

## South Carolina Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

Disclaimer: This Toolkit was developed under grant number SJI-20-E-005 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. While the Jurisdiction and Service of Process Chart is a useful resource, it does not remove the responsibility of each and every lawyer to engage in original analysis and research.

### **Custody Determination – Jurisdiction**

#### *Initial Custody Determination*

#### **S.C. Code Ann. § 63-15-330**

(A) Except as otherwise provided in Section 63-15-336, a court of this State has jurisdiction to make an initial child custody determination only if:

(1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this State, but a parent or person acting as a parent continues to live in this State;

(2) a court of another state does not have jurisdiction under item (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 63-15-342 or 63-15-344, and:

(a) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

(b) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) all courts, having jurisdiction under item (1) or (2), have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 63-15-342 or 63-15-344; or

(4) no court of any other state would have jurisdiction under the criteria specified in item (1), (2), or (3).

(B) Subsection (A) is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

(C) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Exclusive, continuing jurisdiction

#### **S.C. Code Ann. § 63-15-332**

(A) Except as otherwise provided in Section 63-15-336, a court of this State which has made a child custody determination consistent with Section 63-15-330 or 63-15-334 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) a court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(B) A court of this State which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 63-15-330.

## **S.C. Code Ann. § 63-15-336**

A) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(B) If there is no previous child custody determination that is entitled to be enforced under this article and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 63-15-330 through 63-15-334, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 63-15-330 through 63-15-334. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 63-15-330 through 63-15-334, a child custody determination made under this section becomes a final determination, if it so provides and this State becomes the home state of the child.

(C) If there is a previous child custody determination that is entitled to be enforced under this article, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 63-15-330 through 63-15-334, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 63-15-330 through 63-15-334. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(D) A court of this State which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 63-15-330 through 63-15-334, shall immediately communicate with the other court. A court of this State, which is exercising jurisdiction pursuant to Sections 63-15-330 through 63-15-334, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Family Court lacked subject-matter jurisdiction under Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) to issue final orders removing child from mother's custody and terminating mother's parental rights, though Family Court had valid basis to exercise temporary emergency jurisdiction under UCCJEA; mother and child were traveling through South Carolina at time of removal, mother was Georgia resident, child was born in Pennsylvania, child's home state was Georgia, and there was evidence that courts in Pennsylvania and Georgia may have made prior custody determinations regarding child. S.C. Dep't of Soc. Servs. v. Tran, 418 S.C. 308, 311, 792 S.E.2d 254, 255 (Ct. App. 2016).

A family court, except as provided by provision of Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) governing temporary emergency jurisdiction, may not modify a custody order issued by a court of another state unless a court of the state where child is located currently has jurisdiction to make an initial custody determination under the UCCJEA and (1) the court of the issuing state determines either that it no longer has continuing jurisdiction or that a court of the state where child is located currently would be a more convenient forum or (2) either a court of the state where the child is located currently or a court of the issuing state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the issuing state. *Id.*

## **Custody Determination – Service/Notification Requirements**

### **S.C. Code Ann. § 63-15-314**

(A) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(B) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(C) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

### **S.C. Code Ann. § 63-15-338**

(A) Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of Section 63-15-314 must be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(B) This article does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(C) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this article are governed by the law of this State as in child custody proceedings between residents of this State.

### **S.C. Code Ann. § 63-15-348**

(A) In a child custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(B) If a party to a child custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to Section 63-15-314 includes a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(C) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(D) If a party to a child custody proceeding who is outside of this State is directed to appear under subsection (B) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

## **Paternity and Child Support Proceeding – Jurisdiction**

### *Bases for jurisdiction over nonresident*

### **S.C. Code Ann. § 63-17-3010**

(A) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with notice and a summons within this State;

- (2) the individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this State;
- (4) the individual resided in this State and provided prenatal expenses or support for the child;
- (5) the child resides in this State as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
- (7) the individual asserted parentage of a child in the putative father registry maintained in this State by the Department of Social Services; or
- (8) there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

### **S.C. Code Ann. § 63-17-3020**

Personal jurisdiction acquired by a tribunal of this State in a proceeding under this article or other law of this State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order  
Continuing jurisdiction to enforce child support order

### **S.C. Code Ann. § 63-17-3110**

- (A) A tribunal of this State issuing a spousal-support order consistent with the law of this State has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.
- (B) A tribunal of this State may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.
- (C) A tribunal of this State that has continuing, exclusive jurisdiction over a spousal-support order may serve as:
- (1) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this State; or
  - (2) a responding tribunal to enforce or modify its own spousal-support order.

