CHAPTER 3

Divorce

ARTICLE 1

Divorces in This State

**SECTION 20‑3‑10.** Grounds for divorce.

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

(1) adultery;

(2) desertion for a period of one year;

(3) physical cruelty;

(4) habitual drunkenness; provided, that this ground shall be construed to include habitual drunkenness caused by the use of any narcotic drug; or

(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.

HISTORY: 1962 Code Section 20‑101; 1952 Code Section 20‑101; 1949 (46) 216; 1952 (47) 2142; 1969 (56) 172; 1979 Act No. 10 Section 1.

CROSS REFERENCES

Constitutional provisions as to grounds for divorce, see SC Const, Art XVII, Section 3.

Provisions relative to equitable apportionment of marital property, see Section 20‑3‑610 et seq.

Library References

Divorce 12 to 38.

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C.J.S. Divorce Sections 21 to 43, 45 to 65, 67 to 100, 110 to 114.

RESEARCH REFERENCES

ALR Library

101 ALR 6th 455 , What Amounts to Habitual Intemperance, Drunkenness, Excessive Drug Use, and the Like Within Statute Relating to Substantive Grounds for Divorce.

96 ALR 5th 83 , Homosexuality as Ground for Divorce.

120 ALR 1176 , What Amounts to Habitual Intemperance, Drunkenness, Etc., Within Statute Relating to Substantive Grounds for Divorce.

Encyclopedias

49 Am. Jur. Proof of Facts 3d 277, Proof of Adultery as Grounds for Dissolution of Marriage.

115 Am. Jur. Proof of Facts 3d 419, Effect of Divorce on Immigration Status of Spouse Who Immigrated to U.S. Because of Marriage With U.S. Citizen.

137 Am. Jur. Proof of Facts 3d 267, Proof of Valuation of Closely Held Business in Divorce.

143 Am. Jur. Proof of Facts 3d 93, Proof of Right to Equitable Distribution or Maintenance of Spouse’s Social Security Disability Benefits in Divorce Action.

146 Am. Jur. Proof of Facts 3d 197, Proof of Equitable Distribution of Oil or Mineral Rights in Divorce.

148 Am. Jur. Proof of Facts 3d 329, Refusal of Sexual Intercourse as Justifying Divorce or Separation.

128 Am. Jur. Trials 337, Uncovering Marital Assets in Divorce Proceedings.

134 Am. Jur. Trials 419, Appreciation of Separate Assets in Contested Divorce Proceedings.

135 Am. Jur. Trials 317, Litigating Breach of Fiduciary Duty Cause of Action Under Qualified Domestic Relations Orders (QDRO).

S.C. Jur. Criminal Domestic Violence Section 10, Divorce.

S.C. Jur. Divorce Section 9, Constitutional and Statutory Provisions.

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S.C. Jur. Divorce Section 13, Traditional Fault Grounds‑ Habitual Drunkenness.

S.C. Jur. Divorce Section 14, Traditional Fault Grounds‑ Physical Cruelty.

S.C. Jur. Divorce Section 16, No‑Fault Grounds.

S.C. Jur. Divorce Section 21, Recrimination.

S.C. Jur. Divorce Section 23, Insanity.

Treatises and Practice Aids

66 Causes of Action 2d 405, Cause of Action for Divorce on Ground of Constructive Abandonment Based on Refusal of Sexual Relations.

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“The South Carolina Divorce Act of 1949,” 3 SCLQ 253 (1951).

An Examination of the Recrimination Doctrine. 20 S.C. L. Rev. 685.

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Divorce. 24 S.C. L. Rev. 554.

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Domestic Relations: Divorce; Grounds. 23 S.C. L. Rev. 560.

Domestic Relations: Evidence. 22 S.C. L. Rev. 545.

Marriage Counseling Through the Divorce Courts ‑ Another Look. 28 S.C. L. Rev. 687.

Res Judicata and Collateral Estoppel in South Carolina. 28 S.C. L. Rev. 451.

NOTES OF DECISIONS

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1. In general

Cited in Simonds v Simonds (1954) 225 SC 211, 81 SE2d 344. Clanton v Clanton (1956) 229 SC 356, 92 SE2d 878. Simonds v Simonds (1957) 232 SC 185, 101 SE2d 494. Davis v Davis (1960) 236 SC 277, 113 SE2d 819. Taylor v Taylor (1962) 241 SC 462, 128 SE2d 910. Harmon v Harmon (1971) 257 SC 154, 184 SE2d 553. Spence v Spence (1973) 260 SC 526, 197 SE2d 683. Hill v Edwards (1974)262 SC 409, 205 SE2d 139.

Applied in Collins v Collins (1960) 237 SC 230, 116 SE2d 839. Porter v Porter (1965) 246 SC 332, 143 SE2d 619. Mixson v Mixson (1969) 253 SC 436, 171 SE2d 581. Graham v Graham (1970) 253 SC 486, 171 SE2d 704. Brockman v Brockman (1970) 253 SC 528, 171 SE2d 862. Ex parte Harmon (1971) 256 SC 328, 182 SE2d 300. Skinner v Skinner (1972) 257 SC 544, 186 SE2d 523. Herbert v Herbert (1973) 260 SC 86, 194 SE2d 238. Smith v Smith (1974) 262 SC 291, 204SE2d 53, later app 264 SC 624, 216 SE2d 541.

The history of divorce in this State and the strong public policy of this State relating to the fostering and protection of marriage are both discussed at some length in Brown v Brown (1949) 215 SC 502, 56 SE2d 330, 15 ALR2d 163. Shaw v Shaw (1971) 256 SC 453, 182 SE2d 865.

The causes for which separate maintenance and support may be granted are not confined to those which constitute grounds for divorce. Mincey v Mincey (1954) 224 SC 520, 80 SE2d 123, commented on in 6 SCLQ 382 (1954). Cleveland v Cleveland (1961) 238 SC 547, 121 SE2d 98. Todd v Todd (1963) 242 SC 263, 130 SE2d 552.

Stated in Jeffords v Jeffords (1950) 216 SC 451, 58 SE2d 731. Holliday v Holliday (1959) 235 SC 246, 111 SE2d 205.

Fact that recrimination was pled by former husband in divorce proceeding did not affect the family court’s subject matter jurisdiction to enter a divorce decree. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 59

Provisions of Code 1962 Sections 20‑101, 20‑105 [Code 1976 Sections 20‑3‑10, 20‑3‑50] only authorize a cause of action for dissolution of the bonds of matrimony and not a divorce a mensa et thoro. Nocher v. Nocher (S.C. 1977) 268 S.C. 503, 234 S.E.2d 884. Divorce 155

A duty rests upon the court to prevent the disruption of the marital relationship except under circumstances and for causes fully sanctioned by law. Lanier v. Lanier (S.C. 1968) 251 S.C. 117, 160 S.E.2d 558. Divorce 12

Thus, the complaining party may dismiss her action or withdraw a portion thereof before the final decree of the court in the absence of a showing that some peculiar right of the defendant or public demand otherwise. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394.

And it is error to enter a final decree for divorce against the wish of a petitioner in whose favor a decision has been given. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394.

The law will not force a divorce upon a party entitled to it, if he does not then desire it. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394.

The State is vitally interested in the continuance of, rather than the dissolution of, a marriage; divorce is not favored or encouraged but is discouraged. In re De Pass (S.C. 1957) 231 S.C. 134, 97 S.E.2d 505. Divorce 11

2. Constitutional issues

South Carolina is the only State in the Union which deals with divorce in its Constitution. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

And for most of its history divorces from the bonds of matrimony have not been allowed. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

The South Carolina Constitution is a limitation upon the power of the legislature to allow divorce upon any ground other than those enumerated therein. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865. Divorce 13

When the history of this State and its public policy with regard to marriage and divorce are considered, it is inconceivable that there was any intent, on the part of the framers or the voters, by the 1969 amendment to SC Const, Art 17, Section 3, to allow a divorce where the continuous separation of the parties was occasioned by the mental incompetence of one of them, or, in effect, allow a divorce on the ground of insanity. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

Although the amendment to SC Const, Art 17, Section 3, providing three years’ continuous separation as ground for divorce, is capable of self‑execution, the legislature retains plenary power to enact any law relating to the subject of divorce not prohibited by the Constitution. Singley v. Singley (S.C. 1971) 256 S.C. 117, 181 S.E.2d 17.

The only constitutional limitation on separation of the spouses as a ground of divorce is continuity for a period of three years, inferably, immediately prior to the filing of the bill. Singley v. Singley (S.C. 1971) 256 S.C. 117, 181 S.E.2d 17.

The provision in SC Const, Art 17, Section 3, that divorces are allowable on the grounds of continuous separation for a period of at least three years, deals with a condition or state of affairs between spouses, rather than with a matrimonial offense referable to an antecedent date. Singley v. Singley (S.C. 1971) 256 S.C. 117, 181 S.E.2d 17.

A decree of divorce based on continuous separation for a period of at least three years, commencing before the effective date of the amendment to SC Const, Art 17, Section 3, which provided for that ground, did not apply the amendment retroactively. Singley v. Singley (S.C. 1971) 256 S.C. 117, 181 S.E.2d 17.

3. Corroboration

No corroboration is required to support husband’s uncontradicted admission of adultery, where husband vigorously contested the adultery and suit was not collusive; admission of adultery was itself evidence from which finding of adultery could be made. Although no corroboration was necessary, husband’s presence alone with female in her house while she was “comfortably” dressed, provided some corroboration for his admission; while his presence in her home, without more, would not support finding of adultery, family court may consider incident as some evidence that some husband and female had opportunity and disposition to commit offense of adultery. McLaurin v. McLaurin (S.C.App. 1987) 294 S.C. 132, 363 S.E.2d 110.

In South Carolina the rule requiring corroboration is not mandatory and the necessity of such to a large extent depends upon the facts and circumstances of each case. McLaughlin v. McLaughlin (S.C. 1964) 244 S.C. 265, 136 S.E.2d 537. Divorce 127(3)

A divorce will not be granted on the uncorroborated testimony of a party or the parties to the suit; however, as the main reason for the rule is to prevent collusion, it is not generally deemed inflexible and may be relaxed where it is evident that collusion does not exist. McLaughlin v. McLaughlin (S.C. 1964) 244 S.C. 265, 136 S.E.2d 537. Divorce 127(3); Divorce 127(4)

The degree of corroboration required may be greater when the divorce is uncontested and only slight corroboration may be sufficient in certain contested divorces; however, if no corroboration is shown, then the burden is upon the plaintiff to show why. McLaughlin v. McLaughlin (S.C. 1964) 244 S.C. 265, 136 S.E.2d 537. Divorce 127(3); Divorce 127(4)

When the rule is deemed applicable, corroboration is required of all material allegations of the complaint necessary to sustain a decree of divorce, but such corroboration need not in itself be sufficient to warrant such relief. Corroboration may be either direct or circumstantial evidence. All testimony is not required to be corroborated in every particular. It may be corroborated by testimony of third persons as to some of the causes alleged or by testimony to acts other than those specifically alleged which tend to prove those that are. McLaughlin v. McLaughlin (S.C. 1964) 244 S.C. 265, 136 S.E.2d 537. Divorce 127(3); Divorce 127(4)

In the absence of collusion or connivance testimony of the adverse party may furnish necessary corroboration in certain instances; however, such corroboration is looked upon with suspicion if there is an absence of other corroborating testimony or circumstances. McLaughlin v. McLaughlin (S.C. 1964) 244 S.C. 265, 136 S.E.2d 537. Divorce 127(4)

A divorce will not be granted on uncorroborated testimony of a party or the parties to the suit. The rule applies whether the charge is adultery or the various other statutory grounds for divorce. Brown v Brown (1949) 215 SC 502, 56 SE2d 330, commented on in 2 SCLQ 286 (1950). Frazier v. Frazier (S.C. 1955) 228 S.C. 149, 89 S.E.2d 225.

4. Condonation

Regardless of whether an act of fellatio performed by the wife on another man constituted adultery within the meaning of Section 20‑3‑10, the husband could not avail himself of it as a ground for divorce where he condoned the act by continuing to cohabit and voluntarily engage in sexual intercourse with the wife for approximately five months. Doe v. Doe (S.C.App. 1985) 286 S.C. 507, 334 S.E.2d 829.

Husband who remained in home on advice of counsel and for the sake of the parties’ young son did not condone wife’s alleged misconduct by remaining in marital home where it was uncontroverted that he and his wife occupied separate rooms. Murray v. Murray (S.C. 1978) 271 S.C. 62, 244 S.E.2d 538. Divorce 135

Even if husband’s initial decision to stay in home after wife’s alleged misconduct constituted condonation, such condonation was nullified by the wife’s subsequent acts of misconduct. Murray v. Murray (S.C. 1978) 271 S.C. 62, 244 S.E.2d 538. Divorce 135

The duty of the court to preserve marriage transcends the procedural rights of the parties, and a divorce will be denied where the evidence establishes condonation, even though this defense was not pleaded. Lanier v. Lanier (S.C. 1968) 251 S.C. 117, 160 S.E.2d 558. Divorce 99

Condonation is a defense to an action for divorce. Buero v. Buero (S.C. 1965) 246 S.C. 355, 143 S.E.2d 719. Divorce 48

Voluntary marital cohabitation by the wife with her husband after acts of physical cruelty on his part which would have entitled her to a divorce will constitute condonation. Buero v. Buero (S.C. 1965) 246 S.C. 355, 143 S.E.2d 719. Divorce 49(2)

The continued occupancy by the wife and husband of the same home during the pendency of a divorce action, under the facts of the case, conclusively showed condonation on the part of the wife of the alleged acts of physical cruelty upon which the divorce was sought to be obtained. Buero v. Buero (S.C. 1965) 246 S.C. 355, 143 S.E.2d 719.

5. Adultery

Proof of adultery must be sufficiently definite to identify the time and place of the offense, and the circumstances under which it was committed. It is not necessary that the fact of adultery be proved by direct evidence, but it may be sufficiently proved by indirect or circumstantial evidence, or it may be proved by evidence consisting in part of both. Lee v Lee (1961) 237 SC 532, 118 SE2d 171. Odom v Odom (1966) 248 SC 144, 149 SE2d 353. Mann v Mann, 252 SC 160, 165 SE2d 632.

Divorce on the ground of adultery should be denied if, after due consideration of all the evidence, proof of guilt is inconclusive. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 129(10)

Circumstantial evidence showing opportunity and inclination to commit adultery is sufficient to establish a prima facie case. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 129(9)

While adultery may be proven by circumstantial evidence, such evidence must be so convincing as to exclude any other reasonable hypothesis but that of guilt. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 129(10)

To obtain a divorce based upon adultery, the evidence must be clear and positive, and the infidelity must be established by a clear preponderance of the evidence; the proof must be sufficiently definite to identify the time and place of the offense, and the circumstances under which it was committed but, because adultery is an activity that usually takes place in private, proof of adultery may be circumstantial. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 129(9)

Homosexual activity between 2 persons, at least one of whom was married to someone other than the sexual partner, constituted adultery under Sections 20‑3‑10 and 20‑3‑130 barring the award of alimony to a spouse found guilty of adultery. RGM v. DEM (S.C. 1991) 306 S.C. 145, 410 S.E.2d 564. Divorce 26

The disposition of a wife to commit adultery could be inferred from the circumstances where the adult son of the husband from a previous marriage, who lived with the wife for a period of time following the parties’ separation, testified that a man stayed at the apartment for “weeks at a time,” that the man generally spent the night in the bedroom with the wife, and that he could hear sounds of sexual behavior coming from the wife’s bedroom on a few occasions, and that a second man spent 2 nights with the wife in her bedroom from which the son again heard noises indicating sexual behavior. Perry v. Perry (S.C.App. 1990) 301 S.C. 147, 390 S.E.2d 480.

Proof of inclination and opportunity to commit adultery is sufficient to establish a prima facie case of adultery. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376. Divorce 129(16)

Section 20‑3‑10, which makes adultery a ground for divorce, does not define the term “adultery,” and there is nothing to show that the legislature intended a different meaning than the definition at common law. Thus, under Section 20‑3‑10, adultery is the illicit intercourse of 2 persons, one of whom, at least, is married. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376.

Sexual fidelity is a fundamental duty of the marital relationship. As far as the law is concerned, the contract of marriage is, in its essence, a consent on the part of a man and a woman to cohabit with each other and with each other only. This means that a husband and wife must confine their sexual activity exclusively to one another. Sexual relations with a person other than the marriage partner are illicit because they violate this marital duty of exclusiveness. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376.

Adultery may be proven by either direct or circumstantial evidence or a combination of the two. Circumstantial evidence is just as good as direct evidence if it is equally convincing and establishes the disposition to commit the offense and the opportunity to do so. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 129(9)

Husband’s contention that he should have been awarded divorce on ground of adultery need not be considered where trial court held wife entitled to divorce on ground of 12‑months separation, because granting of divorce to husband would not have dissolved marriage any more completely. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

Proof of alleged adultery must be clear and positive and infidelity must be established by clear preponderance of evidence; proof must be sufficiently definite to identify time and place of offense, and circumstances under which it was committed; however, because adultery is by its very nature activity which takes place in private, it may be proven by circumstantial evidence. Although divorce on ground of adultery should be denied if after due consideration of all evidence proof of guilt is inconclusive, insufficiency in any particular respect should not be allowed to defeat divorce where court is fully convinced that adultery has been committed and party has had full opportunity to defend or refute charge. McLaurin v. McLaurin (S.C.App. 1987) 294 S.C. 132, 363 S.E.2d 110.

Although, as a general rule, proof that a spouse has committed adultery must be sufficiently definite to identify the time and place of the offense and the circumstances under which it occurred, insufficiency in this respect should not be allowed to defeat a divorce where a court is fully convinced adultery has in fact been committed, and the offending party has had an opportunity to defend against the charge. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883.

Adultery may be proved by circumstantial evidence, or by direct evidence, or a combination of the two, and circumstantial evidence is just as good as direct evidence if it is equally convincing. Anders v. Anders (S.C. 1985) 285 S.C. 512, 331 S.E.2d 340.

6. Desertion

The essentials of desertion are (1) cessation from cohabitation, (2) intent on the part of the absenting party not to resume it, (3) absence of the opposite party’s consent, and (4) absence of justification. Oswald v Oswald (1956) 230 SC 299, 95 SE2d 493. Machado v Machado (1951) 220 SC 90, 66 SE2d 629, commented on in 4 SCLQ 318 (1951). Cleveland v Cleveland (1961) 238 SC 547, 121 SE2d 98. Boozer v Boozer (1963) 242 SC 292, 130 SE2d 903. Brown v Brown (1963) 243 SC 383, 134 SE2d 222. Adams v Adams (1964) 244 SC 143, 135 SE2d 760. Vickers v Vickers (1970) 255 SC 25, 176 SE2d 561.

A separation of the spouses by mutual consent does not constitute a desertion. Cleveland v Cleveland (1961) 238 SC 547, 121 SE2d 98. Cleveland v Cleveland (1964) 243 SC 586, 135 SE2d 84, 1 ALR3d 203. Bond v Bond (1969) 252 SC 363, 166 SE2d 302.

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. Wolfe v Wolfe (1951) 220 SC 437, 68 SE2d 348. Oswald v Oswald (1956) 230 SC 299, 95 SE2d 493.

The mere refusal of the wife to engage in sexual relations with the husband does not amount to desertion; such refusal does not constitute cessation from cohabitation. Vickers v. Vickers (S.C. 1970) 255 S.C. 25, 176 S.E.2d 561. Divorce 37(20)

Cessation from cohabitation is not established by proof of lack of intercourse alone. Vickers v. Vickers (S.C. 1970) 255 S.C. 25, 176 S.E.2d 561.

The fact alone that the wife fails to show that she is entitled to a divorce on the ground of desertion does not preclude an award of alimony upon a proper showing. Bond v. Bond (S.C. 1969) 252 S.C. 363, 166 S.E.2d 302.

The first of the essential elements of desertion, to warrant a divorce on that ground under the law of this State, is cessation from cohabitation for the statutory period of one year. Adams v. Adams (S.C. 1964) 244 S.C. 143, 135 S.E.2d 760.

One essential element being absent it becomes unnecessary to determine whether the other essential elements of desertion existed or not. Brown v. Brown (S.C. 1963) 243 S.C. 383, 134 S.E.2d 222.

Requirement that desertion continue for one year relates to degree and extent of proof required in establishing essential elements of desertion as ground for divorce and designed to safeguard institution of marriage in furtherance of public policy of State, and is not constitutionally objectionable. Nolletti v. Nolletti (S.C. 1963) 243 S.C. 20, 132 S.E.2d 11.

When husband and wife occupy same living quarters and hold themselves out to world as man and wife during requisite statutory period of time, divorce will not be granted on ground of desertion. Boozer v. Boozer (S.C. 1963) 242 S.C. 292, 130 S.E.2d 903.

A separation by mutual consent may be revoked at any time by either party making a bona fide request for the resumption of marital relations. Cleveland v. Cleveland (S.C. 1961) 238 S.C. 547, 121 S.E.2d 98. Divorce 37(19)

If the other party, without justification or excuse, refuses and persists in remaining apart after such revocation, he or she then becomes guilty of desertion. Cleveland v. Cleveland (S.C. 1961) 238 S.C. 547, 121 S.E.2d 98.

Which, if continued for the statutory period, furnishes the revoking party sufficient cause for a divorce. Cleveland v. Cleveland (S.C. 1961) 238 S.C. 547, 121 S.E.2d 98.

The statutory period commences to run from the date of the refusal to resume marital relations. Cleveland v. Cleveland (S.C. 1961) 238 S.C. 547, 121 S.E.2d 98. Divorce 37(6)

An intent to desert is an indispensable element of desertion. Oswald v. Oswald (S.C. 1956) 230 S.C. 299, 95 S.E.2d 493.

Of course, the cessation of cohabitation must be for the required statutory period before there can be a divorce on the ground of desertion. Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

There can be no desertion where the separation of the spouses is upon mutual consent. Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

And the resumption of cohabitation terminates the desertion. Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

7. Constructive desertion

In order to constitute constructive desertion, the abandoning party seeking to make a technical deserter out of the one abandoned must establish misconduct on the part of the other in itself, and independently amounting to one or more of the recognized permitted grounds for divorce. The conduct complained of must in itself be a sufficient cause for divorce, one or more of the four grounds permitted by the constitutional amendment. Mincey v Mincey (1954) 224 SC 520, 80 SE2d 123, commented on in 6 SCLQ 382 (1954). Simonds v Simonds (1956) 229 SC 376, 93 SE2d 107.

Desertion includes constructive desertion. Vickers v. Vickers (S.C. 1970) 255 S.C. 25, 176 S.E.2d 561.

In establishing constructive desertion it is necessary for the complaining spouse to show that he or she was compelled to leave because of conduct on the part of the other sufficient in itself, and independently, to constitute one or more of the permitted grounds for divorce. Vickers v. Vickers (S.C. 1970) 255 S.C. 25, 176 S.E.2d 561.

Where a divorce is sought on the grounds of constructive desertion and physical cruelty, proof of physical cruelty is necessary to establish constructive desertion since the plaintiff is compelled to show that she was forced to leave the defendant because of conduct sufficient in itself to constitute a ground for divorce. McLaughlin v. McLaughlin (S.C. 1964) 244 S.C. 265, 136 S.E.2d 537. Divorce 37(22)

Divorce on ground of constructive desertion was denied because year had not elapsed from date of desertion to commencement of action. Simonds v. Simonds (S.C. 1956) 229 S.C. 376, 93 S.E.2d 107.

A divorce may be granted in this State on the ground of constructive desertion. Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

Generally speaking, it may be said that there is constructive desertion where an existing cohabitation is intentionally brought to an end by the misconduct of one of the spouses, compelling the other to leave the marital home. An intent to desert is an indispensable element. However, it is not a necessary ingredient in constructive desertion that the husband shall entertain, in connection with the acts complained of, a settled purpose to drive his wife from him. It is enough if such is the natural consequence of his acts. Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

Where a wife is seeking the affirmative relief of divorce based on a claim of constructive desertion by her husband, it is incumbent upon her to establish the essential elements of desertion, some of which need not be shown in an action for separate maintenance. Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

8. Cruelty

In determining what acts constitute cruelty, regard must be had, not only to the provisions of this section [Code 1962 Section 20‑101], but also to the circumstances of each particular case. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593. Lindsey v Lindsey (1965) 246 SC 282, 143 SE2d 524. Brown v Brown (1967) 250 SC 114, 156 SE2d 641.

It is not every slight violence committed by the husband or wife against the other, even in anger, which will authorize the divorce. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593. Lindsey v Lindsey (1965) 246 SC 282, 143 SE2d 524. Crowder v Crowder (1965) 246 SC 299, 143 SE2d 580. Brown v Brown (1967) 250 SC 114, 156 SE2d 641.

A divorce will not be granted on the ground of physical cruelty when the acts of cruelty complained of were provoked by the misconduct of the complaining spouse. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593. Brown v Brown (1967) 250 SC 114, 156 SE2d 641.

Physical cruelty, as used in divorce law, has generally been defined by our courts as actual personal violence or such a course of physical treatment as endangers life, limb or health, and renders cohabitation unsafe. Brown v Brown (1949) 215 SC 502, 56 SE2d 330, 15 ALR2d 163, commented on in 2 SCLQ 286 (1950). Barstow v Barstow (1953) 223 SC 136, 74 SE2d 541. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593. Lindsey v Lindsey (1965) 246 SC 282, 143 SE2d 524. Crowder v Crowder (1965) 246 SC 299, 143 SE2d 580. Brown v Brown (1967) 250 SC 114, 156 SE2d 641.

The only form of cruelty recognized in South Carolina as a ground for divorce is “physical cruelty.” Barstow v Barstow (1953) 223 SC 136, 74 SE2d 541. Lindsey v Lindsey (1965) 246 SC 282, 143 SE2d 524.

If a wrongful act involves actual violence directed by one spouse at the other, bodily injury is not required in order to find physical cruelty under Section 20‑3‑10. Gibson v. Gibson (S.C.App. 1984) 283 S.C. 318, 322 S.E.2d 680. Divorce 27(3)

Cruelty, justifying a divorce in this State, means physical cruelty which is defined as actual personal violence, or such a course of physical treatment as endangers life, limb or health, and renders cohabitation unsafe. Vickers v. Vickers (S.C. 1970) 255 S.C. 25, 176 S.E.2d 561.

The courts seem to be particularly skeptical of the existence of fear or danger where a husky husband, in good health, is complaining of physical cruelty on the part of his frail consort. Brown v. Brown (S.C. 1967) 250 S.C. 114, 156 S.E.2d 641.

General unpleasantness of the wife is a risk assumed by the husband with marriage; however, it is not a statutory ground for divorce. Brown v. Brown (S.C. 1967) 250 S.C. 114, 156 S.E.2d 641. Divorce 12

Continued acts of personal violence producing physical pain or bodily injury and a fear of future danger are recognized as sufficient cause for a divorce for cruelty in nearly all jurisdictions, especially where accompanied by other acts of ill treatment. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593. Lindsey v Lindsey (1965) 246 SC 282, 143 SE2d 524. Crowder v Crowder (1965) 246 SC 299, 143 SE2d 580. Brown v. Brown (S.C. 1967) 250 S.C. 114, 156 S.E.2d 641. Divorce 27(6)

The determination of whether conduct falls within the meaning of “physical cruelty” is governed by the particular circumstances of each case. Crowder v. Crowder (S.C. 1965) 246 S.C. 299, 143 S.E.2d 580. Divorce 27(6)

What constitutes physical cruelty under South Carolina divorce law is a matter of proof rather than allegation. Lyon v. Lyon (S.C. 1955) 227 S.C. 25, 86 S.E.2d 606. Divorce 93(3)

While allegations as to physical cruelty may be subject to a motion to make more definite and certain, they are not subject to a general demurrer since SC Const, Art 17, Section 3, and this section [Code 1962 Section 20‑101] do not define physical cruelty. Lyon v. Lyon (S.C. 1955) 227 S.C. 25, 86 S.E.2d 606.

While severe or dangerous physical assaults by the wife on her husband may constitute physical cruelty and be a ground for divorce, slight acts of violence by a wife from which the husband can easily protect himself do not constitute physical cruelty entitling him to a divorce. Barstow v. Barstow (S.C. 1953) 223 S.C. 136, 74 S.E.2d 541. Divorce 27(4)

9. Single act of physical cruelty

One act of physical abuse does not constitute grounds for divorce under the divorce laws of this State. Smith v. Smith (S.C. 1969) 253 S.C. 350, 170 S.E.2d 650.

While a single act of physical cruelty, and the attendant circumstances may be serious enough to warrant a divorce on the ground of physical cruelty, it is generally held that a single act of physical cruelty does not ordinarily constitute ground for divorce, unless it is so severe and atrocious as to endanger life, or unless the act indicates intention to do serious bodily harm or causes reasonable apprehension of serious danger in the future. Smith v. Smith (S.C. 1969) 253 S.C. 350, 170 S.E.2d 650.

A single act of physical cruelty does not ordinarily constitute ground for divorce, unless it is so severe and atrocious as to endanger life, or unless the act indicates an intention to do serious bodily harm or causes reasonable apprehension of serious danger in the future. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593. Lindsey v. Lindsey (S.C. 1965) 246 S.C. 282, 143 S.E.2d 524.

A single act of aggravated cruelty may warrant a divorce if accompanied with such precedent or attendant circumstances as to satisfy the court that such acts are likely to be repeated. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593. Lindsey v. Lindsey (S.C. 1965) 246 S.C. 282, 143 S.E.2d 524.

A single act of physical cruelty does not constitute grounds for divorce. Guinan v. Guinan (S.C. 1970) 254 S.C. 554, 176 S.E.2d 173. Divorce 27(2)

A single act of aggravated cruelty may warrant a divorce if accompanied with such precedent or attendant circumstances as to satisfy the court that such acts are likely to be repeated. Smith v. Smith (S.C. 1969) 253 S.C. 350, 170 S.E.2d 650. Divorce 27(2)

10. Provocation

That there was some provocation will not disentitle a spouse to relief if the retaliatory cruelty complained of was out of proportion to the provoking conduct. Godwin v Godwin (1965) 245 SC 370, 140 SE2d 593 (1965). Brown v Brown (1967) 250 SC 114, 156 SE2d 641.

A single assault by one spouse upon the other spouse can constitute physical cruelty. The assault must, however, be life‑threatening or must be either indicative of an intent to do serious bodily harm or of such a degree as to raise a reasonable apprehension of great bodily harm in the future. A divorce on the ground of physical cruelty will not be granted when the physical cruelty is provoked by the complaining spouse and the physical cruelty is not out of proportion to the provocation. McDowell v. McDowell (S.C.App. 1989) 300 S.C. 96, 386 S.E.2d 468. Divorce 27(3)

The general rule is that divorce will not be granted on the ground of cruelty when such was provoked by the misconduct of the complainant. The conduct of the party who claims to have been provoked, however, may be out of all proportion to provocation, in which event provocation does not bar an action for divorce. Smith v. Smith (S.C. 1969) 253 S.C. 350, 170 S.E.2d 650. Divorce 46

11. Drunkenness

As a ground for divorce, “habitual drunkenness” is the fixed habit of frequently getting drunk; it does not necessarily imply continual drunkenness. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 22

A party seeking a divorce on the ground of habitual drunkenness must prove it by a preponderance of the evidence. Curry v. Curry (S.C.App. 2013) 402 S.C. 488, 741 S.E.2d 558. Divorce 128

One need not be an alcoholic to be guilty of habitual drunkenness, as grounds for the grant of a divorce; it is sufficient if the use or abuse of alcohol causes the breakdown of normal marital relations. Curry v. Curry (S.C.App. 2013) 402 S.C. 488, 741 S.E.2d 558. Divorce 22

To prove a spouse’s habitual drunkenness, as a ground for divorce, there must be a showing that the abuse of alcohol caused the breakdown of the marriage and that such abuse existed at or near the time of filing for divorce. Bodkin v. Bodkin (S.C.App. 2010) 388 S.C. 203, 694 S.E.2d 230. Divorce 22

To establish habitual drunkenness for purposes of Section 20‑3‑10(4), it is sufficient to show that use or abuse of alcohol causes breakdown of normal marital relations, and divorce is properly granted on this ground where evidence shows that husband was required to provide assistance to wife when she was publicly intoxicated and unable to return home and that these situations would occur in daytime and were source of considerable embarrassment to husband. Lee v. Lee (S.C.App. 1984) 282 S.C. 76, 316 S.E.2d 435.

Habitual drunkenness is the fixed habit of frequently getting drunk, but does not necessarily imply continual drunkenness. Rooney v. Rooney (S.C. 1963) 242 S.C. 503, 131 S.E.2d 618.

In order that a divorce may be granted on the ground of habitual drunkenness, such must exist at or near the time of the filing of the action for a divorce. Simonds v. Simonds (S.C. 1956) 229 S.C. 376, 93 S.E.2d 107. Divorce 22

12. Separation

Family court acted within its discretion in awarding parties a no‑fault divorce based on one year’s continuous separation, even though wife had requested divorce on grounds of husband’s adultery, and wife presented sufficient evidence to establish husband’s adultery; evidence was presented that each spouse engaged in extramarital conduct during the marriage, and family court was in best position to assess the parties’ and witnesses’ testimony as well as the evidence presented in determining which ground for divorce was most appropriate under the circumstances. Mick‑Skaggs v. Skaggs (S.C.App. 2014) 411 S.C. 94, 766 S.E.2d 870, certiorari denied. Divorce 108

When a husband and wife have lived separate and apart without cohabitation for one year, the family court can grant a divorce to both parties, and is not limited to granting the divorce to one party or the other. The granting of a divorce to both parties is not inconsistent with the language of Section 20‑3‑10(5), and is consistent with the purpose of the statute in providing for a “no‑fault” divorce. While the fault of a party in a divorce action can sometimes affect how other issues are decided, the ground on which a divorce is granted cannot possibly make any difference where the divorce is a “no‑fault” divorce. Miles v. Miles (S.C.App. 1990) 303 S.C. 33, 397 S.E.2d 790.

Husband’s contention that he should have been awarded divorce on ground of adultery need not be considered where trial court held wife entitled to divorce on ground of 12‑months separation, because granting of divorce to husband would not have dissolved marriage any more completely. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

When one spouse serves in military and parties were separated before military service began, or when separation is independent of military service, though during service, divorce on grounds of separation is proper. Niemann v. Niemann (S.C.App. 1984) 282 S.C. 127, 317 S.E.2d 472. Divorce 37(18)

Husband and wife living in separate rooms in marital home does not constitute living separate and apart, and does not meet requirement for divorce based on one year separation. Barnes v. Barnes (S.C. 1981) 276 S.C. 519, 280 S.E.2d 538.

If there had been any intent on the part of those who proposed and adopted the 1969 amendment to SC Const, Art 17, Section 3, to make insanity or mental incompetence a ground for divorce, it would have been quite simple for them to expressly so state, as have been done in so many other states. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

One who is separated from his spouse as the result of his commitment for mental incompetence is not, as a matter of law, capable of being conscious of the fact that a separation has occurred; and it follows that a separation so occurring is not sufficient to support a ground for divorce. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

Those who proposed and adopted the 1969 amendment to SC Const, Art 17, Section 3, did not intend that a separation brought about by the insanity of one of the parties would constitute a ground for divorce. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

A separation often occurs as the result of the unilateral act of one party. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

But the consciousness of the other party that such separation has occurred is essential. Shaw v. Shaw (S.C. 1971) 256 S.C. 453, 182 S.E.2d 865.

13. Estoppel

A common‑law husband was not estopped from asserting a prior marriage as a defense to an action for divorce brought by his common‑law wife, even though he had consented to an earlier order of the Family Court finding that they had been married at common‑law, where the wife knew when she entered into the relationship that the husband had failed to terminate his prior marriage, and yet she had made no further inquiries about the status of his existing marriage. Johns v. Johns (S.C.App. 1992) 309 S.C. 199, 420 S.E.2d 856.

14. Parties

A son could not bring a divorce action on behalf of his father as his attorney‑in‑fact where he had subsequently been appointed conservator and guardian of his father’s estate, thus terminating his appointment as attorney‑in‑fact; in the absence of proof that the power of attorney was made durable despite the appointment of a conservator, the court would assume that no special provision was made. Murray by Murray v. Murray (S.C. 1993) 310 S.C. 336, 426 S.E.2d 781, 32 A.L.R.5th 883.

A son could not bring a divorce action on behalf of his father as his conservator since no statutory authority allows a conservator to maintain an action with regard to personal matters. Murray by Murray v. Murray (S.C. 1993) 310 S.C. 336, 426 S.E.2d 781, 32 A.L.R.5th 883. Mental Health 476

A son could not bring a divorce action on behalf of his father as his guardian since a spouse who is mentally incompetent as to his property and person may not bring an action for divorce either on his own behalf or through a guardian; however, absolute denial would not apply to a spouse who is capable of exercising reasonable judgment as to his personal decisions, is able to understand the nature of the action, and is able to express unequivocally a desire to dissolve the marriage. Murray by Murray v. Murray (S.C. 1993) 310 S.C. 336, 426 S.E.2d 781, 32 A.L.R.5th 883.

15. Pleadings

Complaint alleged sufficient facts to state cause of action for divorce on grounds of adultery although it alleged “sexual activities” instead of “sexual intercourse,” because “sexual activity” includes act of “sexual intercourse,” although it may include other activities as well. Clark v. Clark (S.C. 1987) 293 S.C. 415, 361 S.E.2d 328. Divorce 93(2)

Condonation is an affirmative defense which should be pleaded. Lanier v. Lanier (S.C. 1968) 251 S.C. 117, 160 S.E.2d 558.

16. Presumptions and burden of proof

The proof of adultery as a ground for divorce must be clear and positive and the infidelity must be established by a clear preponderance of the evidence. Odom v Odom (1966) 248 SC 144, 149 SE2d 353. Mann v Mann (1969) 252 SC 160, 165 SE2d 632.

In order to prove habitual drunkenness as a ground for divorce, there must be a showing that the abuse of alcohol caused the breakdown of the marriage and that such abuse existed at or near the time of filing for divorce. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 128

Adultery must be proved by a clear preponderance of the evidence but the evidence need not be direct and adultery may be proved by circumstantial evidence. Patterson v. Patterson (S.C.App. 1986) 288 S.C. 282, 341 S.E.2d 819. Divorce 129(1)

Adultery as ground for divorce must be established by clear preponderance of evidence; if direct and/or circumstantial evidence fails to meet this standard of proof, then guilt is inconclusive and divorce will be denied. Fox v. Fox (S.C. 1982) 277 S.C. 400, 288 S.E.2d 390. Divorce 129(1)

In action for divorce on the ground of physical cruelty, where husband specifically denied any acts of physical cruelty, burden was upon the wife to present corroboration of the material allegations of her complaint. Simons v. Simons (S.C. 1975) 263 S.C. 509, 211 S.E.2d 555.

When a husband and wife occupy the same living quarters, the law presumes that they engage in marital relations, and the unsupported testimony of one of the parties in such instance that they did not cohabit is insufficient to overcome such presumption. Buero v. Buero (S.C. 1965) 246 S.C. 355, 143 S.E.2d 719.

