Domestic Relations

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DOMESTIC RELATIONS

. I. STATUTORY REVISION OF DOMESTIC LAW

A. Removal of Gender-Based Classifications

The United States Supreme Court held in *Orr v. Orr*¹ that a statutory scheme imposing alimony obligations on husbands but not wives violated the equal protection clause of the fourteenth amendment.² The Alabama statutes invalidated in that case were similar to several statutes then in effect in South Carolina.³ The *Orr* decision, therefore, cast serious doubt on the constitutionality of the South Carolina alimony and support statutes.

In *Orr*, the Supreme Court ruled that "to withstand scrutiny" under the Equal Protection Clause, "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives."⁴ In holding that gender was not a reliable "proxy" for need, the Court observed that because the Alabama laws already provided for individualized hearings to consider the parties' relative financial circumstances, a gender-based distinction was gratuitous.⁵ The Court concluded that the individual hearings were sufficient to protect needy spouses or to compensate women for past discrimination, without placing burdens solely on husbands and without reinforcing stereotypes about the proper place for women and their need for special protection.⁶ In response to *Orr*, the South Carolina General Assembly, on May 8, 1979, enacted several amendments to the state's domestic relations laws and related provisions.⁷ Most significantly, alimony and support provisions were made applicable to both husbands and wives.⁸

² Id. at 283.
³ These statutes were codified at S.C. CODE ANN. §§ 20-3-120 to -150, -170 (1976).
⁵ 440 U.S. at 281-82.
⁶ Id. at 280-83.
Prior to 1979, South Carolina family support, protection, and alimony statutes required that husbands assume greater obligations than wives. The 1979 amendments, through simple grammatical changes, removed those gender-based classifications. These changes will have significant impact on the state's domestic law.

Sections 20-3-120 and 20-3-130 of the South Carolina Code were amended to allow the award of alimony to husbands as well as wives. The amendment to section 20-3-130 further provides that no alimony shall be granted to an adulterous "spouse." As amended, section 14-21-820 now provides that either a husband or a wife may be charged with the support of the other spouse, and the support of their children. Pursuant to this amend-

9. The 1979 amendment to § 20-3-120, for example, substituted the words "either party" for "the wife, whether she be plaintiff or defendant," and added "him" or "his" whenever the feminine pronoun was used.

Family courts now have jurisdiction to adjudicate proceedings for support of a "spouse" or child. S.C. Code Ann., § 14-21-820 (Cum. Supp. 1979). The 1979 amendment added the words "or wife" to the first phrase of the statute and deleted a provision charging the mother with support of a child whose father is dead, incapable of supporting his child, or not within the state. The statute now provides:

A husband or wife declared to be chargeable with the support of his or her spouse and children, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his or her means, as may be determined by the court.

Id. Formerly, courts could compel support for wives and children only. 1968 S.C. Acts 2718, No. 1195.

10. S.C. Code Ann., § 20-3-120 (Cum. Supp. 1979) provides as follows:

In every divorce action from the bonds of matrimony either party may in his or her complaint or answer or by petition pray for the allowance to him or her of alimony and suit money and for the allowance of such alimony and suit money pendente lite. If such claim shall appear well-founded the court shall allow a reasonable sum therefor.

Section 20-3-130, as revised, provides as follows:

In every judgment of divorce from the bonds of matrimony the court shall make such orders touching the maintenance, alimony and suit money of either party or any allowance to be made to him or her and, if any, the security to be given as from the circumstances of the parties and the nature of the case may be just. No alimony shall be granted an adulterous spouse. In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in a lump sum.

Id. § 20-3-130.

11. Id. This provision will, in all probability, have no practical effect upon the present status of the law. Very few husbands will be granted alimony, and thus, their adultery will have no alimony-related effect.

12. Id. § 14-21-820.
ment, family courts now will assess the financial situation of each party to determine which spouse must provide support. South Carolina courts always have considered to some extent the wife's employment and the income from her separate estate in determining support. Now, however, a wife's earning ability and her assets, as well as the income from those assets, will be considered by the courts not only in determining the amount of support payments but also in selecting which party should make them. Indeed, with the amendment to section 14-21-830, authorizing either custodial parent to bring an action for child support, a husband who has custody of the children, could bring an action against his employed wife for support for their children. If she has assets with which she could pay support, or has the ability to earn sufficient means to assist in the support of the children, she may be held liable.

