1974 S.C. Op. Atty. Gen. 239 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3834, 1974 WL 21338

Office of the Attorney General

State of South Carolina
Opinion No. 3834
August 5, 1974

***1** Judge Harrison R. Swink
Cherokee County Family Court Judge
Post Offices Box 12
Caffney, South Carolina 29340

Dear Judge Swink:
This is in reference to your letter of June 26, 1974, inquiring as to whether a bench warrant could be issued under the following circumstances:
(1) a hearing was held to determine support payments, pendente lite, for a wife;

(2) after the conclusion of the hearing the husband's attorney was informed that such payments would be imposed;

(3) the husband was informed of this fact by the attorney, and;

(4) the husband left town before a written order could be served upon him.

The power of the Family Court to issue warrants for the commitment of persons failing to obey orders of the Court is grounded on Section 15–1095.45 of the 1972 South Carolina Code of Laws, as amended:
Where a respondent shall neglect or refuse to obey an order for support or upon agreement signed by the respondent and approved by the court, and the court is satisfied thereof by competent proof, it may, with or without notice, issue a warrant to commit the respondent to jail until the order is obeyed or until the respondent is discharged by law.

Therefore, your question is reduced to a factual determination of whether there was an adequate order at the time and whether the husband had sufficient notice of this order. This determination must necessarily be made by the Family Court.

Some authorities hold that a Court order compelling an affirmative duty is not binding until properly, served. 14 ALR 717. The order in the present situation may not be effective until reduced to writing under the statutory definition contained in Section 10–1221 of The Code. However, there is a split of authority as to the effectiveness of orders not in writing and those in writing. 56 Am. Jur. 2d Motions § 35; State v. Lindway, 64 N.D. 518, 254 N.W. 276; Neal v. Haight, 187 Or. 13, 206 P. 2d 1197. Unfortunately, no case law could be found in this State which would lend guidance in this case.

Since the authorities are split as to the effectiveness of an order which is written and one which is not, the instant inquiry presents two alternatives. The Family Court may find that adequate notice was afforded the husband and that although the order had not at the time of notice been printed, served and filed, the consequences of the duties contained therein have been violated such as to invoke the authority of section 15–1095.45. The Court may find, however, that the affirmative duty imposed by the contemplated order is not binding upon the party until the order is printed, filed and properly served.

Should the Court resolve this issue as being a definite violation of an order of the Court concerning support payments and the obligor has moved to another county, the disposition of the case is settled under Section 20–341 of the Code. This statutory enactment makes the provisions of the 'Uniform Reciprocal Enforcement of Support Act' applicable between counties and sets out the procedure to be followed in such cases.

***2** If we can be of further service to you, please do not hesitate to contact us.
Very truly yours,

Donald V. Myers
Assistant Attorney General

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