The burden was upon the wife to establish by the preponderance of the evidence the charges of physical cruelty against her husband. Crowder v. Crowder (S.C. 1965) 246 S.C. 299, 143 S.E.2d 580.

The burden of proving physical cruelty carries with it the necessity of presenting corroboration of the material allegations of the complaint or an explanation for its absence. Crowder v. Crowder (S.C. 1965) 246 S.C. 299, 143 S.E.2d 580. Divorce 127(3); Divorce 130

The burden was upon plaintiff to show that his wife deserted him and that such desertion continued for a period of one year prior to the commencement of this action. Cleveland v. Cleveland (S.C. 1961) 238 S.C. 547, 121 S.E.2d 98. Divorce 109.3(2)

The burden was upon the plaintiff to make good the allegation of physical cruelty by a preponderance of the evidence, by detailing what went before and what followed the physical violence of which she complained. Brown v. Brown (S.C. 1949) 215 S.C. 502, 56 S.E.2d 330, 15 A.L.R.2d 163. Divorce 130

17. Admissibility of evidence

In divorce proceeding, family court’s exclusion of evidence of wife’s e‑mails, and the evidence of alleged adultery flowing therefrom, on the basis that their interception violated the Electronic Communications Privacy Act (ECPA) was supported by husband’s admission that he had attached spyware to wife’s computer, despite his testimony that he accessed wife’s e‑mails by other means. Teeter v. Teeter (S.C.App. 2014) 408 S.C. 485, 759 S.E.2d 144, rehearing denied, certiorari dismissed. Divorce 115; Telecommunications 1448

Lower court’s finding of adultery on part of husband, and consequent granting of divorce to wife, reversed where only evidence of adultery was deposition of witness improperly admitted by reason of failure to establish unavailability of witness. Stone v. Guaranty Bank & Trust Co. (S.C. 1978) 270 S.C. 331, 242 S.E.2d 404.

18. Sufficiency of evidence

Evidence was sufficient to conclude that husband had not engaged in habitual drunkenness, as ground for divorce, despite wife’s testimony that husband would get drunk every day and abuse prescription medication; husband’s friend of 25 years testified that he had never seen husband drunk, and husband’s appearance and professional accomplishments were indicative of self‑control. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 22

A preponderance of the evidence supported family court’s finding that husband’s abuse of alcohol caused the breakdown of the parties’ marriage, and that such abuse existed at or near the time of wife’s filing for divorce; wife testified husband drank to excess on a regular basis during the later part of the marriage, became loud, rude and verbally abusive when he drank, routinely went to bed drunk, and refused to seek professional help to address his drinking, which was corroborated by wife’s two sisters and her brother in law. Curry v. Curry (S.C.App. 2013) 402 S.C. 488, 741 S.E.2d 558. Divorce 128

Evidence did not support conclusion that husband was entitled to divorce on ground of wife’s habitual drunkenness; while wife admitted she consumed beer while taking prescription medications, she was the one who moved out of marital residence and filed action, she took child, who was 14 years old at the time, with no objection by husband, and husband agreed to wife’s having sole custody of child, wife had completed her bachelor’s and master’s degrees over course of marriage, received her certification or license, and stayed home with husband’s children and parties’ child, and husband’s claim that wife was not entitled to alimony and was capable of earning a good salary was inconsistent with his claim that she had a drinking problem of such a serious degree that it rose to level of habitual drunkenness and led to breakdown of marriage. Bodkin v. Bodkin (S.C.App. 2010) 388 S.C. 203, 694 S.E.2d 230. Divorce 128

Wife’s evidence was insufficient to warrant divorce on ground of husband’s alleged habitual drunkenness; no allegations of alcohol abuse were included in preseparation letter written by wife to husband concerning changes in his conduct which would improve marriage. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 132(6); Divorce 594(4)

A wife was not entitled to a divorce on the ground of habitual drunkenness where (1) she and her witnesses testified that the husband drank heavily on a daily basis, but the husband and his witnesses testified that he seldom drank, and never to excess, and (2) the court’s order succinctly stated that the evidence was insufficient to prove habitual drunkenness (Rule 26(a), SCRFC). Epperly v. Epperly (S.C. 1994) 312 S.C. 411, 440 S.E.2d 884, rehearing denied.

The trial court erred in discounting the fault of the husband in the breakup of the marriage when dividing the marital property, despite his testimony that he had stopped drinking 6 months prior to the divorce, where (1) the wife testified that he drank heavily both before and after she left the marital home and that his drinking was the cause of the breakup of the marriage, and (2) the husband never denied the wife’s testimony about the nature of his drinking or the problems it caused in the marriage. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604.

A husband was entitled to a divorce and denial of alimony on the ground of adultery, even though the wife suffered from a multiple personality disorder, where the wife failed to prove by a preponderance of the evidence that her mental condition deprived her of the ability to control her various personalities one of which purportedly committed the adultery. Rutherford v. Rutherford (S.C.App. 1990) 303 S.C. 424, 401 S.E.2d 177, reversed 307 S.C. 199, 414 S.E.2d 157.

Where a married woman, with a history of having committed adultery, spends the night, undressed, in the same bed with a man, with whom it appears she is romantically involved and to whom she is not married, her actions warrant the finding that she has committed adultery. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376. Divorce 129(16)

The evidence was sufficient to support a grant of divorce to a wife on the ground of adultery where written detective reports placed the husband at the home of his alleged paramour overnight on more than one occasion, the husband admitted spending the night with his paramour and sleeping in her bed, the wife had observed the paramour’s car outside the husband’s office all night, and the husband had admitted, during deposition, that he knew his wife had “the goods on him.” Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

The evidence was sufficient to support the granting of a divorce on the ground of adultery where a witness testified that he saw the husband and a woman parked at night in a graveyard sitting close together in the car, and another witness testified that he saw the husband and the woman get in a car together, drive down a dead‑end dirt road and return an hour and a half later. Prevatte v. Prevatte (S.C.App. 1989) 297 S.C. 345, 377 S.E.2d 114.

A husband was not entitled to a divorce on the ground of adultery where (1) the family court specifically found that the primary reason for the breakup of the marriage was not the wife’s adultery but rather the conduct of the husband, and (2) the husband was not prejudiced by the trial court’s failure to award him a divorce on the ground of adultery. Martin v. Martin (S.C.App. 1988) 296 S.C. 436, 373 S.E.2d 706.

A wife did not sufficiently establish physical cruelty on the husband’s part so as to warrant a divorce where she failed to establish that the alleged acts of physical cruelty endangered her life, limb or health or rendered cohabitation unsafe. Gambrell v. Gambrell (S.C.App. 1988) 295 S.C. 457, 369 S.E.2d 662.

A wife did not sufficiently establish drunkenness on the husband’s part so as to warrant a divorce where she failed to establish that the husband had a drinking problem at or near the time the divorce action was filed. Gambrell v. Gambrell (S.C.App. 1988) 295 S.C. 457, 369 S.E.2d 662.

Circumstantial evidence was insufficient to establish both disposition to commit offense of adultery and opportunity to do so where family court had granted divorce on ground of adultery and denied wife alimony because of adultery, and evidence showed that wife and another woman on 3 different occasions spent night in house occupied by 2 men; while evidence might be sufficient to establish that wife and alleged paramour had opportunity to commit adultery, it was not enough to show that they were mutually disposed to commit that offense. Fulton v. Fulton (S.C.App. 1987) 293 S.C. 146, 359 S.E.2d 88.

The Family Court did not err in failing to find the former wife guilty of adultery where, although the record suggested adultery on her part, the alleged adultery was not so clearly and conclusively shown that there was no practical theory under which she could have been found innocent, when all the evidence was considered together. Rabon v. Rabon (S.C.App. 1986) 289 S.C. 49, 344 S.E.2d 615.

Although certain choking episodes may have been condoned by the former wife, the former husband’s subsequent cruel conduct revived the former acts and they together with a more recent incident of actual personal violence provided a basis for divorce on the ground of physical cruelty. Rabon v. Rabon (S.C.App. 1986) 289 S.C. 49, 344 S.E.2d 615. Divorce 51

Family Court did not err in granting to former wife a divorce on the ground of physical cruelty under evidence showing that, in addition to grabbing and pushing the former wife into a patio screen and a counter, thus bruising her arm and hip, the former husband had previously choked the former wife, and had displayed violent temper, and had threatened to kill her. Rabon v. Rabon (S.C.App. 1986) 289 S.C. 49, 344 S.E.2d 615.

Desertion was proved by evidence that wife moved husband’s clothes out of house and changed locks on doors to prevent husband’s return, where such act was clearly without husband’s consent, without justification appearing on record, and without showing of bona fide intent to resume marital relationship. Fort v. Fort (S.C. 1978) 270 S.C. 255, 241 S.E.2d 891. Divorce 133(6)

Denial of divorce and award of separate maintenance and child custody to wife affirmed by Supreme Court where lower court findings concurred with those of referee and were not found to be without evidentiary support due to conflicting testimony as to whether husband had inflicted physical abuse on wife, and as to whether wife continued to have drug problem so as to affect her responsibilities as mother. Jones v. Jones (S.C. 1978) 270 S.C. 143, 241 S.E.2d 417.

Court properly refused to grant divorce and alimony to wife who alleged husband had been guilty of physical cruelty where record failed to sustain by preponderance of evidence that husband had made any physical attack upon wife of violent or serious nature or that any act of husband indicated intention to do serious bodily harm, or to cause wife reasonable apprehension of serious danger in future. Wood v. Wood (S.C. 1977) 269 S.C. 600, 239 S.E.2d 315. Divorce 130

Husband should not have been granted divorce on ground of physical cruelty where evidence, while revealing deplorable state of affairs between parties, did not show husband had sufficient reason to apprehend danger to life, limb, or health and where, in nearly every instance, wife was provoked by acts of husband. Gill v. Gill (S.C. 1977) 269 S.C. 337, 237 S.E.2d 382.

Where the wife has treated the husband with coldness and contempt and refused to have sexual relations with him, resulting in a threatened mental and physical breakdown, such conduct does not constitute physical cruelty within the meaning of the divorce statute. Vickers v. Vickers (S.C. 1970) 255 S.C. 25, 176 S.E.2d 561.

No divorce may be granted on the ground of constructive desertion as plaintiff voluntarily left his wife and her conduct, not being sufficient in itself to constitute a ground for divorce, did not afford him sufficient justification to leave the home. Lindsey v. Lindsey (S.C. 1965) 246 S.C. 282, 143 S.E.2d 524. Divorce 37(22)

The evidence shows nothing more than incompatibility between the parties characterized by the nagging of the wife and such conduct does not constitute physical cruelty within the contemplation of this section [Code 1962 $ 20‑101]. Lindsey v. Lindsey (S.C. 1965) 246 S.C. 282, 143 S.E.2d 524. Divorce 130

Evidence held entirely insufficient to warrant divorce on ground of desertion. Adams v. Adams (S.C. 1964) 244 S.C. 143, 135 S.E.2d 760.

Where a husband was an enlisted man who was required to reside wherever he was assigned by the Navy Department, he had a right to expect his wife to reside with him, and when he had made every preparation, such as obtaining quarters in which to live, it was the duty of the wife to go with him, and if she refused, she was guilty of desertion. Oswald v. Oswald (S.C. 1956) 230 S.C. 299, 95 S.E.2d 493. Divorce 37(21)

Where, during period of almost a year from the time of separation of the parties until the commencement of divorce action, husband had wholly abstained from use of alcoholic beverages, wife was not entitled to divorce on ground of habitual drunkenness. Simonds v. Simonds (S.C. 1956) 229 S.C. 376, 93 S.E.2d 107.

19. Review

Existence of defense of recrimination need not be determined on appeal where record fully supports finding that husband’s acts of cruelty were condoned and that wife failed to prove any other statutory grounds for divorce. Pride v. Pride (S.C. 1977) 269 S.C. 70, 236 S.E.2d 404.

**SECTION 20‑3‑20.** Effect of collusion.

If it shall appear to the satisfaction of the court that the parties to any divorce proceeding colluded or that the act complained of was done with the knowledge or assent of the plaintiff for the purpose of obtaining a divorce the court shall not grant such divorce.

HISTORY: 1962 Code Section 20‑102; 1952 Code Section 20‑102; 1949 (46) 216.

Library References

Divorce 56.

Westlaw Topic No. 134.

C.J.S. Divorce Sections 135 to 136.

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**SECTION 20‑3‑30.** Residence requirement.

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.

HISTORY: 1962 Code Section 20‑103; 1952 Code Section 20‑103; 1949 (46) 216; 1951 (47) 539; 1975 (59) 310; 1987 Act No. 17 Section 1, eff March 31, 1987.

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NOTES OF DECISIONS

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Jurisdiction 2

1. In general

The term “reside” as used in this section [Code 1962 Section 20‑103] is equivalent in substance to “domicile.” Gasque v. Gasque (S.C. 1965) 246 S.C. 423, 143 S.E.2d 811.

The term “domicile” means the place where a person has his true, fixed and permanent home and principal establishment, to which he has whenever he is absent, an intention of returning. Gasque v. Gasque (S.C. 1965) 246 S.C. 423, 143 S.E.2d 811. Domicile 1

The true basis and foundation of domicile is the intention, the quo animo, of residence. Gasque v. Gasque (S.C. 1965) 246 S.C. 423, 143 S.E.2d 811. Domicile 4(2)

The question of domicile is largely one of intent to be determined under the facts and circumstances of each case. Gasque v. Gasque (S.C. 1965) 246 S.C. 423, 143 S.E.2d 811. Domicile 11

It is generally held that temporary absence from one’s domiciliary state solely because of government work or employment does not effect a change of domicile within the meaning of the divorce laws, in the absence of clear proof of an intent to abandon the old domicile and acquire a new one. Gasque v. Gasque (S.C. 1965) 246 S.C. 423, 143 S.E.2d 811. Domicile 4(2)

Cited in Foster v. Nordman (S.C. 1964) 244 S.C. 485, 137 S.E.2d 600.

2. Jurisdiction

Evidence in divorce proceeding established that both husband and wife intended to reside in South Carolina, and thus, family court had subject matter jurisdiction over the parties’ marriage; wife sent child with husband to South Carolina, she moved all her household goods to South Carolina, and she proceeded to look for permanent housing in South Carolina. Roesler v. Roesler (S.C.App. 2011) 396 S.C. 100, 719 S.E.2d 275, rehearing denied. Divorce 124.3

Jurisdictional requirements for divorce actions are not applicable to independent actions for alimony or separate maintenance. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504. Divorce 590

Where wife filed for divorce in South Carolina, and husband filed for divorce in Florida, and the Florida court dissolved the marriage but could not rule on alimony, suit money, or attorney’s fees, South Carolina court had jurisdiction to rule on alimony, attorney’s fees, and costs under the “divisible divorce” doctrine. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

Attachment of foreign respondent’s real property located in South Carolina gave court jurisdiction to hear claims for alimony, attorneys fees, and costs in “divisible divorce” action. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

In an action for alimony and support, the South Carolina court obtained jurisdiction by service of summons and by voluntary general appearance by the respondent. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

**SECTION 20‑3‑40.** Married person deemed of age.

Any married person shall, for the purpose of maintaining or defending an action for divorce and the settlement of property rights arising thereunder, be deemed of age.

HISTORY: 1962 Code Section 20‑104; 1952 Code Section 20‑104; 1949 (46) 216.

Library References

Divorce 10.

Infants 1273.

Westlaw Topic Nos. 134, 211.

C.J.S. Divorce Section 170.

C.J.S. Infants Sections 312 to 313, 327.

**SECTION 20‑3‑50.** Jurisdiction of actions for divorce.

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.

HISTORY: 1962 Code Section 20‑105; 1952 Code Section 20‑105; 1949 (46) 216.

CROSS REFERENCES

Provisions relative to equitable apportionment of marital property, see Section 20‑3‑610 et seq.

Library References

Divorce 6, 57, 59.

Westlaw Topic No. 134.

C.J.S. Divorce Sections 2 to 4, 7 to 9, 17 to 18, 25, 147 to 148, 151 to 152.

LAW REVIEW AND JOURNAL COMMENTARIES

1978 Survey: domestic relations: custody. 29 S.C. L. Rev. 99.

NOTES OF DECISIONS

In general 1

Litigation of property rights 2

Review 3

1. In general

An action for divorce is within the equity jurisdiction of the court. Mincey v Mincey (1954) 224 SC 520, 80 SE2d 123, commented on in 6 SCLQ 382 (1954). Dobson v Atkinson (1957) 232 SC 12, 100 SE2d 531. Todd v Todd (1963) 242 SC 263, 130 SE2d 552.

Stated in Jeffords v Jeffords (1950) 216 SC 451, 58 SE2d 73. Machado v Machado (1951) 220 SC 90, 66 SE2d 629, commented on in 4 SCLQ 318 (1951).

Since husband’s obligation under parties’ separation agreement was enforceable only by resort to ordinary contract remedies and since the Family Court’s subject matter jurisdiction did not extend to actions ex contractu, Court’s orders regarding separation agreement were void for lack of subject matter jurisdiction. Peterson v. Peterson (S.C.App. 1998) 333 S.C. 538, 510 S.E.2d 426. Divorce 965

Provisions of Code 1962 Sections 20‑101, 20‑105 [Code 1976 Sections 20‑3‑10, 20‑3‑50] only authorize a cause of action for dissolution of the bonds of matrimony and not a divorce a mensa et thoro. Nocher v. Nocher (S.C. 1977) 268 S.C. 503, 234 S.E.2d 884. Divorce 155

Cited in DuBose v. DuBose (S.C. 1972) 259 S.C. 418, 192 S.E.2d 329.

The general rule is that the jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. Piana v Piana (1961) 239 SC 367, 123 SE2d 297. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372. Courts 30

If jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached. Piana v Piana (1961) 239 SC 367, 123 SE2d 297. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372. Courts 30

In this State the courts in a divorce proceeding may exercise full equity powers. Piana v. Piana (S.C. 1961) 239 S.C. 367, 123 S.E.2d 297.

And the right to exercise those powers is not dependent on the success or failure of the divorce action. Piana v. Piana (S.C. 1961) 239 S.C. 367, 123 S.E.2d 297. Divorce 6.5

The court having general jurisdiction when a divorce action is brought, such jurisdiction is not lost when a divorce is denied. Piana v. Piana (S.C. 1961) 239 S.C. 367, 123 S.E.2d 297.

Applied in Lee v Lee (1961) 237 SC 532, 118 SE2d 171. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

2. Litigation of property rights

Voluntary litigation in a divorce case by the parties of their respective property rights confers jurisdiction on the court to determine the questions raised thereby. Piana v. Piana (S.C. 1961) 239 S.C. 367, 123 S.E.2d 297. Divorce 871

Regardless of whether the court otherwise would have had jurisdiction. Piana v. Piana (S.C. 1961) 239 S.C. 367, 123 S.E.2d 297.

While the divorce statute (Title 20, chapter 2) does not expressly authorize the court in a divorce proceeding to settle disputed claims of the parties to real and personal property, yet such an action is in the equity jurisdiction of the court and there is nothing in the statute undertaking to restrict the broad powers of a court of chancery. Piana v. Piana (S.C. 1961) 239 S.C. 367, 123 S.E.2d 297.

Assuming that in a divorce proceeding, particularly when the divorce is denied, the court should refrain from undertaking any adjudication of property rights, the question is not one of jurisdiction but the proper exercise of jurisdiction. The remedy for any mistake is by direct appeal and not by collateral attack. Piana v. Piana (S.C. 1961) 239 S.C. 367, 123 S.E.2d 297.

3. Review

In equity case Supreme Court may reverse findings of fact of county judge when appellant satisfies court that such findings are without evidentiary support or are against clear preponderance of evidence. Todd v. Todd (S.C. 1963) 242 S.C. 263, 130 S.E.2d 552. Appeal And Error 1009(2); Appeal And Error 1009(4)

An action for divorce being one in equity, an appellate court is at liberty to review the facts and weight the evidence. Sherbert v. Sherbert (S.C. 1961) 237 S.C. 449, 117 S.E.2d 715.

The evidence in an action for divorce must be considered in the light of the well‑settled rule that in an equity case findings of fact by a master or referee, concurred in by a circuit judge, will not be disturbed by the Supreme Court unless it appears that such findings are without evidentiary support or are against the clear preponderance of the evidence. Mincey v Mincey (1954) 224 SC 520, 80 SE2d 123, commented on in 6 SCLQ 382 (1954). Dobson v. Atkinson (S.C. 1957) 232 S.C. 12, 100 S.E.2d 531.

That the findings of fact in divorce proceedings were by the trial judge himself, who had an opportunity of not only considering the testimony but also of viewing the parties and the witnesses and considering their attitudes in adjudging the veracity of their testimony, makes for a still stronger application of the rule that his findings will not be disturbed unless it appears that such findings are without evidentiary support or are against the clear preponderance of the evidence. Frazier v. Frazier (S.C. 1955) 228 S.C. 149, 89 S.E.2d 225. Appeal And Error 1010.1(1); Appeal And Error 1012.1(4)

**SECTION 20‑3‑60.** Venue.

Actions for divorce from the bonds of matrimony or for separate support and maintenance must be tried in the county (a) in which the defendant resides at the time of the commencement of the action, (b) in which the plaintiff resides if the defendant is a nonresident or after due diligence cannot be found, or (c) in which the parties last resided together as husband and wife unless the plaintiff is a nonresident, in which case it must be brought in the county in which the defendant resides.

HISTORY: 1962 Code Section 20‑106; 1952 Code Section 20‑106; 1949 (46) 216; 1951 (47) 539; 1985 Act No. 56 Section 1, eff April 29, 1985.

Library References

Divorce 66.

Westlaw Topic No. 134.

C.J.S. Divorce Sections 165 to 169.

NOTES OF DECISIONS

In general 1

1. In general

Venue of divorce action was proper in county in which couple last lived together, although defendant subsequently moved to another county; word “shall” in Section 20‑4‑60, providing that actions for divorce shall be tried in county in which defendant resides, in which plaintiff resided with defendant if defendant is nonresident or cannot be found, or in which parties last resided together unless plaintiff is nonresident, does not indicate mandatory directive that actions must be tried in county in which defendant resides at commencement of action since such construction renders nugatory word “or” which indicates action is triable in any one of three alternative places. Voravudhi v. Voravudhi (S.C. 1979) 273 S.C. 407, 257 S.E.2d 156. Divorce 66

Where a motion is made for a change of venue on the ground that the named county is the residence of the defendant, and such is not disputed, then a question of law is presented and the decision in the matter is not addressed to the discretion of the trial judge. Brockman v. Brockman (S.C. 1970) 253 S.C. 528, 171 S.E.2d 862. Venue 40

The term “due diligence,” as used in this section [Code 1962 Section 20‑106], means some attempt to find the party, in the county of his alleged residence, which the court or judge shall be satisfied is reasonable under the circumstances. Collins v. Collins (S.C. 1960) 237 S.C. 230, 116 S.E.2d 839. Divorce 66

A divorce action may be brought in the county in which the parties last resided as husband and wife. Thomas v. Thomas (S.C. 1950) 218 S.C. 235, 62 S.E.2d 307.

**SECTION 20‑3‑70.** Service of summons on nonresident.

When the person on whom the service of the summons in an action for divorce from the bonds of matrimony is to be made cannot, after due diligence, be found within the State and that fact appears to the satisfaction of the court, or judge thereof, the clerk of the court of common pleas, the master or the probate judge of the county in which the cause is pending and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, such court, judge, clerk, master or judge of probate may grant an order that the service be made by the publication of the summons in the manner and with the effect provided in Sections 15‑9‑710 to 15‑9‑740. In lieu of publication of summons as provided in Sections 15‑9‑710 to 15‑9‑740 the plaintiff may cause such process to be served personally upon any nonresident and the service so made shall be sufficient.

HISTORY: 1962 Code Section 20‑107; 1952 Code Section 20‑107; 1949 (46) 216.

CROSS REFERENCES

Service by publication in proceedings for separate maintenance or legal separation, etc., see Section 15‑9‑710.

Library References

Divorce 79.

Westlaw Topic No. 134.

C.J.S. Divorce Sections 184 to 187.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Review 3

1. In general

Assuming arguendo that Hague Service Convention treaty pertaining to service of court documents abroad applied only to service of process, such treaty was inapplicable to former husband’s service of process in divorce proceeding, and thus serving husband documents via mail subsequent to service of process did not violate treaty, where personal service was accomplished in State and there was no challenge to its validity. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 78; Treaties 8

In the absence of fraud or collusion, the decision of the officer issuing an order of publication is final. Prevatte v. Prevatte (S.C.App. 1989) 297 S.C. 345, 377 S.E.2d 114.

This section [Code 1962 Section 20‑107] makes provisions of Code 1962 Sections 10‑451 to 10‑454 with respect to service by publication applicable to divorce cases. Cannon v. Cannon (S.C. 1973) 260 S.C. 204, 195 S.E.2d 176.

The concluding sentence of this section [Code 1962 Section 20‑107] effectively adopts Code 1962 Section 10‑455 also. Cannon v. Cannon (S.C. 1973) 260 S.C. 204, 195 S.E.2d 176.

Applied in Collins v. Collins (S.C. 1960) 237 S.C. 230, 116 S.E.2d 839.

2. Constitutional issues

Former husband was not deprived of actual notice of documents served abroad via mail in divorce proceeding, and thus, husband’s due process rights were not violated, where former wife’s counsel both faxed and mailed to husband every document served subsequent to order allowing service by mail. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Constitutional Law 4386; Divorce 78

3. Review

Former husband waived on appeal any objection to trial court’s order allowing service by mail in divorce proceeding if husband failed to appoint an agent for service by date certain, for purposes of claim that such service abroad violated husband’s due process rights, where husband did not appeal order, nor did he claim that directive to appoint an agent violated his due process rights, and husband never raised due process issue to trial court. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 179; Divorce 184(1)

**SECTION 20‑3‑80.** Required delays before reference and final decree; exceptions.

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 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.

HISTORY: 1962 Code Section 20‑108; 1952 Code Section 20‑108; 1949 (46) 216; 1979 Act No. 10 Section 2.

Library References

Divorce 143(1).

Westlaw Topic No. 134.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Divorce Section 16, No‑Fault Grounds.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Porter v Porter (1965) 246 SC 332, 143 SE2d 619. Rajcich v Rajcich (1971) 256 SC 121, 181 SE2d 11. Cain v Secretary of Health, Education & Welfare (1967, CA4 SC) 377 F2d 55.

Stated in Holman v. Holman (S.C. 1974) 262 S.C. 469, 205 S.E.2d 382.

Cited in Holliday v. Holliday (S.C. 1959) 235 S.C. 246, 111 S.E.2d 205.

**SECTION 20‑3‑90.** Attempt at reconciliation.

In all cases referred to a master or special referee, such master or special referee shall, except in default cases, summon the party or parties within the jurisdiction of the court before him and shall in all cases make an earnest effort to bring about a reconciliation between the parties if they appear before him. No judgment of divorce shall be granted in such case unless the master or special referee to whom such cause may have been referred shall certify in his report or, if the cause has not been referred, unless the trial judge shall state in the decree that he has attempted to reconcile the parties to such action and that such efforts were unavailing.

HISTORY: 1962 Code Section 20‑110; 1952 Code Section 20‑110; 1949 (46) 216; 1950 (46) 2363.

Library References

Divorce 52, 143(2).

Westlaw Topic No. 134.

C.J.S. Divorce Sections 137 to 141.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Divorce Section 20, Reconciliation.

LAW REVIEW AND JOURNAL COMMENTARIES

Marriage Counseling Through the Divorce Courts—Another Look. 28 S.C. L. Rev. 687.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Stated in Re DePass (1957) 231 SC 134, 97 SE2d 505. Godwin v. Godwin (S.C. 1965) 245 S.C. 370, 140 S.E.2d 593.

It is error to enter a final decree for divorce against the wish of a petitioner in whose favor a decision has been given. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394.

The complaining party may dismiss her action or withdraw a portion thereof before the final decree of the court in the absence of a showing that some peculiar right of the defendant or public demand otherwise. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394.

The law will not force a divorce upon a party entitled to it, if he does not then desire it. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394.

The State by virtue of its interest in the continuance of the marriage has a definite interest in protecting the marriage relation even to the extent of encouraging dismissal of divorce actions. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394. Divorce 11

The courts of this State have uniformly encouraged the dismissal of divorce actions and the reconciliation of the parties in compliance with this section [Code 1962 Section 20‑110]. Case v. Case (S.C. 1964) 243 S.C. 447, 134 S.E.2d 394.

While this section [Code 1962 Section 20‑110] requires an earnest effort toward reconciliation by the court in every case where both parties are before the court, and a certification with respect thereto by the court, it would seem even more imperative that the court exert such earnest effort in a case where one of the parties affirmatively alleges efforts toward and seeks a reconciliation. Brown v. Brown (S.C. 1963) 243 S.C. 383, 134 S.E.2d 222. Divorce 152

The recognized public policy of this State is clearly reflected in this section [Code 1962 Section 20‑110]. Brown v. Brown (S.C. 1963) 243 S.C. 383, 134 S.E.2d 222.

The public policy of this State relating to marriage is to foster and protect it, to make it a permanent and public institution, to encourage the parties to live together, and to prevent separation. Brown v. Brown (S.C. 1963) 243 S.C. 383, 134 S.E.2d 222. Divorce 1

The reconciliation procedures provided by this section [Code 1962 Section 20‑110] are mandatory. Fennell v. Littlejohn (S.C. 1962) 240 S.C. 189, 125 S.E.2d 408.

Cited in Simonds v Simonds (1956) 229 SC 376, 93 SE2d 107. Simonds v. Simonds (S.C. 1957) 232 S.C. 185, 101 S.E.2d 494.

Statement in decree of the trial judge, “Finding that a reconciliation between the parties could not be effected, I have considered the testimony carefully,” was substantial compliance with this section [Code 1962 Section 20‑110]. Frazier v. Frazier (S.C. 1955) 228 S.C. 149, 89 S.E.2d 225. Divorce 162

2. Review

A divorce decree would be reversed, where the trial judge made no attempt to reconcile the parties and failed to conduct a reconciliation hearing, as required by Section 20‑3‑90. Miller v. Miller (S.C. 1984) 280 S.C. 314, 313 S.E.2d 288. Divorce 184(12)

Error of trial judge in failing to comply with this section [Code 1962 Section 20‑110] is sufficient ground for reversal of the decree. Brown v. Brown (S.C. 1963) 243 S.C. 383, 134 S.E.2d 222.

**SECTION 20‑3‑100.** Attempt at reconciliation when one party is in armed forces overseas.

When either of the parties is a member of the armed forces and is serving without the continental limits of the United States, an affidavit by such party, taken before any officer of the armed forces authorized to administer an oath, to the effect that, so far as he is concerned, a reconciliation is impossible shall be accepted by the court in lieu of the certification that an unsuccessful attempt to reconcile the parties has been made.

HISTORY: 1962 Code Section 20‑110.1; 1952 Code Section 20‑110.1; 1951 (47) 538.

Library References

Armed Services 34(1).

Divorce 143(2).

Westlaw Topic Nos. 34, 134.

C.J.S. Armed Services Sections 1, 162, 166, 350.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Divorce Section 20, Reconciliation.

NOTES OF DECISIONS

In general 1

1. In general

Cited in In re De Pass (S.C. 1957) 231 S.C. 134, 97 S.E.2d 505.

**SECTION 20‑3‑110.** Injunctions incident to divorce suits.

The court, pending the termination of the action or by final order, may restrain or enjoin either party to the cause from in any manner interposing any restraint upon the personal liberty of, or from harming, interfering with or molesting, the other party to the cause during the pendency of the suit or after final judgment. It may also, during the pendency of such action, restrain or enjoin any other person who is made a party to the action from doing or threatening to do any act calculated to prevent or interfere with a reconciliation of the husband and wife or other amicable adjustment of the action.

HISTORY: 1962 Code Section 20‑111; 1952 Code Section 20‑111; 1949 (46) 216.

CROSS REFERENCES

Provisions relative to equitable apportionment of marital property, see Section 20‑3‑610 et seq.

Library References

Divorce 87, 522.

Westlaw Topic No. 134.

C.J.S. Divorce Sections 211, 213 to 216.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Divorce Section 11, Traditional Fault Grounds‑ Generally.

S.C. Jur. Divorce Section 20, Reconciliation.

S.C. Jur. Divorce Section 70, Restraining Orders.

S.C. Jur. Injunctions Section 10, Family Court.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

NOTES OF DECISIONS

In general 1

1. In general

There was no error in trial court’s denial of injunction against husband in action for divorce a vinculo matrimonii where wife did not request one prior to trial of case upon advice of counsel; although there was much turmoil between parties, Supreme Court assumed final adjudication of divorce would end harassment by husband (an attorney and officer of courts of State) entailed in preparing his defense and counterclaim for divorce from his wife. Mays v. Mays (S.C. 1976) 267 S.C. 490, 229 S.E.2d 725.

A party seeking relief under this section [Code 1962 Section 20‑111] must show facts and circumstances entitling her thereto. Odom v. Odom (S.C. 1966) 248 S.C. 144, 149 S.E.2d 353.

**SECTION 20‑3‑120.** Alimony and suit money.

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.

HISTORY: 1962 Code Section 20‑112; 1952 Code Section 20‑112; 1949 (46) 216; 1979 Act No. 71 Section 5.

CROSS REFERENCES

Provisions relative to equitable apportionment of marital property, see Section 20‑3‑610 et seq.

Library References

Divorce 530 to 552, 558 to 638, 1130 to 1181.

Westlaw Topic No. 134.

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46 ALR 5th 735 , Family Court Jurisdiction to Hear Contract Claims.

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S.C. Jur. Attorney Fees Section 41, Divorce.

S.C. Jur. Costs Section 32, Experts.

S.C. Jur. Divorce Section 72, Attorney Fees and Costs.

S.C. Jur. Injunctions Section 10, Family Court.

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Alimony and Support. 24 S.C. L. Rev. 556.

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Annual Survey of South Carolina Law: Domestic Relations: Divorce. 30 S.C. L. Rev. 69.

Annual Survey of South Carolina Law: Domestic Relations: Attorney’s Fees. 27 S.C. L. Rev. 451.

Annual Survey of South Carolina Law: Domestic Relations: Divorce Procedures; Alimony. 29 S.C. L. Rev. 104.

Annual Survey of South Carolina Law: Domestic Relations; Attorneys’ Fees. 32 S.C. L. Rev. 111.

Annual Survey of South Carolina Law: Domestic Relations; Removal of Gender‑Based Classifications. 32 S.C. L. Rev. 105.

Domestic Relations: Divorce; Alimony and Support. 23 S.C. L. Rev. 562.

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

Attorney General’s Opinions

Under Former Law

14th Amendment of the United States Constitution; A final decree awarding alimony may not be collaterally attacked on the basis that the decree was made pursuant to a statute which is subsequently determined to be unconstitutional. 1979 Op Atty Gen, No 79‑57, p. 76 (March 26, 1979) 1979 WL 29063.

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1. In general

Cited in Taylor v Taylor (1962) 241 SC 462, 128 SE2d 910; Brown v Brown (1963) 243 SC 383, 134 SE2d 222. Porter v Porter (1965) 246 SC 332, 143 SE2d 619.

The causes for which separate maintenance and support may be granted are not confined to those which constitute grounds for divorce. Mincey v Mincey (1954) 224 SC 520, 80 SE2d 123, commented on in 6 SCLQ 382 (1954). Simonds v Simonds (1957) 232 SC 185, 101 SE2d 494.

Ordinarily, the purpose of alimony is to place the supported spouse, as nearly as is practical, in the position of support he or she enjoyed during the marriage; alimony should not, however, serve as a disincentive for spouses to improve their employment potential or to dissuade them from providing, to the extent possible, for their own support. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 559

An at‑fault spouse cannot destroy a marriage and then claim that the short duration of the marriage entitles him or her to more favorable consideration when the economic adjustments attendant to divorce are made. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

Once a husband had proved the wife’s adultery at a merits hearing, the wife should be required to repay the amount she has received in pendente lite support. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883. Divorce 535

Where husband filed for divorce in Florida and wife filed in South Carolina, and the Florida court granted the divorce but did not deal with issues of alimony, attorneys fees, and suit money, the wife had a right to maintain an action for alimony, attorneys fees, and costs in South Carolina under the “divisible divorce” doctrine. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

There is no statute in this State undertaking to fix the grounds for separate maintenance and support. This is left to the broad discretion of a court of equity. Simonds v. Simonds (S.C. 1957) 232 S.C. 185, 101 S.E.2d 494.

Stated in Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

2. Jurisdiction

The Family Court, having denied alimony to a wife who suffered from epilepsy due to her failure to establish the extent of her disability, should have reserved jurisdiction to award alimony in the future since her condition might deteriorate in the future. Williamson v. Williamson (S.C. 1993) 311 S.C. 47, 426 S.E.2d 758.

Where a divorce decree does not provide for alimony and there is no reservation of jurisdiction in the decree, the decree is final and absolute and alimony cannot be allowed in any subsequent proceeding. While reservation of alimony is a mechanism available to family court judges in proper cases, it is not to be used to avoid reaching the issue of whether alimony should or should not be awarded under the facts of a particular case. It should not be routinely included in a decree of divorce, as this unnecessarily prolongs the marital litigation. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Family Court had personal jurisdiction over, and could enter personal judgment for alimony and suit money against, a former husband who had abandoned his wife and children and moved to another state 20 years ago, where South Carolina was the parties’ domicil, the place where the former husband’s conduct created the cause of action for divorce, and remained the domicile of the wife and the former husband’s children. Crowe v. Crowe (S.C. 1986) 289 S.C. 330, 345 S.E.2d 498. Divorce 65

Family court has no jurisdiction to resolve a fee dispute between an attorney and his client over matters based on contract. Elliott v. Green (S.C. 1980) 274 S.C. 348, 263 S.E.2d 650.

A decree for the payment of money as alimony or for the payment of costs is void in the absence of actual jurisdiction over the person or property of the one against whom it is awarded. Carnie v. Carnie (S.C. 1969) 252 S.C. 471, 167 S.E.2d 297.

3. Alimony—In general

The trial court erred in reserving alimony to the wife where, at the time of the hearing, she was in good health, was drawing a pension from the state, and was selling real estate part‑time, and there was no indication of a foreseeable change in her need in the future. Hardy v. Hardy (S.C.App. 1993) 311 S.C. 433, 429 S.E.2d 811. Divorce 576; Divorce 577; Divorce 584

The issue of alimony may be reserved when there is a “determination that there exists an identifiable set of circumstances that is likely to generate a need for alimony in the reasonably near future.” However, where there is no need for alimony at the time of trial, and no indication of physical or mental illness, foreseeable change of need in the future, or some other extenuating circumstance, the question of alimony should not be reserved. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 154

When a wife is awarded alimony, it is a substitute for the support which is normally incident to the marital relationship. McNaughton v. McNaughton (S.C. 1972) 258 S.C. 554, 189 S.E.2d 820. Divorce 559

Award of alimony rests within the sound discretion of the trial judge. McNaughton v. McNaughton (S.C. 1972) 258 S.C. 554, 189 S.E.2d 820. Divorce 565(1)

Where the wife seeks alimony it is the duty of the court to make an award that is fit, equitable, and just, if the claim is well founded. McNaughton v. McNaughton (S.C. 1972) 258 S.C. 554, 189 S.E.2d 820. Divorce 559

Even though circumstances might indicate that a wife is entitled to alimony as a matter of right, still there is nothing to prevent her relinquishment of such right. McNaughton v. McNaughton (S.C. 1972) 258 S.C. 554, 189 S.E.2d 820.