Section 20-7-40 of the South Carolina Code, which formerly dealt with the obligation of the husband and father to support his wife and children, has been amended to make the support obligation applicable to either spouse. In addition, provisions


(a) The court shall have jurisdiction and a spouse may be required to furnish support or may be liable for non-support, as provided above, if, at the time of the filing of the petition for support:

(1) he or she is residing or domiciled in the county or when such area is the matrimonial domicile of the parties;

(2) he or she is not residing or domiciled in the area referred to in item (1) but if found therein at such time provided the petitioner is so residing or domiciled at such time;

(3) he or she is neither residing or domiciled nor found in such area but, prior to such time and while so residing or domiciled, he or she shall have failed to furnish such support or shall have abandoned his or her spouse or child and thereafter shall have failed to furnish such support provided that the petitioner is so residing or domiciled at that time.

(b) The petitioner need not continue to reside or be domiciled in such area where the cause of action arose, as provided in items (2) and (3) of this section, if the conduct of the respondent has been such as to make it unsafe or improper for him or her to so reside or be domiciled and the petitioner may bring action in the court of the jurisdiction wherein he or she is thusly residing or has become domiciled.

Id.

16. Id. § 20-7-40. The amended statute reads:

(A) Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to
were inserted that relieve a husband or wife abandoned by his or her spouse of liability for the support of the abandoning spouse unless that spouse offers to return. The obligation of support continues, however, if the misconduct of the nonabandoning husband or wife justified abandonment by the other.\textsuperscript{17}

The extent of the support obligation was also expanded by amendment. Previously, the husband was required to provide merely the "actual necessities of life"\textsuperscript{18} to his wife and children. Under the amended statute, a spouse is required to provide "reasonable support"\textsuperscript{19} which is defined as "an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities."\textsuperscript{20}

The 1979 amendments to section 20-7-40 retain the penalty for nonsupport of imprisonment for up to one year or a fine of

\begin{quote}
his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor and upon conviction shall be imprisoned for a term of not exceeding one year or be fined not less than three hundred dollars nor more than one thousand five hundred dollars, or both, in the discretion of the court. A husband or wife abandoned by his or her spouse is not liable for the support of the abandoning spouse until such spouse offers to return unless the misconduct of the husband or wife justified the abandonment. If a fine be imposed the court may, in its discretion, order that a portion of the fine be paid to a proper and suitable person or agency for the maintenance and support of the defendant's spouse or minor unmarried legitimate or illegitimate child. As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

(B) Any person who fails to receive the support required by this section may petition to a court of competent jurisdiction for a rule to show cause why the obligated person should not be required to provide such support and after proper service and hearing the court shall in all appropriate cases order such support to be paid. Any such petition shall specify the amount of support required. Compliance with the court order shall bar prosecution under the provisions of subsection (A) of this section.

\textit{Id.}

17. \textit{Id.}
18. This is the language found at S.C. Code Ann. § 20-7-40 (1976).
20. \textit{Id.}
three hundred to fifteen hundred dollars, or both, but adds a provision allowing a person who fails to receive support to petition the court for a rule to show cause why the obligated person should not be required to provide such support. After a hearing, the court can order payment of the support. If the non-supporting party complies with the order, he or she cannot be proscribed for non-support.

Section 14-21-1020 of the South Carolina Code was substantially amended to give family courts jurisdiction over actions concerning divorce, separate support and maintenance, separation, and settlement of all legal and equitable rights to the real and personal property of the marriage. This amendment seems to have broadened the theory of equitable distribution to the extent that it is relevant in any marital litigation. Since Orr forbids unjustified gender-based classifications, contribution of both spouses to the financial success of the family must be considered in determining an equitable division of the property.

By deleting almost all gender-based classifications from South Carolina statutes dealing with family law, the 1979 amendments removed certain traditional presumptions about the more favored entitlement of women. Orr, however, has re-

21. Id.
22. Id. § 20-7-40(B).
23. Id.
24. Id. § 14-21-1020. The amended statute provides:

The court shall have all power, authority and jurisdiction by law vested in the circuit courts of the State in actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in such actions in and to the real and personal property of the marriage and attorneys’ fees, if requested by either party in the pleadings.

