provides some guidance in regard to the problem at hand. That section provides: '..... the words 'emancipated minor' shall mean a minor whose parents have entirely surrendered the right to the care, custody, and earnings of such minor, and who are no longer under any legal obligation to support or maintain such minor'.

The cases have concentrated on the first aspect of the definition and generally hold that a determination of emancipation must entail an analysis of the facts and circumstances of each individual case. [Timmerman v. Brown](#), 268 S.C. 303, 233 S.E.2d 106 (1977); [Parker v. Parker](#) 230 S.C. 28, 94 S.E.2d 12 (1956).

In the [Timmerman](#) case a minor child left the home of her father with his consent. She had remained away from home for a period of months without any contact with or supervision from her father when she incurred certain medical expenses.

The Court held that the father's voluntary renunciation of his parental rights and the daughter's subsequent conduct were such that her emancipation was completely effected. The father, therefore, was found not to be responsible for the child's medical expenses.

In the Parker case the Court upheld a jury determination of emancipation even though the minor lived in his parent's home. Again, the case turned largely upon parental supervision and authority. The testimony showed that the minor was gainfully employed, owned his own automobile, was a member of the National Guard, and listed his aged father as a dependent on his income tax return. The testimony further showed that he paid twelve dollars per week as board and 'more or less looked after his parents'.

*2 Applying these two cases, and our statutory definition, to the facts as you have outlined them, leads one to the conclusion that bearing a child *per se* is not enough to effect the minor's emancipation. The key is to examine the conduct of the minor and her parents after the birth of the minor's offspring. If she continues to live at home under parental supervision and care she will not be considered emancipated under South Carolina law even though she is considered an adult by your agency. If, however, it is determined that the minor assumes complete responsibility for herself and her child, she could be considered emancipated. This determination will be very difficult if the minor continues to live in the parental home. The emancipation under such a state of facts will not be presumed, but must be shown in each case by demonstrating an express or implied agreement by the parent to sever his or her parental rights and liabilities. Parker v. Parker, *Supra*. The minor will be much more likely to be considered emancipated if she maintains a separate residence for herself and her child.

If the minor is deemed to be unemancipated, she represents a child support obligation on the part of her parents. [Section 20-7-40, CODE, 1976](#) [20-303, CODE, 1962] provides a criminal sanction for her father if he fails to provide for her support. Section 15-1385, CODE, 1962 has been repealed by implication and is no longer effective.

A much more useful and effective civil remedy is found in [Section 14-21-10, et. seq., CODE](#), commonly referred to as The Family Court Act. This Act places the primary duty of support on the father, with the mother being held secondarily liable. A civil action may be brought against the offending party in the Family Court under the provisions of these sections.

Assuming that most of the young mothers living in their parental home will remain unemancipated under the above test, the next determination must be the validity of her assignment of child support rights. Such determination will understandably have a tremendous impact upon the administration of the child support enforcement program in this state.

A contract entered into by a minor has been held to be voidable, not void at its inception. The contract may be voided at the option of the minor at any time prior to ratification. [Ihley v. Padgett](#) 27 S.C. 30, 3 S.E. 468 (1887); [Salinas v. Bennett](#), 33 S.C. 285, 292, 11 S.E. 968 (1890). This simply means that the minor may repudiate any contract made during his minority, but that the other party to the contract, or some third party, has no right to challenge the validity of the contract. Upon reaching majority the minor may bind himself to the contract by ratification. Under Section 32-5-10, CODE, this would require a written re-affirmation of the contract after the minor reaches majority.

Applying this to the assignment executed by the minor public assistance recipients, the young mother may, at her option, repudiate the assignment at any time prior to ratification. Absent this repudiation, the assignment is valid and is not subject to attack by your agency or the absent parent. The assignment would, therefore, be valid for the purpose of child support enforcement, barring the unlikely repudiation by the minor mother.

CONCLUSION

*3 Where a minor unmarried female gives birth to a child and receives public assistance for herself and her child:

- 1) Such minor would represent a child support obligation on the part of her parents unless she is emancipated.
- 2) Such obligation may be enforced under the criminal sanctions of [Section 20-7-40, CODE, 1976](#). Section 15-1385, CODE, 1962, has been repealed by implication and is no longer in effect.
- 3) Bearing a child per se will not effect the emancipation of the minor. Such a determination entails an analysis of the facts of each individual case, only one of which is whether or not the minor and her offspring live in the minor's parental home.
- 4) An assignment executed by an unemancipated minor is voidable at the minor's option, it being in the nature of a contract. It is not, however, subject to attack by third parties and is, therefore, valid for child support collection purposes absent voiding by the minor.

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