### **S.C. Code Ann. § 63-17-20**

(A) Any person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this article with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by law, personal jurisdiction may be acquired by service of process outside this State in the manner authorized by the provisions of Section 36-2-806.

## **Paternity and Child Support Proceeding – Service/Notification Requirements**

### **S.C. Code Ann. § 63-17-380**

- (A) If pursuant to family court rule, the clerk of court issues a rule to show cause in a case of child support or periodic alimony arrearage, the clerk also shall provide written notice to the party owed the support or alimony. The notice to the party owed support or alimony must:
- (1) be provided by the court at least five days prior to the hearing;
  - (2) be sent by first class delivery through the United States Postal Service and addressed to the party's last address on file with the court; and
  - (3) include the date, time, and place the party in arrears has been ordered to appear.

(B) The mailing provided for in subsection (A) is considered sufficient notice of the hearing to the party owed the support or alimony.

(C) The clerk of court shall place in the case file a copy of the notice sent to the party owed support or alimony with the time and date stamped on the copy.

(D) This section does not apply to a rule to show cause in a case of child support or periodic alimony arrearage issued by a clerk of court pursuant to family court rule if the party owed the support or alimony is represented by the Department of Social Services.

## **Child Abuse/Neglect Proceeding – Jurisdiction**

### **S.C. Code Ann. § 63-7-1610**

(A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article.

(B) The county in which the child resides is the legal place of venue.

## **Child Abuse/Neglect Proceeding – Service/Notification Requirements**

### **S.C. Code Ann. § 63-7-1630**

The department shall provide notice of a hearing held in connection with an action filed or pursued under this chapter to the foster parent, the preadoptive parent, or the relative who is providing care for a child. The notice must be in writing and may be delivered in person or by regular mail. The notice shall inform the foster parent, preadoptive parent, or relative of the date, place, and time of the hearing and of the right to attend the hearing and to address the court concerning the child. Notice provided pursuant to this section does not confer on the foster parent, preadoptive parent, or relative the status of a party to the action.

## **Divorce and Legal Separation – Jurisdiction**

### **S.C. Code Ann. § 20-3-50**

Actions for divorce from the bonds of matrimony shall, except as otherwise provided, be only in the equity jurisdiction of the court of common pleas.

## **Divorce and Legal Separation – Service/Notification Requirements**

### **S.C. Code Ann. § 20-3-30**

In order to institute an action for divorce from the bonds of matrimony the plaintiff must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action. The terms ‘residents’ or ‘resided’ as used in this section as it applies to a plaintiff or defendant stationed in this State on active duty military service means a continuous presence in this State for the period required regardless of intent to permanently remain in South Carolina.

## **Adoption Proceeding – Jurisdiction**

### **S.C. Code Ann. § 63-9-40**

(A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article.

Proceedings for adoption by residents of this State may be brought in the family court of the county in which the petitioner resides or is in military service, or in the county in which the child resides or is born.



For nonresidents of this State proceedings for adoption must be brought in the county in which the child resides, in which the child is born, or in which the agency having custody of the child is located.

(B) The family court may order a change of venue as in civil proceedings in this State.

## **Adoption Proceeding – Service/Notification Requirements**

### **S.C. Code Ann. § 63-9-730**

(A) Notice of any proceeding initiated pursuant to this article must be given to the persons or agencies specified in subsection (B) of this section, unless the person has given consent or relinquishment or parental rights have been terminated.

(B) The following persons or agencies are entitled to notice as provided in subsection (A):

- (1) a person adjudicated by a court in this State to be the father of the child;
- (2) a person or agency required to give consent or relinquishment pursuant to Section 63-9-310(A) or (B) from whom consent or relinquishment cannot be obtained;
- (3) a person who has properly registered with the Responsible Father Registry at the time of the filing of the petition for termination of parental rights or adoption;
- (4) a person who is recorded on the child's birth certificate as the child's father. The Department of Health and Environmental Control shall release this information to any attorney representing a party in an adoption or termination of parental rights action pursuant to a subpoena;
- (5) a person who is openly living with the child or the child's mother, or both, at the time the proceeding is initiated and who is holding himself out to be the child's father;
- (6) a person who has been identified as the child's father by the mother in a sworn, written statement; and
- (7) a person from whom consent or relinquishment is not required pursuant to Section 63-9-320(A)(2).

(C) Persons specified in subsection (B) of this section are not entitled to notice if the child who is the subject of the adoption proceeding was conceived as a result of criminal sexual conduct or incest.

(D) Any person or agency entitled to notice pursuant to this section must be given notice that adoption proceedings have been initiated. Notice must be given in the manner prescribed by law for personal service of summons in civil actions. If notice cannot be effected by personal service, notice may be given by publication or by the manner the court decides will provide notice.