Id. The amendment deleted reference to divorce a mensa et thoro, a cause of action which no longer exists in South Carolina. Nocher v. Nocher, 268 S.C. 503, 510, 234 S.E.2d 884, 887 (1977). S.C. Code Ann. § 20-3-140 (Cum. Supp. 1979) includes no reference to divorce a mensa et thoro. The phrase was replaced with the words “separate support and maintenance, legal separation, or other marital litigation between the parties.” Id.

25. The theory of equitable distribution was articulated in Wilson v. Wilson, 270 S.C. 216, 241 S.E.2d 566 (1978), which held that when a wife makes direct or indirect material contributions to the financial success of the family that assist in the acquisition of property in the name of the husband, the wife is entitled to a division of that property, even though no funds or efforts were contributed toward any specific property.

26. One statute not amended, but containing a provision of questionable constitutionality under Orr, is S.C. Code Ann. § 21-21-10 (1976), which refers to a father’s common-law obligation to support his children.
quired not only amendment of South Carolina domestic relations statutory law; it also has affected the gender-based classifications that pervade the state’s common law.

For instance, removal of gender as the basis for family-law decisions may require replacement of the already weakened tender-years doctrine with a gender-neutral test. The tender-years doctrine is “the oft approved principle that, generally, all things being equal, a child of tender years should be with the mother.” 27 This preference for the mother in cases involving the custody of young children, however, is merely presumptive and in South Carolina the long-standing policy already has been to decide custody cases upon the welfare and best interests of the child. 28 Additionally, after Orr and the 1979 amendments to the South Carolina Code, the concept of a privileged suitor, under which the wife has been allowed to petition for temporary alimony and suit money upon a prima facie showing of entitlement, 29 may no longer be valid. Finally, it previously has been held that “under the settled law of this State, the husband has the right, acting reasonably, to choose where the family shall reside, and when the wife refuses to go with him, she is guilty of desertion.” 30 This rule, based solely on the sex of the spouse, is not consistent with Orr, which favors individualized hearings and rejects sexual stereotypes if the state purposes are served equally well by gender-neutral classification. 31

28. In Cook v. Cobb, 271 S.C. 136, 140, 245 S.E.2d 612, 614 (1978), the South Carolina Supreme Court held that the paternal grandparents of an eight-year-old child should retain custody when the grandparents had come to be regarded by the child as her parents and the mother had adopted a “bohemian life style.” This reasoning was reiterated in Skinner v. King, 272 S.C. 391, 252 S.E.2d 891 (1979), a case in which the parental preference was overcome by the best interests of the child and custody was retained by the maternal grandparents. In Skinner, as in Cook, the child originally was placed voluntarily by the mother with the grandparents, and neither the father’s nor the mother’s circumstances had changed sufficiently to warrant transfer of custody.
31. See text accompanying notes 5 & 6 supra.
B. Attorneys' Fees

The same act that abolished gender-based classifications also authorized placement of a lien on any property owned by a person ordered to pay attorneys' fees in a divorce action. Adoption of this section was probably an attempt by the legislature to offset the effect of the South Carolina Supreme Court's holding in Louthian & Merritt, P.A. v. Davis. It is unclear, however, to what extent section 20-3-145 of the South Carolina Code overrules Louthian.

In Louthian, the wife was awarded temporary alimony and attorneys' fees pendente lite in an action for divorce. Before entry of the final divorce decree, however, the wife died. Shortly thereafter, the standing master determined that the husband should be required to pay his wife's attorneys' fees. The trial court found that the master's report was null and void due to a lack of subject matter jurisdiction and the South Carolina Supreme Court agreed. The court, in an opinion by Justice Gregory, held that an action for divorce, being purely personal, terminates on the death of either spouse. If one party to a divorce action dies before entry of a final decree, the action abates and the subject matter jurisdiction of the court to proceed with the matter terminates. Since the trial court was authorized to award attorneys' fees only in an action for divorce, and since the wife's death abated that action, the trial court in Louthian lacked jurisdiction to consider the question of awarding attorneys' fees.