The fact alone that the wife fails to show that she is entitled to a divorce on the ground of desertion does not preclude an award of alimony upon a proper showing. Bond v. Bond (S.C. 1969) 252 S.C. 363, 166 S.E.2d 302.

4. —— Adultery, alimony

A former wife was not entitled to an award of alimony where she committed adultery on numerous occasions after a decree of separate maintenance was filed; she was no less a “spouse” under the separate maintenance decree, her romantic interludes no less “adulterous,” than if the parties had never separated. Morris v. Morris (S.C. 1988) 295 S.C. 37, 367 S.E.2d 24.

Failure of trial court either to award wife alimony or to reserve question of allowance of future alimony operated to bar her from receiving it thereafter; therefore, there was no prejudice to husband who complained that trial court’s failure to bar wife from receiving alimony because of her admitted adultery was error. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404. Divorce 1298

Trial judge did not commit error in finding adultery of husband to be primary reason for breakup of marriage, and then considering husband’s fault in arriving at alimony award, where husband admitted committing adultery with 2 persons following his request for divorce. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68.

In all cases other than adultery by the wife the circumstances and conduct of an offending spouse might be such as to bar her from alimony but this is a matter solely for the trial judge, governed by equity and justice and the condition of both parties. Page v. Page (S.C. 1973) 260 S.C. 298, 195 S.E.2d 613.

5. —— Factors, alimony

In setting an alimony award, the family court must consider the following factors: (1) duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living established during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) marital and nonmarital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; (12) prior support obligations; and (13) other factors the court considers relevant. Hawley v. Hawley (S.C.App. 2005) 363 S.C. 318, 610 S.E.2d 309. Divorce 586

Trial court’s denial of alimony to wife was improper since court overlooked several important factors when denying wife’s request for alimony, such as wife’s lack of employment history and earning potential, her educational needs to obtain adequate employment, her sacrifice of salaried job to work in family business, and her role as primary caretaker for children and marital home for more than 15 years. Patel v. Patel (S.C. 2001) 347 S.C. 281, 555 S.E.2d 386, rehearing denied, on subsequent appeal 359 S.C. 515, 599 S.E.2d 114. Divorce 586

The Family Court reasonably inferred that the wife unnecessarily inflated her expenses for purposes of alimony determination where she borrowed $4,000 and “took most of [her] money and paid [her] house payment in advance.” Mobley v. Mobley (S.C.App. 1992) 309 S.C. 134, 420 S.E.2d 506. Divorce 861

The amount of property awarded in an equitable distribution may be an important factor in determining alimony. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267. Divorce 575

In determining the amount of reimbursement alimony to be awarded, the court should consider “all relevant factors” including the amount of the supporting spouse’s contributions, his or her foregone opportunities to enhance or improve professional or vocational skills, and the duration of the marriage following completion of the non‑supporting spouse’s professional education. Money expended for the support of the parties’ children should also be taken into consideration. Furthermore, where there are children from a previous marriage living with the couple, consideration should be given to money expended by the working spouse in excess of the child support provided by the previous spouse. Determination of the amount of reimbursement alimony is within the discretion of the trial judge, and the amount will depend on the facts of each case. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

A trial judge did not abuse his discretion in denying alimony to a husband, even though the husband was in poor health placing him at an economic disadvantage in earning capacity, where such factors as age, individual wealth, contributions to the accumulation of marital property, and standard of living weighed evenly as to both parties, and the husband was guilty of gross misconduct in that he abused the wife throughout the marriage. Williams v. Williams (S.C.App. 1988) 297 S.C. 208, 375 S.E.2d 349. Divorce 586

An award of alimony, while based upon the reasonable needs of the receiving spouse to maintain his or her marital standard of living, should also take into account his or her own earning capacity. Alimony should not serve as a disincentive for the receiving spouse to improve his or her employment potential nor dissuade him or her from providing, to the extent feasible, for his or her own support. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 608

Evidence supported trial judge’s award of alimony and child support where husband argued this amount exceeded needs of wife and consumed his anticipated income; in determining alimony, factors to be considered are, inter alia, (1) financial condition of husband and needs of wife, (2) age and health of parties, respective earning capacities, and their individual wealth, (3) wife’s contribution to accumulation of joint wealth, and (4) amount of property awarded in equitable distribution. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259.

Court should not consider contribution of wife’s relatives to her support in determining amount of alimony. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259. Divorce 572

Regardless of whether trial judge termed money coming to husband as income or return on investment, it was proper for him to consider it in determining alimony; among factors to be considered in determination of alimony are financial condition of husband, individual wealth of parties, ability of husband to pay alimony, and actual income of parties. Blackmon v. Blackmon (S.C.App. 1987) 294 S.C. 187, 363 S.E.2d 400. Divorce 574; Divorce 576

While the ultimate alimony award to the wife should be based on her reasonable needs, it should not serve as a disincentive for the wife to make reasonable efforts to improve her employment potential or dissuade her from becoming self‑supporting, to the extent feasible. Josey v. Josey (S.C.App. 1986) 291 S.C. 26, 351 S.E.2d 891. Divorce 608

Family court’s failure to award former wife alimony was an abuse of discretion, where former husband earned over $100,000 per year, while former wife’s income, even if with her further retraining it could reach $30,000 per annum, would be insufficient to support her at the standard of living she had enjoyed during the marriage. Voelker v. Hillock (S.C.App. 1986) 288 S.C. 622, 344 S.E.2d 177.

The Family Court did not abuse its discretion in denying alimony to the former wife in view of findings that both former spouses were in good health, of equal age, and to have relatively good earning capacity, the separation was demanded by the former wife, the former husband had contributed more significantly to the accumulation of joint wealth, and the former wife was subsequently awarded 40 percent of the equity in the house, most of its furnishings and its exclusive possession until the youngest child reached 18 years of age or both children became emancipated. Courie v. Courie (S.C.App. 1986) 288 S.C. 163, 341 S.E.2d 646. Divorce 1170(8)

Trial court improperly determined that ex wife who permitted 19‑year‑old son and 66‑year‑old mother to live with her without paying rent should increase income by requiring them to pay rent, and would have alimony increased if either or both moved out. Bailey v. Bailey (S.C. 1977) 269 S.C. 1, 235 S.E.2d 801.

Alimony is a substitute for the support which is normally incident to a marital relationship and, all factors to that relationship should be considered in making award. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504. Divorce 559

6. —— Lump sum, alimony

The trial court properly awarded the wife lump sum alimony, even though it was not requested in the pleadings, where the issue before the court was the type of alimony to which the wife was entitled based on the parties’ agreement, and the husband was unable to strictly comply with the terms of the agreement in regard to alimony; thus, the trial judge was required to interpret the intent of the provision on alimony and effect compliance as best as possible. Richardson v. Richardson (S.C.App. 1992) 309 S.C. 31, 419 S.E.2d 806.

The trial court did not err in interpreting a decree of divorce as awarding lump sum alimony where the agreement negotiated by the parties and made a part of the divorce decree clearly provided that the wife could have taken title to the marital residence “in full satisfaction of her right to alimony, past and future, as lump sum alimony.” Richardson v. Richardson (S.C.App. 1992) 309 S.C. 31, 419 S.E.2d 806.

The trial court properly awarded the wife lump sum alimony where such award was based on an agreement between the parties, rather than on a finding of special circumstances by the court, and the agreement itself indicated special circumstances warranting such an award due to the uncertain nature of the husband’s medical condition (cancer). Richardson v. Richardson (S.C.App. 1992) 309 S.C. 31, 419 S.E.2d 806.

The power to award lump sum alimony should be exercised only where special circumstances require it. Lump sum awards are not favored and should be given only in exceptional cases or when consented to. An award of lump sum alimony must be supported by some impelling reason for its necessity or desirability. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

7. —— Amount, alimony

Alimony award to wife of $1,500 per month was not abuse of discretion; wife was unemployed and would have difficult time finding adequate job to support her in manner to which she had become accustomed during marriage, wife was entitled to residence in safe neighborhood, comparable to the marital home, wife’s medical insurance alone would cost her $220 per month, and issue of alimony would be revisited upon proper pleadings and showing that wife had means to secure reasonable employment, thus allowing for the alimony award to be modified or even terminated at some future time. Hawley v. Hawley (S.C.App. 2005) 363 S.C. 318, 610 S.E.2d 309. Divorce 572; Divorce 576; Divorce 581

An award to a wife of 15 percent of any “net bonus” received by the husband from his employer, as additional alimony, was not an abuse of discretion where the bonuses had been a part of the overall income of the parties for many years, and the amounts were different each year. Lineberger v. Lineberger (S.C.App. 1990) 303 S.C. 248, 399 S.E.2d 786. Divorce 576

An award to a wife of $1,500 per month in permanent periodic alimony was an abuse of discretion, even though the husband had substantial income and assets and the parties had enjoyed a high standard of living during the marriage, where the wife’s expenses appeared excessive when considered in conjunction with the fact that she had not procured employment since the parties’ separation although she was an expert typist. Although alimony is a substitute for the support normally incident to the marital relationship, it should not serve as a disincentive for a spouse to improve his or her employment potential or to dissuade the spouse from providing, to the extent possible, for his or her own support. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

An award of alimony to a wife in the amount of $1,800 per month was not excessive where the husband had a substantial monthly income of approximately $7,300, he computed an excess of $2,800 after his expenses, he received substantial yearly income tax returns which he did not include in his income, the wife worked part‑time because the youngest child got home from school at noon, and the highest annual income received by the wife when she worked full‑time during the marriage was approximately $12,000. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165.

An award to a husband of $200 per month in periodic alimony was proper, even though the marriage was relatively short and the wife’s financial declaration showed a deficit when her income and expenses were compared, where the husband suffered serious and disabling injuries when he was shot by the wife, he had not been employed since the shooting, he had no disability income from his former employment, he was appealing a rejection of his application for Social Security Disability, and the court order held that the husband was to provide a report on the status of his disability claim and the wife was granted leave to apply for a modification of the alimony order if the husband was successful in his application for benefits. McDowell v. McDowell (S.C.App. 1989) 300 S.C. 96, 386 S.E.2d 468.

Trial judge did not err in awarding wife $2,500 per month alimony, $500 per month child support, and 25 per cent equitable distribution of marital assets where husband was earning almost $5,000 per month from job, and even if he left employment, as he testified he expected to do, he would receive $8,000 per month until all his preferred stock had been repurchased. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259. Child Support 87; Divorce 576; Divorce 732

Trial judge did not abuse discretion in awarding wife $100 per week in alimony where his order stated he had considered respective necessities of parties, standard of living of wife, duration of marriage, ability of husband to provide for wife, and actual income of parties. Blackmon v. Blackmon (S.C.App. 1987) 294 S.C. 187, 363 S.E.2d 400.

Trial judge did not abuse his discretion in refusing to award lump sum alimony to wife and in awarding her $1,200 monthly periodic alimony where: record demonstrated spending habits of both parties dissipated husband’s inheritance; husband had degree from Oxford University, could earn minimum of $50,000 per year as novelist, should inherit proceeds of one trust from mother in amount close to $1,000,000, had expectancy in another trust worth $3,000,000 to $5,000,000, and was entitled to proceeds from sale of some real estate in Great Britain; and, husband failed to demonstrate why award of lump sum alimony would be more appropriate than periodic alimony award. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68. Divorce 594(4); Divorce 601(3)

Alimony in the amount of $750, rather than $550, per month was appropriate for a wife with a high school education, who was unemployed at the time of the hearing but planned to reopen an antique shop of doubtful profitability, where the husband, who had a college education, had a gross monthly income of $3,470, and the parties had been married for more than 20 years. Vaiksnoras v. Vaiksnoras (S.C. 1986) 288 S.C. 147, 341 S.E.2d 637.

Judge abused discretion in divorce action by accepting referee’s recommendation of $200 per month alimony where amount was not in keeping with husband’s assets (net worth of $50,000 to $60,000 and income of approximately $15,000) or the failing health of wife, her needs and accustomed standard of living, and her incapacity to earn and provide for herself. Bailey v. Bailey (S.C. 1977) 269 S.C. 1, 235 S.E.2d 801.

Where, at the time of the divorce, both husband and wife were 65 years of age, and the husband’s income was $485.00 a month from social security and a declining business, and the husband owned no real property, and the wife had an income of $425.00 per month from social security and rent receipts, and owned a home and interest in the land on which the husband’s business was located, trial court’s award of $225.00 per month in alimony to wife was excessive and an abuse of discretion. Trammell v. Trammell (S.C. 1977) 268 S.C. 144, 232 S.E.2d 339.

8. —— Duration of award, alimony

Where rehabilitative alimony is awarded, the evidence should demonstrate that the dependent spouse is reasonably self‑sufficient at the termination of the alimony payment. Thus, an award of rehabilitative alimony for a period of 3 years would be reversed and remanded for reconsideration where the evidence did not show self‑sufficiency at the end of 3 years. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

Generally, the contribution of one spouse to the education of the other spouse may be taken into account by giving the supporting spouse a larger distributive share of the marital property to be divided. This remedy is not, however, sufficient when little or no marital property has been accumulated during the marriage. In these situations, reimbursement alimony may be appropriate regardless of the appropriateness of permanent alimony. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference for permanent periodic support. The purpose of rehabilitative alimony is to encourage a dependent spouse to become self‑supporting after a divorce. However, it should be approved only in exceptional circumstances, in part because it seldom suffices to maintain the level of support that the dependent spouse enjoyed as an incident to the marriage. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

The factors to be considered in awarding rehabilitative alimony include: (1) the duration of the marriage; (2) the age, health, and education of the supported spouse; (3) the financial resources of the parties; (4) the parties’ accustomed standard of living; (5) the ability of the supporting spouse to meet his or her needs while meeting those of the supported spouse; (6) the time necessary for the supported spouse to acquire job training or skills; (7) the likelihood that the supported spouse will successfully complete retraining; and (8) the supported spouse’s likelihood of success in the job market. In order for rehabilitative alimony to be granted, there must be evidence demonstrating the self‑sufficiency of the supported spouse at the expiration of the ordered payments. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

While an award of permanent periodic alimony is based upon the reasonable needs of the supported spouse to maintain his or her marital standard of living, the award should also take into account the supported spouse’s earning capacity. Alimony should not serve as a disincentive for the supported spouse to improve his or her employment potential nor dissuade him or her from providing, to the extent feasible, for his or her own support. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

Rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference for permanent, periodic support. It seldom suffices to maintain the level of support the dependent spouse enjoyed as an incident to the marriage. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 608

A trial court did not err in awarding a wife permanent, periodic alimony instead of rehabilitative alimony where the record did not show any likelihood that the wife after a given time during which rehabilitative alimony was paid would become any more self‑sufficient than she already was. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21.

9. Insurance

The award of $719.10 monthly alimony to a wife was not excessive, despite the fact that such income exceeded her expenses as set forth on her financial declaration, where the wife did not work at the husband’s request during the 25‑year marriage, she had a limited work history and educational level, and she required dental treatment, eye glasses, health insurance and dental insurance in addition to the expenses listed on her financial declaration. Curry v. Curry (S.C.App. 1992) 309 S.C. 539, 424 S.E.2d 552.

Absent special circumstances or specific statutory authority, the family court does not have the inherent power to require a supporting spouse to obtain or maintain a life insurance policy solely as an incident of periodic support. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

Alimony is a substitute for support incident to the marital relationship. It is not intended to penalize one spouse while rewarding the other. The marriage contract is not an annuity; it is not lifetime insurance against the unexpected. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 559

Absent special circumstances or specific statutory authority, the family court does not have the inherent power to require a supporting spouse to obtain or maintain, solely as an incident of periodic support, a life insurance policy naming the defendant spouse as beneficiary, the rationale being that such a requirement is in the nature of alimony, for which the liability ceases upon the death of the supporting spouse. Hardin v. Hardin (S.C.App. 1987) 294 S.C. 402, 365 S.E.2d 34. Divorce 603

10. Certificates of deposit

Court order to equally divide jointly held certificate of deposit does not apply where there is no evidence that certificate was in existence on day of hearing. Stone v. Stone (S.C. 1980) 274 S.C. 571, 266 S.E.2d 70.

11. Attorney fees—In general

If the party in family court proceedings against whom attorney fees are awarded objects to the family court’s application of the factors governing the determination of a reasonable fee in the final order, the party may raise the issue in a motion to reconsider; however, if that party chose not to object to the fee affidavit or request a later hearing, the party’s objection to the award must only be supported by information contained in the record‑in other words, the party may not introduce additional testimony regarding any of the factors after the family court issues its final order. Buist v. Buist (S.C. 2014) 410 S.C. 569, 766 S.E.2d 381. Costs 214

Family court did not abuse its discretion in deciding that each party in divorce proceeding would bear his or her own attorney fees and costs, where both parties succeeded on some aspects of their respective claims, husband received custody of children, and, after factoring in husband’s alimony obligation, both parties’ monthly expenses outweighed their monthly income. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Child Custody 942; Child Custody 943; Divorce 1140; Divorce 1144; Divorce 1147

In deciding whether to award attorney fees in divorce action, the family court should consider: (1) the parties’ ability to pay their own fee; (2) the beneficial results obtained by counsel; (3) the respective financial conditions of the parties; and (4) the effect of the fee on each party’s standard of living. Lanier v. Lanier (S.C.App. 2005) 364 S.C. 211, 612 S.E.2d 456, rehearing denied, certiorari denied. Divorce 1138

Before awarding attorney fees in divorce action, the Family Court should consider: (1) each party’s ability to pay his own fee; (2) the beneficial results obtained by the attorney; (3) the parties’ respective financial conditions; and (4) the effect of the attorney fee on each party’s standard of living. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 1138

In determining whether to award attorney’s fees, the court should consider each party’s ability to pay his or her own fee, the beneficial results obtained by the attorney, the parties’ respective financial conditions, and the effect of the attorney’s fee on each party’s standard of living. Griffith v. Griffith (S.C.App. 1998) 332 S.C. 630, 506 S.E.2d 526. Divorce 1138

Factors to be considered in awarding reasonable attorney fees and costs in a divorce action include: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 1138

In awarding attorney fees in domestic case, factors to be considered include contingency of fee, ability of parties to pay, their respective financial conditions, and effect of attorney fees on each party’s standard of living. Anderson v. Tolbert (S.C.App. 1996) 322 S.C. 543, 473 S.E.2d 456. Divorce 1138

In awarding attorney fees and costs, the family court should consider the nature, extent and difficulty of the services rendered, the time necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the beneficial results obtained, and the customary legal fees for similar legal services. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Costs 194.18

Under Section 20‑3‑120, attorneys fees are termed “suit money”, and are enforceable by petition to the family court to enforce payment, which enforcement is ordinarily by way of contempt. Woodside v. Woodside (S.C.App. 1986) 290 S.C. 366, 350 S.E.2d 407.

Attorney’s fees may be awarded in action arising from the original divorce action, such as an action to modify support payments and to enforce visitation rights. Schadel v. Schadel (S.C. 1977) 268 S.C. 50, 232 S.E.2d 17.

Where action was brought by ex‑husband to settle possible tax problems relating to the deductibility of alimony payments, an allowance of “suit money” was well founded within the statute, thus allowing the ex‑wife attorney’s fees regardless of her financial position. Darden v. Witham (S.C. 1974) 263 S.C. 183, 209 S.E.2d 42.

The fact that the same issues are presented by way of a declaratory judgment proceeding should not alter the obligation to pay attorney’s fees under this section [Code 1962 Section 20‑112], if the court deems this appropriate. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

The authority to make an award to the wife for attorney’s fees existed as an incident to a determination of each of the separate issues in the action, that is, (1) the action for divorce; (2) the claim for alimony; and (3) custody and support of the children. Bond v. Bond (S.C. 1969) 252 S.C. 363, 166 S.E.2d 302. Divorce 1131

This section [Code 1962 Section 20‑112] does not suggest that an attorney’s fee be in anywise referable to services in other litigation. It authorizes its allowance for services in the particular action only. Collins v. Collins (S.C. 1961) 239 S.C. 170, 122 S.E.2d 1.

Where husband and wife become reconciled prior to completion of wife’s action for divorce, husband cannot be held liable for attorney’s fees of counsel employed by wife. In re De Pass (S.C. 1957) 231 S.C. 134, 97 S.E.2d 505.

12. —— Order, attorney fees

Historically, an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal and, until then, it is more in the nature of a disbursement. Woodside v. Woodside (S.C.App. 1986) 290 S.C. 366, 350 S.E.2d 407.

An order awarding attorneys’ fees must set forth specific findings of fact concerning the nature, extent and difficulty of the legal services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the beneficiary results accomplished; and the fee customarily charged in the locality for similar legal services. Voelker v. Hillock (S.C.App. 1986) 288 S.C. 622, 344 S.E.2d 177. Costs 208

In an award of attorney’s fees, the order must set forth specific findings of fact concerning the nature, extent, and difficulty of legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the beneficial results accomplished, and the fee customarily charged in the locality for similar legal services. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811. Costs 208

An award of attorneys’ fees in a divorce action must be made to the wife herself, and not to her attorney; any claim for such fees is abated with the divorce action if either party dies before the entry of a final decree. Louthian & Merritt, P. A. v. Davis (S.C. 1979) 272 S.C. 330, 251 S.E.2d 757. Divorce 83

Possible error in direction that fees be paid directly to attorneys, rather than to opposite party, was not sufficient to invalidate the order, where no prejudice was shown. Darden v. Witham (S.C. 1974) 263 S.C. 183, 209 S.E.2d 42.

13. —— Discretion of court, attorney fees

Family court acted within its discretion in requiring parties to pay their own attorney fees in divorce proceeding, even though wife claimed that husband’s financial condition was far superior to hers; family court’s ruling that parties were entitled to a divorce based on one year’s continuous separation neither benefited nor harmed either party, and trial court denied wife alimony based on evidence of her adultery. Mick‑Skaggs v. Skaggs (S.C.App. 2014) 411 S.C. 94, 766 S.E.2d 870, certiorari denied. Divorce 1140; Divorce 1149

If a party in family court proceedings opposing a request for an award of attorney fees fails to object or request a later hearing on the objection, the family court may exercise its discretion to determine whether the amount of the award stated in the fee affidavit i.e., the hourly rate and number of hours billed, is reasonable, absent additional testimony; however, even if the family court finds the affidavit reasonable, it must still consider whether the proponent of the affidavit is entitled to attorneys’ fees pursuant to the factors governing the determination of a reasonable fee. Buist v. Buist (S.C. 2014) 410 S.C. 569, 766 S.E.2d 381. Costs 208

The award of attorney fees in divorce action is at the sound discretion of the family court. Lanier v. Lanier (S.C.App. 2005) 364 S.C. 211, 612 S.E.2d 456, rehearing denied, certiorari denied. Divorce 1131

An award of attorney fees and costs is a discretionary matter not to be overturned absent abuse by the trial court. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Appeal And Error 984(5)

The award of attorney fees is within the sound discretion of the trial judge and will not be interfered with unless the judge abuses his discretion. Gay v. Gay (S.C.App. 1986) 288 S.C. 74, 339 S.E.2d 532.

Award of attorneys fees is generally discretionary with the trial judge. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504. Divorce 1131

Allowance of counsel fees is generally within the discretion of the trial judge, and there was no abuse of discretion in his refusal to award fees in addition to that provided for in the agreement between the parties. Reece v. Reece (S.C. 1976) 266 S.C. 316, 223 S.E.2d 182.

Fact that Supreme Court might set a smaller attorney’s fee does not establish an abuse of discretion by trial court. Darden v. Witham (S.C. 1974) 263 S.C. 183, 209 S.E.2d 42. Divorce 1168(2)

14. —— Beneficial result obtained, attorney fees

Former husband, who was not at fault for failure of one of former wife’s attorney to appear at first hearing in connection with contempt action for failing to timely pay child support and medical expenses, should not have been penalized, for exercising his right to seek second hearing to question reasonableness and validity of attorney’s charges, by requiring him to reimburse wife’s attorneys for their fees from second hearing. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Costs 194.44

Ex‑husband was not entitled to recover attorney fees with respect to his action seeking to terminate his alimony obligation; although ex‑husband successfully received a reduction in his alimony obligation, he was primarily seeking to terminate his alimony obligation based on either ex‑wife’s cohabitation with her boyfriend or the parties’ oral agreement, he was not successful on either of these claims, and ex‑husband’s substantial income was sufficient to enable him to compensate his attorney. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 1140; Divorce 1146; Divorce 1160

Trial court could not award attorney fees to wife for fees and costs incurred in posttrial proceedings challenging the valuation of husband’s interest in his medical practice, where posttrial proceedings resulted in devaluation of practice by $67,000. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 1160

Trial court could not award attorney fees to wife for research of constitutionality of adultery’s bar to alimony, in action for divorce, where wife did not raise issue at trial. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 1149

Father was not entitled to recover attorney fees after successfully appealing custody action brought against him by maternal grandparents and stepfather of children; even though stepfather and grandparents were successful at trial of case, family court determined that each party would be responsible for his own attorney fees. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 943

An award of attorney’s fees to the wife in a divorce action should not have been affirmed where (1) the issues of alimony and equitable division had been remanded for reconsideration, thus reversing the beneficial results for the wife, and (2) with the issue of the husband’s earning capacity on remand, his ability to pay the wife’s fees could not be determined. Sexton v. Sexton (S.C. 1993) 310 S.C. 501, 427 S.E.2d 665.

The husband was not entitled to attorney’s fees and costs, even though he prevailed against the wife in her action alleging entitlement to certain property sold by the husband, where the wife prevailed on the husband’s counterclaim, and the husband was in a far more advantageous financial condition than the wife. Cox v. Cox (S.C.App. 1992) 310 S.C. 127, 425 S.E.2d 761, rehearing denied, certiorari denied. Divorce 1140; Divorce 1144

A trial court’s denial of a wife’s claim for attorney fees was not error where the wife did not recover on her prayer for “ [s]ole ownership, title and possession of the former marital home,” she did not succeed in having the husband held in contempt of court, and the parties had comparable gross incomes and were able to pay their respective attorney fees. Shannon v. Shannon (S.C.App. 1990) 301 S.C. 107, 390 S.E.2d 380. Marriage And Cohabitation 1242

Although a wife testified about her limited means, the family court, in determining if attorney fees were warranted, was free to consider additional factors, including most notably the result obtained in the action. Since the wife did not prevail at trial or on appeal, the family court did not abuse its discretion in denying her attorney fees. Medlin v. King (S.C.App. 1988) 294 S.C. 406, 365 S.E.2d 36.

Where wife, in action for increase in child support, showed a change of condition entitling her to relief, reasonable attorney’s fees should have been awarded. Campbell v. McPherson (S.C. 1977) 268 S.C. 444, 234 S.E.2d 774.

15. —— Ability to pay, attorney fees

In a divorce action, family court’s award of a portion of wife’s attorney fees was warranted where husband had greater ability to pay attorney fees and absorb that cost into his standard of living, and his beneficial result on appeal regarding value of his company did not inure so much to his favor so as to disturb attorney fees decision. Teeter v. Teeter (S.C.App. 2014) 408 S.C. 485, 759 S.E.2d 144, rehearing denied, certiorari dismissed. Divorce 1144

Fact that spouse is gainfully employed does not, standing alone, deprive spouse of right to attorney fees. Anderson v. Tolbert (S.C.App. 1996) 322 S.C. 543, 473 S.E.2d 456. Divorce 1143

The trial court did not abuse its discretion in disallowing the wife’s request for attorney fees where she had more available cash than the husband, and admitted to having $24,000 in certificates of deposit and a money market account from her remaining inherited property. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604.

Denial of counsel fees to the former wife was not an abuse of the Family Court’s discretion where, although the wife denied that she could afford to pay them, factual findings indicated that she had potential earning capacity, and she had been awarded a substantial amount of assets by the divorce decree. Courie v. Courie (S.C.App. 1986) 288 S.C. 163, 341 S.E.2d 646. Divorce 1145

Judge properly ordered payment of attorneys’ fees by husband, in view of extensive litigation surrounding case, and financial disparity between husband, who earned approximately $400,000 per year, and wife, who was unemployed. Jones v. Jones (S.C. 1978) 270 S.C. 143, 241 S.E.2d 417.

Where there is a financial disparity between the parties, and paying attorneys fees would necessarily decrease the wife’s standard of living, award of attorney’s fees is proper. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

On the question of attorney’s fees, the wife’s claim was well‑founded, especially in the light of the disparity between the financial situation of the husband and the wife. Lowe v. Lowe (S.C. 1971) 256 S.C. 243, 182 S.E.2d 75.

The fact that the wife is gainfully employed does not necessarily deprive her of the right to an allowance for counsel fees. Bond v. Bond (S.C. 1969) 252 S.C. 363, 166 S.E.2d 302.

16. —— Calculation of amount, attorney fees

The family court, in determining a reasonable amount of attorney fees to award in post‑divorce proceeding, is required to make an independent evaluation of each of the factors enumerated in Glasscock v. Glasscock, and, if it does so, its award will be affirmed as long as there is sufficient evidence in the record supporting each factor. Widdicombe v. Tucker‑Cales (S.C.App. 2005) 366 S.C. 75, 620 S.E.2d 333, rehearing denied, certiorari granted, affirmed in part, vacated in part 375 S.C. 427, 653 S.E.2d 276. Divorce 1155; Divorce 1170(6); Divorce 1289

In determining the amount of attorney fees to award, the court should consider: (1) the nature, extent, and difficulty of the services rendered; (2) the time necessarily devoted to the case; (3) counsel’s professional standing; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Costs 194.18

In determining amount of attorney fees to award, court should consider nature, extent, and difficulty of services rendered, time necessarily devoted to case, counsel’s professional standing, contingency of compensation, beneficial results obtained, and customary legal fees for similar services. Henggeler v. Hanson (S.C.App. 1998) 333 S.C. 598, 510 S.E.2d 722, rehearing denied, certiorari denied. Costs 194.18

Factors to be considered in the award of attorney fees include the nature, extent and difficulty of the services rendered; the time necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; and the beneficial results accomplished. Gay v. Gay (S.C.App. 1986) 288 S.C. 74, 339 S.E.2d 532.

Attorney fee awards are based on the nature, extent and difficulty of the services rendered, the time devoted to the case, the professional standing of the individual lawyer, and the beneficial result accomplished at trial. Ivey v. Ivey (S.C.App. 1985) 286 S.C. 315, 334 S.E.2d 123. Divorce 1168(1)

Family Court Rule 27(C) requires the family court, in setting attorney fees, to make findings concerning the nature, extent, and difficulty of the services rendered; the time devoted to the case; the standing of counsel; and the contingency of compensation and beneficial results accomplished. Prince v. Prince (S.C.App. 1985) 285 S.C. 203, 328 S.E.2d 664. Divorce 1170(8)

Factors to be considered in the determination of attorney’s fees are the nature, extent and difficulty of the services rendered; the time necessarily devoted to the case; the professional standing of counsel; the contingency of compensation, and the beneficial results accomplished. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504. Divorce 1168(1)

Husband is to be granted a full hearing as to the amount of attorney’s fees to be granted wife. Schadel v. Schadel (S.C. 1977) 268 S.C. 50, 232 S.E.2d 17.

In fixing attorney’s fee there should be taken into consideration nature, extent and difficulties of services rendered, time necessarily devoted to case, professional standing of counsel, contingency of compensation, and beneficial result accomplished. Todd v Todd (1963) 242 SC 263, 130 SE2d 552. Smith v. Smith (S.C. 1974) 262 S.C. 291, 204 S.E.2d 53. Divorce 1168(1)

17. —— Amount, attorney fees

Family court did not abuse its discretion in awarding ex‑husband attorney fees of $562.50 following its denial of ex‑wife’s motion to reconsider its denial of her motion to dismiss, and $775 in fees following its denial of ex‑wife’s motion for relief from judgment, in child custody dispute; family court specifically considered all required factors in Glasscock v. Glasscock for determining a reasonable amount of attorney fees, and ex‑wife failed to provide family court with evidence of her financial situation on issue of attorney fees. Widdicombe v. Tucker‑Cales (S.C.App. 2005) 366 S.C. 75, 620 S.E.2d 333, rehearing denied, certiorari granted, affirmed in part, vacated in part 375 S.C. 427, 653 S.E.2d 276. Child Custody 949; Child Custody 952

Awarding $65,000 in attorney fees to former wife, rather than requiring parties to bear cost of their own attorneys, was error in divorce proceeding; both parties had the ability to pay their own fees, husband was ordered to pay $10,000 for isolated incident of prolonging discovery process by claiming a confidentiality privilege that he did not have, and nothing in record indicated that he was more to blame than former wife for case’s litigious history. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Divorce 85; Divorce 1140; Divorce 1144

Wife was entitled to award of $52,917.21 in attorney fees and costs, and award was not excessive, even though husband prevailed on two issues on appeal from divorce judgment; wife’s attorney received a favorable result on the issues of divorce and alimony, wife was required to obtain counsel to defend against husband’s action for separate support and maintenance, and husband’s income was vastly larger than wife’s income. Wooten v. Wooten (S.C.App. 2003) 358 S.C. 54, 594 S.E.2d 854, affirmed in part, reversed in part 364 S.C. 532, 615 S.E.2d 98. Divorce 1140; Divorce 1144; Divorce 1163; Divorce 1168(2)

Award of attorney fees to former wife’s counsel in connection with former husband’s motion to quash bench warrant issued for noncompliance with temporary order in divorce proceeding, requiring husband to make monthly pro rata deposits in escrow from sale of shares of bank in which he owned interest, was not excessive, where counsel submitted affidavits of fees and costs which exceeded amount awarded, and trial court emphasized that husband had brought motion twice which forced wife to expend amounts in fees and costs. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 1168(2)

Wife was entitled to attorney fees in the amount of $8,915.00 in divorce action, given the beneficial results obtained by wife’s counsel regarding equitable distribution, namely that wife received approximately $70,000 from husband in realization of her share in the marital estate, and the inherent difficulty attendant to this case given the controversy surrounding the valuation of major marital assets. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 1140; Divorce 1168(1)

In domestic action, husband would be required to reimburse wife only for attorney fees wife incurred due solely to husband’s uncooperative, unreasonable, and contumacious conduct; wife had employed two attorneys, who billed at rates of $300 and $200 per hour, and while issues were not complex and were settled by agreement, counsel’s firm expended 163.30 attorney hours and 173.38 paralegal hours, billed at $50 per hour, wife earned $50,000 per year compared to husband’s $35,000 per year, but husband did much to prolong and hamper final resolution of issues, requiring wife to seek court order to protect interests of children and to obtain sanctions against husband for violating court orders. Anderson v. Tolbert (S.C.App. 1996) 322 S.C. 543, 473 S.E.2d 456. Divorce 1139; Divorce 1141; Divorce 1144

An award of attorney’s fees in a domestic action was limited to a fee based on a reasonable hourly rate and totaling $51,998, rather than the $150,000 which the client had agreed to pay because of the beneficial result accomplished when she received $1.6 million dollars of a $2.8 million dollar estate, since Rule 407(1.5)(d)(1), SCACR, forbids the basing of fees on the amount recovered for the client in domestic relations matters. Glasscock v. Glasscock (S.C. 1991) 304 S.C. 158, 403 S.E.2d 313, 17 A.L.R.5th 1054.

An award to a wife of $10,000 in attorney fees and $11,000 in costs was not an abuse of discretion where the wife had retained counsel at an hourly rate of $100, she had incurred unpaid fees as of the date of the hearing totalling $10,043.26, she had paid $2500 in fees during the pendency of the case as required by court order, and the costs included private investigator fees, appraisal fees, and accounting fees. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

A trial judge did not err in awarding a wife only $300 in attorney’s fees, even though the wife requested $850 in attorney’s fees, where there was no affidavit in the record showing the amount of fees incurred, and the only evidence of the amount of fees owed by the wife was in the order of the trial judge noting “that the $600 charged [the wife] by [the attorney] was a reasonable attorney’s fee under the facts of this case.” Ward v. Marturano (S.C.App. 1990) 302 S.C. 112, 394 S.E.2d 16.

There was no abuse of discretion in ordering a husband in a divorce action to pay the wife $9,462.00 for reimbursement of attorney fees and costs where it was a complex divorce action involving several difficult issues, some of them novel in the jurisdiction, the beneficial results achieved by the wife were apparent, the wife’s attorney faced difficulty and lack of cooperation from the husband, and the wife achieved her divorce on the basis of adultery such that reasonable and necessary expenses incurred in obtaining evidence of the husband’s adultery were recoverable. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 1168(1)

A court abused its discretion in awarding attorney’s fees to a wife in an amount less than actually incurred where (1) the husband had the ability to pay the fees, (2) the wife had no means to pay for defense of the action, (3) the husband initiated the law suit, (4) the husband attempted to enforce an invalid antenuptial agreement which rendered the case more difficult to defend, and (5) the husband failed to furnish discovery information and to file a proper financial declaration, as required by the rules of court, which further increased the time and expense of litigation for the wife. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 1168(1)

Trial court did not abuse its discretion in making award of attorney fees where wife’s attorney put into evidence affidavits stating that at initial consultation wife was advised that she would be charged hourly rate of $100, with additional fee considerations involving billing for results achieved, and showing that attorney had devoted 113.75 hours to case up to date of divorce hearing, which would render fee of $11,375 for those services. That figure did not include fee for 3 day divorce hearing, nor did it include sum to reimburse wife for $5,000 she had paid former attorney in case. Additionally, trial judge indicated he considered contingency of fee arrangement between wife and attorney in making attorney fee award. Woodward v. Woodward (S.C.App. 1987) 294 S.C. 210, 363 S.E.2d 413.

Award of $3,000 per month alimony was in excess of wife’s needs, and it was error to have awarded such, although husband acknowledged he was able to pay award, because ability to pay is only one factor in determining alimony. Trial court could consider rehabilitative alimony award as warranted where wife testified she expected to complete her retraining in ophthalmology in June 1986, at which time she expected to get job. Alimony award of $3,000 per month where wife’s financial declaration showed she had monthly income of approximately $2,600 and expenses of approximately $3,200 while husband had “excess income” of approximately $6,700 per month was in nature of division of husband’s future excess income, and where wife had been awarded fair percentage of marital estate, it was error to award her permanent alimony substantially in excess of her needs. Although trial judge stated in his order that wife would need help in starting her practice, he made no specific findings regarding such needs. Woodward v. Woodward (S.C.App. 1987) 294 S.C. 210, 363 S.E.2d 413.