(E) Notice given pursuant to this section must include notice of the following:

- (1) within thirty days of receiving notice the person or agency shall respond in writing by filing with the court in which the adoption is pending notice and reasons to contest, intervene, or otherwise respond;
- (2) the court must be informed of the person's or agency's current address and of any changes in address during the adoption proceedings; and
- (3) failure to file a response within thirty days of receiving notice constitutes consent to adoption of the child and forfeiture of all rights and obligations of the person or agency with respect to the child.

(F) When notice of intent to contest, intervene, or otherwise respond is filed with the court within the required time period, the person or agency must be given an opportunity to appear and to be heard before the final hearing on the merits of the adoption.

(G) Petitioners must be notified by the court of notice and reasons to contest, intervene, or otherwise respond, and petitioners also must be given the opportunity to be represented or to appear and to be heard at any hearing held relating to the adoption.

## **Domestic Violence – Jurisdiction**

### **S.C. Code Ann. § 20-4-30**

(A) The family court has jurisdiction over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a

magistrate. The magistrate may issue an order of protection granting only the relief provided by Section 20-4-60(a)(1).

(B) Except as provided in subsection (C), actions for an order of protection must be filed in the county in which:

- (1) the alleged act of abuse occurred;
- (2) the petitioner resides or is sheltered, unless the petitioner is a nonresident of the State;
- (3) the respondent resides, unless the respondent is a nonresident of the State; or
- (4) the parties last resided together.

(C)(1) If the action is filed in the county in which the petitioner resides or is sheltered and the respondent is a nonresident of that county, the petitioner must request that the action be immediately transferred to another county in which venue is proper and must include a supplemental petition that designates the transfer county and that changes all specific references to the county of filing to the transfer county. The clerk of court must transfer and forward the supplemental petition to the transfer county.

(2) If the petitioner is a nonresident of the State, the action must be filed in the county specified in item (1), (3), or (4) of subsection (B).

(3) If the respondent is a nonresident of the State, the petitioner may request that the action be immediately transferred to another county in which venue is proper and must include a supplemental petition that designates the transfer county and that changes all specific references to the county of filing to the transfer county. The clerk of court must transfer and forward the supplemental petition to the transfer county.

(D) Hearings on the petition may be held in any county in the same judicial circuit as the county in which the action is filed or to which the action is transferred.

## **Domestic Violence– Service/Notification Requirements**

### **S.C. Code Ann. § 20-4-40**

There is created an action known as a “Petition for an Order of Protection” in cases of abuse to a household member.

(a) A petition for relief under this section may be made by any household members in need of protection or by any household members on behalf of minor household members.

(b) A petition for relief must allege the existence of abuse to a household member. It must state the specific time, place, details of the abuse, and other facts and circumstances upon which relief is sought and must be verified.

(c) The petition must inform the respondent of the right to retain counsel.

(d) In a pending action for divorce or separate support and maintenance, the petition for relief shall be brought in the form of a motion for further relief and shall be served on counsel of record, if any. Where no action is pending, the petition shall be filed and served as an independent action. A pending motion or petition for relief shall not be dismissed solely because the underlying action is dismissed.

(e) The clerk of court must provide simplified forms which will facilitate the preparation and filing of a petition under this section by any person not represented by counsel, including motions and affidavits to proceed in forma pauperis.

(f) The clerk of court may not charge a fee for filing a petition for an order for protection from domestic abuse.

### **S.C. Code Ann. § 20-4-50**

(a) Within twenty-four hours after service of a petition under this chapter upon the respondent, the court may, for good cause shown, hold an emergency hearing and issue an order of protection if the petitioner proves the allegation of abuse by a preponderance of the evidence. A prima facie showing of immediate

and present danger of bodily injury, which may be verified by supporting affidavits, constitutes good cause for purposes of this section.

(b) If the court denies the motion for a twenty-four-hour hearing or such a hearing is not requested, the petitioner may request and the court must grant a hearing within fifteen days of the filing of a petition. The court must cause a copy of the petition to be served upon the respondent at least five days prior to the hearing, except as provided in subsection (a), in the same manner required for service in the circuit courts. Where service is not accomplished five days prior to the hearing, the respondent, upon his motion, is entitled to a continuance until such time is necessary to provide for compliance with this section.

**S.C. Code Ann. § 20-4-80**

A certified copy of an order of protection must be mailed to or served upon the petitioner, the respondent, and local law enforcement agencies having jurisdiction in the area where the petitioner resides. No charge may be made to the petitioner for such action.

© 2021 - Morgan, Lewis and Bockius LLP