Furthermore, the court pointed out that under section 20-3-120 attorneys' fees are awarded to the wife only. The trial

   In any divorce action any attorney fee awarded by the court shall constitute a lien on any property owned by the person ordered to pay the attorney fee and such attorney fee shall be paid to the estate of the person entitled to receive it under the order if such person dies during the pendency of the divorce action.
   Id. Revision of § 20-3-140 apparently makes this section applicable to all marital litigation between the parties. Id. § 20-3-140.
   34. Id. at 331, 251 S.E.2d at 758.
   35. Id.
   36. Id. at 332-33, 251 S.E.2d at 758.
   37. Section 20-3-120, as it read in the 1976 Code, was amended after the Louthian decision by 1979 S.C. Acts 118, No. 71 to allow either party to a divorce action to petition for alimony and suit money during litigation. This provision is now codified at S.C.
court is not authorized to make the allowance directly to the wife's attorney. "The attorney is not a party to the divorce action and he can neither seek nor be awarded attorneys' fees from the husband." Only the wife can pursue a claim against the husband for fees—a claim that is abated along with the divorce action if either party dies before entry of final judgment. If an attorney is to recover his fee, then, under Louthian, his only recourse is against his client. The court suggested that counsel representing the wife file a claim for fees against her estate.

This discussion in Louthian appears to contradict the court's holding in Darden v. Whitham. In that 1974 case, the court held that a lower court's issuance of an order requiring payment directly to the wife's attorney was a tradition in this state and that "[n]ormally, there is no reason to contest such payment and this Court is not aware of any evils growing out of the practice."

Section 20-3-145 apparently was written to ensure that attorneys will be paid for their labors. The revision, however, leaves many questions unanswered. On its face, the statute does not give the protection the legislature apparently intended. The jurisdictional problem confronted in Louthian is not addressed in the statute. If a party to the divorce dies before the final decree, does the statute give the trial court subject matter jurisdiction to award fees? The provision also leaves unclear the method by which the liens will be recorded and enforced to ensure payment of fees. The likely procedure under this new section will be to enter the order awarding attorneys' fees as a judgment against the spouse ordered to pay the fee, and in favor of the other spouse. This procedure may require some indication of the fee lien in the judgment file and apparently would require attorneys to enter satisfaction of judgment upon payment of the awarded fees. Enforcement of the lien upon nonpayment, could be either by levy and execution or contempt, the latter probably being more expeditious. Other questions left unanswered are whether a judgment for fees should bear interest and whether a

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38. 272 S.C. at 333, 251 S.E.2d at 758-59.
39. Id. at 333-34, 251 S.E.2d at 759.
41. Id. at 195, 209 S.E.2d at 47.
transcript of judgment should be filed.

C. One-Year Separation

South Carolina's statute enumerating grounds for divorce was amended in 1979 to recognize continuous separation for only one year as grounds for divorce. South Carolina is the only state that includes divorce provisions in its constitution; thus, a constitutional amendment was required to allow a reduction of the statutory period. The amendment reducing the separation period from three years to one year was approved by the state's voters in the 1978 general election and became effective in February, 1979.

The statutory waiting period in a divorce sought on grounds of desertion or separation for one year was also reduced. Under the amended provisions, a two-month delay between the filing of the complaint and the reference was eliminated. A hearing may now be held and a decree issued as soon as a defendant files responsive pleadings or is held to be in default.

42. S.C. Code Ann. § 20-3-10(5) (Cum. Supp. 1979). This subsection provides in pertinent part:

No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to wit:

. . .

(5) On the application of either party if and when the husband and wife have lived separate and apart without cohabitation for a period of one year. A plea of res judicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground.

Id.


44. S.C. Code Ann. § 20-3-80 (Cum. Supp. 1979). This section provides as follows:

No reference shall be had before two months after the filing of the complaint in the office of the Clerk of Court, nor shall a final decree be granted before three months after such a filing.

Provided, however, that when the plaintiff seeks a divorce on the grounds of desertion or separation for one year, the hearing may be held and the decree issued after the responsive pleadings have been filed or after the respondent has been adjudged to be in default whichever occurs sooner.

Id.