Trial court did not abuse its discretion in awarding $1,562 in attorney fees to wife, to be paid out of marital assets before they were divided, especially when financial resources of husband, his earning capacity, and results of litigation were considered. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404. Divorce 1147; Divorce 1168(1)

Family court did not abuse its discretion in award of attorney’s fees to wife in amount of $3972.60, despite contention of husband that issues were not complicated enough to justify amount of fees awarded; although issues may not have been extremely complex, allegation of adultery was contested, necessitating much time be invested by wife’s attorney; although husband is not to be punished by award to wife of attorney’s fees, family court found breakup of marriage was fault of husband. Leatherwood v. Leatherwood (S.C.App. 1987) 293 S.C. 148, 359 S.E.2d 89. Divorce 1168(1)

Trial judge did not err in awarding wife $4,500 in attorney fees where court found hourly rate consistent with that customarily charged for that type of legal service by attorneys with standing and ability of wife’s attorneys, hours claimed were consistent with time devoted to case through depositions and other discovery and research, and record revealed beneficial results obtained for wife through temporary support, and in receiving divorce on ground of adultery and award of periodic alimony; record also reflected husband’s ability to pay attorney fees and wife’s inability to do so. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68.

A family court order which contained only vague estimations of time and labor devoted to the case and the extent of the legal services rendered did not support an award of $35,000 in attorney’s fees. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811. Divorce 1168(1)

There was no abuse of discretion in denying attorney fees to the wife where no evidence was presented to establish her entitlement to such an award beyond an allegation that she could not afford to pay, and none of the other factors supporting an award of attorney fees was demonstrated. Alliegro v. Alliegro (S.C.App. 1985) 287 S.C. 154, 337 S.E.2d 252.

There was no abuse of discretion in awarding the wife $1500 attorney fees where she testified that she retained her lawyer for $2,000 and paid $230, and an affidavit revealed that the lawyer spent about 24 hours on the case including a contested hearing, and was required to secure evidence concerning the husband’s adultery and his financial status, which resulted in a favorable holding for the wife. Ivey v. Ivey (S.C.App. 1985) 286 S.C. 315, 334 S.E.2d 123. Divorce 1168(1)

There was no abuse of discretion in awarding $1,000 attorney fees to the wife where the wife’s attorney (1) held five or six thirty‑minute conferences with the wife, (2) represented the wife at the hearing, and (3) obtained a beneficial result. Hendricks v. Hendricks (S.C.App. 1985) 285 S.C. 591, 330 S.E.2d 553. Divorce 1140

Award of $400 attorneys’ fees to wife in divorce was reasonable. Bailey v. Bailey (S.C. 1977) 269 S.C. 1, 235 S.E.2d 801. Divorce 1168(1)

Trial court abused its discretion in awarding only $500 for attorney’s fees in view of nature, extent, and difficulty of case, time devoted, professional standing of counsel and beneficial results obtained by him, and especially in view of the substantial sum the husband was able to pay his private investigators. Mays v. Mays (S.C. 1976) 267 S.C. 490, 229 S.E.2d 725.

Court awarded attorney’s fee of $175,000 would be reasonable in favor of ex‑wife, where amount involved in the controversy was in excess of $1,500,000 payable over a period of 20 years. Darden v. Witham (S.C. 1974) 263 S.C. 183, 209 S.E.2d 42.

Where the wife has demonstrated to the court that her claim for attorney’s fee is well founded, she is entitled to a reasonable allowance therefor, taking into consideration the nature, extent and difficulty of the services rendered, the time necessarily devoted to the matter, the professional standing of her counsel, the contingency of compensation, and the beneficial result accomplished (the last involving of necessity the financial status of both parties as bearing upon the amount of alimony); and to judgment accordingly. That the husband may be unable to pay it affords no basis for denial of such a judgment. Collins v. Collins (S.C. 1961) 239 S.C. 170, 122 S.E.2d 1. Divorce 1138; Divorce 1168(1)

18. —— Adequacy, attorney fees

A mother was entitled to more than $650 in attorney fees to defend against a custody claim brought by her child’s father where the claim was presented with sufficient vigor to require the appointment of a guardian ad litem, pendente lite court action, and a psychologist’s examination of the child, and where the mother had limited resources to bear the cost of the litigation. Johns v. Johns (S.C.App. 1992) 309 S.C. 199, 420 S.E.2d 856. Child Custody 949

A trial judge abused his discretion in failing to allow a more adequate fee to counsel for the wife where the wife was permanently hospitalized in a mental institution and had neither property nor income, and the action was commenced by the husband in spite of the fact that case law clearly stood by the proposition that the husband was not entitled to a divorce on the ground of one year separation as alleged in the complaint. Rish v. Rish By and Through Barry (S.C.App. 1988) 296 S.C. 14, 370 S.E.2d 102. Divorce 1168(2)

Wife failed to demonstrate abuse of discretion in arguing attorney fee award was grossly inadequate where trial court, among other things, made specific findings regarding difficulty of legal services rendered, time and labor devoted to case, beneficial results accomplished, professional standing of counsel, customary charge for services rendered, and contingency of compensation. Bailey v. Bailey (S.C.App. 1987) 293 S.C. 451, 361 S.E.2d 348.

Additional award to wife’s attorney of $500 in legal separation action brought by husband, bringing fee to $1,500 was too low; family court order modified to require husband to pay $1,500, bringing total fee to $2,500. Murray v. Murray (S.C. 1978) 271 S.C. 62, 244 S.E.2d 538.

Failure to grant additional fees for wife’s attorney, beyond sum of $125 for hearing on application for temporary relief, was in error, in action where wife and husband brought cross‑actions for divorce and child custody, and where trial court denied both parties’ demands for divorce, and awarded custody of child to husband. Peeples v. Peeples (S.C. 1978) 270 S.C. 116, 241 S.E.2d 159.

Award of $10,000 in attorney’s fees to wife by the trial court was found to be excessive and was reduced to a reasonable amount of $4,000. Morris v. Morris (S.C. 1977) 268 S.C. 104, 232 S.E.2d 326. Divorce 1168(2)

19. Temporary alimony and counsel fees

Trial court failed to properly consider relevant factors and explain its reasoning in denying attorney fees to ex‑husband and ex‑wife in action to enforce divorce decree, where court order simply stated that both parties shall be responsible for their own attorney fees and costs associated with action. Lacke v. Lacke (S.C.App. 2005) 362 S.C. 302, 608 S.E.2d 147, certiorari dismissed. Divorce 1170(8)

An award of temporary alimony to a wife, instead of permanent alimony, was not an abuse of discretion where the parties had the capacity to earn approximately the same income, the parties’ standard of living was commensurate with that of a young couple starting out in marriage, the parties had not accumulated any joint wealth to speak of, the marriage was relatively short in duration, neither party was primarily at fault for its dissolution, and the wife was 28 years of age, was in good health, was highly credentialed, and had good, immediate employment prospects. Shambley v. Shambley (S.C.App. 1988) 296 S.C. 405, 373 S.E.2d 689.

Denial of temporary alimony and counsel fees is proper where trial judge is faced with special difficulty in resolving equities involved in case by removal of wife to Israel and speculative nature of her needs. Armaly v. Armaly (S.C. 1980) 274 S.C. 560, 266 S.E.2d 68.

Alimony award of $400 per month for 6 months and 3 rooms of furniture was not an abuse of discretion in legal separation action where Family Court found that the disintegration of the marriage was the fault of the wife, and that the wife did not have custody of the child and was thus able to work. Murray v. Murray (S.C. 1978) 271 S.C. 62, 244 S.E.2d 538. Divorce 606; Divorce 785; Divorce 856

Reconciliation of husband and wife terminates action for divorce, and allowance for temporary alimony fails therewith. In re De Pass (S.C. 1957) 231 S.C. 134, 97 S.E.2d 505.

The right of a wife‑litigant to alimony pending divorce proceedings is expressly vouchsafed to her by this section, and the allowance of such pendente lite is within the discretion of the court when the wife establishes a prima facie right thereto, which is subject to review and reversal on appeal. Simonds v. Simonds (S.C. 1954) 225 S.C. 211, 81 S.E.2d 344.

Where there were no papers in support of a motion for temporary alimony except wife’s verified complaint, this was not a fatal deficiency, albeit the burden of proof was upon the wife, privileged suitor though she be. Simonds v. Simonds (S.C. 1954) 225 S.C. 211, 81 S.E.2d 344. Divorce 540(2)

Generally speaking, where the husband sues the wife for divorce and the only showing before the court is his verified complaint and a verified answer by the wife denying the grounds for divorce and showing that she is without funds to defend the suit or maintain herself during the pendency of the action, a prima facie case is made for the allowance of temporary alimony and counsel fees. Poliakoff v. Poliakoff (S.C. 1952) 221 S.C. 391, 70 S.E.2d 625. Divorce 540(3); Divorce 1161; Divorce 1170(6)

If it appears that the wife’s denial is not made in good faith, but is merely sham and for the purpose of protracting the period during which the injured husband may be compelled to support her, application for suit money and temporary alimony will be denied. Poliakoff v. Poliakoff (S.C. 1952) 221 S.C. 391, 70 S.E.2d 625.

The wife is regarded as the privileged suitor and in determining whether temporary alimony and counsel fees shall be allowed, it is not necessary to examine into the merits of the controversy. But to entitle the wife to such relief, it is incumbent upon her to establish a prima facie case. Poliakoff v. Poliakoff (S.C. 1952) 221 S.C. 391, 70 S.E.2d 625. Divorce 540(2); Divorce 541; Divorce 1170(6)

Wife did not establish a prima facie right for alimony pendente lite and allowance of suit money or attorney’s fees in an action for divorce brought by husband where wife had previously had an action for separate support and maintenance decided against her, there being no children and it being inferred that wife was gainfully employed. Jeffords v. Jeffords (S.C. 1950) 216 S.C. 451, 58 S.E.2d 731.

While the allowance of alimony pendente lite and the allowance of suit money or attorney’s fees is within the discretion of the court, the power should not be exercised unless the wife establishes a prima facie right thereto. Jeffords v. Jeffords (S.C. 1950) 216 S.C. 451, 58 S.E.2d 731. Divorce 533; Divorce 540(3); Divorce 1161; Divorce 1170(6)

20. Real property

A party who is granted possession of a residence as an incident of support does not obtain a vested right to remain in the home for his or her lifetime. Rather, changed circumstances may necessitate a future change in such a provision. Stafford v. Stafford (S.C.App. 1988) 296 S.C. 423, 373 S.E.2d 699. Marriage And Cohabitation 1220; Marriage And Cohabitation 1234

21. Expenses

Reasonable and necessary expenses incurred in obtaining evidence of a spouse’s adultery are recoverable as suit money. Stevenson v. Stevenson (S.C. 1988) 295 S.C. 412, 368 S.E.2d 901. Divorce 1157

22. Guardian ad litem fees

Dividing the pre‑trial guardian ad litem fees equally between the parties was not an abuse of discretion in divorce proceeding, even though former husband complained that former wife’s move to North Carolina caused guardian to incur additional fees in form of travel, where parties agreed to appointment of guardian whose office was located between parties’ residences. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Infants 1244

A trial court did not abuse its discretion in requiring a husband in a divorce action to pay 1⁄2 of the guardian ad litem’s fee, even though the guardian ad litem’s recommendations were more favorable to the wife and the husband contended that the guardian ad litem was not objective; the fact that a party does not like the recommendations of a court‑appointed guardian is no reason for excusing that party from liability for payment of the guardian’s fee. Hardwick v. Hardwick (S.C.App. 1990) 303 S.C. 256, 399 S.E.2d 791.

23. Expert fees

Family court acted within its discretion in ordering husband to pay expert witness fees of $23,066.25 in divorce proceeding; the family court found the various experts credible and accepted their valuations, the court noted that the experts’ valuations were material to the relief wife sought and obtained, and there was a large disparity in the parties’ incomes with husband making $24,000 per month and wife making $436 per month. Lewis v. Lewis (S.C. 2011) 392 S.C. 381, 709 S.E.2d 650. Divorce 1144; Divorce 1157; Divorce 1162

Wife failed to produce evidence to support award of expert fees in dissolution action; family court ordered husband to pay $2,222 for wife’s forensic economist and $682 for copies of documents wife made for accountant, wife testified that forensic economist gave her wonderful three or four page sheet with little details that she needed to think of what she would spend, economist did not testify nor did wife affirmatively establish what services he performed, and wife testified that she paid for $682 worth of copies from accountant but produced no receipt, and wife had burden to establish her claim was well‑founded. Fuller v. Fuller (S.C.App. 2006) 370 S.C. 538, 636 S.E.2d 636, rehearing denied. Divorce 1170(6)

In an action for the division of marital property, the trial court properly held that the wife should pay a fee of $400 to her husband’s expert witness where she twice deposed the expert, and the court found his bill to be reasonable. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604.

There was no error in the family court’s refusal to award a wife expert witness fees as suit money where (1) the wife related her claim for expert witness fees only to her demand for attorney fees resulting from having to protect, in a bankruptcy court, the attorney fees awarded her by the family court, (2) the family court found the witness unqualified to offer an expert opinion on bankruptcy litigation, and (3) attorney fees incurred in protecting, in bankruptcy court, an award of attorney fees made by the family court are unrecoverable as costs in the family court. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614. Divorce 1166

24. Private investigator fees

Wife was entitled to award of private investigator fees in divorce action, where husband denied having an affair, necessitating employment of private investigator to prove adultery. Ellerbe v. Ellerbe (S.C.App. 1996) 323 S.C. 283, 473 S.E.2d 881, rehearing denied. Divorce 1157

There was no abuse of discretion in a trial court’s refusal to require a husband to pay private investigator fees where the private investigator’s testimony failed to prove wrongdoing on the part of the husband prior to the parties’ separation and the sole purpose of the private investigator’s testimony was to prove that the husband committed adultery. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

25. Costs

The same equitable considerations which apply to attorney’s fees also apply to costs. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

26. Settlement agreements

If a support and property settlement agreement is executory as to support and a continuance of the separation, while it is executed as to property rights, reconciliation and resumption of cohabitation may terminate the executory support provision while having no effect on the executed property provisions. Thus, a property settlement agreement and reconciliation agreement precluded reapportionment of the property covered by them except to the extent that such property had increased in value due to the joint effort of the parties, where the reconciliation agreement indicated that the parties agreed that they had complied with the provisions of the property settlement agreement. However, the reconciliation of the parties nullified the provisions of the separation and reconciliation agreements regarding the parties’ agreements not to be liable for the support of each other, and therefore the husband’s argument that the trial court should not have awarded alimony to the wife was without merit. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

The trial court properly approved a settlement agreement in a divorce action even though the husband expressed some uncertainty as to part of the agreement where the momentary equivocation was recanted by the husband, the husband testified that he freely and voluntarily accepted the agreement, and the trial judge made every effort to reiterate to the husband his options. Polin v. Polin (S.C.App. 1988) 295 S.C. 129, 367 S.E.2d 433.

27. Change in circumstances

After holding wife’s request for alimony and suit money pendente lite in abeyance, family court could revisit issue in connection with wife’s renewed plea based on changed circumstances. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1170(2)

28. Bankruptcy

It was not error for the family court to refuse to award a wife attorney fees for her attorney’s services in the bankruptcy court to protect the attorney fees awarded by the family court in its divorce decree. Although a family court may award attorney fees in action for divorce, separate support and maintenance, and other marital litigation between the parties, a family court is not authorized to award attorney fees for services rendered a spouse in other litigation arising out of the marital troubles. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614.

When deciding whether an obligation imposed by state divorce court is nondischargeable as being in nature of “support,” bankruptcy court must consider several factors, including divorce court’s intent as to purpose of obligation, parties’ financial circumstances at time of divorce and degree to which obligation enables recipient to maintain daily necessities. In re Seybt (Bkrtcy.D.S.C. 2002) 2002 WL 342346, Unreported. Bankruptcy 3366

Chapter 7 debtor’s obligation, under divorce decree, to continue making second mortgage payments on home where his ex‑wife and daughters resided was nondischargeable, as being in nature of “support,” notwithstanding lack of language in divorce decree as to obligation’s purpose and fact that debtor’s and his ex‑wife’s incomes were roughly equal at time of divorce; obligation, by ensuring that ex‑wife and children would have home in which to live, provided “support.” In re Seybt (Bkrtcy.D.S.C. 2002) 2002 WL 342346, Unreported. Bankruptcy 3365(6)

29. Service

A decree for alimony and costs against a nonresident defendant cannot be based upon constructive service except as against property which may be found within the jurisdiction of the court specifically proceeded against in the divorce proceeding, and described in the complaint or petition for divorce. Carnie v. Carnie (S.C. 1969) 252 S.C. 471, 167 S.E.2d 297.

Constructive service in itself, whether made by publication or by actual service of process upon the defendant outside the State, is insufficient to give jurisdiction to render a judgment for alimony against a nonresident which will be binding upon him except as to his property within the jurisdiction. Carnie v. Carnie (S.C. 1969) 252 S.C. 471, 167 S.E.2d 297.

30. Presumptions and burden of proof

Burden of proving that claim is “well founded,” so as to entitle spouse to suit money is on party seeking suit money. Anderson v. Tolbert (S.C.App. 1996) 322 S.C. 543, 473 S.E.2d 456. Divorce 1170(6)

The allowance of attorney’s fees in a divorce action is largely within the discretion of the trial judge. A husband appealing from such an allowance on the ground of excessiveness has the burden of satisfying the court that the award is so unreasonably high as to amount to an abuse of discretion. Young v. Young (S.C. 1970) 254 S.C. 498, 176 S.E.2d 156.

31. Admissibility of evidence

Probative value of photographs depicting wife and another man on the night of her birthday was not substantially outweighed by the danger of unfair prejudice, and thus the photographs were admissible in divorce proceeding, though photographs were of poor quality; photographs were relevant to husband’s claim of adultery against wife, and the likelihood that the family court, which acknowledged the poor quality of the photographs, was improperly persuaded by them was negligible. Mick‑Skaggs v. Skaggs (S.C.App. 2014) 411 S.C. 94, 766 S.E.2d 870, certiorari denied. Divorce 115; Evidence 359(1)

Trial judge did not err in disallowing evidence as to change in circumstances on issue of alimony where husband’s petition for divorce merely alleged wife was not entitled to alimony; wife plead, and trial judge accepted, that matter of alimony had already been judicially determined, and wife further alleged there had been no change in parties’ financial condition and husband failed to allege any such change. Blackmon v. Blackmon (S.C.App. 1987) 294 S.C. 187, 363 S.E.2d 400.

32. Sufficiency of evidence

Husband presented sufficient corroborating testimony to demonstrate that wife committed adultery, so as to support denial of alimony to wife in divorce proceeding; several witnesses observed wife being affectionate with a man at a bar on the night of her birthday, evidence showed that this man followed wife home in the early morning hours and entered wife’s house upon her invitation, and text messages sent on wife’s phone were circumstantial evidence indicating a continued disposition to commit adultery. Mick‑Skaggs v. Skaggs (S.C.App. 2014) 411 S.C. 94, 766 S.E.2d 870, certiorari denied. Divorce 594(4)

Evidence was sufficient to support award of alimony to wife; wife was unemployed and would have difficult time finding adequate job to support her in manner in which she had become accustomed during marriage, husband ended marriage by leaving and by committing adultery, husband had income disproportionate to wife and had income sufficient to support himself and her to reasonable extent, and husband had non‑marital assets greatly in excess of wife. Hawley v. Hawley (S.C.App. 2005) 363 S.C. 318, 610 S.E.2d 309. Divorce 571; Divorce 574; Divorce 576

Affidavit indicating amount of attorney fees and costs mother incurred in custody action, and evidence that judge considered appropriate factors before entering award, was sufficient to support awarding fees and costs to mother. Henggeler v. Hanson (S.C.App. 1998) 333 S.C. 598, 510 S.E.2d 722, rehearing denied, certiorari denied. Child Custody 952

Wife made prima facie showing of entitlement to alimony and suit money pendente lite; wife offered affidavits concerning husband’s habitual use of alcohol, and wife submitted financial statements reflecting income less than one‑quarter of husband’s, and declaration indicating that since separation from husband, wife had monthly deficit of $2,000. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1170(6)

The Family Court did not abuse its discretion in denying alimony to a wife who suffered from epilepsy where the wife did not present any evidence to establish the extent of her disability, other than her own testimony that she probably could work but might be too ill on some days. Williamson v. Williamson (S.C. 1993) 311 S.C. 47, 426 S.E.2d 758.

A family court did not err in awarding alimony to a wife, even though the evidence showed that she received a pension and had the ability to obtain employment, where the court determined that she was entitled to alimony to maintain her standard of living and the amount allowed was partially based upon an increase in the mortgage payment necessitated by the husband’s refinancing of the marital home. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178. Divorce 586

Although the trial court had authority, pursuant to Sections 20‑3‑120, 20‑3‑130, and 20‑7‑420(2), to order payment of alimony and suit money to a former wife in a divorce action, it properly denied her request for attorneys’ fees, where the bare assertion that she had no funds with which to pay adequate attorneys’ fees was insufficient to justify an award. Miller v. Miller (S.C. 1984) 280 S.C. 314, 313 S.E.2d 288.

33. Harmless error

Family court’s error in concluding it could not revisit issue of alimony and suit money pendente lite in connection with wife’s renewed plea based on changed circumstances was harmless; court required husband to pay substantial medical expenses as temporary support, and wife failed to show any prejudice resulting from court’s error, as she was able to maintain herself and defend divorce proceeding. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1298; Divorce 1299

34. Review

By claiming in motion to reconsider that family court erred by ordering husband to pay wife’s attorney fees and one‑half of guardian ad litem fees within 180 days, when husband lacked ability to do so “within that time frame,” husband’s objection was only to time frame for payment of award, and he did not preserve for appellate review family court’s calculation of award. Buist v. Buist (S.C. 2014) 410 S.C. 569, 766 S.E.2d 381. Divorce 1217

Asserting challenge to award of attorney fees to wife in divorce for first time in motion to reconsider was timely challenge to award of fees sufficient to preserve issue for appellate review. Buist v. Buist (S.C. 2014) 410 S.C. 569, 766 S.E.2d 381. Divorce 1170(8); Divorce 1217

Remand was required in divorce proceeding to allow family court to exercise its discretion to determine whether to allow wife, who failed to file an answer in the case, to raise the issue of alimony; wife requested alimony at the conclusion of the merits hearing, and record lacked any indication the family court considered whether wife should be allowed to raise the issue of alimony despite her failure to answer. Roesler v. Roesler (S.C.App. 2011) 396 S.C. 100, 719 S.E.2d 275, rehearing denied. Divorce 1322(1)

In domestic case, reviewing court would closely evaluate services rendered for purposes of determining appropriateness and amount of attorney fee award, as services appeared to be disproportionate to issues litigated, and law impressed lien on property of husband to ensure payment of wife’s attorney fees. Anderson v. Tolbert (S.C.App. 1996) 322 S.C. 543, 473 S.E.2d 456. Divorce 1261(1)

The issue of alimony would be remanded to the Family Court judge who had ordered the husband in a divorce action to pay to the wife “as his total support obligation” the sum of $7,200 where at no point in his order did the judge designate the type of alimony he was awarding, and he made no finding of special circumstances, as required for either lump sum or rehabilitative alimony. Carroll v. Carroll (S.C.App. 1992) 309 S.C. 22, 419 S.E.2d 801.

The trial judge had the authority to determine the appropriate amount and award of attorney’s fees for services rendered as a result of a remand where the Supreme Court had remanded the case to the trial judge for computation of the fees incurred by the prevailing party, children who had been wrongfully sued for payment by the attorneys who had represented their mother in a divorce action. Bowen & Smoot v. Plumlee (S.C. 1992) 308 S.C. 325, 417 S.E.2d 855. Appeal And Error 1207(3)

A wife was not entitled to an award of attorney fees where she had savings of $7,000, received $5,666 for her equity in the family home, had a college degree, earned $20,000 per year, and on appeal was denied an award of alimony. E.D.M. v. T.A.M. (S.C. 1992) 307 S.C. 471, 415 S.E.2d 812.

The Court of Appeals had jurisdiction to construe an order in which a trial judge construed his own previously issued order where the terms of a marital litigation decree seemed ambiguous but the same trial judge presided over the entire litigation; however, the determinative factor in construing an ambiguous order is the intent of the judge who wrote it, and thus due deference should be given to the opinion of the trial judge who had the advantage of knowing his own intent. Eddins v. Eddins (S.C.App. 1991) 304 S.C. 133, 403 S.E.2d 164, certiorari denied.

A temporary family court order requiring a husband to make weekly payments to the wife was not automatically stayed pending appeal since the payments constituted temporary alimony, rather than a distribution of marital assets, where the payments were to be made for an indefinite, though temporary, period of time and for an indefinite total sum. Bochette v. Bochette (S.C.App. 1989) 300 S.C. 109, 386 S.E.2d 475. Divorce 884; Divorce 1233

Exception alleging that trial court abused its discretion when it failed to award wife “attorney’s fees, costs or other disbursements” would not be liberally construed to include allegation of error regarding periodic alimony; every ground of appeal ought to be so distinctly stated that court may at once seek point upon which it is to decide without having to grope in dark. Hudson v. Hudson (S.C.App. 1987) 294 S.C. 166, 363 S.E.2d 387.

In divorce cases, Court of Appeals of South Carolina has jurisdiction to find facts in accordance with its own view of preponderance of evidence. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68. Divorce 184(6.1)

Award to former wife of attorney fees would be remanded where the Family Court, in making the award, merely recited, instead of making specific findings concerning, relevant factors. Rabon v. Rabon (S.C.App. 1986) 289 S.C. 49, 344 S.E.2d 615.

The amount of attorney fees rests within the sound discretion of the trial court, and will not be disturbed on appeal unless an abuse is shown. To constitute an abuse of discretion, the wife must show that the conclusions reached were without reasonable factual support, resulted in prejudice to her, and amounted to an error of law under the circumstances of the case. Alliegro v. Alliegro (S.C.App. 1985) 287 S.C. 154, 337 S.E.2d 252.

Wife who fails to offer any evidence on issue of attorney’s fees incurred in connection with divorce proceeding fails to meet her burden of showing that her request for attorney’s fees is well founded, and Family Court order awarding attorney’s fees to wife in absence of request therefor and without proof of her entitlement thereto is vacated by Supreme Court. Gainey v. Gainey (S.C. 1983) 279 S.C. 68, 301 S.E.2d 763.

Award of $25,500 attorneys’ fees to wife in divorce was remanded for further consideration where Supreme Court determined wife was entitled to neither divorce nor alimony, since among factors to be weighed in setting reasonable fee is accomplishment of beneficial result. Stone v. Guaranty Bank & Trust Co. (S.C. 1978) 270 S.C. 331, 242 S.E.2d 404.

Where the divorce decree eliminated the right of the wife and child to continue to reside in the family home, case would be remanded for consideration of whether the alimony and support award was adequate to allow the wife to secure other living quarters. Morris v. Morris (S.C. 1977) 268 S.C. 104, 232 S.E.2d 326.

The exercise of such a discretion will not be disturbed on appeal unless an abuse thereof is shown. Page v. Page (S.C. 1973) 260 S.C. 298, 195 S.E.2d 613.

In suit for alimony pendente lite the amount of husband’s income taxes was a further important consideration for the trial court in arriving at the proper amount, as temporary alimony payments are not deductible for Federal income tax purposes, and where such was not taken into consideration, award was reversed and remanded for further consideration. Simonds v. Simonds (S.C. 1954) 225 S.C. 211, 81 S.E.2d 344.

**SECTION 20‑3‑125.** Petition to enforce award of attorney fee.

Any attorney whose client has been awarded an attorney fee by the family court may petition the family court for the circuit in which the order was filed to enforce the payment of such fee.

HISTORY: 1984 Act No. 301.

CROSS REFERENCES

Attorney fee constituting a lien, see Section 20‑3‑145.

Library References

Divorce 1179.

Westlaw Topic No. 134.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 44, Attorney Fees Constitute a Lien.

S.C. Jur. Divorce Section 72, Attorney Fees and Costs.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

Fee dispute 2

1. In general

Under Section 20‑3‑120, attorneys fees are termed “suit money”, and are enforceable by petition to the family court to enforce payment, which enforcement is ordinarily by way of contempt. Woodside v. Woodside (S.C.App. 1986) 290 S.C. 366, 350 S.E.2d 407.

Historically, an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal and, until then, it is more in the nature of a disbursement. Woodside v. Woodside (S.C.App. 1986) 290 S.C. 366, 350 S.E.2d 407.

2. Fee dispute

In divorce proceedings, the wife’s filing of an application with the State Bar for resolution of a fee dispute with her former attorneys vested exclusive jurisdiction over the issue with Fee Disputes Board of the State Bar pursuant to App Ct Rule 407; Section 20‑3‑125, which authorizes an attorney to petition the Family Court for enforcement of attorney fees awarded to a client, did not apply. Bailey v. Bailey (S.C. 1994) 312 S.C. 454, 441 S.E.2d 325. Attorney And Client 157.1

**SECTION 20‑3‑130.** Award of alimony and other allowances.

(A) In proceedings for divorce from the bonds of matrimony, and in actions for separate maintenance and support, the court may grant alimony or separate maintenance and support in such amounts and for such term as the court considers appropriate as from the circumstances of the parties and the nature of case may be just, pendente lite, and permanently. No alimony may be awarded a spouse who commits adultery before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

(B) Alimony and separate maintenance and support awards may be granted pendente lite and permanently in such amounts and for periods of time subject to conditions as the court considers just including, but not limited to:

(1) Periodic alimony to be paid but terminating on the remarriage or continued cohabitation of the supported spouse or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances occurring in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to order the payment of alimony on an ongoing basis where it is desirable to make a current determination and requirement for the ongoing support of a spouse to be reviewed and revised as circumstances may dictate in the future.

(2) Lump‑sum alimony in a finite total sum to be paid in one installment, or periodically over a period of time, terminating only upon the death of the supported spouse, but not terminable or modifiable based upon remarriage or changed circumstances in the future. The purpose of this form of support may include, but not be limited to, circumstances where the court finds alimony appropriate but determines that such an award be of a finite and nonmodifiable nature.

(3) Rehabilitative alimony in a finite sum to be paid in one installment or periodically, terminable upon the remarriage or continued cohabitation of the supported spouse, the death of either spouse (except as secured in subsection (D)) or the occurrence of a specific event to occur in the future, or modifiable based upon unforeseen events frustrating the good faith efforts of the supported spouse to become self‑supporting or the ability of the supporting spouse to pay the rehabilitative alimony. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to provide for the rehabilitation of the supported spouse, but to provide modifiable ending dates coinciding with events considered appropriate by the court such as the completion of job training or education and the like, and to require rehabilitative efforts by the supported spouse.

(4) Reimbursement alimony to be paid in a finite sum, to be paid in one installment or periodically, terminable on the remarriage or continued cohabitation of the supported spouse, or upon the death of either spouse (except as secured in subsection (D)) but not terminable or modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it necessary and desirable to reimburse the supported spouse from the future earnings of the payor spouse based upon circumstances or events that occurred during the marriage.

(5) Separate maintenance and support to be paid periodically, but terminating upon the continued cohabitation of the supported spouse, upon the divorce of the parties, or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where a divorce is not sought, but it is necessary to provide for support of the supported spouse by way of separate maintenance and support when the parties are living separate and apart.

(6) Such other form of spousal support, under terms and conditions as the court may consider just, as appropriate under the circumstances without limitation to grant more than one form of support.

For purposes of this subsection and unless otherwise agreed to in writing by the parties, “continued cohabitation” means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety‑day requirement.

(C) In making an award of alimony or separate maintenance and support, the court must consider and give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties;

(2) the physical and emotional condition of each spouse;

(3) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse’s income potential;

(4) the employment history and earning potential of each spouse;

(5) the standard of living established during the marriage;

(6) the current and reasonably anticipated earnings of both spouses;

(7) the current and reasonably anticipated expenses and needs of both spouses;

(8) the marital and nonmarital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action;

(9) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;

(10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement or (b) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(11) the tax consequences to each party as a result of the particular form of support awarded;

(12) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and

(13) such other factors the court considers relevant.

(D) In making an award of alimony or separate maintenance and support, the court may make provision for security for the payment of the support including, but not limited to, requiring the posting of money, property, and bonds and may require a spouse, with due consideration of the cost of premiums, insurance plans carried by the parties during marriage, insurability of the payor spouse, the probable economic condition of the supported spouse upon the death of the payor spouse, and any other factors the court may deem relevant, to carry and maintain life insurance so as to assure support of a spouse beyond the death of the payor spouse.

(E) In making an award of alimony or separate maintenance and support, the court may order the direct payment to the supported spouse, or may require that the payments be made through the Family Court and allocate responsibility for the service fee in connection with the award. The court may require the payment of debts, obligations, and other matters on behalf of the supported spouse.

(F) The court may elect and determine the intended tax effect of the alimony and separate maintenance and support as provided by the Internal Revenue Code and any corresponding state tax provisions. The Family Court may allocate the right to claim dependency exemptions pursuant to the Internal Revenue Code and under corresponding state tax provisions and to require the execution and delivery of all necessary documents and tax filings in connection with the exemption.

(G) The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements. The parties may agree in writing if properly approved by the court to make the payment of alimony as set forth in items (1) through (6) of subsection (B) nonmodifiable and not subject to subsequent modification by the court.

(H) The court, from time to time after considering the financial resources and marital fault of both parties, may order one party to pay a reasonable amount to the other for attorney fees, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce from the bonds of matrimony, as well as in actions for separate maintenance and support, including sums for services rendered and costs incurred before the commencement of the proceeding and after entry of judgment, pendente lite and permanently.

HISTORY: 1962 Code Section 20‑113; 1952 Code Section 20‑113; 1949 (46) 216; 1979 Act No. 71 Section 6; 1990 Act No. 518, Section 1, eff six months after approval by the Governor and applies to all actions filed on or after that date (approved May 29, 1990); 2002 Act No. 328, Section 1, eff June 18, 2002.

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1. In general

When a wife is awarded alimony, it is a substitute for the support which is normally incident to the marital relationship. McNaughton v McNaughton (1972) 258 SC 554, 189 SE2d 820. Spence v Spence (1973) 260 SC 526, 197 SE2d 683.

“Alimony” is a substitute for the support which is normally incident to the marital relationship. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied; Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359.

Generally, alimony should place the supported spouse, as nearly as is practical, in the same position he or she enjoyed during the marriage; however, alimony should not dissuade a spouse, to the extent possible, from becoming self‑supporting. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 573

Generally, alimony should place the supported spouse, as nearly as practical, in the same position as enjoyed during the marriage. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 572

Alimony is not awarded to support a live‑in partnership between the supported ex‑spouse and a third party. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 568

Alimony is a substitute for the support which is normally incident to marital relationship. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 559

Generally, alimony should place the supported spouse, as nearly as is practical, in same position she enjoyed during marriage. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 559

Ordinarily, the purpose of alimony is to place the supported spouse, as nearly as is practical, in the position of support he or she enjoyed during the marriage; alimony should not, however, serve as a disincentive for spouses to improve their employment potential or to dissuade them from providing, to the extent possible, for their own support. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 559

Alimony is a substitute for the support that is normally incident to the marital relationship. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

Ordinarily, the purpose of alimony is to place the supported spouse, as nearly as is practical, in the position of support he or she enjoyed during marriage. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321. Divorce 559

The grant of an alimony award is a matter within the discretion of the court and will not be reversed on appeal absent an abuse of discretion. Doe v. Doe (S.C.App. 1995) 319 S.C. 151, 459 S.E.2d 892, rehearing denied. Divorce 565(1); Divorce 1281(1)

Alimony is a substitute for support incident to the marital relationship. It is not intended to penalize one spouse while rewarding the other. The marriage contract is not an annuity; it is not lifetime insurance against the unexpected. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 559

Factors to be considered in awarding alimony are financial condition of husband and needs of wife, health and age of parties, their earning capacities, amount wife has contributed to their wealth, standard of living wife was accustomed to at time of divorce, and conduct of parties; alimony is substitute for support which is normally incident to marital relation. Powers v. Powers (S.C. 1979) 273 S.C. 51, 254 S.E.2d 289. Divorce 586

Alimony is a substitute for the support which is normally incident to a marital relationship and, all factors to that relationship should be considered in making award. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504. Divorce 559

Alimony statute contemplates the payment of alimony in money, and court has no power to award any specific property of a spouse as alimony. Smith v. Smith (S.C. 1975) 264 S.C. 624, 216 S.E.2d 541. Divorce 602

Even though circumstances might indicate that a wife is entitled to alimony as a matter of right, still there is noting to prevent her relinquishment of such right. McNaughton v. McNaughton (S.C. 1972) 258 S.C. 554, 189 S.E.2d 820.

Award including amount in arrears plus alimony and support accruing during pendency of action is within the scope and prayer of a complaint. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372.

Applied in Langston v. Langston (S.C. 1967) 250 S.C. 363, 157 S.E.2d 858.

This section [Code 1962 Section 20‑113] authorizes alimony in actions for divorce a vinculo matrimonii. Brewer v. Brewer (S.C. 1963) 242 S.C. 9, 129 S.E.2d 736.

This section [Code 1962 Section 20‑113] does not abrogate or impair the original inherent power of equity to grant alimony independent of a divorce. Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629. Marriage And Cohabitation 1225

2. Construction and application

Word “or” in this section [Code 1962 Section 20‑113] is disjunctive particle which marks an alternative, and courts authorized to award alimony in periodic payments or in a lump sum, but not both. Brewer v. Brewer (S.C. 1963) 242 S.C. 9, 129 S.E.2d 736.

3. Duty and discretion of court

It is the duty of the trial judge to determine from the evidence whether alimony should be awarded and, if so, the amount thereof. Porter v Porter (1965) 246 SC 332, 143 SE2d 619. Spence v Spence (1973) 260 SC 526, 197 SE2d 683.

The family court is only required to consider relevant statutory factors for determining an award of alimony. Stoney v. Stoney (S.C.App. 2016) 417 S.C. 345, 790 S.E.2d 31, rehearing denied. Divorce 186

Award of alimony rests within the sound discretion of family court and will not be disturbed absent an abuse of discretion. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 565(1); Divorce 1281(1)

Modification of alimony is within sound discretion of family court and will not be overturned absent an abuse thereof. Riggs v. Riggs (S.C. 2003) 353 S.C. 230, 578 S.E.2d 3, rehearing denied. Divorce 626; Divorce 1281(5)

Only method sanctioned by Legislature for securing payment of periodic alimony beyond life of payor spouse was life insurance; thus, family court lacked authority to establish alimony trust to secure payment of periodic alimony beyond payor’s death. Gilfillin v. Gilfillin (S.C. 2001) 344 S.C. 407, 544 S.E.2d 829. Divorce 603; Divorce 615; Divorce 1068

In a divorce action, the Family Court did not abuse its discretion in awarding the wife only $100 in alimony where the record showed the court considered the factors set forth in Section 20‑3‑130(C). Matter of Bennett (S.C. 1996) 321 S.C. 485, 469 S.E.2d 608.

Section 20‑3‑130(B)(6) affords the Family Court broad discretion in awarding alimony and allows the court to fashion an alimony award which is just under the circumstances. Doe v. Doe (S.C.App. 1995) 319 S.C. 151, 459 S.E.2d 892, rehearing denied.

