

1979 S.C. Op. Atty. Gen. 212 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-133, 1979 WL 29135

Office of the Attorney General

State of South Carolina

Opinion No. 79-133

November 28, 1979

***1 SUBJECT: Courts; Inheritance; Marriage and Divorce.**

The Court of Probate possesses jurisdiction to determine the status of a common-law marriage when such question is relevant to a determination of the proper heirs of an estate before the Probate Court.

TO: The Honorable Bobbie D. Wilson
Judge of Probate

QUESTION:

Does the Court of Probate possess jurisdiction to determine the existence or nonexistence of a common-law marriage when such status is relevant to a determination of the proper heirs of an estate before the Court?

STATUTES AND CASES:

Sections 14–23–1150 and 14–21–1050, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended; [Johnson v. Johnson](#), 235 S.C. 542, 112 S.E.2d 647 (1960); [Payton v. Payton](#), 270 S.C. 275, 241 S.E.2d 901 (1978); [Nimmer's Estate v. Nimmer](#), 212 S.C. 311, 47 S.E.2d 716 (1948); [In Re Greenfield's Estate](#), 245 S.C. 595, 141 S.E.2d 916 (1965); [Greenfield v. Greenfield](#), 245 S.C. 604, 141 S.E.2d 920 (1965); [Mitchell v. Smyser](#), 236 S.C. 332, 114 S.E.2d 226 (1960); [Ex Parte Blizzard](#), 185 S.C. 131, 193 S.E. 633 (1937); 20 Am. Jur. [Courts](#); 21 C.J.S. [Courts](#).

DISCUSSION:

It is clear that the Court of Probate lacks the jurisdiction to determine the status of a common-law marriage if such is questioned in an original cause of action. [Section 14–21–1050\(1\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. However, every judge of Probate maintains jurisdiction among other things [i]n all matters testamentary and of administration, including jurisdiction in such matters to declare rights, status and other legal relations whether or not further relief is or could be claimed . . . [Section 14–23–1150\(a\) CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

Necessarily collateral to that explicit grant of authority is the power of the Probate Court to determine the proper heirs in an estate before it, and the distribution of that estate. cf [Greenfield v. Greenfield](#), 245 S.C. 604, 141 S.E.2d 920. Generally, a Court of Probate possesses inherent authority to do all those things reasonably necessary for the administration of justice within the scope of its jurisdiction, even though the Court may thus be called upon to decide matters which would not be within its cognizance as original causes of action. 21 C.J.S. [Courts](#), § 88; 20 Am. Jr. [Courts](#), § 104. It would, thus, appear that if the existence or nonexistence of a common-law marital relationship is relevant to a determination of the proper heirs of a deceased, the Probate Court could exercise jurisdiction to make such a determination.

The Probate Court in South Carolina has continuously exercised the jurisdiction to litigate relationships among potential heirs or potential administrators within an estate before it. In *Ex Parte Blizzard*, 185 S.C. 131, 193 S.E. 633, the Supreme Court of South Carolina heard the issue of the jurisdiction of Probate Court to determine the status of a common-law marriage which was relevant to the appointment of administratrix of an estate before the Court. The Supreme Court upheld the authority and jurisdiction of the Probate Court in that matter. Subsequent to that decision, the Supreme Court has reviewed several situations where the Probate Courts have determined the validity or invalidity of a common-law marital relationship when that determination was necessary for the determination of proper heirs or the administrator of an estate. See, *Johnson v. Johnson*, 235 S.C. 542, 112 S.E.2d 647; *Mitchell v. Smyser*, 23 S.C. 332, 114 S.E.2d 226; *In Re Greenfield's Estate*, 245 S.C. 595, 141 S.E.2d 916.

CONCLUSION

*2 Therefore, the Court of Probate possesses the authority to determine the existence or nonexistence of a common-law marital relationship if that determination is relevant to determining whether or not a particular person is an heir to the estate.

Edwin E. Evans
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