45. Once a pleading has been filed and served, a period of twenty days is allowed so that the other party may answer. Id. § 15-13-310 (1976). This period may be extended. Id. § 15-3-90; S.C. Cim. Cr. R. 19. Under the amendment to § 20-3-80, if a defendant in a divorce action on grounds of separation or desertion is served and answers immediately, the hearing could be held in a matter of days, and a final decree could be granted long before the original three-month waiting period between filing and final decree had
The one-year separation amendment follows a national trend away from the traditional notion that one spouse must be guilty of some injury to the other before divorce may be granted, and toward a more simple no-fault standard. Some states grant a divorce on the basis of "irretrievable breakdown" or for mere "incompatibility." Other states, including South Carolina, recognize that a marriage has ended for all practical purposes if the parties have lived apart for a prescribed period of time without cohabitation. The time periods range from six months in the District of Columbia to five years in Idaho. The one-year period of separation required by South Carolina law as grounds for divorce is now shorter than in the majority of jurisdictions.

II. SEPARATION AGREEMENTS

In Zwerling v. Zwerling, the South Carolina Supreme Court held that separation agreements contracted between husband and wife that are not merged or incorporated into a divorce decree, or do not arise from a statutory duty of family support, are outside the subject matter jurisdiction of the family courts. Zwerling concerned an action brought by a wife domiciled in New York to enforce three money judgments for support payments that were past due under the parties' separation agreement. Each judgment was obtained in New York after personal service upon the husband who was living in South Carolina. The action to enforce the judgments originally was brought in the court of common pleas, but was transferred to the family court by voluntary order of the circuit judge. The family court refused to enforce the New York judgments after finding that the New York court lacked personal jurisdiction over the husband.

On appeal to the South Carolina Supreme Court, the wife contended that the family court was without jurisdiction over the subject matter of the action and the supreme court agreed.

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47. Id. at 302.
49. Id. at 294, 255 S.E.2d at 851.
50. Id.
The court found that since the support obligation the wife sought to enforce did not arise either from a statutory duty of family support or from a duty that was judicially imposed as a consequence of a divorce decree, the husband’s only obligation to contribute to the support and maintenance of the wife arose from the separation agreement entered into between the parties prior to their divorce. The agreement was negotiated and executed as a contract between the parties and the court held that the contractual nature of the agreement was not altered by the parties’ divorce because the divorce decree was not merged with the agreement. Thus, any obligation arising under that agreement was enforceable only by ordinary contract remedies outside the subject matter jurisdiction of the family court.

Although the court may have found compelling reasons to remove unincorporated separation agreements from the jurisdiction of the family court, the decision in Zwerling runs counter to the recent enlargement and unification of the state’s family court system. There are strong arguments, which provided impetus for the unification, that all domestic proceedings should be handled exclusively by family courts. A separation agreement, incident to a divorce though not merged with the decree, concerns the support of a spouse and the settlement of all legal and equitable rights of the parties to a marriage. These are matters over which the family courts ordinarily have jurisdiction. Under Zwerling, however, it is necessary to specifically merge the agreement into the divorce decree to ensure that the family court will retain jurisdiction to enforce support payments provided in a separation agreement.

51. Id. at 294-95, 255 S.E.2d at 852.
52. Id. at 295, 255 S.E.2d at 852.
53. Id. The supreme court reiterated this view in McGrew v. McGrew, 273 S.C. 556, 257 S.E.2d 743 (1979), and overruled a family court determination of arrearage due under a separation agreement that had not been incorporated in any divorce decree.
54. In 1976, the General Assembly placed family courts under a unified statewide system, establishing one court for each judicial district, and giving family courts exclusive jurisdiction in matters over which they had previously been given jurisdiction under the Family Court Act of 1968. See Domestic Relations, Annual Survey of South Carolina Law, 30 S.C.L. Rev. 69, 84 (1979).
III. CHILD SUPPORT PAST AGE OF MAJORITY

Section 14-21-810 of the South Carolina Code, the jurisdictional statute for family courts, has been amended to provide that all orders for support of a child shall run until the child is eighteen years of age except in specified circumstances.56 Formerly, the statute designated twenty-one as the age at which child support would end.57 The South Carolina Supreme Court, in Cason v. Cason,58 a 1978 case, determined that a family court has no authority to compel a parent to support his or her child beyond the age of eighteen absent a finding by the court that a parent had agreed to do so.59 A problem arises, however, in interpreting the statute’s provision that “exceptional circumstances”60 may require support after a child reaches eighteen.