An award of attorney fees and costs is a discretionary matter not to be overturned absent abuse by the trial court. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Appeal And Error 984(5)

Unless alimony is barred as a matter of law, the award or refusal to award alimony is a matter left to the discretion of the trial judge. Doe v. Doe (S.C.App. 1985) 286 S.C. 507, 334 S.E.2d 829. Divorce 565(1)

Questions regarding alimony rest within the sound discretion of the trial judge, whose conclusion will not be disturbed absent a showing of abuse of discretion. Bannen v. Bannen (S.C.App. 1985) 286 S.C. 24, 331 S.E.2d 379. Divorce 1281(1); Divorce 1283(1)

Grant, or refusal, of alimony is a matter of discretion on the part of the trial judge. Clardy v. Clardy (S.C. 1976) 266 S.C. 270, 222 S.E.2d 771. Divorce 565(1)

In all cases, other than an adulterous wife, the issues of the wife’s entitlement to alimony and the amount thereof, if any, rest in the sound discretion of the trial judge, governed by what is equitable and just, having due regard to the circumstances of the parties and the nature of the case. Kendall v. Kendall (S.C. 1973) 260 S.C. 570, 197 S.E.2d 689.

While the trial judge is without power to grant alimony and attorney’s fees when the divorce was occasioned by the adultery of the wife, in all other cases the matter is one in the discretion of the trial judge. Herbert v. Herbert (S.C. 1973) 260 S.C. 86, 194 S.E.2d 238.

Where the wife seeks alimony it is the duty of the court to make an award that is fit, equitable, and just, if the claim is well founded. McNaughton v. McNaughton (S.C. 1972) 258 S.C. 554, 189 S.E.2d 820. Divorce 559

Award of alimony rests within the sound discretion of the trial judge. McNaughton v. McNaughton (S.C. 1972) 258 S.C. 554, 189 S.E.2d 820. Divorce 565(1)

4. Adultery

The fact that the wife is guilty of adultery and thereby precluded from receiving support does not affect the legal liability of a father to support his children. Lee v Lee (1961) 237 SC 532, 118 SE2d 171, citing Campbell v Campbell (1942) 200 SC 67, 20 SE2d 237.

An adulteress may not receive alimony. Thrower v. Cox (D.C.S.C. 1976) 425 F.Supp. 570.

Husband condoned wife’s adultery and, thus, he could not revive the marital offense as bar to alimony award; after wife’s admission of adultery, husband and wife continued normal cohabitation for at least seven months until wife expressed her desire to separate, and yet the couple continued living together under the same roof for an additional seven months, parties’ continued marital cohabitation for a considerable period of time conclusively showed an intention to forgive or condone such conduct, and, after he learned of wife’s affair, husband and wife attempted marriage counseling twice to work on the marriage. Srivastava v. Srivastava (S.C.App. 2015) 411 S.C. 481, 769 S.E.2d 442. Divorce 49(4); Divorce 569

Husband waived his right to assert wife was barred from receiving alimony since she committed adultery, in divorce proceeding; husband and wife signed an agreement that stated neither would use adultery as a bar to alimony, and the agreement was not against public policy. Eason v. Eason (S.C. 2009) 384 S.C. 473, 682 S.E.2d 804. Divorce 571

Adultery, as will preclude alimony award, is not the same thing as intercourse. Nemeth v. Nemeth (S.C.App. 1997) 325 S.C. 480, 481 S.E.2d 181, rehearing denied. Divorce 571

Adultery precludes alimony. Nemeth v. Nemeth (S.C.App. 1997) 325 S.C. 480, 481 S.E.2d 181, rehearing denied. Divorce 571

Husband made prima facie case of adultery, thereby precluding any award of alimony in favor of wife, by presenting clear evidence of wife’s opportunity and inclination to commit adultery. Nemeth v. Nemeth (S.C.App. 1997) 325 S.C. 480, 481 S.E.2d 181, rehearing denied. Divorce 594(4)

A wife was not entitled to alimony from her husband, who had agreed to support her by paying her rent and utilities, where the agreement was an informal verbal understanding made while the wife was a hospital inpatient, and the wife later committed adultery. Rutherford v. Rutherford (S.C. 1992) 307 S.C. 199, 414 S.E.2d 157.

In order to be entitled to receive alimony from her former husband, a wife who committed adultery, but claimed that she had done so unknowingly and while under the control of multiple personalities, was required to prove by the preponderance of evidence that her mental illness deprived her of the ability to control her actions; the inability to control one’s acts is not a complete defense to either criminal or civil liability. Rutherford v. Rutherford (S.C. 1992) 307 S.C. 199, 414 S.E.2d 157. Divorce 594(4)

Homosexual activity between 2 persons, at least one of whom was married to someone other than the sexual partner, constituted adultery under Sections 20‑3‑10 and 20‑3‑130 barring the award of alimony to a spouse found guilty of adultery. RGM v. DEM (S.C. 1991) 306 S.C. 145, 410 S.E.2d 564. Divorce 26

The family court did not violate public policy by considering the wife’s failure to get alimony in its division of the marital property in a divorce action where, although the wife did not seek alimony, the record contained no allegations of adultery which would have barred her from receiving alimony. Seawright v. Seawright (S.C.App. 1991) 305 S.C. 167, 406 S.E.2d 386.

A husband was entitled to a divorce and denial of alimony on the ground of adultery, even though the wife suffered from a multiple personality disorder, where the wife failed to prove by a preponderance of the evidence that her mental condition deprived her of the ability to control her various personalities one of which purportedly committed the adultery. Rutherford v. Rutherford (S.C.App. 1990) 303 S.C. 424, 401 S.E.2d 177, reversed 307 S.C. 199, 414 S.E.2d 157.

A former wife was not entitled to an award of alimony where she committed adultery on numerous occasions after a decree of separate maintenance was filed; she was no less a “spouse” under the separate maintenance decree, her romantic interludes no less “adulterous,” than if the parties had never separated. Morris v. Morris (S.C. 1988) 295 S.C. 37, 367 S.E.2d 24.

Trial court erred in indicating that it had increased wife’s distributive share of equitable division of marital property to compensate for alimony which could not be awarded because preclusion of alimony award to spouse found guilty of adultery cannot be used to increase equitable distribution award; such would contravene public policy considerations manifested in alimony‑barring statute. Berry v. Berry (S.C. 1988) 294 S.C. 334, 364 S.E.2d 463.

Failure of trial court either to award wife alimony or to reserve question of allowance of future alimony operated to bar her from receiving it thereafter; therefore, there was no prejudice to husband who complained that trial court’s failure to bar wife from receiving alimony because of her admitted adultery was error. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404. Divorce 1298

Only adulterous spouse is automatically barred from alimony. Where court found age, health, income, and earning capacity of wife to be relatively similar to her husband’s, she was considered able to provide for herself. There was no abuse of discretion in court’s ruling that forever foreclosed wife from receiving alimony. West v. West (S.C.App. 1987) 294 S.C. 190, 363 S.E.2d 402.

Trial judge did not commit error in finding adultery of husband to be primary reason for breakup of marriage, and then considering husband’s fault in arriving at alimony award, where husband admitted committing adultery with 2 persons following his request for divorce. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68.

Adultery on the part of a wife operates to discharge the husband from all obligations to support her. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883.

Once a husband had proved the wife’s adultery at a merits hearing, the wife should be required to repay the amount she has received in pendente lite support. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883. Divorce 535

Issue of adultery is properly before court where husband pleads adultery on part of wife and offers proof of it, and asks court, in prayer for relief, to permanently bar wife from alimony. Gainey v. Gainey (S.C. 1982) 277 S.C. 519, 290 S.E.2d 242. Divorce 108

Where a husband pled adultery on the part of his wife and offered proof of it, the trial judge erred in determining that the issue of adultery had not been properly presented by failure of the husband to allege specifically the elements of the crime of adultery. The husband established adultery on the part of the wife by a preponderance of the evidence where he called five witnesses, each of whom testified that the wife had spent the night with her paramour on numerous occasions and where the wife, although denying adultery, admitted that she had spent the night with her paramour on a regular basis; therefore, the wife would be permanently barred from alimony in accordance with Section 20‑3‑120. Gainey v. Gainey (S.C. 1982) 277 S.C. 519, 290 S.E.2d 242.

Statutory foreclosure of alimony based upon spouse’s adulterous conduct does not extend to special equity award of husband’s property acquired during coverture where wife has made material contribution to acquisition through her efforts. Simmons v. Simmons (S.C. 1980) 275 S.C. 41, 267 S.E.2d 427. Divorce 743; Divorce 783

Only an adulterous wife is statutorily denied alimony. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504. Divorce 571

Divorce law of South Carolina does not deny alimony to a wife except in case of adultery. Clardy v. Clardy (S.C. 1976) 266 S.C. 270, 222 S.E.2d 771. Divorce 569

Only an adulterous wife is automatically barred from alimony. Page v. Page (S.C. 1973) 260 S.C. 298, 195 S.E.2d 613.

An adulterous wife, under this section [Code 1962 Section 20‑113], is denied alimony and the husband is no longer required to provide her with the home in which she lives. Johnson v. Johnson (S.C. 1968) 251 S.C. 420, 163 S.E.2d 229.

5. Fault

Marital fault is only one of the factors the family court must consider in making an award of alimony. Bodkin v. Bodkin (S.C.App. 2010) 388 S.C. 203, 694 S.E.2d 230; Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829.

An at‑fault spouse cannot destroy a marriage and then claim that the short duration of the marriage entitles him or her to more favorable consideration when the economic adjustments attendant to divorce are made. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

6. Defenses

“Condonation,” as defense in divorce action, means forgiveness, express or implied, by one spouse for breach of marital duty by the other; more specifically, it is the forgiveness of an antecedent matrimonial offense on condition that it shall not be repeated and the offender shall thereafter treat the forgiving party with conjugal kindness. Nemeth v. Nemeth (S.C.App. 1997) 325 S.C. 480, 481 S.E.2d 181, rehearing denied. Divorce 49(7)

To establish “condonation,” there must be proof of reconciliation which implies normal cohabitation of husband and wife in the family home. Nemeth v. Nemeth (S.C.App. 1997) 325 S.C. 480, 481 S.E.2d 181, rehearing denied. Divorce 49(6)

Evidence was insufficient to prove that husband condoned wife’s adultery by spending two nights in the home after wife allegedly confessed her adultery to him, where husband testified that they did not sleep together and that there was no agreement to reconcile. Nemeth v. Nemeth (S.C.App. 1997) 325 S.C. 480, 481 S.E.2d 181, rehearing denied. Divorce 594(4)

Unlike condonation, which may be revoked by subsequent illicit conduct, the defense of recrimination does not constitute an exception to Section 20‑3‑130, barring alimony if a spouse has committed adultery; thus, a wife’s continued lesbian activity during the marital separation precluded her from asserting condonation as a defense to adultery, and revived the ground of adultery for purposes of Section 20‑3‑130. RGM v. DEM (S.C. 1991) 306 S.C. 145, 410 S.E.2d 564.

Recrimination is not a proper defense as a bar to alimony set forth in Section 20‑3‑130 which provides that no alimony shall be granted to an adulterous spouse. The violation of the law by one’s spouse does not justify nor give license to the other to violate the same law without penalty. Spires v. Spires (S.C.App. 1988) 296 S.C. 422, 373 S.E.2d 698.

Husband, by raising adultery issue for first time at trial, gave wife no notice that he would seek to prove adultery as bar to her alimony counterclaim, and had wife been on notice that husband would raise adultery as bar to her alimony claim, she could have pled and sought to prove recrimination or condonation; it would be extremely unjust to allow husband to raise issue of adultery by surprise at trial stage of case, and under circumstances, court erred in allowing husband to prove post‑separation adultery; husband’s general denial in his reply that he should not be required to pay support to wife did not properly place adultery in issue. Oyler v. Oyler (S.C.App. 1987) 293 S.C. 4, 358 S.E.2d 170.

Adultery, unlike recrimination and condonation, is not listed specifically as affirmative defense which must be pled under Rule 11, Rules of Practice in Family Courts, however, Rules of Civil Procedure, Rule 8(c) requires party to set forth any matter constituting avoidance or affirmative defense in pleading, as avoidance is defense which goes beyond basic elements of opposing party’s cause and depends upon additional facts to defeat claim, and adultery involves introduction of new matter which constitutes avoidance to claim for alimony, and since no family court rule conflicts with Rule 8(c) adultery constitutes avoidance to action for alimony which should have been pled in pleadings. Fields v. INA Filtration Corp. (S.C.App. 1987) 292 S.C. 614, 358 S.E.2d 160.

Regardless of whether an act of fellatio performed by the wife on another man constituted adultery within the meaning of Section 20‑3‑130, the husband could not avail himself of it as a bar to paying alimony to the wife where he condoned the act by continuing to cohabit and voluntarily engage in sexual intercourse with her for approximately five months. Doe v. Doe (S.C.App. 1985) 286 S.C. 507, 334 S.E.2d 829.

One incident of adultery some 11 years earlier was an improper basis for denying a wife’s request for alimony where the preponderance of evidence indicated that the husband had condoned her isolated act of infidelity. Grubbs v. Grubbs (S.C. 1978) 272 S.C. 138, 249 S.E.2d 747.

7. Determining amount, generally

In arriving at the amount of alimony and child support, the trial judge should take into consideration the needs of the wife and child and the financial ability of the husband and father to meet them, considering his income and assets. It is proper to consider the wife’s health, age, general physical condition, and her income and earning capacity. Graham v Graham (1970) 253 SC 486, 171 SE2d 704. Spence v Spence (1973) 260 SC 526, 197 SE2d 683.

Family court was required to consider all applicable statutory factors in ruling on husband’s complaint seeking termination or modification of alimony, including parties’ expenses, husband’s financial ability and earning capacity, and whether husband’s change in circumstances was unanticipated, and not merely percentage of husband’s income constituting alimony. Holmes v. Holmes (S.C.App. 2012) 399 S.C. 499, 732 S.E.2d 213, rehearing denied. Divorce 627(3); Divorce 627(4); Divorce 627(6)

Per statute, the complete list of factors the family court can consider in setting alimony includes: (1) duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living established during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses and needs of the parties; (8) marital and nonmarital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; (12) prior support obligations; and (13) other factors the court considers relevant. Holmes v. Holmes (S.C.App. 2012) 399 S.C. 499, 732 S.E.2d 213, rehearing denied. Divorce 568

Factors to be considered in making an alimony award include: (1) duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living established during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) marital and nonmarital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; and (12) prior support obligations; as well as (13) other factors the court considers relevant. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 586

There are several factors the family court must consider in deciding whether to award alimony: (1) the duration of the marriage and the ages of the parties at the time of the marriage and at separation; (2) the physical and emotional condition of each spouse; (3) the educational background of each spouse and the need for additional education; (4) the employment history and earning potential of each spouse; (5) the standard of living established during the marriage; (6) the current and reasonably anticipated income of each spouse; (7) the current and reasonably anticipated expenses of each spouse; (8) the marital and nonmarital properties of the parties; (9) the custody of any children; (10) marital misconduct or fault; (11) the tax consequences of the award; (12) the existence of support obligations to a former spouse; and (13) such other factors the court considers relevant. Fuller v. Fuller (S.C.App. 2006) 370 S.C. 538, 636 S.E.2d 636, rehearing denied. Divorce 586

Factors to be considered in making an alimony award include: (1) duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) marital and non‑marital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; (12) prior support obligations; and (13) other factors the court considers relevant. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 586

Factors to be considered in making an alimony award include: (1) duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living established during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) marital and nonmarital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; and (12) prior support obligations. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 586

In determining the amount of reimbursement alimony to be awarded, the court should consider “all relevant factors” including the amount of the supporting spouse’s contributions, his or her foregone opportunities to enhance or improve professional or vocational skills, and the duration of the marriage following completion of the non‑supporting spouse’s professional education. Money expended for the support of the parties’ children should also be taken into consideration. Furthermore, where there are children from a previous marriage living with the couple, consideration should be given to money expended by the working spouse in excess of the child support provided by the previous spouse. Determination of the amount of reimbursement alimony is within the discretion of the trial judge, and the amount will depend on the facts of each case. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Regardless of whether trial judge termed money coming to husband as income or return on investment, it was proper for him to consider it in determining alimony; among factors to be considered in determination of alimony are financial condition of husband, individual wealth of parties, ability of husband to pay alimony, and actual income of parties. Blackmon v. Blackmon (S.C.App. 1987) 294 S.C. 187, 363 S.E.2d 400. Divorce 574; Divorce 576

The factors to be considered in awarding alimony to a wife include (1) financial condition of the husband and the needs of the wife, (2) age and health of the parties, respective earning capacity, and individual wealth, (3) wife’s contribution to the accumulation of joint wealth, (4) conduct of the parties, (5) respective necessities of the parties, (6) standard of living of the wife at the time of divorce, (7) duration of the marriage, (8) ability of the husband to pay alimony, and (9) actual incomes of the parties. Johnson v. Johnson (S.C.App. 1986) 288 S.C. 270, 341 S.E.2d 811. Divorce 586

Among the factors to be considered in determining whether alimony should be awarded are (1) the financial condition of the husband and the needs of the wife, (2) the age and health of the parties, their respective earning capacities, and their individual wealth, (3) the wife’s contribution to the accumulation of their joint wealth, (4) the conduct of the parties, (5) the respective necessities of the parties, (6) the standard of living of the wife at the time of the divorce, (7) the duration of the marriage, (8) the ability of the husband to pay alimony, and (9) the actual income of the parties. Ivey v. Ivey (S.C.App. 1985) 286 S.C. 315, 334 S.E.2d 123. Divorce 586

Family Court Rule 27(C) requires the family court, in determining alimony, to make findings concerning the financial condition, needs, health, age, earning capacity, actual income, contribution to accumulation of joint wealth, standard of living at the time of divorce, and conduct of the parties. Prince v. Prince (S.C.App. 1985) 285 S.C. 203, 328 S.E.2d 664.

Nine factors are relevant to a court’s consideration of alimony: (1) the financial condition of the husband and the needs of the wife, (2) the age and the health of the parties, their respective earning capacity, and their individual wealth, (3) the wife’s contribution to the accumulation of their joint wealth, (4) the conduct of the parties, (5) the respective necessities of the parties, (6) the standard of living of the wife at the time of the divorce, (7) the duration of the marriage, (8) the ability of the husband to pay alimony, and (9) the actual income of the parties. Bradley v. Bradley (S.C.App. 1985) 285 S.C. 170, 328 S.E.2d 647. Divorce 586

In exercising his discretion in the award of alimony, a judge should obviously consider all of the facts disclosed by the evidence relative to the needs of the parties and the ability of each to supply his or her own needs. Spence v. Spence (S.C. 1973) 260 S.C. 526, 197 S.E.2d 683. Divorce 572

The award for alimony and child support should not be excessive but should be fair and just to all parties concerned. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704.

In fixing the amount of alimony, the necessities of the wife should be considered. It is proper for the trial judge to consider the wife’s health, age, general physical condition and her earning capacity. Porter v. Porter (S.C. 1965) 246 S.C. 332, 143 S.E.2d 619.

The financial condition of the parties is a factor to be considered in awarding permanent alimony. However, it is not the only factor. Porter v. Porter (S.C. 1965) 246 S.C. 332, 143 S.E.2d 619.

8. Amount of awards, generally

Family court’s alimony award of $1000 per month to wife was appropriate, where family court considered relevant statutory factors, husband’s earnings were far superior to wife’s, and, although husband argued that wife was underemployed, she was working to her full earning potential as full‑time aide in public school system. Gorecki v. Gorecki (S.C.App. 2010) 387 S.C. 626, 693 S.E.2d 419, rehearing denied. Divorce 576; Divorce 597(1); Divorce 598(2)

Reduction of wife’s alimony award to $7,000 per month was warranted, in marital dissolution case, where $7,000 per month would place wife, as nearly as practical, in the same position she enjoyed during the marriage. Dickert v. Dickert (S.C. 2010) 387 S.C. 1, 691 S.E.2d 448. Divorce 573

Alimony award to wife of $1,200 per month was appropriate; both parties were working to their potential and neither suffered from ill health, husband was guilty of adultery, and, although wife had large expenses, the expenses could predominantly be attributed to credit card debt and debt on a second mortgage, wife’s past spending habits were evidence of her lack of fiscal responsibility, and wife only earned $2,300 in monthly wages whereas, by contrast, husband earned nearly $82,000 a year. Deidun v. Deidun (S.C.App. 2004) 362 S.C. 47, 606 S.E.2d 489. Divorce 571; Divorce 572; Divorce 576

Family court did not abuse its discretion in awarding wife $2,600 per month in alimony, despite husband’s claim that the amount was excessive in light of wife’s income potential and his ability to pay; wife’s training and work experience over the course of their 25‑year marriage were limited, husband had a gross income of $7,000, and wife’s household and living expenses totaled $3,496 per month according to estimates accepted by the family court. Rimer v. Rimer (S.C.App. 2004) 361 S.C. 521, 605 S.E.2d 572. Divorce 572; Divorce 576

Wife was entitled to alimony of $2,000 per month, rather than $1,500 per month, in action for divorce, where both husband and wife were 50 years old at time of trial, husband’s annual income was $108,000, wife was unemployed, and husband admitted to adultery. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 571; Divorce 576; Divorce 583

Award of $11,000 per month in alimony to wife was excessive, even though wife testified that she was unsure of her ability to work full‑time as a nurse due to her fybromyalgia, and even though husband’s income was substantial and divorce was brought about by his adultery, where there was no medical evidence that established that wife’s fybromyalgia precluded her from all employment, she did not base her present inability to work solely on her medical condition, and her living expenses were unnecessarily inflated. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 576

Court did not abuse its discretion in awarding wife $550 per month in alimony, given long duration of marriage, wife’s limited earning potential, and husband’s fault in breakup of marriage. Smith v. Smith (S.C.App. 1997) 327 S.C. 448, 486 S.E.2d 516, rehearing denied. Divorce 569; Divorce 576; Divorce 582

The trial court properly awarded $150 alimony under Section 20‑3‑130(B)(6) to defer the wife’s expenses in having to move out of the marital home where the wife’s move was precipitated by the husband’s sexual abuse of their daughter. C.A.H. v. L.H. (S.C. 1993) 315 S.C. 389, 434 S.E.2d 268.

The award of $719.10 monthly alimony to a wife was not excessive, despite the fact that such income exceeded her expenses as set forth on her financial declaration, where the wife did not work at the husband’s request during the 25‑year marriage, she had a limited work history and educational level, and she required dental treatment, eye glasses, health insurance and dental insurance in addition to the expenses listed on her financial declaration. Curry v. Curry (S.C.App. 1992) 309 S.C. 539, 424 S.E.2d 552.

An award of alimony in the amount of $375 per month was unsupported where (1) the husband testified that he earned $4 per hour on one job and $44 per day on another, but no evidence set forth how much time was spent on these jobs or what his average earnings were, (2) the judge relied on a prior temporary order which showed that the husband worked 24 hours a week and earned $13 per hour, and (3) although the judge concluded therefrom that the husband was deliberately keeping his income low in an attempt to reduce the support he might be ordered to pay, no explanation was offered as to there was a change in the husband’s earning capacity. Sexton v. Sexton (S.C.App. 1992) 308 S.C. 37, 416 S.E.2d 649, rehearing denied, certiorari granted, reversed 310 S.C. 501, 427 S.E.2d 665.

An award of alimony to a wife in the amount of $1,800 per month was not excessive where the husband had a substantial monthly income of approximately $7,300, he computed an excess of $2,800 after his expenses, he received substantial yearly income tax returns which he did not include in his income, the wife worked part‑time because the youngest child got home from school at noon, and the highest annual income received by the wife when she worked full‑time during the marriage was approximately $12,000. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165.

Trial judge did not abuse discretion in awarding wife $100 per week in alimony where his order stated he had considered respective necessities of parties, standard of living of wife, duration of marriage, ability of husband to provide for wife, and actual income of parties. Blackmon v. Blackmon (S.C.App. 1987) 294 S.C. 187, 363 S.E.2d 400.

There was no abuse of discretion in awarding $400 monthly alimony to the wife where the husband realized annual income of between $30,000 and $36,000 from his sole proprietorship, and the wife’s annual income was $6,000. Ivey v. Ivey (S.C.App. 1985) 286 S.C. 315, 334 S.E.2d 123. Divorce 576

An alimony award of $350 biweekly was not an abuse of discretion where the wife’s annual income was $7,069.23; the husband’s annual income was $29,734; the marriage had lasted thirty‑one years and resulted in the birth of five children; the wife had been both a homemaker and a wage earner, and appeared to have been a model wife; and the marriage was terminated because of the adulterous conduct of the husband. Bass v. Bass (S.C.App. 1985) 285 S.C. 178, 328 S.E.2d 649. Divorce 571; Divorce 576; Divorce 582

Alimony award of $300 per month was proper where at time of divorce husband was 41 and wife was 42, husband was employed in managerial position, earning $16,326, wife had not been employed since her marriage and had no marketable skills, she suffered from high blood pressure and diabetes, had annual income from trust of $6,000 per year, had life interest in rental houses which produced negligible amount of income, neither party had any extraordinary living expenses, break‑up of marriage was caused by husband’s infatuation with another woman and his subsequent desertion of wife, and there was no evidence of any misconduct by wife. Powers v. Powers (S.C. 1979) 273 S.C. 51, 254 S.E.2d 289. Divorce 571; Divorce 576; Divorce 584

Alimony award of $400 per month for 6 months and 3 rooms of furniture was not an abuse of discretion in a legal separation action where Family Court found that the disintegration of the marriage was the fault of the wife, and that the wife did not have custody of the child and was thus able to work. Murray v. Murray (S.C. 1978) 271 S.C. 62, 244 S.E.2d 538. Divorce 606; Divorce 785; Divorce 856

Alimony award of $400 per month for 6 months and 3 rooms of furniture was not an abuse of discretion in a legal separation action where the Family Court found that the disintegration of the marriage was the fault of the wife, and that the wife did not have custody of the child and was thus able to work. Murray v. Murray (S.C. 1978) 271 S.C. 62, 244 S.E.2d 538. Divorce 606; Divorce 785; Divorce 856

Where, at the time of the divorce, both husband and wife were 65 years of age, and the husband’s income was $485.00 a month from social security and a declining business, and the husband owned no real property, and the wife had an income of $425.00 per month from social security and rent receipts, and owned a home and interest in the land on which the husband’s business was located, trial court’s award of $225.00 per month in alimony to wife was excessive and an abuse of discretion. Trammell v. Trammell (S.C. 1977) 268 S.C. 144, 232 S.E.2d 339.

Trial court abused its discretion in awarding wife only $200 per month child support plus medical expenses plus payment of mortgages on house plus car payments where husband had gross annual income of $40,000 and unemployed wife, responsible for raising young family, was just starting college. Mays v. Mays (S.C. 1976) 267 S.C. 490, 229 S.E.2d 725.

9. Separation agreements

The terms of a separation agreement, and not Section 20‑3‑130, controlled the rights of parties to a divorce where the agreement clearly stated that it would not be merged with the separation order, and could be modified only on written agreement of the parties. Accordingly, the wife’s adultery after the date of the agreement did not terminate her right to support under the agreement. Sattler v. Sattler (S.C. 1985) 284 S.C. 422, 327 S.E.2d 71.

10. Periodic alimony

Former wife should have been awarded permanent periodic alimony, rather than transitional alimony, given financial status of parties and standard of living to which former wife was accustomed; former wife and former husband lived in one of the most influential neighborhoods, vacationed at husband’s family lake house in gated community, enjoyed recreating on their boat, and drove luxury automobiles. Craig v. Craig (S.C.App. 2004) 358 S.C. 548, 595 S.E.2d 837, rehearing denied, certification granted, affirmed 2005 WL 825188, withdrawn and superseded on rehearing 365 S.C. 285, 617 S.E.2d 359. Divorce 237

Family court’s awarding wife $5,000 per month in permanent, periodic alimony was fair and supported by the evidence; wife reported approximately $6,670 in monthly expenses on her financial declaration, which included individual retirement contributions and the marital home’s mortgage, wife had monthly income of $1,500, and she would earn monthly investment income from her share of investment account. Sweeney v. Sweeney (S.C.App. 2017) 420 S.C. 69, 800 S.E.2d 148, rehearing denied. Divorce 594(5); Divorce 594(7)

Wife was entitled to permanent, periodic alimony; parties had been married for 30 years, husband’s adultery contributed to demise of marriage, wife supported the family in the early years of the marriage while husband advanced his education, and parties enjoyed a well‑above average lifestyle in the final years of their marriage and regularly enjoyed expensive vacations. Sweeney v. Sweeney (S.C.App. 2017) 420 S.C. 69, 800 S.E.2d 148, rehearing denied. Divorce 559

Divorced husband was entitled to permanent periodic alimony, as opposed to conditional, rehabilitative alimony, in dissolution of marriage proceedings; at the time of divorce and in preceding two years, husband’s income was substantially lower than that of wife and husband was living well below standard of living he enjoyed during marriage, parties were married for 15 years at time divorce were finalized, wife was more educated than husband, with wife holding bachelor’s degree and husband having only graduated from high school, wife maintained steady employment and was making substantial income with anticipated promotion in near future, whereas husband’s income fluctuated based upon having to restart his business after relocation for wife’s career advancement, parties maintained good standard of living during marriage, and wife was at fault in breakup of marriage, having engaged in numerous affairs during marriage. Ricigliano v. Ricigliano (S.C.App. 2015) 413 S.C. 319, 775 S.E.2d 701. Divorce 586; Divorce 606; Divorce 608

Wife was entitled to permanent periodic alimony in divorce action; parties had been married for 16 years, husband’s current and reasonably anticipated earnings were approximately $60,000 per year, wife’s education and age appeared to cap her future earning potential at approximately $30,000 per year, and neither party was more at fault than the other in the breakdown of the marriage. Wannamaker v. Wannamaker (S.C.App. 2011) 395 S.C. 592, 719 S.E.2d 261. Divorce 572; Divorce 576

Trial court acted within its discretion in awarding wife permanent periodic alimony upon divorce; trial court considered the relevant factors under spousal support statute, including the length of the marriage, husband’s and wife’s education, the parties’ health, both parties’ past and current incomes, the parties’ standard of living during the marriage, marital fault, and the marital and nonmarital properties of the parties. Grumbos v. Grumbos (S.C.App. 2011) 393 S.C. 33, 710 S.E.2d 76, rehearing denied. Divorce 597(1)

Divorce award of $3,000 per month in permanent periodic alimony to wife was excessive, and award would be reduced on appeal to $2,000 per month; wife claimed that her monthly expenses were $6,000 per month, but many of wife’s expenses were inflated, the parties’ marriage was not a long‑term marriage, the parties’ were granted a no‑fault divorce, it was each party’s third marriage, no children were born of the marriage, and both parties were employed during the marriage. Myers v. Myers (S.C.App. 2011) 391 S.C. 308, 705 S.E.2d 86. Divorce 586; Divorce 1322(1)

Trial court did not abuse its discretion in awarding wife permanent, periodic alimony of $1,500 per month; parties were in a long‑term marriage lasting 19 years, husband was primary wage earner and was the one responsible for payment of majority of marital bills and creation and operation of several businesses, wife was primary caretaker of parties’ child and husband’s children, husband had greater earning potential, wife’s projected gross monthly income was $2,500 while husband’s gross monthly income was $11,027, wife had several medical problems, and wife would have additional expense of health insurance because she would no longer be able to be on husband’s policy. Bodkin v. Bodkin (S.C.App. 2010) 388 S.C. 203, 694 S.E.2d 230. Divorce 586

Family court considered all relevant factors prior to awarding wife permanent, periodic alimony of $1,000 per month; family court found both parties to be in “good health” and did not limit that finding to only physical health, husband did not provide any support obligations the family court failed to consider, husband did not point to any misconduct or fault on wife’s part, and, although husband and wife had two children together during their first marriage, both children were emancipated at the time of the family court’s hearing. King v. King (S.C.App. 2009) 384 S.C. 134, 681 S.E.2d 609. Divorce 597(1)

Award of permanent periodic alimony of $3,000 per month to wife, rather than award of transitional monthly alimony of $3,000 until sale of marital home and then $875 in permanent periodic alimony, was warranted in divorce action; husband and wife established very high standard of living, couple had very nice home in very nice neighborhood, wife drove nice car, and, but for husband’s infidelities, wife would have continued to enjoy life she had during marriage. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 571; Divorce 573; Divorce 606

Award of permanent periodic alimony to wife was not abuse of family court’s discretion; marriage was of 17 years’ duration, husband was financially able to pay alimony award, was highly educated, and currently managed successful motel business, and wife had high school education and had been out of work force for more than 20 years. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Divorce 572; Divorce 576; Divorce 582

Family court acted within its discretion in awarding former wife $1,800 per month permanent periodic alimony; court considered statutory factors for making an alimony award, especially wife’s bleak earning potential due to her outdated bookkeeping skills, compared to husband’s stable employment. Jenkins v. Jenkins (S.C.App. 2004) 357 S.C. 354, 592 S.E.2d 637. Divorce 576

Order requiring husband to pay $300 per month permanent, periodic alimony to wife was appropriate; award of alimony was warranted, as husband had monthly income approximately twice that of wife and had substantially larger retirement accounts, and amount was adequate, as wife was employed as nurse and husband had been solely responsible for their son’s college expenses. Doe v. Doe (S.C.App. 1996) 324 S.C. 492, 478 S.E.2d 854, rehearing denied. Divorce 574; Divorce 576; Divorce 580

In a divorce action, the trial court erred in awarding the wife periodic alimony that was not terminable upon remarriage or modifiable upon changed circumstances even though the award was an attempt to prevent the husband from retiring early and thereby decreasing the wife’s future payments from the husband’s pension; Section 20‑3‑130(B)(6) does not empower Family Court judges to award periodic alimony that is not terminable upon death or remarriage. Hazel v. Hazel (S.C.App. 1995) 320 S.C. 487, 465 S.E.2d 776.

An award to a wife of $1,500 per month in permanent periodic alimony was an abuse of discretion, even though the husband had substantial income and assets and the parties had enjoyed a high standard of living during the marriage, where the wife’s expenses appeared excessive when considered in conjunction with the fact that she had not procured employment since the parties’ separation although she was an expert typist. Although alimony is a substitute for the support normally incident to the marital relationship, it should not serve as a disincentive for a spouse to improve his or her employment potential or to dissuade the spouse from providing, to the extent possible, for his or her own support. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

An award to a husband of $200 per month in periodic alimony was proper, even though the marriage was relatively short and the wife’s financial declaration showed a deficit when her income and expenses were compared, where the husband suffered serious and disabling injuries when he was shot by the wife, he had not been employed since the shooting, he had no disability income from his former employment, he was appealing a rejection of his application for Social Security Disability, and the court order held that the husband was to provide a report on the status of his disability claim and the wife was granted leave to apply for a modification of the alimony order if the husband was successful in his application for benefits. McDowell v. McDowell (S.C.App. 1989) 300 S.C. 96, 386 S.E.2d 468.

While an award of permanent periodic alimony is based upon the reasonable needs of the supported spouse to maintain his or her marital standard of living, the award should also take into account the supported spouse’s earning capacity. Alimony should not serve as a disincentive for the supported spouse to improve his or her employment potential nor dissuade him or her from providing, to the extent feasible, for his or her own support. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

If lump sum alimony is awarded, it is a debt owed and is properly chargeable to the estate if the obligor dies before full payment is made. If alimony is awarded in the form of periodic payments, liability ordinarily terminates on the death of the obligor. If the obligation to pay installments of alimony is to be extended beyond the death of either party, it must be done by an agreement of the parties which is approved by the court and incorporated in the decree; it may not be done by the court decree alone. McCune v. McCune (S.C. 1985) 284 S.C. 452, 327 S.E.2d 340.

Language of lower court order fails to affirmatively charge husband’s estate with responsibility for continuing alimony and child support payments after his death where order requires husband to fulfill obligation of support by making periodic payments of alimony and child support and by providing home for children and former wife until she dies or remarries or until children attain age of majority, whichever of two alternatives occurs last. Kennedy v. Kennedy (S.C. 1978) 270 S.C. 358, 242 S.E.2d 417.

11. Lump‑sum alimony

Family court did not misapprehend the relative ages of husband and wife when awarding lump‑sum alimony to wife, though family court’s order, when discussing the parties’ retirement assets, stated that “Husband is older than Wife and has less time left in his work life,” and husband, in fact, was less than one year older than wife; family court, in its “Background and Findings Relevant to Most Issues,” correctly noted the age difference, and the award was not based solely on the parties’ respective retirement assets. Dearybury v. Dearybury (S.C. 2002) 351 S.C. 278, 569 S.E.2d 367. Divorce 601(3)

The trial court properly awarded the wife lump sum alimony, even though it was not requested in the pleadings, where the issue before the court was the type of alimony to which the wife was entitled based on the parties’ agreement, and the husband was unable to strictly comply with the terms of the agreement in regard to alimony; thus, the trial judge was required to interpret the intent of the provision on alimony and effect compliance as best as possible. Richardson v. Richardson (S.C.App. 1992) 309 S.C. 31, 419 S.E.2d 806.

The trial court did not err in interpreting a decree of divorce as awarding lump sum alimony where the agreement negotiated by the parties and made a part of the divorce decree clearly provided that the wife could have taken title to the marital residence “in full satisfaction of her right to alimony, past and future, as lump sum alimony.” Richardson v. Richardson (S.C.App. 1992) 309 S.C. 31, 419 S.E.2d 806.

The trial court properly awarded the wife lump sum alimony where such award was based on an agreement between the parties, rather than on a finding of special circumstances by the court, and the agreement itself indicated special circumstances warranting such an award due to the uncertain nature of the husband’s medical condition (cancer). Richardson v. Richardson (S.C.App. 1992) 309 S.C. 31, 419 S.E.2d 806.

The issue of alimony would be remanded to the Family Court judge who had ordered the husband in a divorce action to pay to the wife “as his total support obligation” the sum of $7,200 where at no point in his order did the judge designate the type of alimony he was awarding, and he made no finding of special circumstances, as required for either lump sum or rehabilitative alimony. Carroll v. Carroll (S.C.App. 1992) 309 S.C. 22, 419 S.E.2d 801.

The power to award lump sum alimony should be exercised only where special circumstances require it. Lump sum awards are not favored and should be given only in exceptional cases or when consented to. An award of lump sum alimony must be supported by some impelling reason for its necessity or desirability. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

Lump sum alimony is appropriate under a finding of special circumstances. Wingard v. Wingard (S.C.App. 1986) 288 S.C. 644, 344 S.E.2d 191.

The power to award lump sum alimony under Section 20‑3‑130 should be exercised only where special circumstances require it or make it advisable. There was no error in making a lump sum award where (1) the husband had not supported his family for nineteen years; (2) the husband had quickly spent a $45,000 inheritance by buying a truck and paying the hospital bills of a paramour in another state; and (3) the wife needed funds for two operations and extensive repairs to her home. Hendricks v. Hendricks (S.C.App. 1985) 285 S.C. 591, 330 S.E.2d 553.

A lump sum award of alimony consisting of a one‑third interest in a savings account owned by the husband as well as various specifically itemized shares of stock owned by him was not an abuse of discretion. McCullough v. McCullough (S.C. 1978) 271 S.C. 475, 248 S.E.2d 308.

