1979 WL 43515 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 13, 1979

***1** The Honorable Willie T. Smith, Jr.
Judge
Family Court
Thirteenth Judicial Circuit
P.O. Box 757-County Office Building
Greenville, South Carolina 29602

Dear Judge Smith:
This is to confirm a verbal opinion which I gave you earlier as to the following factual situation.
Both parties reside in Greenville County and all property owned by them is situated in that county with the exception of one tract of real estate owned jointly by the parties and situate in the State of North Carolina.

Question-In an action for absolute divorce, does the Family Court have jurisdiction to order any disposition of the North Carolina property owned jointly by the parties?

You further advised that there was no problem concerning the jurisdiction of the parties and subject matter of this action with the exception of the real property in North Carolina.

First, there is no question that the Family Court possesses the general authority to make disposition of real property in divorce actions. Section 14-21-1020 of the Code of Laws of South Carolina (1976 as amended) provides:
The Court shall have all the power and authority and jurisdiction by law vested in the circuit courts of the State in actions: (1) For divorce a Vinculo matrimoni and a mensa et thoro and for such 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. [emphasis added].

Normally, however, the rule is well established that no court of a particular state may 'directly affect the legal title to land situated in another state, unless the decree is allowed that effect by the laws of the state which the land is situated.' 24 Am. Jur.2d, Divorce and Separation, § 936. The rule notes that even though the court has jurisdiction over both parties, such as you have stated is the case here, a divorce decree cannot be given an in rem effect in order to transfer title to real estate outside the state. Supra.

On the other hand, it is equally well settled that while the court may not directly affect title to real estate in another state, it may indirectly do so.
A court in one state, however, by a decree in personam which is supported by a good and sufficient service of process or appearance, may indirectly affect interests in land in another state by ordering a conveyance and enforcing the order in personam; such orders do not operate directly on the title to the land, but only through the act of the party of whom the court has jurisdiction, and enforceable only by methods effective against the person, such as proceedings for contempt, etc. Supra.

See also: Anno. 34 A.L.R.3d 962.

This principle seems to have been adopted by the South Carolina Supreme Court in Scheper v. Scheper, 125 S.C. 89, 118 S.E. 178. There, the Court in construing the full faith and credit clause of the Constitution as to a North Carolina divorce stated that for out of state property, the North Carolina Court's

***2** . . . judgment could have no efficacy to operate directly upon property beyond its jurisdiction nor to establish or divest title to land in another State. . ..

However, the Court also observed 'it is well settled' that

a Court of Equity, having authority to act upon the person, may indirectly act upon real estate in another State through the instrumentality of his authority over the person.

It is, therefore, my opinion that the Family Court may affect title to North Carolina property only by acting upon the person within the jurisdiction of the Court as described above.

Very truly yours,

Robert D. Cook
State Attorney

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