1976 S.C. Op. Atty. Gen. 305 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4446, 1976 WL 23063

Office of the Attorney General

State of South Carolina
Opinion No. 4446
September 15, 1976

***1** 1. Absent precedential authority in South Carolina, where a divorce decree granted prior to February 6, 1975, the date of the lowering of the age of majority in South Carolina from 21 to 18, provides that a father shall make child support payments 'until child reaches his majority,' and subsequent to February 6, 1975, said child attains the age of 18, then the father's liability for child support payments under the divorce decree terminates upon the child's 18th birthday based on the present majority view. If, however, the divorce decree is based on a contractual agreement between the parties and provides for child support payments 'until child reaches the age of 21,' then the father's liability for child support payments continues until the child's 21st birthday in spite of the subsequent lowering of the age of majority, based on the present majority view.

2. In order to determine whether or not a child has become 'self-supporting,' it is necessary to look at the facts of the individual case. There is no specific legal definition of the term.

TO: Alvin Chambers
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QUESTIONS PRESENTED:

1. Does Act No. 15, dated February 6, 1975, which ratified constitutional amendment to Art. XVII of the South Carolina Constitution (1895), lowering the age of majority in South Carolina from 21 to 18, alter a father's liability for support payments under a divorce decree granted prior to 1975, in that he can stop payments if the child has reached age 18 after 1975 where the decree provides that support payments be made 'until child reaches his majority'?

2. What is the interpretation of 'self-supporting' under South Carolina State law where a divorce decree provides for child support payments until the child 'reaches age 21, or becomes self supporting'?

AUTHORITIES CITED:

Meredith v. Meredith, 216 Va. 636, 222 S.E.2d 511 (1976);

Shoaf v. Shoaf, 282 N.C. 287, 192 S.E.2d 299(1972);

Paul V. Paul, 214 Va. 651, 203 S.E.2d 123 (1974);

Choquette v. Choquette, 232 Ga. 759, 208 S.E.2d 848 (1974).

DISCUSSION:

1. The first question presented has never been decided by the South Carolina Supreme Court, and there is no other authority within the State on which to base an opinion. Courts of several other states have considered the question,

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however, and have come up with a variety of answers. The effect of the age of majority constitutional amendment on construction of pre-existing agreements and divorce decrees is uncertain simply because we have no case law on point. This office cannot speculate on the views our Supreme Court may ultimately adopt. The opinion expressed herein is based on what appears to be the present majority view.

The recent Virginia case of Meredith v. Meredith, 216 Va. 636, 222 S.E.2d 511 (1976), is a case in point. In Meredith, a 1970 divorce decree incorporated an earlier Stipulation and Agreement as part of the final decree. That stipulation and Agreement required that the husband pay $100.00 monthly child support 'until such child shall reach his majority,' or until changed by court order. In 1972, the age of majority in Virginia was lowered from 21 to 18. On January 19, 1975, the child in question became 18 years of age, and his father petitioned the Court for termination of support payments. The lower Court held that the child had a vested legal right to support from his father until age 21, but this decision was reversed by the Virginia Supreme Court. That Court said that the wording of the agreement showed no intent on the part of the parties to extend the father's child support duty beyond the period during which he would be legally liable for such support.

***2** The North Carolina case of Shoaf v. Shoaf, 282 N.C. 287, 192 S.E.2d 299 (1972), with which the Meredith case agreed, gave further reasons for its decision. In Shoaf, the Court, on July 11, 1960, ordered that the father pay child support 'until such time as said minor child reaches his majority or is otherwise emancipated.' On July 5, 1971, the age of majority in North Carolina was lowered from 21 to 18. The child in question had reached 18 years of age on January 13, 1971. The North Carolina Supreme Court held that the father's child support duty terminated on the date of the lowering of the age of majority from 21 to 18, since on that date the child in question became emancipated. It was stated that only the legislature has the power to determine the age of majority, and that the Court's power to compel the father to make child support payments ceases when the legal duty, as defined by the legislature, no longer exists. The Court quoted an Arizona case in stating that majority or minority is a status rather than a vested right, and is subject to change by the legislature.

A different problem arises when a child support decree issued before the reduction of the age of majority from 21 to 18 and based on a pre-existing agreement between the parties specifies that support shall continue until the child reaches the age of 21. In the Virginia case of Paul v. Paul, 214 Va. 651, 203 S.E.2d 123 (1974), which was discussed and distinguished in Meredith, a child support agreement entered into in 1969 and ratified by a 1970 divorce decree required that the father support each child 'until said children are 21, shall marry, enter or be inducted into the armed forces of the United States, become fulltime gainfully employed or otherwise emancipated.' After the 1972 reduction of the age of majority to 18, the father petitioned the Court to terminate his duty to support two of his children who were over 18. The fact situation in this case was the same as that in Meredith except that support payments here were specifically required until age 21 rather than until the children reached their majority. Here the court held that the father must continue his support payments even though his children were no longer minors. The distinguishing element of this case, according to the Meredith court, was the fact that there was a clear intent expressed by the parties that support be continued until the children reached age 21. The reason given by the Paul Court for considering the intent of the parties was the fact that the decree was based on a prior contract between the parties, and that it retained its contractual nature even though ratified in a divorce decree. The Court could not interfere with the terms of the contract. Presumably, if there were no contract behind the decree, then the court could no longer enforce the support payments beyond age 18, since the legal duty to support no longer existed.

2. The meaning of the term 'self-supporting' has never been discussed in the case law of South Carolina. The issue has been raised in other states, but there seems to be no rule or formula by which it may be determined whether or not a person is self-supporting. The courts look at the facts and circumstances of each individual case to determine the person's status. An example is the Georgia case of Choquette v. Choquette, 232 Ga. 759, 208 S.E.2d 848 (1974), in which a divorce decree required that child support be paid until the child 'reaches the age of twenty one years, enters the military service, marries, or becomes self-supporting.' The child in this case had worked for four months and made between $13.00 and

$103.00 per week. Without discussing a legal definition of the term 'self-supporting,' the Court examined the facts of the case and held that the child was not self-supporting.

CONCLUSION:

***3** There is no case law in South Carolina clarifying the effect of the reduction of the age of majority from 21 to 18 on a child support obligation in a divorce decree issued prior to the date of the lowering the age of majority. The evolving majority view appears to be that the duty to support should not be enforceable beyond the time which that legal duty, as defined by the legislature at the time of enforcement, continues to exist. If the support obligation was initially defined in a contract between the parties, however, and later ratified by the divorce court, then the obligation remains contractual, and if the contract clearly expresses that the intention of the parties at the time of bargaining was that child support continue until the child becomes 21, then that intention should be carried out. There may be exceptions to the above-stated rule if the child is not self sufficient.

There is no legal definition of the term 'self-supporting,' and a determination of the existence or non-existence of that status must be made by considering the facts of the individual case.

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