Lump sum alimony payment held proper where defendant’s past conduct and statements demonstrated both inability and unwillingness to provide support for family in regular installments. Jones v. Jones (S.C. 1978) 270 S.C. 280, 241 S.E.2d 904.

Lump sum award of $10,000 did not constitute reversible error where couple had $16,000 in joint savings accounts, which had been accumulated over the 19 or 20 years of married life together, and where husband had other savings accounts in his own name and had substantial real estate holdings. Clardy v. Clardy (S.C. 1976) 266 S.C. 270, 222 S.E.2d 771.

It cannot be held as a matter of law that wife was not entitled to either periodic payments or a lump sum settlement, where, although divorce was granted to the husband, it was inferrable that fault was about equally divided, and where, from review of the record, it could not be said that trial judge abused his discretion in awarding lump sum settlement to wife. Clardy v. Clardy (S.C. 1976) 266 S.C. 270, 222 S.E.2d 771.

In light of ruling that specific property should not be allotted as alimony in a divorce proceeding, there was no error on part of a trial judge in refusing to award a wife, as lump sum alimony, the title to and exclusive possession of the house and lot owned by husband. Smith v. Smith (S.C. 1975) 264 S.C. 624, 216 S.E.2d 541. Divorce 602

If the divorce court awards alimony in gross, or in a lump sum, without reserving the power to amend, the court cannot modify the provision, even where it is payable in installments. Blakely v. Blakely (S.C. 1967) 249 S.C. 623, 155 S.E.2d 857.

There was no error in requiring payment of alimony in a lump sum, where the marriage had been dissolved by the Kentucky decree, making it logical to apply by analogy the public policy expressed in this section [Code 1962 Section 20‑113], which gives the court discretion to require payment of alimony in a lump sum in divorce cases. Murdock v. Murdock (S.C. 1963) 243 S.C. 218, 133 S.E.2d 323.

12. Rehabilitative alimony

Purposes of rehabilitative alimony are to encourage dependent spouses to become self‑supporting after divorce and permit former spouses to develop their own lives free from obligations to each other. Belton v. Belton (S.C.App. 1997) 325 S.C. 456, 481 S.E.2d 174, rehearing denied. Divorce 608

Family Court should consider several factors in awarding rehabilitative alimony, including among other things, parties’ accustomed standard of living, likelihood that supported spouse will successfully complete retraining, and likelihood of success in job market. Belton v. Belton (S.C.App. 1997) 325 S.C. 456, 481 S.E.2d 174, rehearing denied. Divorce 608

Rehabilitative alimony should be approved only in exceptional circumstances, because it seldom suffices to maintain level of support dependent spouse enjoyed as incident to marriage; record must demonstrate self‑sufficiency of recipient at expiration date of ordered payments and that supported spouse will match prior standard of living accustomed to during marriage. Belton v. Belton (S.C.App. 1997) 325 S.C. 456, 481 S.E.2d 174, rehearing denied. Divorce 608

Award of rehabilitative alimony for period of two years, rather than permanent periodic alimony, to dependent spouse upon divorce was improper, absent exceptional circumstances or evidence that dependent spouse was likely to succeed in new employment venture within two years. Belton v. Belton (S.C.App. 1997) 325 S.C. 456, 481 S.E.2d 174, rehearing denied. Divorce 608

Under Section 20‑3‑130(B)(3), rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference of permanent, periodic support. C.A.H. v. L.H. (S.C. 1993) 315 S.C. 389, 434 S.E.2d 268. Divorce 608

Where rehabilitative alimony is awarded, the evidence should demonstrate that the dependent spouse is reasonably self‑sufficient at the termination of the alimony payment. Thus, an award of rehabilitative alimony for a period of 3 years would be reversed and remanded for reconsideration where the evidence did not show self‑sufficiency at the end of 3 years. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

Rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference for permanent periodic support. The purpose of rehabilitative alimony is to encourage a dependent spouse to become self‑supporting after a divorce. However, it should be approved only in exceptional circumstances, in part because it seldom suffices to maintain the level of support that the dependent spouse enjoyed as an incident to the marriage. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

The factors to be considered in awarding rehabilitative alimony include: (1) the duration of the marriage; (2) the age, health, and education of the supported spouse; (3) the financial resources of the parties; (4) the parties’ accustomed standard of living; (5) the ability of the supporting spouse to meet his or her needs while meeting those of the supported spouse; (6) the time necessary for the supported spouse to acquire job training or skills; (7) the likelihood that the supported spouse will successfully complete retraining; and (8) the supported spouse’s likelihood of success in the job market. In order for rehabilitative alimony to be granted, there must be evidence demonstrating the self‑sufficiency of the supported spouse at the expiration of the ordered payments. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

Rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference for permanent, periodic support. It seldom suffices to maintain the level of support the dependent spouse enjoyed as an incident to the marriage. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 608

A trial court did not err in awarding a wife permanent, periodic alimony instead of rehabilitative alimony where the record did not show any likelihood that the wife after a given time during which rehabilitative alimony was paid would become any more self‑sufficient than she already was. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21.

Award of $3,000 per month alimony was in excess of wife’s needs, and it was error to have awarded such, although husband acknowledged he was able to pay award, because ability to pay is only one factor in determining alimony. Trial court could consider rehabilitative alimony award as warranted where wife testified she expected to complete her retraining in ophthalmology in June 1986, at which time she expected to get a job. Alimony award of $3,000 per month where wife’s financial declaration showed she had monthly income of approximately $2,600 and expenses of approximately $3,200 while husband had “excess income” of approximately $6,700 per month was in nature of division of husband’s future excess income, and where wife had been awarded fair percentage of marital estate, it was error to award her permanent alimony substantially in excess of her needs. Although trial judge stated in his order that wife would need help in starting her practice, he made no specific findings regarding such needs. Woodward v. Woodward (S.C.App. 1987) 294 S.C. 210, 363 S.E.2d 413.

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Husband’s argument that rehabilitative alimony should have been awarded was rejected where there was no indication that wife, almost 50 years old, could successfully complete any further training to acquire new job skills, or that she would achieve success in job market in amount sufficient to completely support herself and evidence indicated husband was capable of providing wife with periodic alimony of $1,200 per month. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68.

Before making award of rehabilitative alimony, trial judge must make findings of fact pertaining to relevant factors. Trowell v. Trowell (S.C.App. 1986) 287 S.C. 614, 340 S.E.2d 553.

Factors to be considered in awarding rehabilitative alimony include (1) the duration of the marriage, (2) the age, health and education background of the supported spouse, (3) the financial resources of the parties, (4) the parties’ accustomed standards of living, (5) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance, (6) the time necessary for the dependent spouse to acquire job skills, and (7) the likelihood of success in the job market. Alliegro v. Alliegro (S.C.App. 1985) 287 S.C. 154, 337 S.E.2d 252. Divorce 608

Rehabilitative alimony awards are expressly recognized in South Carolina, but they are valid only when established by evidence sufficient to support their temporary nature. The record must demonstrate the self‑sufficiency of the recipient at the expiration date of ordered payments. Herring v. Herring (S.C. 1985) 286 S.C. 447, 335 S.E.2d 366.

The term “alimony” in Section 20‑3‑130 is sufficiently broad to include rehabilitative alimony, and the words “any allowance” reveal the intent of the legislature that the courts of South Carolina shall have broad authority in providing spousal support. Eagerton v. Eagerton (S.C.App. 1985) 285 S.C. 279, 328 S.E.2d 912.

The purpose of rehabilitative alimony is to encourage a dependent spouse to become self‑supporting by providing alimony for a limited period of time during which the dependent spouse may retrain and rehabilitate himself or herself thereby limiting the duration of the time in which the supporting spouse is burdened by spousal support. Additionally, this type of alimony permits a couple, where all legitimate purposes of maintaining the marriage have ended and a divorce is granted, to develop their own lives free from obligations to each other. This purpose, although commendable, per se, must be limited by well defined parameters. Where a spouse has been out of the job market performing household duties over the course of a lengthy marriage, rehabilitative alimony will rarely be approved; in such cases, permanent alimony generally is required. Eagerton v. Eagerton (S.C.App. 1985) 285 S.C. 279, 328 S.E.2d 912.

The factors to be considered in awarding rehabilitative alimony include (1) the duration of the marriage; (2) the age, health and educational background of the supported spouse; (3) the financial resources of the parties; (4) the parties’ accustomed standards of living; (5) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance; (6) the time necessary for the dependent spouse to acquire job skills; (7) the likelihood that the spouse will successfully complete retraining; and (8) the likelihood of success in the job market. Finally, the court should consider other responsibilities of the supported spouse such as care for children of the marriage which would interfere with the retraining. Eagerton v. Eagerton (S.C.App. 1985) 285 S.C. 279, 328 S.E.2d 912. Divorce 608

13. Reimbursement alimony

Generally, the contribution of one spouse to the education of the other spouse may be taken into account by giving the supporting spouse a larger distributive share of the marital property to be divided. This remedy is not, however, sufficient when little or no marital property has been accumulated during the marriage. In these situations, reimbursement alimony may be appropriate regardless of the appropriateness of permanent alimony. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

14. Separate maintenance

A court may decree separate maintenance although a divorce is denied. Machado v Machado (1951) 220 SC 90, 66 SE2d 629, commented on in 4 SCLQ 318 (1951). Simonds v Simonds (1957) 232 SC 185, 101 SE2d 494.

Because wife’s complaint failed to state a claim for separate maintenance, there was no valid complaint on which wife’s lis pendens, which she filed on husband’s rental properties, could be premised, and thus, trial court did not err in canceling it. Theisen v. Theisen (S.C. 2011) 394 S.C. 434, 716 S.E.2d 271. Lis Pendens 20

In order to state a claim for separate maintenance, the complaint must allege that the parties are living separate and apart, and “living separate and apart” must involve more than the cessation of the parties’ romantic relationship. Theisen v. Theisen (S.C. 2011) 394 S.C. 434, 716 S.E.2d 271. Marriage And Cohabitation 1207; Marriage And Cohabitation 1229

Separate maintenance terminates upon the continuous cohabitation of the supported spouse with another; the supported spouse cannot cohabit with another unless he has already separated from the payor spouse. Theisen v. Theisen (S.C. 2011) 394 S.C. 434, 716 S.E.2d 271. Marriage And Cohabitation 1235

Purpose of separate maintenance is to provide support for a spouse when he or she is living apart from the other spouse. Theisen v. Theisen (S.C. 2011) 394 S.C. 434, 716 S.E.2d 271. Marriage And Cohabitation 1204

Denying wife alimony in her action for separate maintenance and support was not abuse of discretion, where wife had bachelor’s degree in business administration and two associate’s degrees, had been in the workplace for many years and had held responsible positions, had substantial assets as she left marriage, and was considerably younger than husband. Hatfield v. Hatfield (S.C.App. 1997) 327 S.C. 360, 489 S.E.2d 212, rehearing denied, certiorari denied. Divorce 574; Divorce 576; Divorce 583; Marriage And Cohabitation 1213

Issues litigated and decided in a separate maintenance action may not be relitigated in a subsequent divorce proceeding. However, where the order for separate maintenance merely recited the parties’ agreement and made no ruling as to the fairness of its terms, the trial judge in the divorce action had full authority to make an independent award of spousal support and no showing of changed circumstances was required. Clayton v. Clayton (S.C. 1985) 287 S.C. 308, 338 S.E.2d 326.

15. Equitable distribution

Family court did not abuse its discretion in making equitable distribution when it assigned zero value to parties’ two automobiles, even though wife testified that the combined value of the two vehicles was $24,000; wife also testified both of the vehicles had debt equal to their value, and the overall distribution of property was fair. King v. King (S.C.App. 2009) 384 S.C. 134, 681 S.E.2d 609. Divorce 786

Wife was not entitled to award of alimony; husband had meager income as he was retired and wife received substantial sum in equitable division. Avery v. Avery (S.C.App. 2006) 370 S.C. 304, 634 S.E.2d 668. Divorce 575; Divorce 576

Husband’s shares of stock were properly valued, for equitable distribution purposes, at share price husband paid during stock repurchase which occurred well after date the marital litigation was commenced; stock repurchase agreement was most probative of value of marital portion of husband’s business at time of filing of dissolution action, and this value was more accurate than that presented by husband’s expert at trial, whose valuation of husband’s stock was just based on book value and who offered value that did not account for business as ongoing concern. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 796

Family court acted within its discretion in awarding $750 per month in alimony to wife following separation from husband, where family court thoroughly applied factors relevant to awarding alimony and, in arriving at its award, expressly considered, among other things, the wife’s health, medical expenses, inability to earn income in excess of her social security disability benefits, and her award of equitable distribution. Hinson v. Hinson (S.C.App. 2000) 341 S.C. 574, 535 S.E.2d 143. Divorce 575; Divorce 576; Divorce 584

Husband’s tax liability for year was marital debt to husband for purposes of equitable distribution in divorce action, as although husband’s tax liability was not payable until after date of divorce filing, liability was incurred prior to date of filing. Ellerbe v. Ellerbe (S.C.App. 1996) 323 S.C. 283, 473 S.E.2d 881, rehearing denied. Divorce 839

There was no error in an equitable distribution of property or grant of alimony by the award to the wife of a 35 percent share in the marital home, the provision that the husband purchase her share, without the addition of interest, by a payment of $1,500 per month together with an annual payment of $5,000, and the provision that the husband, by way of alimony, was required to maintain medical insurance for the wife through his business and pay all other reasonable medical expenses not covered by insurance where (1) the couple were happily married for many years, (2) the husband owned 2 businesses, several acres of property, life insurance policies with a cash value of $4,846, and personal property worth $3,000, (3) the wife had income of $257 per month, personal property worth $815, a van worth $981, and withdrew $25,000 from various joint bank accounts, (4) the husband was guilty of post‑separation adultery, (5) the wife admitted that she conspired to kill the husband, and (6) the wife had cancer and a life expectancy of less than 5 years. Sharpe v. Sharpe (S.C.App. 1992) 307 S.C. 540, 416 S.E.2d 215.

The amount of property awarded in an equitable distribution may be an important factor in determining alimony. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267. Divorce 575

Trial judge did not err in awarding wife $2,500 per month alimony, $500 per month child support, and 25 per cent equitable distribution of marital assets where husband was earning almost $5,000 per month from job, and even if he left employment, as he testified he expected to do, he would receive $8,000 per month until all his preferred stock had been repurchased. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259. Child Support 87; Divorce 576; Divorce 732

Evidence supported trial judge’s award of alimony and child support where husband argued this amount exceeded needs of wife and consumed his anticipated income; in determining alimony, factors to be considered are, inter alia, (1) financial condition of husband and needs of wife, (2) age and health of parties, respective earning capacities, and their individual wealth, (3) wife’s contribution to accumulation of joint wealth, and (4) amount of property awarded in equitable distribution. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259.

Since an increase in an equitable distribution award to a wife who has admitted adultery is contrary to the public policy considerations manifested in Section 20‑3‑130, trial judge improperly increased wife’s distributive share to make up for the alimony he could not award to her. Berry v. Berry (S.C.App. 1986) 290 S.C. 351, 350 S.E.2d 398, affirmed 294 S.C. 334, 364 S.E.2d 463.

A wife’s request in her pleadings for the “home as alimony” was properly disregarded because a court may not unconditionally order the transfer of property as alimony or in lieu thereof; however, there was no error in giving the wife the home as an equitable distribution where her petition also stated that she “is entitled to an equitable division of all the real and personal property acquired during the marriage of the parties.” Hendricks v. Hendricks (S.C.App. 1985) 285 S.C. 591, 330 S.E.2d 553.

16. Retroactive alimony

Wife was entitled to award of retroactive alimony for all months since date of original hearing in which alimony was not paid, at monthly rate of $1,500.00, where appellate court remanded for reconsideration of alimony without awarding alimony on appeal from pendente lite award at original hearing, and family court awarded permanent periodic alimony on remand. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Divorce 1322(2)

17. Temporary alimony

An award of temporary alimony to a wife, instead of permanent alimony, was not an abuse of discretion where the parties had the capacity to earn approximately the same income, the parties’ standard of living was commensurate with that of a young couple starting out in marriage, the parties had not accumulated any joint wealth to speak of, the marriage was relatively short in duration, neither party was primarily at fault for its dissolution, and the wife was 28 years of age, was in good health, was highly credentialed, and had good, immediate employment prospects. Shambley v. Shambley (S.C.App. 1988) 296 S.C. 405, 373 S.E.2d 689.

Family Court Rule 52 did not preclude the husband from attempting to prove, at the temporary hearing, that the wife was an adulterous spouse, as contemplated by Section 20‑3‑130, and was not entitled to temporary alimony. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883.

18. Reservation of alimony

The trial court erred in reserving alimony to the wife where, at the time of the hearing, she was in good health, was drawing a pension from the state, and was selling real estate part‑time, and there was no indication of a foreseeable change in her need in the future. Hardy v. Hardy (S.C.App. 1993) 311 S.C. 433, 429 S.E.2d 811. Divorce 576; Divorce 577; Divorce 584

The issue of alimony may be reserved when there is a “determination that there exists an identifiable set of circumstances that is likely to generate a need for alimony in the reasonably near future.” However, where there is no need for alimony at the time of trial, and no indication of physical or mental illness, foreseeable change of need in the future, or some other extenuating circumstance, the question of alimony should not be reserved. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 154

19. Nonmarital assets

Wife was not entitled to special equity from the increase in value of car, which was husband’s separate, nonmarital property and which increased in value from $5,900 to $15,000; other than the money from the parties’ joint account, wife made no other contribution to the maintenance or improvements to car, and evidence indicated that, other than routine maintenance, the cost of improvements was only $1,500. Deidun v. Deidun (S.C.App. 2004) 362 S.C. 47, 606 S.E.2d 489. Divorce 695

The family court was not limited to awarding alimony payments solely from marital assets and, thus, court had jurisdiction to order payment of alimony with nonmarital assets. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 574

20. Contributions

The trial judge did not commit error where she stated that the husband’s live‑in paramour “is or should be contributing to the joint household expenses that the husband is incurring,” since the statement was simply a finding of fact not directly related to the award of alimony, and the trial judge stated she considered the factors enumerated in Section 20‑3‑130 in determining alimony. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

Court should not consider contribution of wife’s relatives to her support in determining amount of alimony. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259. Divorce 572

Contributions to the wife’s support by her daughter should not have been considered by the family court in determining an award of alimony, and the court abused its discretion in considering such a factor. Because alimony is the replacement for the husband’s duty to support his wife, the court cannot consider the contributions of the wife’s relatives. Prince v. Prince (S.C.App. 1985) 285 S.C. 203, 328 S.E.2d 664.

21. Income

Family court did not err in failing to impute wife’s income at the minimum wage for alimony purposes, and evidence in the record supported the family court’s conclusion that wife had the ability to earn at least $1,500 per month; court imputed a monthly income of $1,500 to wife based upon husband’s expert’s testimony at trial, wife’s recent employment history was a garden center worker at $8 per hour and as a tutor at $25 per hour, and husband maintained that wife would earn substantially more than $1,500 per month if she became recertified as a public school teacher. Sweeney v. Sweeney (S.C.App. 2017) 420 S.C. 69, 800 S.E.2d 148, rehearing denied. Divorce 576

The common thread in cases where actual income versus earning capacity is at issue with regard to an award of alimony is that courts are to closely examine the party’s good‑faith and reasonable explanation for the decreased income. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 576

Although voluntary decreases in income may prompt a family court to consider a party’s earning capacity instead of actual income, the failure to reach earning capacity, by itself, does not automatically equate to voluntary underemployment such that income must be imputed with regard to an award of alimony. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 576

Family Court was required to consider wife’s eligibility to receive social security benefits in its determination of alimony, although wife had not yet applied for such benefits. Crossland v. Crossland (S.C.App. 2012) 397 S.C. 406, 725 S.E.2d 509, rehearing denied, certiorari granted, reversed 408 S.C. 443, 759 S.E.2d 419. Divorce 577

Wife was not voluntarily underemployed so as to require the family court to impute income to her in divorce action for purposes of calculating alimony or husband’s child support obligation, where parties mutually agreed during marriage that wife would no longer teach in the public school system so she could spend more time at home with the couple’s daughter. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Child Support 88; Divorce 576

Ex‑wife was entitled to alimony; prior to ex‑wife’s father’s retirement, she earned nearly $85,000 annually, but attributed her high salary to the “Daddy” factor, family court acknowledged this employer‑employee relationship was clearly less than arm’s length transaction, ex‑husband averred ex‑wife could earn between $40,000‑$45,000 in insurance industry, ex‑wife returned to work in education at significantly reduced salary of $31,000, plus health, disability, and retirement benefits, she began studying for her master’s degree, and she maintained that, taking state benefits into account, upon completion of her graduate degree her earnings would be roughly equivalent to those in insurance industry. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 576; Divorce 586

Income imputed to husband of $100,000 per year for purposes of calculating child support obligations was not warranted; there was no evidence that failure to make additional income was motivated by desire to decrease support obligation, wife presented no evidence that any jobs for which husband was qualified existed or were available in community, husband’s poor health and fact he was trying to secure employment or establish business indicated that unemployment or underemployment was not entirely voluntary, his efforts to save his prior job likely exacerbated his physical impairment, increased his reliance on pain medication, and accelerated his overall decline, and it was doubtful he could return to demanding work environment of senior executive. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Child Support 88

When deciding whether to award alimony, court must consider current and reasonably anticipated earnings of both spouses in addition to statutory factors. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 576

An award to a wife of 15 percent of any “net bonus” received by the husband from his employer, as additional alimony, was not an abuse of discretion where the bonuses had been a part of the overall income of the parties for many years, and the amounts were different each year. Lineberger v. Lineberger (S.C.App. 1990) 303 S.C. 248, 399 S.E.2d 786. Divorce 576

An award of alimony, while based upon the reasonable needs of the receiving spouse to maintain his or her marital standard of living, should also take into account his or her own earning capacity. Alimony should not serve as a disincentive for the receiving spouse to improve his or her employment potential nor dissuade him or her from providing, to the extent feasible, for his or her own support. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 608

Family court’s failure to award former wife alimony was an abuse of discretion where the former husband earned over $100,000 per year, while the former wife’s income, even if with her further retraining could reach $30,000 per year, would be insufficient to support her at the standard of living she had enjoyed during their marriage. Voelker v. Hillock (S.C.App. 1986) 288 S.C. 622, 344 S.E.2d 177.

22. Expenses

Family Court, in calculating former husband’s new alimony obligation, could consider former wife’s current expenses for fresh flowers and houseplants, household maintenance, and major home repairs, as parties anticipated that former husband’s alimony obligation would go towards these items due to former wife’s detailed list of expenses and candidness in listing them. Butler v. Butler (S.C.App. 2009) 385 S.C. 328, 684 S.E.2d 191. Divorce 627(4)

Family Court, in calculating former husband’s new alimony obligation, could consider former wife’s current expenses for charitable donations and contributions to son’s medical school tuition, as parties had marital history of giving donations and financially helping their children. Butler v. Butler (S.C.App. 2009) 385 S.C. 328, 684 S.E.2d 191. Divorce 627(4)

The trial court did not abuse its discretion in awarding permanent alimony in the form of future medical expenses based on the wife’s need for medical treatment of her herpes condition where the husband admitted to knowingly exposing his wife to herpes. Doe v. Doe (S.C.App. 1995) 319 S.C. 151, 459 S.E.2d 892, rehearing denied.

The Family Court reasonably inferred that the wife unnecessarily inflated her expenses for purposes of alimony determination where she borrowed $4,000 and “took most of [her] money and paid [her] house payment in advance.” Mobley v. Mobley (S.C.App. 1992) 309 S.C. 134, 420 S.E.2d 506. Divorce 861

The wife’s claim for credit card expense on her financial declaration would be reduced from $118 per month to $78.67 per month where only 2⁄3 of the debt incurred was for marital purposes. Conklin v. Conklin (S.C.App. 1992) 308 S.C. 84, 417 S.E.2d 94, rehearing denied.

The husband was not required to pay alimony for expenses incurred by the wife for the care of her child by a previous marriage, despite the wife’s assertion that such expense would be necessary to enable her to work. Conklin v. Conklin (S.C.App. 1992) 308 S.C. 84, 417 S.E.2d 94, rehearing denied. Marriage And Cohabitation 1216

It is proper to consider the husband’s necessities and living expenses in fixing the amount of alimony and child support. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704. Child Support 83; Divorce 572

22.1. Relocation

Divorced husband was not required to relocate to receive alimony, in dissolution of marriage proceedings; it was not economically feasible for husband to move to area where divorced wife had received job offer and was planning to move, and amount of alimony family court awarded was not sufficient to allow husband to relocate with financial stability. Ricigliano v. Ricigliano (S.C.App. 2015) 413 S.C. 319, 775 S.E.2d 701. Divorce 581

23. Insurance

Wife failed to demonstrate existence of special circumstances giving rise to the need for life insurance as security for husband’s alimony and child support obligations, where wife was 43 years old and in good health, her income earning ability was substantially higher than her current salary, and she owned substantial assets as a result of the equitable distribution of the marital estate. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Child Support 156; Divorce 603

In determining whether to secure an alimony award with a life insurance policy, the analysis should begin with the supported spouse’s need for such security, i.e., consideration of the supported spouse’s probable economic condition in the event of the payor spouse’s death, the family court should also consider the supported spouse’s age, health, income earning ability, and accumulated assets, and, if a need for security is found, the family court should next consider the payor spouse’s ability to secure the award with life insurance, i.e., the payor spouse’s age, health, income earning ability, accumulated assets, insurability, cost of premiums, and insurance plans carried by the parties during the marriage; the cost of premiums could be assigned solely to the payor spouse, solely to the supported spouse, or shared between them. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 603

A party is not required to show a compelling reason before life insurance may be ordered to secure an alimony award; disapproving McElveen v. McElveen, 332 S.C. 583, 506 S.E.2d 1. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 603

Family court must conduct a comprehensive review of the statutory factors to determine whether special circumstances exist which require the purchase or maintenance of a life insurance policy to secure an alimony award. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Child Support 244

Husband was not required to purchase life insurance to secure wife’s alimony award; wife was in good health, and she had a stable income and substantial assets with which she could support herself should husband predecease her. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 603

Family court in divorce proceeding properly considered relevant statutory factors in requiring husband to secure payment of alimony to wife with life insurance; court commented that husband already had $50,000 life insurance policy in place, and court thoroughly discussed financial positions of parties. Roberson v. Roberson (S.C.App. 2004) 359 S.C. 384, 597 S.E.2d 840, rehearing denied, certiorari granted. Divorce 603

While it was preferable for the family court judge to address statutory alimony factors, the deficiency did not require vacation of trial court’s order denying wife’s request to require husband to secure his alimony support obligation with a life insurance policy; family court made findings regarding the health condition of each party, wife’s earnings and benefits from employment, and husband’s longstanding practice of making his alimony payments in a timely manner. Wooten v. Wooten (S.C.App. 2003) 356 S.C. 473, 589 S.E.2d 769, rehearing denied, certiorari granted, affirmed in part, reversed in part 364 S.C. 532, 615 S.E.2d 98. Divorce 1314

Family court may provide for security of periodic alimony payments beyond death of supporting spouse through life insurance whenever family court makes factual findings concerning the five factors favored requiring such insurance, and use of life insurance is restricted for use only after family court makes comprehensive review of these five distinct statutory issues. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 603

Absent the requisite statutory authority and special circumstances, trial court erred in imposing upon the husband the obligation to secure the equitable distribution award through life insurance. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 894

The statute permitting courts to order payor spouses to purchase life insurance to secure payment of periodic alimony beyond the payor spouse’s life is in derogation of the common law rule that periodic alimony terminates at the death of the payor spouse, and, thus, the statute must be strictly construed, and will not be extended beyond the clear legislative intent. Gilfillin v. Gilfillin (S.C. 2001) 344 S.C. 407, 544 S.E.2d 829. Divorce 603

Husband ordered to establish a $300,000 cash or liquid securities trust to secure payment of alimony to wife could choose option of funding trust through purchase and maintenance of life insurance policy with face value of $300,000, absent findings of fact of feasibility of life insurance alternative by family court. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 603; Divorce 615

Absent special circumstances or specific statutory authority, the family court does not have the inherent power to require a supporting spouse to obtain or maintain a life insurance policy solely as an incident of periodic support. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

Absent special circumstances or specific statutory authority,the family court does not have the inherent power to require a supporting spouse to obtain or maintain, solely as an incident of periodic support, a life insurance policy naming the defendant spouse as beneficiary, the rationale being that such a requirement is in the nature of alimony, for which the liability ceases upon the death of the supporting spouse. Hardin v. Hardin (S.C.App. 1987) 294 S.C. 402, 365 S.E.2d 34. Divorce 603

24. Misconduct

Wife’s depletion of marital funds and increase of the marital debt were not to support a failing business, and as such, Family Court’s consideration of wife’s failure to appropriately manage the family finances was not error when apportioning martial assets; wife claimed she spent the money on family necessities, including clothing, food, and other household debt, wife admitted that she hid her expenditures and the parties’ growing debt from husband, and husband testified that wife’s financial mismanagement led to the breakup of the marriage. Deidun v. Deidun (S.C.App. 2004) 362 S.C. 47, 606 S.E.2d 489. Divorce 744(2); Divorce 744(3)

A spouse may not voluntarily or intentionally change his employment or economic circumstances so as to curtail his income and thereby avoid paying alimony or child support. Messer v. Messer (S.C.App. 2004) 359 S.C. 614, 598 S.E.2d 310, rehearing denied, certiorari denied. Child Support 88; Divorce 572; Divorce 576

In making an alimony award, the misconduct of a party is proper consideration. Doe v. Doe (S.C.App. 1995) 319 S.C. 151, 459 S.E.2d 892, rehearing denied. Divorce 569

While a wife need not be wholly blameless in order to recover in an action for separate maintenance, if she is chargeable with substantial fault or misconduct, either by way of act or omission, which materially contributed to the disruption of the marital relation or induced the action by the husband upon which she relies to justify their separation, she is precluded from maintaining a proceeding for separate maintenance. Brown v. Brown (S.C. 1962) 239 S.C. 444, 123 S.E.2d 772. Marriage And Cohabitation 1210

25. Pension

In dividing spouse’s defined benefit (DB) pension plan upon divorce, trial court typically calculates, using actuarial evidence, present value of pension and then calculates percentage of present value attributable to marriage and appropriate equitable share of other spouse. Belton v. Belton (S.C.App. 1997) 325 S.C. 456, 481 S.E.2d 174, rehearing denied. Divorce 712; Divorce 803

Pension plan’s vesting status, possibility of forfeiture, and tax implications are conditions which may impact valuation of plan upon divorce. Belton v. Belton (S.C.App. 1997) 325 S.C. 456, 481 S.E.2d 174, rehearing denied. Divorce 803

Trial court’s valuation of husband’s three employer‑sponsored pension plans upon divorce at $15,000 was erroneous, as evidence did not support $15,000 figure but instead supported wife’s asserted figure of $42,854.25, and remand was required to determine effect of higher figure on property division. Belton v. Belton (S.C.App. 1997) 325 S.C. 456, 481 S.E.2d 174, rehearing denied. Divorce 803; Divorce 1323(7)

25.5. Social security benefits

Trial court was not required to consider wife’s eligibility for social security benefits at age 62 in calculating its initial alimony award; wife articulated a rational reason for delaying her application for social security benefits, namely, that she would receive a greater benefit if she postponed her application until she reached the age of 65, and the trial court was not presented with sufficient evidence to prospectively consider the amount of benefits wife reasonably expected to receive at age 65. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 577

Social security benefits a party is actually receiving would be properly considered as income in awarding alimony. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 577

26. Standard of living

A family court did not err in awarding alimony to a wife, even though the evidence showed that she received a pension and had the ability to obtain employment, where the court determined that she was entitled to alimony to maintain her standard of living and the amount allowed was partially based upon an increase in the mortgage payment necessitated by the husband’s refinancing of the marital home. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178. Divorce 586

A judge abused his discretion in fixing alimony to be paid to a wife at an amount which, at best, would restore her to her standard of living before she married rather than to the standard she enjoyed during the marriage. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

27. Property division

Money husband received under agreement terminating his twenty‑three‑year quasi‑partnership relationship with home builder pursuant to original management agreement containing non‑compete clause unlimited by time was part of the marital estate and subject to equitable division by the family court; the purpose of the termination agreement, as stated in the agreement, was to compensate husband for his contributions to the business venture and appreciation of business assets, which occurred while the parties were still lawfully married, not to provide him with future income he would have otherwise obtained through competing employment. Farmer v. Farmer (S.C.App. 2010) 388 S.C. 50, 694 S.E.2d 47, rehearing denied, certiorari denied. Divorce 711

In making an award of alimony, the family court must consider the thirteen factors set forth statute governing alimony, and no one factor is dispositive. Roberson v. Roberson (S.C.App. 2004) 359 S.C. 384, 597 S.E.2d 840, rehearing denied, certiorari granted. Divorce 568

Wife was not entitled to ownership of the parties’ marital residence as part of her share of the marital estate, in divorce proceeding; wife presented no testimony to refute expert testimony concerning the tax ramifications of wife solely owning the property and the tax benefits to both parties if the residence was sold, trial court failed to consider the tax consequences to husband if he was forced to liquidate his retirement account in order to purchase a new residence, and it was error for the trial court to consider the equity in the marital home and husband’s retirement account equally. Wooten v. Wooten (S.C.App. 2003) 358 S.C. 54, 594 S.E.2d 854, affirmed in part, reversed in part 364 S.C. 532, 615 S.E.2d 98. Divorce 747; Divorce 850; Divorce 863

Division of property in divorce proceeding was not affected by finding of former husband’s fault; although in dividing marital estate, trial court referred to husband’s marital misconduct, court ultimately divided marital assets equally. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 743

Wife acquired a one‑half interest in four parcels of real property by holding title jointly with husband, even though antenuptial agreement restricted each spouse’s right to acquire an ownership interest in the other’s separate property and husband paid the entire purchase price for the four parcels, where the agreement did not address jointly titled newly acquired property. Bowen v. Bowen (S.C. 2003) 352 S.C. 494, 575 S.E.2d 553. Marriage And Cohabitation 182(3)

Contributions to the purchase of property by one party’s parents may be treated as contributions by that party in divorce actions. Jocoy v. Jocoy (S.C.App. 2002) 349 S.C. 441, 562 S.E.2d 674, rehearing denied. Divorce 684

For equitable distribution purposes, husband was properly ordered by trial court to make three equal monthly cash disbursements of $23,663.57 to wife, thereby totaling $70,990.72, in realization of her share in marital estate; husband had had ample time to make financial preparations for payment to wife, and husband was able to make cash disbursements as ordered by trial court in light of his testimony that his $10,000 per month salary from his company was result of self‑imposed pay scale. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 824

In dissolution action, husband’s 401(k) account appropriately was treated as an asset, which the court apportioned equally between the parties, and the outstanding balance on the loan appropriately was treated as a debt and apportioned to husband. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 712; Divorce 803; Divorce 835

In divorce action, trial court erred in including in the marital estate $104,002.57 worth of property which was sold during the pendency of litigation, given that parties had agreed to divide the proceeds equally and that proceeds could be considered as advancement of any equitable distribution award. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 921

Family Court had no authority to transfer title to former husband’s real property to former wife as security for alimony and child support payments. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Child Support 463; Divorce 615

Family Court’s order, purporting to transfer title to former husband’s real property to former wife as security for alimony and child support payments, and expressly stating that property was to secure former husband’s obligations to former wife, had effect of creating lien on property, and thus, because former husband had refused to meet his obligations, former wife could immediately foreclose lien. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Child Support 463; Divorce 615

Where Family Court’s order had effect of creating lien on former husband’s property to secure his obligations to former wife, and former husband had refused to meet his obligations, proceeds of any foreclosure sale would go to satisfying former husband’s debts, and, if sale price for property were to exceed amount of indebtedness, remainder of proceeds would be held in escrow in account from which former wife could draw monthly alimony until fund was exhausted. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Child Support 463; Divorce 615

Family Court’s order, purporting to transfer to former wife, as security for alimony and child support payments, title to real property in which former husband and current wife each had one‑half interest, had effect of creating lien on property to secure former husband’s obligations to former wife, and current wife thus held property subject to such lien. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Child Support 463; Divorce 615

A party who is granted possession of a residence as an incident of support does not obtain a vested right to remain in the home for his or her lifetime. Rather, changed circumstances may necessitate a future change in such a provision. Stafford v. Stafford (S.C.App. 1988) 296 S.C. 423, 373 S.E.2d 699. Marriage And Cohabitation 1220; Marriage And Cohabitation 1234

The fact that an award of exclusive possession of the marital home to the wife was for an indefinite period of time did not invalidate the award or make it any less an incident of support. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21. Divorce 856

The question of whether to award one spouse exclusive possession of the marital home is one addressed to the sound discretion of the trial court whose judgment will not be disturbed on appeal unless an abuse of discretion is clearly shown. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21. Divorce 853; Divorce 1283(1)

Although court lacks jurisdiction absent consent, to order husband to convey real property to wife, it may give husband option of making such transfer as alternate method of satisfying alimony award. Jones v. Jones (S.C. 1978) 270 S.C. 280, 241 S.E.2d 904.

Lower court could not order one‑half interest in husband’s property transferred in lieu of alimony, although it could have specified such property transfer as alternative method of satisfying alimony award. Wilson v. Wilson (S.C. 1978) 270 S.C. 216, 241 S.E.2d 566.

An award to the wife of $25,000.00 and life insurance policies was not lump sum alimony in addition to the periodic alimony already awarded, but was part of a property settlement, where the court had the power to divide the property owned by the parties, or either of them, in an equitable manner, without regard to where the legal title to the respective pieces of property was vested and the award was necessary to bring about a fair and equitable result to both parties. Moyle v. Moyle (S.C. 1974) 262 S.C. 308, 204 S.E.2d 46.

