

1976 S.C. Op. Atty. Gen. 350 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4491, 1976 WL 23108

Office of the Attorney General

State of South Carolina

Opinion No. 4491

October 14, 1976

***1 South Carolina State courts would have jurisdiction over the custody of an abused or neglected child residing within Fort Jackson property unless an action were brought in which diversity, a constitutional question or a habeas application were present which might give a federal court jurisdiction.**

JAGC

Chief

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Fort Jackson, South Carolina

QUESTION PRESENTED:

Whether again inquiry concerns whether federal or state courts would have jurisdiction over custody of an abused or neglected child residing within the confines of Fort Jackson property.

STATUTES AND CASES CITED:

[Hernstadt v. Hernstadt](#), 373 F.2d 316 (2nd Cir. 1967); [Nguyen Da Yen v. Kissinger](#), 528 F.2d 1174 at 1202 (9th Cir. 1975); [McCarty v. Hollis](#), 120 F.2d 540 (10th Cir. 1941); [Spindel v. Spindel](#), 283 F. Supp. 797 at 804 (D.C. N.Y. 1968); [State of Ohio v. Agler](#), 280 U.S. 379, 50 S. Ct. 154, 74 L. Ed. 489 (1930); [James Stewart & Co. v. Sadrakula](#), 309 U.S. 94, 60 S. Ct. 431, 84 L. Ed. 596 (1940); [U.S. v. Paul](#), 371 U.S. 245, 83 S. Ct. 426, 9 L. Ed. 2d 292 (1963); 1962 South Carolina Code and amendments thereto, § 20–310.2, § 31–51, *et seq.*, and § 71–251.

DISCUSSION OF THE ISSUE:

That the states have jurisdiction in the field of domestic relations including custody over a child is indicated by [State of Ohio v. Agler](#), 280 U.S. 379, 50 S. Ct. 154, 74 L. Ed. 489 (1930), [McCarty v. Hollis](#), 120 F.2d 540 (10th Cir. 1941) and [Hernstadt v. Hernstadt](#), 373 F.2d 316 (2nd Cir. 1967). That custody over an abused or neglected child is, at least in part, a matter of domestic relations for State Court jurisdiction is strongly indicated by the fact that Section 20–310.2 of the 1962 South Carolina Code, as amended, pertaining to abused and neglected children is included in Title 20 of the Code which is entitled ‘Domestic Relations.’ South Carolina courts thus would have jurisdiction under Section 20–310.2 in cases of this kind over children residing within the confines of Fort Jackson unless that jurisdiction was transferred to the federal government when it acquired the Fort property.

The case [James Stewart & Co. v. Sadrakula](#), 309 U.S. 94, 60 S. Ct. 431, 84 L. Ed. 596 (1940), stated that when property is transferred to the federal government, ‘. . . not every vestige of the laws of the former sovereignty must vanish.’ The Constitution ‘. . . has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred.’ [Stewart](#). Although this principal is normally applied only to prior existing State statutes, [U.S. v. Paul](#), 371 U.S. 245, 83 S. Ct. 426, 9 L. Ed. 2d 292 (1963), strongly indicates that the principal may be applied to subsequent statutes when the same basic scheme of law applied by the later statute has been in effect since the territory was transferred.

*2 Although Section 20–310.2 was passed subsequent to the transfer of land now comprising Fort Jackson, prior to that time, South Carolina Laws now codified as Sections 31–51, et seq., and Section 71–5, empowered the State courts to exercise jurisdiction over the custody of children. Thus, although the law has been changed somewhat by Section 20–310.2, basic provisions for the welfare and custody of children have been in existence both before and after the federal government's acquisition of the Fort Jackson property.

South Carolina had jurisdiction over custody of abused and neglected children prior to the Fort Jackson transfer because of the federal court's recognition that states have jurisdiction in these and other domestic matters, and did not lose such jurisdiction following the transfer because the state law continued to provide for such cases; however, some circumstances might exist in which federal courts would have jurisdiction over the custody of a child, instead of South Carolina courts. The possibility of the federal courts having jurisdiction in domestic matters in which diversity, a habeas application or a constitutional question were present was discussed in [Spindel v. Spindel](#), 203 F. Supp. 797 at 804 (D.C. N.Y. 1968), [Nguyen Da Yen v. Kissinger](#), 528 F.2d 1194 at 1202 (9th Cir. 1975) and [Hernstadt v. Hernstadt](#), 373 F.2d 316 at 317; however, it does not appear to be likely that actions in which those factors are present would arise in connection with the custody of an abused child. Thus, unless special actions such as these were brought, South Carolina courts would have jurisdiction over the custody of an abused or neglected child.

CONCLUSION:

With the possible exception of custody in an action in which diversity, a habeas application or a constitutional ??

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