The supreme court considered this issue in Risinger v. Risinger.61 In that case, the husband appealed an order from a family court, alleging that the family court had no power to order him to support an adult child over eighteen while the child was attending school. The supreme court affirmed the order of the family court62 pointing out that the need for education is the most likely additional “exceptional circumstance” that might justify continued financial support. The court concluded that “[c]hildren over 18 with a physical or mental disability, and children over 18 in need of further education, have much in common. In each case, the child’s ability to earn is either diminished or entirely lacking.”63 Such a comparison between children with disabilities and students might be considered questionable. The court, however, held that any doubt concerning the family court’s power to make such an order for support should be resolved in favor of that power in order to promote the welfare of the child, the family, and the state.64

57. This provision was found in § 14-21-810(b)(4) of the 1976 Code.
59. Id. at 399, 247 S.E.2d at 675-76 (1978).
62. Id. at 38, 253 S.E.2d at 653.
63. Id.
64. Id. The court quoted S.C. CODE ANN. § 14-21-160 (1976) which provides:
   This chapter shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored.
The court refrained from listing each specific circumstance under which a divorced parent might be ordered to pay for educational expenses of a child over eighteen years of age. Guidelines were established, however, to assist the family court in its determination. "[A] family court judge may require a parent to contribute that amount of money necessary to enable a child over 18 to attend high school and four years of college, where there is evidence that: (1) the characteristics of the child indicate that he or she will benefit from college; (2) the child demonstrates the ability to do well, or at least make satisfactory grades; (3) the child cannot otherwise go to school; and (4) the parent has the financial ability to help pay for such an education." 65

The obligation to finance a child's higher education is even greater when a parent has previously agreed to do so. In Clark v. Jones, 66 a divorced father and mother had entered into an agreement in 1973 providing that the mother's petition for an increase in child support would be abandoned if the father would help pay for the higher education of his children. The South Carolina Supreme Court held that since the father had benefited from the agreement and had income sufficient to help defray his daughter's college expenses, he was obligated to comply with his agreement and to pay one-half of his daughter's college expenses. 67

A divorced parent's obligation to provide a college education, however, is not unconditional. In Bearden v. Bearden, 68 the supreme court held that concomitant with a divorced parent's obligation to pay college expenses for his child was the child's obligation to apply himself to his college education. 69 In that case, the father was found justified in refusing to continue pay-

65. Id. at 38-39, 253 S.E.2d at 653 (quoting S.C. Code Ann. § 14-21-160 (1976)).
66. Id. at 39, 253 S.E.2d at 653-54.
67. Id. at 456, 252 S.E.2d 564 (1979).
68. Id. at 458-59, 252 S.E.2d at 564-65.
69. Id. at 382, 252 S.E.2d at 128 (1979).
ing his son’s college expenses when it was demonstrated that the son was not doing acceptable college-level work.\textsuperscript{70}

Whether a parent may be required to pay expenses for a college education for his or her child is one of the most commonly litigated questions in child-support cases.\textsuperscript{71} One of the more serious problems in such cases is whether there is a reasonable ground for making the distinction between adult children of divorced parents and adult children of married parents. Married parents legally may choose to discontinue support of their children who have reached the age of eighteen.\textsuperscript{72} Courts, however, increasingly are willing to consider a college education to be a necessity in today’s society.\textsuperscript{73} Those courts may see it as their duty to ensure that disadvantages of children of divorced parents are minimized, reasoning that a child of divorced parents should be able to obtain the same advantages he would have had but for the divorce, as long as his and society’s interests are served and the parents suffer no undue hardship. This seemed to be the reasoning of the South Carolina Supreme Court in Ris-\textsuperscript{74} inger. A question arises, however, whether the state’s interest in the welfare of the child is sufficiently compelling to overcome a constitutional challenge based on equal protection. The supreme court soon may be confronted with this question as family courts continue to order child support for college expenses past the age of majority.

\textit{Vickie R. Steele}

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item See Parker v. Parker, 230 S.C. 28, 31, 94 S.E.2d 12, 13 (1956).
\item Id. at 498.
\item For a case holding that an order compelling payment of child support, including college expenses, beyond the child’s majority was within the judge’s discretion and that the authorizing statute was constitutional, see Childrens v. Childrens, 89 Wash. 2d 592, 575 P.2d 201 (1978), \textit{noted in} 17 J. Fam. L. 604 (1979).
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