When assessing, for dischargeability purposes, whether benefit to debtor of discharging divorce‑related debt not in nature of support outweighs detriment to former spouse, bankruptcy courts rely on totality of the circumstances approach and consider various factors, including income and expenses of both parties, whether non‑debtor spouse is jointly liable on debts, number of dependents, nature of the debts, reaffirmation of any debts, and non‑debtor spouse’s ability to pay. In re Seybt (Bkrtcy.D.S.C. 2002) 2002 WL 342346, Unreported. Bankruptcy 3367(3)

28. Antenuptial agreement

Under their antenuptial agreement, husband and wife had a clear understanding as to the ownership of conveyed real property, and thus, neither presumption of a resulting trust nor presumption of a gift applied to husband’s purchase of real property to which wife made no financial contribution, where agreement provided that husband and wife would be treated as if they were unmarried persons in relation to property and expressly stated that all property that the parties acquired during the marriage from any source whatever would be the separate property of the respective party. Bowen v. Bowen (S.C. 2003) 352 S.C. 494, 575 S.E.2d 553. Marriage And Cohabitation 182(2); Marriage And Cohabitation 859

Wife acquired a one‑half interest in four parcels of real property by holding title jointly with husband, even though antenuptial agreement restricted each spouse’s right to acquire an ownership interest in the other’s separate property and husband paid the entire purchase price for the four parcels, where the agreement did not address jointly titled newly acquired property. Bowen v. Bowen (S.C. 2003) 352 S.C. 494, 575 S.E.2d 553. Marriage And Cohabitation 182(3)

29. Prenuptial agreement

Prenuptial agreement provisions which waived alimony and attorney fees were enforceable, even though wife’s health had deteriorated and she was unable to work; wife did not sign the agreement under fraud or duress, both parties were represented by counsel, the clauses waiving alimony and attorney fees were not unconscionable when entered, and facts and circumstances had not changed such that enforcement of the agreement was unfair. Hardee v. Hardee (S.C. 2003) 355 S.C. 382, 585 S.E.2d 501, rehearing denied. Marriage And Cohabitation 175

Prenuptial agreement did not bar wife from receiving an equitable division of the property acquired during the parties’ marriage, in divorce proceeding, where provision of prenuptial agreement stated that disposition of property provisions “shall in no way affect the property, whether real, personal or mixed which shall be acquired by the parties, whether titled separately or jointly, subsequent to the date of this Agreement.” Hardee v. Hardee (S.C. 2003) 355 S.C. 382, 585 S.E.2d 501, rehearing denied. Marriage And Cohabitation 182(3)

30. Settlement agreements

If a support and property settlement agreement is executory as to support and a continuance of the separation, while it is executed as to property rights, reconciliation and resumption of cohabitation may terminate the executory support provision while having no effect on the executed property provisions. Thus, a property settlement agreement and reconciliation agreement precluded reapportionment of the property covered by them except to the extent that such property had increased in value due to the joint effort of the parties, where the reconciliation agreement indicated that the parties agreed that they had complied with the provisions of the property settlement agreement. However, the reconciliation of the parties nullified the provisions of the separation and reconciliation agreements regarding the parties’ agreements not to be liable for the support of each other, and therefore the husband’s argument that the trial court should not have awarded alimony to the wife was without merit. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

The trial court properly approved a settlement agreement in a divorce action even though the husband expressed some uncertainty as to part of the agreement where the momentary equivocation was recanted by the husband, the husband testified that he freely and voluntarily accepted the agreement, and the trial judge made every effort to reiterate to the husband his options. Polin v. Polin (S.C.App. 1988) 295 S.C. 129, 367 S.E.2d 433.

Where one party seeks family court approval of a settlement agreement between a husband and wife and the other party repudiates it, the court must first determine if the agreement was freely and voluntarily entered into and next determine if it is fair under all circumstances. A trial judge was correct in refusing to enforce a separation agreement insofar as it pertained to alimony where the judge found the agreement to be unfair and inequitable on the issue of alimony, and the wife testified that she signed the agreement because the husband had threatened to take her children and “have my name drug through the mud all over town.” Doe v. Doe (S.C.App. 1985) 286 S.C. 507, 334 S.E.2d 829.

31. Tax considerations

Trial court had authority to allocate tax burden of award of temporary separate maintenance and support so as to make support award non‑taxable to wife and non‑deductible to husband. Brown v. Brown (S.C.App. 2007) 375 S.C. 48, 650 S.E.2d 84, rehearing denied, certiorari denied. Divorce 541

Original award of temporary separate maintenance and support, which made no reference to tax burdens nor allocated them in a manner different from the traditional rule, was unambiguous and thus trial court could not make retroactive its order, on wife’s motion for additional temporary relief, declaring the unallocated separate maintenance award non‑taxable to her and non‑deductible to husband, contrary to traditional rule; under traditional tax treatment of award of unallocated family support, unallocated award was taxable to the supported spouse and deductible to the supporting spouse. Brown v. Brown (S.C.App. 2007) 375 S.C. 48, 650 S.E.2d 84, rehearing denied, certiorari denied. Divorce 550; Internal Revenue 3120; Internal Revenue 3288.1

Wife was not entitled to ownership of the parties’ marital residence as part of her share of the marital estate, in divorce proceeding; wife presented no testimony to refute expert testimony concerning the tax ramifications of wife solely owning the property and the tax benefits to both parties if the residence was sold, trial court failed to consider the tax consequences to husband if he was forced to liquidate his retirement account in order to purchase a new residence, and it was error for the trial court to consider the equity in the marital home and husband’s retirement account equally. Wooten v. Wooten (S.C.App. 2003) 358 S.C. 54, 594 S.E.2d 854, affirmed in part, reversed in part 364 S.C. 532, 615 S.E.2d 98. Divorce 747; Divorce 850; Divorce 863

In dissolution action, there was no error in the Family Court’s failure to expressly consider tax consequences resulting from its award to wife of one‑half the value of husband’s 401(k) account, where Court’s order did not require or contemplate liquidation of husband’s 401(k) account and there was no evidence indicating either party anticipated liquidation of the account. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 803

Family court abused its discretion in automatically reallocating dependent tax exemption from non‑custodial, supporting father to custodial mother after six years, in action for divorce, absent any evidence of actual changed circumstances warranting reallocation. Hudson v. Hudson (S.C.App. 2000) 340 S.C. 198, 530 S.E.2d 400. Child Support 351

32. Voluntary payments

The amount of voluntary payments made by a spouse may indicate the parties’ needs and ability to pay, but it is not conclusive of the amount of alimony to be awarded in the final decree. Thus, the family court’s award of $1600 per month alimony would not be disturbed where there was testimony that the wife’s expenses were some two to three hundred dollars per month less at the time of the hearing than they had been when the husband began making voluntary support payments pendente lite of about $1735 per month, and there was ample basis in the record for the amount of alimony awarded by the family court. Bannen v. Bannen (S.C.App. 1985) 286 S.C. 24, 331 S.E.2d 379.

A husband charged with contempt for nonpayment of alimony or support money is entitled to credit for such amounts as he may have paid under the decree. The fact that he has made some payments, however, will not purge him of contempt or prevent his commitment therefor, as default as to each new installment is a fresh contempt. Nor is he entitled to credit for payments made, enuring to the benefit or welfare of his wife or children, if they are not made pursuant to or for the purposes prescribed by the decree. Under circumstances short of abandonment of the child by the wife, the husband may be considered merely a volunteer with respect to his expenditures in the child’s behalf while in his custody, and is therefore not entitled to credit for them as against payments due his wife by order of the court. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581.

33. Desertion

A deserted wife is not necessarily disqualified from receiving alimony merely because she is employed and earns a livelihood. Murdock v Murdock (1963) 243 SC 218, 133 SE2d 323. Porter v Porter (1965) 246 SC 332, 143 SE2d 619.

Family court properly considered wife’s desertion in ordering husband to pay $3,200 per month in alimony, and its decision not to penalize wife for desertion was supported by wife’s mental condition, her need to avoid stress, and the stress the marriage was placing on her. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 569; Divorce 584

34. Duration of marriage

Marriage is not terminated as of date the parties separate, or even the commencement of marital litigation, for purposes of principle that duration of marriage is one of the factors to be considered in making alimony award. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 582

35. Dependency exemptions

The legislature did not intend to make the family court’s authority to allocate the right to claim dependency exemptions exclusively incident to proceedings for spousal support. Hudson v. Hudson (S.C.App. 2000) 340 S.C. 198, 530 S.E.2d 400. Child Support 141

36. Enforcement

It is the obligation of the divorced husband to pay the specified amounts of alimony and support money according to the terms of the decree and he should not be permitted to vary these terms to suit his own convenience. The amounts spent on children for a trip to the beach and at Christmas time must be regarded as gifts or gratuities and they cannot be credited on his obligation to pay according to the terms of the decree. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581.

A decree for alimony granted by a foreign court may be established and enforced by and through the equity courts of this State, and South Carolina equity courts may assume jurisdiction thereof. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372.

A decree for alimony granted by a Florida court may be established in this State as a local judgment, and enforced by equitable remedies as are customary in the enforcement of domestic decrees for alimony in our local courts. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372.

A Nevada decree was enforceable in this State by the family court of Spartanburg County in such manner and by all remedies available for the enforcement of its own domestic decrees and the court also had the right to require the payment of all installments for the support and maintenance of the wife and child which had become due and payable during the pendency of the action. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372. Child Support 508(1); Divorce 1443; Divorce 1452(1)

37. Alimony trust

An alimony trust was among the types of provisions the legislature intended family court to use as security for payment of support; although alimony trust was not enumerated in statute authorizing court to make provision for security of payment of alimony, statute specifically stated that family court was not limited to type of provisions in statute. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 615

Finding that exceptional circumstances warranted creation of alimony trust to secure wife’s alimony after husband’s death was supported by 12‑year age difference between husband and wife, wife’s longer life expectancy, and wife’s history of emotional problems, which resulted in significant medical expenses and her inability to maintain gainful employment. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 615

38. Modification

Former wife failed to satisfy her burden to show that former husband resided with another woman for at least 90 days, as required to warrant modification of her alimony obligation to husband; before woman began relationship with husband, she lived her son and maintained residence there even after she began seeing husband, wife presented no evidence that woman had completely relocated from her son’s house to husband’s house, since woman lived at her son’s house approximately two days of the week, she and husband could not have lived under the same roof for 90 consecutive days, and weekly separation between husband and woman was result of her work, and, thus, did not amount to separation intended to circumvent 90‑day requirement. McKinney v. Pedery (S.C. 2015) 413 S.C. 475, 776 S.E.2d 566. Divorce 627(13)

Changes in circumstances within the contemplation of the parties at the time the divorce was entered generally do not provide a basis for modifying alimony; where the date and amount of the anticipated changes are not ascertainable and the original decree does not prospectively account for the future circumstance, a modification may be appropriate. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 627(3)

Many of the same considerations relevant to the initial setting of an alimony award may be applied in the modification context as well, including the parties’ standard of living during the marriage, each party’s earning capacity, and the supporting spouse’s ability to continue to support the other spouse. Holmes v. Holmes (S.C.App. 2012) 399 S.C. 499, 732 S.E.2d 213, rehearing denied. Divorce 627(2); Divorce 627(6)

Former wife’s decision to waive alimony did not demonstrate that former husband’s divorce agreement obligation to provide health and dental insurance to former wife following their divorce was not an incident of support that could not be modified; the mere fact the parties waived alimony did not lead to the conclusion they waived all other forms of support. Miles v. Miles (S.C. 2011) 393 S.C. 111, 711 S.E.2d 880. Divorce 931

Evidence supported finding that a substantial change in circumstances warranting modification of former husband’s divorce obligation to provide health and dental insurance to former wife had occurred; since the entry of the final decree, former husband underwent a triple bypass, tore his rotator cuff, and was diagnosed with colon cancer, all of which required seven operations, as a result of his medical conditions he was no longer employed and was totally disabled, he received disability income of $1,830 gross per month, that income was less than half of his former earnings as a police officer, and his insurance premiums had increased. Miles v. Miles (S.C. 2011) 393 S.C. 111, 711 S.E.2d 880. Divorce 627(4); Divorce 627(5); Divorce 627(6)

Former husband’s continued ability to pay alimony was permissible factor of review in Family Court’s consideration of former husband’s petition for reduction or termination of alimony, under statute enumerating factors for review in setting alimony, notwithstanding that modification proceedings arose from former wife’s inheritance. Butler v. Butler (S.C.App. 2009) 385 S.C. 328, 684 S.E.2d 191. Divorce 627(2)

While the family court normally has the authority to modify alimony, once an alimony agreement that specifically disallows modification is approved by the court and merged into a judicial order, it is binding on the parties and the court and is not subject to modification. Maxwell v. Maxwell (S.C.App. 2007) 375 S.C. 182, 650 S.E.2d 680. Divorce 945

Trial court lacked authority to terminate former husband’s alimony obligation due to his former wife’s adultery, where parties’ separation agreement provided that it was not modifiable by the parties or the family court unless both parties agreed in writing to modify it by a formal procedure in the family court. Maxwell v. Maxwell (S.C.App. 2007) 375 S.C. 182, 650 S.E.2d 680. Divorce 609(2); Divorce 919(2); Divorce 945

No basis existed for retroactive modification in the amount of temporary support awarded to Wife during the pendency of divorce action, even though husband was forced to invade assets he received as result of equitable distribution; temporary order incorporated parties’ agreement as to both support and mortgage payments, husband received net $15,000 income from severance package, made monthly mortgage payment, and paid wife $7500 in family support, later court found husband’s income was reduced warranting modification of temporary order, he continued paying mortgage obligation, but spousal support was reduced, taxable to wife and deductible by husband, later order terminated spousal support and reduced monthly mortgage payment by one‑half, and then wife was awarded marital home and responsibility for mortgage debt and she did not seek permanent spousal support. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 547

Trial court lacked authority to terminate husband’s alimony obligation due to wife’s cohabitation with third party, where separation agreement incorporated into divorce decree contained provision that agreement could not be modified or changed except by mutual consent of parties, expressed in writing. Degenhart v. Burriss (S.C.App. 2004) 360 S.C. 497, 602 S.E.2d 96. Divorce 609(2); Divorce 945

Modification of alimony must be based on a substantial or material change in circumstances. Riggs v. Riggs (S.C. 2003) 353 S.C. 230, 578 S.E.2d 3, rehearing denied. Divorce 627(3)

In a divorce action, the Family Court did not abuse its discretion in modifying of an award of alimony retroactively, thereby requiring the wife to reimburse the husband for overpayment of alimony, where the record showed the court considered the factors set forth in Section 20‑3‑130(C). Matter of Bennett (S.C. 1996) 321 S.C. 485, 469 S.E.2d 608.

A former husband was prevented from seeking to enforce a prior agreement with his former wife to terminate alimony on their child’s commencement of college since he had failed to appeal a subsequent order modifying his alimony obligation to provide that his payments would continue until “further order of the court.” McAleese v. McAleese (S.C.App. 1992) 309 S.C. 548, 424 S.E.2d 558, rehearing denied.

The family court was without jurisdiction to modify an award for rehabilitative alimony where (1) the ex‑wife did not base her claim for modification on a change in circumstances, but rather based her claim on Section 20‑3‑170, (2) at the time of the initial award the wife failed to appeal the decision of the family court, which itself did not provide for the possibility of modification, and (3) the case law and statutes prevailing at the time of the initial award did not provide for modification. Jordan v. Jordan (S.C.App. 1992) 307 S.C. 407, 415 S.E.2d 424.

It was an abuse of discretion to provide for an automatic future decrease in alimony, since it could not be known what conditions might exist in six or twelve months; future conditions could call for either an increase or a decrease in the award. Prince v. Prince (S.C.App. 1985) 285 S.C. 203, 328 S.E.2d 664.

39. Termination of alimony

Sufficient evidence existed to support terminating ex‑husband’s alimony on the basis husband, as the supported spouse, resided with his paramour for a period of 90 or more consecutive days; ex‑wife’s private investigator observed ex‑husband and his paramour spending five out of seven nights every week together at ex‑husband’s house for a period of at least seven months, and, although the paramour left ex‑husband’s house every week to care for her grandchildren, her departure was more akin to a temporary absence for out‑of‑town travel than it was to a routine separation based on separate residences. McKinney v. Pedery (S.C.App. 2013) 406 S.C. 1, 749 S.E.2d 119, rehearing denied, reversed 413 S.C. 475, 776 S.E.2d 566. Divorce 632(3)

Ex‑wife’s relationship with her boyfriend did not amount to “continued cohabitation,” as would warrant termination of ex‑husband’s alimony obligation, even though ex‑wife rented house owned by boyfriend, and ex‑wife and boyfriend acknowledged it was likely they had spent more than 90 non‑consecutive days together in the house over a three‑year period; boyfriend maintained a separate residence in another county, obtained a new driver’s license reflecting out‑of‑county address, and ex‑wife and boyfriend did not live under the same roof for 90 consecutive days. Semken v. Semken (S.C.App. 2008) 379 S.C. 71, 664 S.E.2d 493. Divorce 609(2)

A case‑by‑case approach was most appropriate method for resolving whether annulment of a payee spouse’s remarriage would reinstate payor spouse’s periodic alimony obligation. Joye v. Yon (S.C. 2003) 355 S.C. 452, 586 S.E.2d 131. Divorce 609(2)

Continued cohabitation of the supported spouse for a period of 90 or more consecutive days, as a statutory ground to terminate periodic alimony payments, did not apply to payee wife who was married to bigamous second husband for only two months before filing annulment action. Joye v. Yon (S.C. 2003) 355 S.C. 452, 586 S.E.2d 131. Divorce 609(2)

Under case‑by‑case method for resolving whether annulment of a payee spouse’s remarriage would reinstate payor spouse’s periodic alimony obligation, the family court should consider relevant factors such as length of the subsequent marriage, whether the payee spouse receives support and maintenance from the annulled marriage, whether the payor spouse is prejudiced by the revival of alimony payments, whether the subsequent marriage was properly annulled, and any change in the spouses’ personal and financial circumstances after the subsequent marriage is annulled. Joye v. Yon (S.C. 2003) 355 S.C. 452, 586 S.E.2d 131. Divorce 609(2)

Reduction in former husband’s alimony payment to former wife, rather than termination of alimony, was within discretion of trial court; wife’s original earnings were 22% of husband’s, however wife’s earnings subsequently increased to 37% of husband’s, and court considered wife’s continued custodial care of disabled adult‑child in refusing to terminate alimony. Riggs v. Riggs (S.C. 2003) 353 S.C. 230, 578 S.E.2d 3, rehearing denied. Divorce 609(1); Divorce 626; Divorce 627(15)

39.5. Qualified domestic relations order

Husband, as opposed to wife, was required to prepare qualified domestic relations order (QDRO); husband had the strongest financial incentive to quickly prepare the order and follow through with the qualification process. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 827

40. Jurisdiction

The Family Court, having denied alimony to a wife who suffered from epilepsy due to her failure to establish the extent of her disability, should have reserved jurisdiction to award alimony in the future since her condition might deteriorate in the future. Williamson v. Williamson (S.C. 1993) 311 S.C. 47, 426 S.E.2d 758.

Where a divorce decree does not provide for alimony and there is no reservation of jurisdiction in the decree, the decree is final and absolute and alimony cannot be allowed in any subsequent proceeding. While reservation of alimony is a mechanism available to family court judges in proper cases, it is not to be used to avoid reaching the issue of whether alimony should or should not be awarded under the facts of a particular case. It should not be routinely included in a decree of divorce, as this unnecessarily prolongs the marital litigation. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

The juvenile and domestic relations court and the family court of Spartanburg County have concurrent jurisdiction with the circuit court to try divorce cases and matters related thereto. Gardner v. Gardner (S.C. 1969) 253 S.C. 296, 170 S.E.2d 372. Courts 472.1

41. Costs

Family court did not abuse its discretion by ordering husband to pay 60 percent of guardian ad litem fees in divorce action; husband was not prejudiced by court’s allocation of more than half of such fees to him since additional 10 percent assigned to him would be offset through allocation of marital funds. Brown v. Brown (S.C.App. 2015) 412 S.C. 225, 771 S.E.2d 649. Infants 1244

There was no abuse of discretion in a trial court’s refusal to require a husband to pay private investigator fees where the private investigator’s testimony failed to prove wrongdoing on the part of the husband prior to the parties’ separation and the sole purpose of the private investigator’s testimony was to prove that the husband committed adultery. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

The family court erred in holding that an award of costs must be specified in the divorce decree since Rule 54(d) of the South Carolina Rules of Civil Procedure, which are applicable in family court divorce actions, provides that “ [c]osts may be taxed by the clerk on one day’s notice.” Finley v. Finley (S.C. 1989) 299 S.C. 99, 382 S.E.2d 890.

Reasonable and necessary expenses incurred in obtaining evidence of a spouse’s adultery are recoverable as suit money. Stevenson v. Stevenson (S.C. 1988) 295 S.C. 412, 368 S.E.2d 901. Divorce 1157

42. Attorney fees—In general

An award of attorney’s fees in a divorce action rests within the sound discretion of the trial judge and should not be disturbed on appeal absent an abuse of discretion. Stoney v. Stoney (S.C.App. 2016) 417 S.C. 345, 790 S.E.2d 31, rehearing denied. Child Support 156; Divorce 603

Family court was not precluded from awarding wife fees incurred by paralegals and law clerks in its award of attorney fees in divorce action. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 1158

Husband and wife were each responsible for their own attorney fees in divorce action; each party earned an above‑average income, and each was capable of paying his or her own attorney fees and costs. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 1144

In determining whether an attorney’s fee should be awarded in a divorce case, the following factors should be considered: (1) the party’s ability to pay his/her own attorney’s fee; (2) beneficial results obtained by the attorney; (3) the parties’ respective financial conditions; and (4) effect of the attorney’s fee on each party’s standard of living. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 1144; Divorce 1147; Divorce 1153

In determining the amount of reasonable attorney’s fees to award in a divorce case, a court should take six factors into consideration: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 1153; Divorce 1168(1)

Where beneficial results in a divorce action are reversed on appeal, the case should be remanded for reconsideration of attorney’s fees awarded. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 1324

The decision to award attorney’s fees in a divorce action is within the family court’s sound discretion, and, although appellate review of such an award is de novo, the appellant still has the burden of showing error in the family court’s findings of fact. Burgess v. Burgess (S.C.App. 2014) 407 S.C. 98, 753 S.E.2d 566. Divorce 1131; Divorce 1266(5); Divorce 1272

The family court may order one party to pay a reasonable amount to the other party for attorney’s fees and costs incurred in maintaining an action for divorce. Crossland v. Crossland (S.C.App. 2012) 397 S.C. 406, 725 S.E.2d 509, rehearing denied, certiorari granted, reversed 408 S.C. 443, 759 S.E.2d 419. Divorce 1131

Whether to award attorney’s fees in a divorce action is a matter within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. Dickert v. Dickert (S.C. 2010) 387 S.C. 1, 691 S.E.2d 448. Divorce 1131; Divorce 1282

The family court is authorized by statute to order attorney fees to either party in a divorce action. Lanier v. Lanier (S.C.App. 2005) 364 S.C. 211, 612 S.E.2d 456, rehearing denied, certiorari denied. Divorce 1135; Divorce 1136

Pro se litigants are not entitled to attorney fees under statute permitting award of attorney fees incurred in divorce action; pro se litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney. Calhoun v. Calhoun (S.C. 2000) 339 S.C. 96, 529 S.E.2d 14. Divorce 1134

It was not error for the family court to refuse to award a wife attorney fees for her attorney’s services in the bankruptcy court to protect the attorney fees awarded by the family court in its divorce decree. Although a family court may award attorney fees in action for divorce, separate support and maintenance, and other marital litigation between the parties, a family court is not authorized to award attorney fees for services rendered a spouse in other litigation arising out of the marital troubles. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614.

Historically, an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal and, until then, it is more in the nature of a disbursement. Woodside v. Woodside (S.C.App. 1986) 290 S.C. 366, 350 S.E.2d 407.

Where husband filed for divorce in Florida and wife filed in South Carolina, and the Florida court granted the divorce but did not deal with issues of alimony, attorneys fees, and suit money, the wife had a right to maintain an action for alimony, attorneys fees, and costs in South Carolina under the “divisible divorce” doctrine. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

43. —— Considerations, attorney fees

A family court should consider the following factors in deciding whether to award attorney’s fees and costs in a divorce action: (1) each party’s ability to pay his or her own fee; (2) the beneficial results obtained by the attorney; (3) the parties’ respective financial conditions; and (4) the effect of the fee on each party’s standard of living. Stoney v. Stoney (S.C.App. 2016) 417 S.C. 345, 790 S.E.2d 31, rehearing denied. Child Support 156; Divorce 603

A party’s ability to pay is an essential factor in determining whether an attorney’s fee should be awarded in a divorce action, as are the parties’ respective financial conditions and the effect of the award on each party’s standard of living. Stoney v. Stoney (S.C.App. 2016) 417 S.C. 345, 790 S.E.2d 31, rehearing denied. Divorce 1273; Divorce 1283(1); Divorce 1323(4)

In determining whether to award attorney’s fees in a divorce action, the following factors should be considered: (1) the party’s ability to pay his/her own attorney’s fee; (2) beneficial results obtained by the attorney; (3) the parties’ respective financial conditions; (4) effect of the attorney’s fee on each party’s standard of living. Burgess v. Burgess (S.C.App. 2014) 407 S.C. 98, 753 S.E.2d 566. Divorce 1138; Divorce 1144; Divorce 1153

If an award of attorney’s fees is appropriate in a divorce action, the reasonableness of the fees should be determined according to: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services. Burgess v. Burgess (S.C.App. 2014) 407 S.C. 98, 753 S.E.2d 566. Divorce 1139; Divorce 1153; Divorce 1168(1)

In determining whether an attorney’s fee should be awarded in a divorce action, the following factors should be considered: (1) the party’s ability to pay his/her own attorney’s fee, (2) beneficial results obtained by the attorney, (3) the parties’ respective financial conditions, and (4) effect of the attorney’s fee on each party’s standard of living. Crossland v. Crossland (S.C.App. 2012) 397 S.C. 406, 725 S.E.2d 509, rehearing denied, certiorari granted, reversed 408 S.C. 443, 759 S.E.2d 419. Divorce 1144; Divorce 1153

After deciding to award attorney’s fees, a family court should then consider the following factors in deciding how much to award in attorney’s fees and costs in a divorce action: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Farmer v. Farmer (S.C.App. 2010) 388 S.C. 50, 694 S.E.2d 47, rehearing denied, certiorari denied. Divorce 1139; Divorce 1153

A family court should first consider the following factors in deciding whether to award attorney’s fees and costs in a divorce action: (1) each party’s ability to pay his or her own fee; (2) the beneficial results obtained by the attorney; (3) the parties’ respective financial conditions; and (4) the effect of the fee on each party’s standard of living. Farmer v. Farmer (S.C.App. 2010) 388 S.C. 50, 694 S.E.2d 47, rehearing denied, certiorari denied. Divorce 1138; Divorce 1144; Divorce 1153

In deciding whether to award attorney fees in divorce proceedings, the family court should consider: (1) each party’s ability to pay his or her own fees; (2) the beneficial results obtained by counsel; (3) the respective financial condition of each party; and (4) the effect of the fee on each party’s standard of living. Avery v. Avery (S.C.App. 2006) 370 S.C. 304, 634 S.E.2d 668. Divorce 1138

In deciding whether to award attorney fees in divorce action, the family court should consider: (1) the parties’ ability to pay their own fee; (2) the beneficial results obtained by counsel; (3) the respective financial conditions of the parties; and (4) the effect of the fee on each party’s standard of living. Lanier v. Lanier (S.C.App. 2005) 364 S.C. 211, 612 S.E.2d 456, rehearing denied, certiorari denied. Divorce 1138

In determining the reasonable amount of attorneys fees to award in divorce proceeding, the court should consider the nature, extent, and difficulty of the services rendered, the time necessarily devoted to the case, counsel’s professional standing, the contingency of compensation, the beneficial results obtained, and the customary legal fees for similar services. Roberson v. Roberson (S.C.App. 2004) 359 S.C. 384, 597 S.E.2d 840, rehearing denied, certiorari granted. Divorce 1168(1)

In awarding attorney fees and costs, the family court should consider the nature, extent and difficulty of the services rendered, the time necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the beneficial results obtained, and the customary legal fees for similar legal services. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Costs 194.18

A court abused its discretion in awarding attorney’s fees to a wife in an amount less than actually incurred where (1) the husband had the ability to pay the fees, (2) the wife had no means to pay for defense of the action, (3) the husband initiated the law suit, (4) the husband attempted to enforce an invalid antenuptial agreement which rendered the case more difficult to defend, and (5) the husband failed to furnish discovery information and to file a proper financial declaration, as required by the rules of court, which further increased the time and expense of litigation for the wife. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 1168(1)

Although a wife testified about her limited means, the family court, in determining if attorney fees were warranted, was free to consider additional factors, including most notably the result obtained in the action. Since the wife did not prevail at trial or on appeal, the family court did not abuse its discretion in denying her attorney fees. Medlin v. King (S.C.App. 1988) 294 S.C. 406, 365 S.E.2d 36.

44. —— Adequacy, attorney fees

Family court did not abuse its discretion in awarding wife attorney fees and costs for expert in divorce action in light of wife’s beneficial results and the likelihood that she initiated litigation in the first place in order to receive her portion of husband’s business venture. Farmer v. Farmer (S.C.App. 2010) 388 S.C. 50, 694 S.E.2d 47, rehearing denied, certiorari denied. Divorce 1139; Divorce 1140

Wife was not entitled to award of attorney fees given that parties’ ability to pay attorney fees, results obtained by counsel, their respective financial conditions, and effect of fee on their standard of living were virtually equal. Avery v. Avery (S.C.App. 2006) 370 S.C. 304, 634 S.E.2d 668. Divorce 1140; Divorce 1144

Wife, an attorney, who appeared pro se in divorce case, was not entitled to award of pro se attorney fees; even though she diverted time that she could otherwise have utilized in income‑producing activity, she did not incur obligation to pay attorney fees to another person. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1145

In domestic action, husband would be required to reimburse wife only for attorney fees wife incurred due solely to husband’s uncooperative, unreasonable, and contumacious conduct; wife had employed two attorneys, who billed at rates of $300 and $200 per hour, and while issues were not complex and were settled by agreement, counsel’s firm expended 163.30 attorney hours and 173.38 paralegal hours, billed at $50 per hour, wife earned $50,000 per year compared to husband’s $35,000 per year, but husband did much to prolong and hamper final resolution of issues, requiring wife to seek court order to protect interests of children and to obtain sanctions against husband for violating court orders. Anderson v. Tolbert (S.C.App. 1996) 322 S.C. 543, 473 S.E.2d 456. Divorce 1139; Divorce 1141; Divorce 1144

The trial court properly awarded an ex‑wife alimony where the trial court’s order clearly reflected consideration of the appropriate factors for alimony and attorneys fees. West v. West (S.C.App. 1993) 315 S.C. 44, 431 S.E.2d 603. Divorce 597(2); Divorce 598(2); Divorce 1170(9)

A trial court’s denial of a wife’s claim for attorney fees was not error where the wife did not recover on her prayer for “ [s]ole ownership, title and possession of the former marital home,” she did not succeed in having the husband held in contempt of court, and the parties had comparable gross incomes and were able to pay their respective attorney fees. Shannon v. Shannon (S.C.App. 1990) 301 S.C. 107, 390 S.E.2d 380. Marriage And Cohabitation 1242

There was no error in the family court’s refusal to award a wife expert witness fees as suit money where (1) the wife related her claim for expert witness fees only to her demand for attorney fees resulting from having to protect, in a bankruptcy court, the attorney fees awarded her by the family court, (2) the family court found the witness unqualified to offer an expert opinion on bankruptcy litigation, and (3) attorney fees incurred in protecting, in bankruptcy court, an award of attorney fees made by the family court are unrecoverable as costs in the family court. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614. Divorce 1166

A trial judge abused his discretion in failing to allow a more adequate fee to counsel for the wife where the wife was permanently hospitalized in a mental institution and had neither property nor income, and the action was commenced by the husband in spite of the fact that case law clearly stood by the proposition that the husband was not entitled to a divorce on the ground of one year separation as alleged in the complaint. Rish v. Rish By and Through Barry (S.C.App. 1988) 296 S.C. 14, 370 S.E.2d 102. Divorce 1168(2)

Although the trial court had authority, pursuant to Sections 20‑3‑120, 20‑3‑130, and 20‑7‑420(2), to order payment of alimony and suit money to a former wife in a divorce action, it properly denied her request for attorneys’ fees, where the bare assertion that she had no funds with which to pay adequate attorneys’ fees was insufficient to justify an award. Miller v. Miller (S.C. 1984) 280 S.C. 314, 313 S.E.2d 288.

45. —— Amount, attorney fees

Evidence was sufficient to support award of approximately $135,000 in attorney’s fees and costs to wife in divorce action; the court found husband admitted his failure to be truthful in deposition testimony and that wife proved husband’s deceit at trial, husband demonstrated the ability to earn a substantial income, while wife was unemployed, and wife prevailed on the transmutation and valuation of many assets. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 1138; Divorce 1144

Award of $26,230 in attorney fees to wife in divorce action, representing 61% of her total attorney fees, was reasonable where divorce was pending for two years, wife’s attorney was required to spend more time on her case due to husband hiring three different attorneys over course of the proceedings, and wife secured almost 50 percent of the marital estate and obtained custody of the couple’s four children. Brown v. Brown (S.C.App. 2015) 412 S.C. 225, 771 S.E.2d 649. Divorce 1141; Divorce 1148; Divorce 1153

Family court’s award of $50,000 in attorney fees to husband in divorce action was excessive and an abuse of discretion; wife had a gross annual income of $55,260 and, applying this number to the award of attorney fees, the $50,000 award represented approximately 90% of wife’s gross annual income, husband earned substantially higher annual income than wife, and the income‑to‑attorney fees ratio made it apparent that the family court did not sufficiently consider each party’s ability to pay, their respective financial conditions, and the effect of the award on each party’s standard of living. Srivastava v. Srivastava (S.C.App. 2015) 411 S.C. 481, 769 S.E.2d 442. Divorce 1144; Divorce 1168(2); Divorce 1170(8)

Order requiring husband to pay $99,000 of wife’s attorney fees was not an abuse of discretion, in dissolution case, where the case presented complex issues that required a great deal of time and energy to assess. Dickert v. Dickert (S.C. 2010) 387 S.C. 1, 691 S.E.2d 448. Divorce 1139; Divorce 1153

Family court did not abuse its discretion in ordering husband to contribute $5,000 to wife’s attorney fees in divorce action; family court referenced wife’s attorney’s affidavit and also the fact that the attorney would also be preparing the QDRO in addition to the time the affidavit took into account, and husband did not object to the affidavit or cross‑examine counsel on it. King v. King (S.C.App. 2009) 384 S.C. 134, 681 S.E.2d 609. Divorce 1170(7); Divorce 1170(8)

Attorney fee award of $2,570 to wife in divorce action was supported by record and was not an abuse of discretion; although wife spent several thousands of dollars in fees prior to the filing of the divorce action, the record showed she merely consulted some attorneys and the other attorneys only represented her in consent agreements, the $2,000 in credit card debt wife used to pay legal expenses was counted as marital debt and equitably distributed, wife paid her current counsel $1,500 as a retainer fee, and wife’s counsel submitted an affidavit for attorney fees showing that the retainer fee had been spent and wife owed an additional $2,540.75. Deidun v. Deidun (S.C.App. 2004) 362 S.C. 47, 606 S.E.2d 489. Divorce 1168(1); Divorce 1170(6)

Wife was entitled to award of $52,917.21 in attorney fees and costs, and award was not excessive, even though husband prevailed on two issues on appeal from divorce judgment; wife’s attorney received a favorable result on the issues of divorce and alimony, wife was required to obtain counsel to defend against husband’s action for separate support and maintenance, and husband’s income was vastly larger than wife’s income. Wooten v. Wooten (S.C.App. 2003) 358 S.C. 54, 594 S.E.2d 854, affirmed in part, reversed in part 364 S.C. 532, 615 S.E.2d 98. Divorce 1140; Divorce 1144; Divorce 1163; Divorce 1168(2)

Award of $10,000 in attorney fees to wife was not supported by evidence, in divorce action, in absence of findings regarding the nature, extent, and difficulty of services rendered, the time necessarily devoted to case, the professional standing of counsel, the contingency of compensation, the beneficial results obtained, and the customary legal fees for similar services. Griffith v. Griffith (S.C.App. 1998) 332 S.C. 630, 506 S.E.2d 526. Divorce 1168(1); Divorce 1170(6)

Wife was entitled in divorce action to award of $10,000 in attorney fees for her retained counsel, as well as award of $5,763 for costs and fees for appraiser, accountant, and psychologist; case was arduous, and wife was ultimately successful on several issues concerning equitable apportionment of marital property. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1166; Divorce 1168(1)

An award to a wife of $10,000 in attorney fees and $11,000 in costs was not an abuse of discretion where the wife had retained counsel at an hourly rate of $100, she had incurred unpaid fees as of the date of the hearing totalling $10,043.26, she had paid $2500 in fees during the pendency of the case as required by court order, and the costs included private investigator fees, appraisal fees, and accounting fees. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

A trial judge did not err in awarding a wife only $300 in attorney’s fees, even though the wife requested $850 in attorney’s fees, where there was no affidavit in the record showing the amount of fees incurred, and the only evidence of the amount of fees owed by the wife was in the order of the trial judge noting “that the $600 charged [the wife] by [the attorney] was a reasonable attorney’s fee under the facts of this case.” Ward v. Marturano (S.C.App. 1990) 302 S.C. 112, 394 S.E.2d 16.

There was no abuse of discretion in ordering a husband in a divorce action to pay the wife $9,462.00 for reimbursement of attorney fees and costs where it was a complex divorce action involving several difficult issues, some of them novel in the jurisdiction, the beneficial results achieved by the wife were apparent, the wife’s attorney faced difficulty and lack of cooperation from the husband, and the wife achieved her divorce on the basis of adultery such that reasonable and necessary expenses incurred in obtaining evidence of the husband’s adultery were recoverable. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 1168(1)

Family court did not abuse its discretion in award of attorney’s fees to wife in amount of $3972.60, despite contention of husband that issues were not complicated enough to justify amount of fees awarded; although issues may not have been extremely complex, allegation of adultery was contested, necessitating much time be invested by wife’s attorney; while husband is not to be punished by award to wife of attorney’s fees, family court found breakup of marriage was fault of husband. Leatherwood v. Leatherwood (S.C.App. 1987) 293 S.C. 148, 359 S.E.2d 89. Divorce 1168(1)

Award of $200 attorney’s fee to wife in unsuccessful action by wife to obtain divorce, where husband obtained order of separate maintenance, was so inadequate as to require reversal in view of amount of time devoted to investigation and preparation of case, lengthy court hearings and beneficial results accomplished. Wood v. Wood (S.C. 1977) 269 S.C. 600, 239 S.E.2d 315.

46. Bankruptcy

Even assuming that Chapter 7 debtor’s obligation, under divorce decree, to continue making second mortgage payments upon home where his ex‑wife and daughters resided could be regarded, not as “support,” but as property settlement obligation, debt would still be excepted from discharge, where debtor’s earning capacity was such that, when he obtained job, he would be financially able to make payments, and where benefit to debtor of discharging debt was outweighed by detriment to children and former spouse, who would likely be unable to make payments herself and need to find new residence. In re Seybt (Bkrtcy.D.S.C. 2002) 2002 WL 342346, Unreported. Bankruptcy 3367(2); Bankruptcy 3367(3)

47. Limitation of actions

Former’s wife claim for past due alimony was barred by the doctrine of laches; there was a 24 year delay from the date of the original divorce decree and former wife’s action for past due alimony, former wife had an order holding former husband in contempt and never served him with the order, even though she had contact with former husband over the years, former wife’s claims that she could not locate former husband were without merit since he had a listed telephone number, owned property, and employed the parties sons, who former wife stated she had a good relationship with, and former husband, who was 65 years old and approaching retirement, was prejudiced by the delay. Kelley v. Kelley (S.C.App. 2006) 368 S.C. 602, 629 S.E.2d 388. Divorce 1054

48. Estoppel

Ex‑wife’s claim for past due alimony was barred under the doctrine of equitable estoppel; ex‑wife’s conduct conveyed the impression that she was willing to accept alimony in an amount different from the $1200 per month articulated in the divorce decree, ex‑wife accepted ex‑husband’s $300 monthly alimony payments for seven years and further stated that she agreed on $300 per month, she pursued no alimony when ex‑husband’s monthly payments altogether ceased, she intended ex‑husband to rely on her actions and assertions, ex‑husband had no indication that ex‑wife was dissatisfied with parties’ own terms of alimony, and ex‑husband was prejudiced in relying on ex‑wife’s assurances that parties had settled all issues related to alimony. Strickland v. Strickland (S.C. 2007) 375 S.C. 76, 650 S.E.2d 465. Divorce 1007

Husband was estopped to assert invalidity of Haitian judgment of divorce for purpose of raising defense of adultery in action by wife for alimony where wife’s alleged adulterous acts took place after Haitian divorce decree was obtained by him. Smoak v. Smoak (S.C. 1977) 269 S.C. 313, 237 S.E.2d 372.

Where denial of alimony by lower court on basis of wife’s adultery was reversed, because alleged adultery had occurred after husband obtained Haitian divorce which he was now estopped to deny validity of, issue of inadequacy of child support and house occupancy was remanded for consideration in light of such alimony as might be awarded. Smoak v. Smoak (S.C. 1977) 269 S.C. 313, 237 S.E.2d 372.

49. Admissibility of evidence

As a general principle, a landowner, who is familiar with her property and its value, is allowed to give her estimate as to the value of the land and damages thereto, even though she is not an expert. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Evidence 474(18)

Trial judge did not err in disallowing evidence as to change in circumstances on issue of alimony where husband’s petition for divorce merely alleged wife was not entitled to alimony; wife plead, and trial judge accepted, that matter of alimony had already been judicially determined, and wife further alleged there had been no change in parties’ financial condition and husband failed to allege any such change. Blackmon v. Blackmon (S.C.App. 1987) 294 S.C. 187, 363 S.E.2d 400.

50. Presumptions and burden of proof

Party seeking modification of alimony bears the burden of demonstrating a substantial unforeseen change in circumstances. King v. King (S.C.App. 2012) 400 S.C. 611, 735 S.E.2d 551. Divorce 632(2)

For purposes of determining whether former husband demonstrated substantial unforeseen change in circumstances warranting reduction of his alimony, former husband failed to meet his burden of proof with respect to claimed increase in his expenses, where there was little testimony as to his personal expenses, nature of those expenses, and reasons why they would warrant change of alimony. King v. King (S.C.App. 2012) 400 S.C. 611, 735 S.E.2d 551. Divorce 627(4)

Party alleging that adultery has occurred must establish it by clear preponderance of evidence. Oyler v. Oyler (S.C.App. 1987) 293 S.C. 4, 358 S.E.2d 170.

51. Sufficiency of evidence

Standard of living established during lengthy marriage, disparity in parties’ incomes and earning abilities, and wife’s dependence upon husband’s income supported award of alimony to wife; although wife would need additional training to achieve a greater income, she had most likely reached her income potential, wife had historically depended on husband’s income for her standard of living, and husband’s greater income was augmented by his undivided retirement account. Way v. Way (S.C.App. 2012) 398 S.C. 1, 726 S.E.2d 215. Divorce 573; Divorce 576

Trial court’s award of alimony to wife, and its determination as to the amount of alimony, did not constitute an abuse of discretion, where the court listed each factor it was statutorily required to consider, and made findings of fact supported by the evidence and conclusions of law regarding each factor. Reiss v. Reiss (S.C.App. 2011) 392 S.C. 198, 708 S.E.2d 799. Divorce 597(1)

Wife was entitled to award of alimony; parties had 30‑year marriage, wife spent bulk of marriage caring for parties’ children, husband had college degree and over 30 years of experience in sales while wife was high school graduate and had little to no full‑time work history, there was disparity between incomes of husband and wife, and husband admitted to committing adultery. Browder v. Browder (S.C.App. 2009) 382 S.C. 512, 675 S.E.2d 820. Divorce 571; Divorce 576; Divorce 582

Evidence failed to establish that former wife engaged in continued cohabitation with boyfriend for 90 or more consecutive days so as to terminate former husband’s alimony obligation; private investigator was hired to perform surveillance on former wife’s residence on April 2005, investigator testified that boyfriend drove pickup truck, investigator performed surveillance on former wife’s residence only 21 times, of these days, 10 were before June 13, 2005, and bill of sale produced at trial showed boyfriend purchased pickup on June 13, 2005, which negated any possibility of investigator observing boyfriend driving, entering, or exiting pickup prior to June 13, 2005, which fell short of 90 day requirement. Feldman v. Feldman (S.C.App. 2008) 380 S.C. 538, 670 S.E.2d 669. Divorce 609(2)

Wife and third party’s continued and secretive meetings in various parking lots was sufficient circumstantial evidence to prove that wife committed adultery, and thus wife was barred from receiving alimony in divorce action; evidence showed that third party and wife met approximately twenty‑four times over a four‑ to five‑year period, and, while the admitted meetings were during the daytime in a car parked in public parking lots, wife and third party admitted to engaging in activities that were sexual in nature, and admissions by wife and third party established they were inclined to commit adultery. Brown v. Brown (S.C.App. 2008) 379 S.C. 271, 665 S.E.2d 174, rehearing denied, certiorari denied. Divorce 594(4)

Evidence of wife’s income and expenses supported award of permanent periodic alimony of $600 per month in divorce action; wife’s living expenses were $1,000, and court considered wife’s separate income in making alimony award. Roberson v. Roberson (S.C.App. 2004) 359 S.C. 384, 597 S.E.2d 840, rehearing denied, certiorari granted. Divorce 572; Divorce 576

Evidence supported $300,000 valuation of former husband’s stock in investment company for purposes of divorce proceeding; former wife testified as to her opinion regarding value of business and further testified that she was familiar with real estate and restaurants where investment company was located, no objection was made to wife’s testimony, and husband did not respond to wife’s request to admit that his interest in company had value of $300,000. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 796

Evidence in divorce action did not support trial court’s decision valuing parties’ marital home at $260,000, and thus, its judgment would be modified to value home at $252,500; parties listed home for sale at $252,500, and although wife valued home at $265,000 on her marital assets sheet, wife offered no credible explanation of her estimate of home’s value and admitted that her valuation was “guesstimate.” Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 850

Finding that husband did not present sufficient circumstantial evidence to prove that wife committed adultery was supported by evidence and, thus, wife was not barred from receiving alimony in divorce action; numerous telephone calls between wife and alleged paramour, the absence of telephone calls between wife and alleged paramour during three weekends when wife went out of town, apparent alterations to hotel registry, and wife’s efforts to evade detection and cover up weekend trips, although circumstantial evidence of opportunity and inclination, was not so convincing as to exclude any reasonable hypothesis other than that of guilt, in light of the lack of any evidence linking wife to alteration of hotel registry and lack of evidence of a romantic or sexual relationship between wife and alleged paramour. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Divorce 594(4)

Evidence was sufficient to support court’s denial of wife’s request for alimony; husband’s retirement income was substantially less than his preretirement earnings, and although wife did not have to work to full capacity during marriage, she had ability to build up her legal practice and support herself. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 594(7)

The evidence supported awarding custody of children to their mother where she had been the primary caretaker of the children throughout their lives, the guardian ad litem found that the children were well cared for by her, and the tender years doctrine militated in favor of awarding custody to her. Epperly v. Epperly (S.C. 1994) 312 S.C. 411, 440 S.E.2d 884, rehearing denied. Child Custody 469

The Family Court did not abuse its discretion in denying alimony to a wife who suffered from epilepsy where the wife did not present any evidence to establish the extent of her disability, other than her own testimony that she probably could work but might be too ill on some days. Williamson v. Williamson (S.C. 1993) 311 S.C. 47, 426 S.E.2d 758.

The trial court erred in establishing an alimony award based on the findings and rulings of a prior temporary order made pursuant to former Family Court Rule 52, where the findings of fact were based only on the affidavits of the parties, their financial declarations, and the statements of their attorneys. Sexton v. Sexton (S.C.App. 1992) 308 S.C. 37, 416 S.E.2d 649, rehearing denied, certiorari granted, reversed 310 S.C. 501, 427 S.E.2d 665.

A wife was not entitled to an award of alimony where (1) the break‑up of the marriage was the result of her inability to engage in sexual relations, (2) the marriage lasted 4 1⁄2 years, (3) both parties were in good health, 31‑years old, and had college degrees, (4) the husband earned $48,000 per year and the wife earned $20,000, (5) during the marriage the husband paid all the household bills, provided the money for the downpayment of the home, and did extensive home improvements, whereas the wife contributed little, and (6) the wife had savings of $7,000, received $5,666 for her equity in the marital home, and had health insurance which would help with her psychiatry bills. E.D.M. v. T.A.M. (S.C. 1992) 307 S.C. 471, 415 S.E.2d 812.

A trial judge did not abuse his discretion in denying alimony to a husband, even though the husband was in poor health placing him at an economic disadvantage in earning capacity, where such factors as age, individual wealth, contributions to the accumulation of marital property, and standard of living weighed evenly as to both parties, and the husband was guilty of gross misconduct in that he abused the wife throughout the marriage. Williams v. Williams (S.C.App. 1988) 297 S.C. 208, 375 S.E.2d 349. Divorce 586

Circumstantial evidence was insufficient to establish both disposition to commit offense of adultery and opportunity to do so where family court had granted divorce on ground of adultery and denied wife alimony because of adultery, and evidence showed that wife and another woman on 3 different occasions spent night in house occupied by 2 men; while evidence might be sufficient to establish that wife and alleged paramour had opportunity to commit adultery, it was not enough to show that they were mutually disposed to commit that offense. Fulton v. Fulton (S.C.App. 1987) 293 S.C. 146, 359 S.E.2d 88.

Trial judge did not abuse his discretion in refusing to award lump sum alimony to wife and in awarding her $1,200 monthly periodic alimony where: record demonstrated spending habits of both parties dissipated husband’s inheritance; husband had degree from Oxford University, could earn minimum of $50,000 per year as novelist, should inherit proceeds of one trust from mother in amount close to $1,000,000, had expectancy in another trust worth $3,000,000 to $5,000,000, and was entitled to proceeds from sale of some real estate in Great Britain; and, husband failed to demonstrate why award of lump sum alimony would be more appropriate than periodic alimony award. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68. Divorce 594(4); Divorce 601(3)

Where the husband, who was retired and had undergone open heart surgery, admitted a net worth in excess of $4 million, gave the wife during the marriage sums of money, including a monthly check for $300, courtesy and credit cards, and numerous vacations, and where the wife was relatively young, in good health, capable of self support, had made no contribution toward her husband’s wealth, and where there was insufficient evidence of marital misconduct and the marriage lasted less than 14 months, the master’s determination that alimony in a lump sum of $15,000.00 was unreasonable in light of wife’s accustomed standard of living, the disparity between the parties’ wealth, and their respective earning capacities. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

Where the husband, who was retired and had undergone open heart surgery, admitted a net worth in excess of $4 million, gave the wife during the marriage sums of money, including a monthly check for $300, courtesy and credit cards, and numerous vacations, and where the wife was relatively young, in good health, capable of self support, and made no contribution toward her husband’s wealth, and where there was insufficient evidence of marital misconduct and the marriage lasted less than 14 months, the trial judge abused his discretion by finding that the wife was not entitled to alimony. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

52. Findings

Family court was not required to make specific factual findings as to each statutory factor relevant to the establishment of an alimony award in denying former husband’s motion for modification of alimony, where burden was on former husband, as party seeking modification, to argue which factors were important and to demonstrate why, and former husband asserted only that his income had decreased, former wife’s income had decreased, and his expenses were large. King v. King (S.C.App. 2012) 400 S.C. 611, 735 S.E.2d 551. Divorce 633

53. Review

The award of alimony rests within the sound discretion of the trial judge and will not be disturbed on appeal unless an abuse thereof is shown. Porter v Porter (1965) 246 SC 332, 143 SE2d 619. Long v Long (1966) 247 SC 250, 146 SE2d 873. Spence v Spence (1973) 260 SC 526, 197 SE2d 683.

Remand was warranted for family court to determine whether former husband was entitled to attorney fees by making specific findings of fact upon its decision on former wife’s request for modification of her periodic alimony obligation to husband, where Supreme Court determined that wife failed to satisfy her burden to show that former husband resided with another woman for at least 90 days, as required to warrant modification, and, thus, reversed Court of Appeals’ decision affirming family court’s termination of alimony on that basis. McKinney v. Pedery (S.C. 2015) 413 S.C. 475, 776 S.E.2d 566. Divorce 1324

Remand was warranted for family court to determine whether former wife’s alimony obligation to husband should have been reduced or terminated on basis of change in circumstances in her health and income, where court did not find that wife’s changed circumstances supported its decision terminating alimony but merely made factual findings summarizing testimony presented regarding economic downturn that affected wife’s change income and wife’s health problems. McKinney v. Pedery (S.C. 2015) 413 S.C. 475, 776 S.E.2d 566. Divorce 1322(1)

Remand was warranted for family court to determine whether divorced husband was entitled to attorney fees and costs in dissolution of marriage proceedings; there was no indication that family court considered appropriate factors in deciding whether to make an award of attorney fees and costs, such as abilities of parties to pay, financial conditions of parties, and effect award would have on parties. Ricigliano v. Ricigliano (S.C.App. 2015) 413 S.C. 319, 775 S.E.2d 701. Divorce 1324

The inartful use of an abuse of discretion deferential standard of review merely represents the appellate courts’ effort to incorporate the two sound principles underlying the proper review of an equity case; those two principles are the superior position of the trial judge to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the trial court. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Appeal and Error 946

Remand to allow the trial court to reconsider its award of attorney fees to former husband was required, where the trial court found former wife was in willful contempt of court due to her failure to comply with the court’s visitation order, and the Court of Appeals reversed the contempt finding. Ward v. Washington (S.C.App. 2013) 406 S.C. 249, 750 S.E.2d 105. Child Custody 924

The two‑issue rule, under which, when a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case, did not bar consideration of ex‑husband’s argument that the family court erred in terminating ex‑wife’s alimony obligation on the grounds husband continuously cohabitated with his paramour for 90 or more consecutive days, even though ex‑wife’s decrease in income and health issues could constitute a substantial change in circumstances, where the family court did not rule on those issues, and limited its findings to whether husband and his paramour continuously cohabitated. McKinney v. Pedery (S.C.App. 2013) 406 S.C. 1, 749 S.E.2d 119, rehearing denied, reversed 413 S.C. 475, 776 S.E.2d 566. Courts 99(5)

Record on appeal was insufficient for Court of Appeals to grant wife any relief on family court’s error in refusing to address merits of whether husband was required to continue to provide health insurance to wife through his employer upon divorce, where nothing in the record indicated that husband’s insurance carrier would have allowed him to carry wife on his health insurance plan after divorce became final. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Divorce 1235

Remand was required in divorce action to allow the family court to reconsider wife’s request for attorney fees, where the Supreme Court reversed the family court’s judgment that held wife was barred from receiving alimony due to adultery. Eason v. Eason (S.C. 2009) 384 S.C. 473, 682 S.E.2d 804. Divorce 1322(1); Divorce 1324

The inquiry on appeal regarding alimony is not whether the family court gave the same weight to particular factors as appellate court would have; rather, the inquiry extends only to whether the family court abused its considerable discretion in assigning weight to the applicable factors. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 1281(1)

An award of alimony rests within the sound discretion of the family court and will not be disturbed absent an abuse of discretion. Davis v. Davis (S.C.App. 2006) 372 S.C. 64, 641 S.E.2d 446, rehearing denied. Divorce 565(1); Divorce 1281(1)

Remand was required to determine wife’s entitlement to alimony; family court only cited husband’s ability to pay and wife’s need in awarding alimony, it was unclear upon which of wife’s financial declarations court relied in determining wife’s need, it did not appear court considered that wife’s expenses nearly doubled from time between temporary and final hearing, it was also unclear whether court considered wife’s substantial nonmarital assets in determining her need, and family court’s order did not state how it arrived at wife’s imputed income nor did it consider fact that husband’s testimony revealed that he incurred approximately $49,000 to $50,000 worth of debt since couple separated. Fuller v. Fuller (S.C.App. 2006) 370 S.C. 538, 636 S.E.2d 636, rehearing denied. Divorce 1322(1)

The decision to award alimony rests within the sound discretion of the family court and will not be disturbed on appeal absent an abuse of discretion. Avery v. Avery (S.C.App. 2006) 370 S.C. 304, 634 S.E.2d 668. Divorce 565(1); Divorce 1281(1)

While it was preferable for the family court judge to address statutory alimony factors, the deficiency did not require vacation of trial court’s order denying wife’s request to require husband to secure his alimony support obligation with a life insurance policy; family court made findings regarding the health condition of each party, wife’s earnings and benefits from employment, and husband’s longstanding practice of making his alimony payments in a timely manner. Wooten v. Wooten (S.C.App. 2003) 356 S.C. 473, 589 S.E.2d 769, rehearing denied, certiorari granted, affirmed in part, reversed in part 364 S.C. 532, 615 S.E.2d 98. Divorce 1314

Former husband waived on appeal claim that former wife’s request to admit value of husband’s stock in investment company was not properly served upon him in accordance with Hague Service Convention treaty pertaining to service of court documents abroad, where issue was never raised in trial court. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 1216

When an order from the family court is issued in violation of rule requiring trial court in domestic relations case to set forth the specific findings of fact and conclusions of law to support its decision, the appellate court may remand the matter to the trial court or, where the record is sufficient, make its own findings of fact in accordance with the preponderance of the evidence. Bowers v. Bowers (S.C.App. 2002) 349 S.C. 85, 561 S.E.2d 610, rehearing denied, certiorari denied. Divorce 1322(1)

In appeals from family court, appellate court has authority to find facts in accordance with its own view of preponderance of the evidence; however, this broad scope of review does not require appellate court to disregard findings of family court, nor is appellate court required to ignore the fact that trial judge, who saw and heard witnesses, was in better position to evaluate their credibility and assign comparative weight to their testimony. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 184(1); Divorce 184(7); Divorce 184(10)

Appellate court’s inquiry on appeal is not whether trial court gave the same weight to particular factors as appellate court would have in making alimony award, but, rather, whether trial court abused its discretion in assigning weight to applicable statutory factors. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 1281(1)

Husband’s claim that trial court erred in awarding wife full amount of her attorney fees was not preserved for appeal since husband asserted his claim for the first time on appeal. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 1216

Award of alimony rests within the sound discretion of trial court and will not be disturbed on appeal absent abuse of discretion. Allen v. Allen (S.C.App. 2001) 347 S.C. 177, 554 S.E.2d 421. Divorce 565(1); Divorce 1281(1)

Award of attorney fees and costs in divorce cases is matter within sound discretion of trial judge; award will not be reversed on appeal absent abuse of discretion. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1131; Divorce 1282

The decision to grant or deny alimony rests within the sound discretion of the Family Court, and the court’s ruling will not be disturbed on appeal absent an abuse of discretion. Matter of Bennett (S.C. 1996) 321 S.C. 485, 469 S.E.2d 608.

The trial court did not fail to consider the factors enumerated in Section 20‑3‑130, although it placed emphasis upon the husband’s fault in the breakup of the marriage as well as his action in transmitting herpes to the wife prior to the marriage, where (1) the husband’s conduct, originally premarital in nature, extended to the marriage when he had continued to lie to the wife about his own medical condition, and she proceeded to marry him in ignorance of the truth, (2) the husband admitted that his conduct, including his deception, contributed to the breakup of the marriage, and (3) while it would have been preferable for the trial judge to discuss the other alimony factors he considered, his statement that he based the award on Section 20‑3‑130 was sufficient, given the record before the Court of Appeals. Doe v. Doe (S.C.App. 1995) 319 S.C. 151, 459 S.E.2d 892, rehearing denied.

Exception alleging that trial court abused its discretion when it failed to award wife “attorney’s fees, costs or other disbursements” would not be liberally construed to include allegation of error regarding periodic alimony; every ground of appeal ought to be so distinctly stated that court may at once seek point upon which it is to decide without having to grope in dark. Hudson v. Hudson (S.C.App. 1987) 294 S.C. 166, 363 S.E.2d 387.

In divorce cases, Court of Appeals of South Carolina has jurisdiction to find facts in accordance with its own view of preponderance of evidence. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68. Divorce 184(6.1)

Issues of alimony and property settlement were remanded to trial court for determination where effect of wife taking no exception to master’s recommendation that both parties be denied divorce, and wife be denied alimony and property settlement but be allowed to live apart from husband, while husband excepted only to recommendation denying divorce, was that issues of alimony and property settlement were not specifically presented to judge when he subsequently found husband entitled to divorce. Fort v. Fort (S.C. 1978) 270 S.C. 255, 241 S.E.2d 891.

Failure to file conditional exception, submitting that if judge found husband entitled to divorce against master’s recommendation he should order alimony and property settlement, should not bar wife from having issues considered, where issues were definitely raised in pleadings and prayer for relief. Fort v. Fort (S.C. 1978) 270 S.C. 255, 241 S.E.2d 891.

Where the Supreme Court found an award of alimony to be excessive, it would remand the case to the trial court to reconsider its contempt judgment against a husband for failure to pay alimony. Trammell v. Trammell (S.C. 1977) 268 S.C. 144, 232 S.E.2d 339.

Where the divorce decree eliminated the right of the wife and child to continue to reside in the family home, case would be remanded for consideration of whether the alimony and support award was adequate to allow the wife to secure other living quarters. Morris v. Morris (S.C. 1977) 268 S.C. 104, 232 S.E.2d 326.

The exercise of such a discretion will not be disturbed on appeal unless an abuse thereof is shown. Herbert v. Herbert (S.C. 1973) 260 S.C. 86, 194 S.E.2d 238.

The amount of alimony and child support cannot be determined by any mathematical formula but is a matter resting within the sound discretion of the trial judge, and the amount awarded will not be disturbed on appeal unless an abuse of discretion is shown upon a view of all the circumstances of the particular case. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704. Child Support 9; Child Support 556(1); Divorce 565(2); Divorce 1281(1)

**SECTION 20‑3‑135.** Spousal support obligation when marriage declared void due to fraud.

A marriage that would otherwise be lawful that is declared void ab initio by reason of fraud, does not relieve the party committing the fraud of the duty to provide spousal support that would have otherwise existed pursuant to Section 20‑3‑130.

HISTORY: 2008 Act No. 291, Section 1, eff June 11, 2008.

Library References

Marriage 62.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 70, 86 to 87.

**SECTION 20‑3‑140.** Allowance of alimony and suit money in suits for separate support and maintenance and similar actions.

In all actions for separate support and maintenance, legal separation, or other marital litigation between the parties, allowances of alimony and suit money and allowances of alimony and suit money pendente lite shall be made according to the principles controlling such allowance and actions for divorce a vinculo matrimonii.

HISTORY: 1962 Code Section 20‑113.1; 1952 Code Section 20‑113.1; 1951 (47) 436; 1979 Act No. 71 Section 4B.

Library References

Divorce 530 to 552, 558 to 638, 1130 to 1181.

Westlaw Topic No. 134.

RESEARCH REFERENCES

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S.C. Jur. Attorney Fees Section 42, Alimony, Separate Support and Maintenance.

S.C. Jur. Costs Section 2, Definitions.

S.C. Jur. Costs Section 32, Experts.

S.C. Jur. Divorce Section 45, Factors to be Considered.

S.C. Jur. Divorce Section 72, Attorney Fees and Costs.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, domestic law. 41 S.C. L. Rev. 59 (Autumn 1989).

NOTES OF DECISIONS

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Attorney fees 4

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1. In general

Wife made prima facie showing of entitlement to alimony and suit money pendente lite; wife offered affidavits concerning husband’s habitual use of alcohol, and wife submitted financial statements reflecting income less than one‑quarter of husband’s, and declaration indicating that since separation from husband, wife had monthly deficit of $2,000. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1170(6)

After holding wife’s request for alimony and suit money pendente lite in abeyance, family court could revisit issue in connection with wife’s renewed plea based on changed circumstances. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1170(2)

Family court’s error in concluding it could not revisit issue of alimony and suit money pendente lite in connection with wife’s renewed plea based on changed circumstances was harmless; court required husband to pay substantial medical expenses as temporary support, and wife failed to show any prejudice resulting from court’s error, as she was able to maintain herself and defend divorce proceeding. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 1298; Divorce 1299

Denying wife alimony in her action for separate maintenance and support was not abuse of discretion, where wife had bachelor’s degree in business administration and two associate’s degrees, had been in the workplace for many years and had held responsible positions, had substantial assets as she left marriage, and was considerably younger than husband. Hatfield v. Hatfield (S.C.App. 1997) 327 S.C. 360, 489 S.E.2d 212, rehearing denied, certiorari denied. Divorce 574; Divorce 576; Divorce 583; Marriage And Cohabitation 1213

In an action for separate maintenance and support, an award of alimony is to be made according to the principles controlling in divorce actions. The factors to be considered in awarding alimony are: (1) the financial condition of the husband and the needs of the wife; (2) the age and health of the parties, their respective earning capacity, and their individual wealth; (3) the wife’s contributions to the accumulation of the parties’ joint wealth; (4) the conduct of the parties; (5) the respective necessities of the parties; (6) the standard of living of the wife at the time of the divorce; (7) the duration of the marriage; (8) the ability of the husband to pay alimony; and (9) the actual income of the parties. Rivenbark v. Rivenbark (S.C. 1990) 301 S.C. 175, 391 S.E.2d 232.

In an action for separate maintenance and support, the trial court abused its discretion in failing to award alimony to the wife where the action ended a 30‑year marriage, the couple enjoyed a “moderate to upper middle class” standard of living at the time of separation, the husband’s net monthly income was approximately $2,250 while the wife’s gross monthly income was only $900, the husband had savings plans and would receive retirement income from 2 sources while the wife had no savings and no retirement, and while the wife apparently did not contribute a great amount monetarily, she did contribute to the marriage as a homemaker and caretaker of 3 children. The trial court’s finding that the wife was not entitled to any payment because she had used abusive language, and had threatened, cursed, berated and embarrassed the husband, thereby adding to the marital discord and rendering further life together impossible, was not supported by the evidence, even though there was some testimony to this effect, where an equal amount of testimony was presented regarding the husband’s abusive nature and drinking habits. Rivenbark v. Rivenbark (S.C. 1990) 301 S.C. 175, 391 S.E.2d 232.

While an award of alimony pendente lite is within the discretion of the family court judge, the power should not be exercised unless the wife establishes a prima facie right thereto. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883.

Once a husband had proved the wife’s adultery at a merits hearing, the wife should be required to repay the amount she has received in pendente lite support. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883. Divorce 535

Issues litigated and decided in a separate maintenance action may not be relitigated in a subsequent divorce proceeding. However, where the order for separate maintenance merely recited the parties’ agreement and made no ruling as to the fairness of its terms, the trial judge in the divorce action had full authority to make an independent award of spousal support and no showing of changed circumstances was required. Clayton v. Clayton (S.C. 1985) 287 S.C. 308, 338 S.E.2d 326.

Wife may have division of property matter determined in action for separate support and maintenance where she has substantial interest in property involved, since, although traditionally lump sum awards of alimony in actions for separate support and maintenance are not favored, they will be ordered where consented to or in exceptional circumstances. Gill v. Gill (S.C. 1977) 269 S.C. 337, 237 S.E.2d 382.

Where evidence failed to support granting husband divorce on grounds of physical cruelty, wife who sought separation was entitled to reasonable periodic support, as she had done nothing to forfeit right of maintenance. Gill v. Gill (S.C. 1977) 269 S.C. 337, 237 S.E.2d 382.

In action to enforce alimony, trial court erred in entering factual findings for divorced wife, when it did not permit husband’s testimony to establish justification for a reduction or termination of alimony payments. Rice v. Rice (S.C. 1977) 268 S.C. 453, 234 S.E.2d 777.

Quoted in Machado v. Machado (S.C. 1951) 220 S.C. 90, 66 S.E.2d 629.

2. Divorce a mensa et thoro, etc.

The family court committed no error in refusing to grant a wife a legal separation since there is neither a constitutional provision nor a statute that states the grounds for a limited divorce and, unlike an action for separate maintenance or alimony, an action for legal separation cannot be maintained in South Carolina in the absence of constitutional or statutory authority. Section 20‑3‑140, the statute pursuant to which the wife brought the action and which authorizes the award of alimony in actions for legal separation, does not provide statutory authority for a court to grant a limited divorce. Neither does Section 20‑7‑420(2), which confers jurisdiction upon the family court to hear and determine actions for legal separation, provide such authority. Ariail v. Ariail (S.C.App. 1988) 295 S.C. 486, 369 S.E.2d 146.

Provisions of Code 1962 Sections 20‑101, 20‑105 [Code 1976 Sections 20‑3‑10, 20‑3‑50] only authorize a cause of action for dissolution of the bonds of matrimony and not a divorce a mensa et thoro. Nocher v. Nocher (S.C. 1977) 268 S.C. 503, 234 S.E.2d 884. Divorce 155

A “divorce a mensa et thoro” is distinguishable from proceedings for “separate support and maintenance” in that an action for separate maintenance does not necessarily authorize the wife to live apart from her husband, while a limited divorce does. Nocher v. Nocher (S.C. 1977) 268 S.C. 503, 234 S.E.2d 884.

In the absence of constitutional or statutory authority, there is no power to award a limited divorce. Nocher v. Nocher (S.C. 1977) 268 S.C. 503, 234 S.E.2d 884. Divorce 155

Code 1962 Section 20‑113.1 [Code 1976 Section 20‑3‑140] does not authorize a cause of action for divorce a mensa et thoro. Nocher v. Nocher (S.C. 1977) 268 S.C. 503, 234 S.E.2d 884.

Although there is no authority for a divorce a mensa et thoro, relief given in such proceedings which may have been given in separate maintenance and support proceedings may remain effective. Nocher v. Nocher (S.C. 1977) 268 S.C. 503, 234 S.E.2d 884.

Divorce a mensa et thoro is judicial decree terminating obligation and right of cohabitation, but does not affect marital status, parties remaining husband and wife though authorized to live in separation. Brewer v. Brewer (S.C. 1963) 242 S.C. 9, 129 S.E.2d 736.

Existence of cause of action for divorce a mensa et thoro in this State. Brewer v. Brewer (S.C. 1963) 242 S.C. 9, 129 S.E.2d 736.

Statutory power of court concerning allowance of permanent alimony is same in decreeing divorce a mensa et thoro as in decreeing divorce a vinculo matrimonii. Brewer v. Brewer (S.C. 1963) 242 S.C. 9, 129 S.E.2d 736. Divorce 561

3. Practice and procedure

Unappealed order of judge denying former husband’s motion to quash bench warrant issued for noncompliance with temporary order in divorce proceeding, requiring husband to make monthly pro rata deposits in escrow from sale of shares of bank in which he owned interest, on ground that court lacked jurisdiction was law of the case, and thus, judge hearing husband’s second motion to quash could not overrule prior unappealed order. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Courts 99(6)

4. Attorney fees

Family court, which took action regarding child support and child custody, had jurisdiction to decide wife was entitled to attorney fees on the issues of child support and child custody; while parties unambiguously waived their right to attorney fees regarding a majority of the issues, they did not waive their right to attorney fees as they pertained to child support and child custody. Meehan v. Meehan (S.C.App. 2014) 407 S.C. 471, 756 S.E.2d 398. Child Custody 943; Child Support 603

Award of attorney fees to former wife’s counsel in connection with former husband’s motion to quash bench warrant issued for noncompliance with temporary order in divorce proceeding, requiring husband to make monthly pro rata deposits in escrow from sale of shares of bank in which he owned interest, was not excessive, where counsel submitted affidavits of fees and costs which exceeded amount awarded, and trial court emphasized that husband had brought motion twice which forced wife to expend amounts in fees and costs. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 1168(2)

It was not error for the family court to refuse to award a wife attorney fees for her attorney’s services in the bankruptcy court to protect the attorney fees awarded by the family court in its divorce decree. Although a family court may award attorney fees in action for divorce, separate support and maintenance, and other marital litigation between the parties, a family court is not authorized to award attorney fees for services rendered a spouse in other litigation arising out of the marital troubles. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614.

Family court’s award of $500 as attorney’s fees is so inadequate as to warrant reversal in view of amount of time necessarily devoted to investigation and preparation of case, appearance at 3 different hearings, and preparation of trial briefs, together with necessary expenditures to locate child and father and to bring witnesses from West Virginia for hearings in South Carolina. Marks v. Marks (S.C.App. 1984) 281 S.C. 316, 315 S.E.2d 158. Child Custody 949

Award of $200 attorney’s fee to wife in unsuccessful action by wife to obtain divorce, where husband obtained order of separate maintenance, was so inadequate as to require reversal in view of amount of time devoted to investigation and preparation of case, lengthy court hearings, and beneficial results accomplished. Wood v. Wood (S.C. 1977) 269 S.C. 600, 239 S.E.2d 315.

On the question of attorney’s fees, the wife’s claim was well‑founded, especially in the light of the disparity between the financial situation of the husband and the wife. Lowe v. Lowe (S.C. 1971) 256 S.C. 243, 182 S.E.2d 75.

5. Expert witness fees

There was no error in the family court’s refusal to award a wife expert witness fees as suit money where (1) the wife related her claim for expert witness fees only to her demand for attorney fees resulting from having to protect, in a bankruptcy court, the attorney fees awarded her by the family court, (2) the family court found the witness unqualified to offer an expert opinion on bankruptcy litigation, and (3) attorney fees incurred in protecting, in bankruptcy court, an award of attorney fees made by the family court are unrecoverable as costs in the family court. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614. Divorce 1166

6. Contempt

Continued viability of bench warrant issued by trial court against former husband for failure to make payments under temporary order in divorce proceeding, requiring husband to make monthly pro rata deposits in escrow from sale of shares of bank in which he owned interest, was matter within court’s authority to enforce its unstayed contempt order, and thus, court had jurisdiction to decide merits of husband’s motion to quash contempt order. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 1112

Former husband’s deposit of funds with trial court did not purge his contempt for noncompliance with temporary order in divorce proceeding, requiring husband to make monthly pro rata deposits in escrow from sale of shares of bank in which he owned interest, and thus, husband was not entitled to have bench warrant quashed, where order specifically directed husband to pay outstanding money directly to wife, not deposit funds, husband never contested original order that he pay wife from the proceeds of sale of stock, husband remained obligated to make payments to wife, and deposit of uncontested funds did nothing but delay payment of funds due. Bakala v. Bakala (S.C. 2003) 352 S.C. 612, 576 S.E.2d 156. Divorce 1109; Divorce 1121

7. Review

Issues of alimony and property settlement were remanded to trial court for determination where effect of wife taking no exception to master’s recommendation that both parties be denied divorce, and wife be denied alimony and property settlement but be allowed to live apart from husband, while husband excepted only to recommendation denying divorce, was that issues of alimony and property settlement were not specifically presented to judge when he subsequently found husband entitled to divorce. Fort v. Fort (S.C. 1978) 270 S.C. 255, 241 S.E.2d 891.

**SECTION 20‑3‑145.** Attorney fee to constitute lien; payment to estate.

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.

HISTORY: 1979 Act No. 71 Section 7.

CROSS REFERENCES

Petition to enforce an award of an attorney fee, see Section 20‑3‑125.

Relationship between this section and provisions relative to proceedings for equitable apportionment of marital property, see Section 20‑3‑670.

Library References

Divorce 1177 to 1179.

Westlaw Topic No. 134.

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S.C. Jur. Divorce Section 72, Attorney Fees and Costs.

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Annual Survey of South Carolina Law: Domestic Relations; Attorneys’ Fees. 32 S.C. L. Rev. 111.

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

1. In general

An attorney’s conduct constituted misconduct where she filed a lien for unpaid fees against her client’s property for services incurred in a dissolution of marriage action even though no attorney’s fees had been awarded pursuant to Section 20‑3‑145. Matter of Jennings (S.C. 1996) 321 S.C. 440, 468 S.E.2d 869, rehearing denied.

A lien filed by an attorney against a client for attorney’s fees under Section 20‑3‑145 was invalid where, in the action on which the fees were based, there was no request that the client be ordered to pay her own fees, and the Family Court simply declared that each party would be responsible for his or her own fees. Huff v. Jennings (S.C.App. 1995) 319 S.C. 142, 459 S.E.2d 886, rehearing denied, appeal dismissed. Attorney And Client 179

A former husband had standing to sue his ex‑wife’s attorney for slander of title where the property on which the attorney placed a lien for attorney’s fees was owned by the husband and the wife at the time the lien was recorded, and the lien specifically stated it was placed against the property of both the husband and wife; while it may be true that, had the lien been foreclosed and the property sold, the lien could have been satisfied only through the wife’s interest in the property, the lien nonetheless attached to the property as whole and affected the value of the property as a whole. Huff v. Jennings (S.C.App. 1995) 319 S.C. 142, 459 S.E.2d 886, rehearing denied, appeal dismissed.

Historically, an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal and, until then, it is more in the nature of a disbursement. Woodside v. Woodside (S.C.App. 1986) 290 S.C. 366, 350 S.E.2d 407.

**SECTION 20‑3‑150.** Segregation of allowance between spouse and children; effect of remarriage of spouse.

If the court awards the custody of the children to the spouse receiving alimony the court, by its decree, unless good cause to the contrary be shown, shall allocate any award for permanent alimony and support between the supported spouse and the children and upon the remarriage or continued cohabitation of the supported spouse the amount fixed in the decree for his or her support shall cease, and no further alimony payments may be required from the supporting spouse.

For purposes of this section and unless otherwise agreed to in writing by the parties, “continued cohabitation” means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety‑day requirement.

HISTORY: 1962 Code Section 20‑114; 1952 Code Section 20‑114; 1949 (46) 216; 1979 Act No. 71 Section 8; 2002 Act No. 328, Section 2, eff June 18, 2002.

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Child Support 223.

Divorce 609(2), 613.

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C.J.S. Parent and Child Section 229.

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S.C. Jur. Divorce Section 47, Lump Sum Alimony or Alimony in Gross.

S.C. Jur. Divorce Section 45.1, Change in Alimony.

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Alimony terminated for unmarried cohabitation. 39 S.C. L. Rev. 76, Autumn 1987.

Annual Survey of South Carolina Law: Domestic Relations; Removal of Gender‑Based Classifications. 32 S.C. L. Rev. 105.

NOTES OF DECISIONS

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Construction and application 2

Effect of remarriage 4

Modification 6

1. In general

An alimony award given for the support of a wife and her children is an award to the group as a family unit and cannot automatically be prorated among the wife and children upon the happening of some contingent event regarding the children, except as specifically provided in the decree. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Child Support 8; Divorce 559

Since the settlement agreement incorporated into the divorce decree was ambiguous as to whether the parties intended that the former wife was to receive periodic alimony or alimony in gross, the Family Court erred in precluding the former wife’s testimony relative to the intention of the parties at the time they entered into the agreement, where the former wife did not seek to contradict or vary the terms of the agreement by parol evidence, but rather sought only to apprise the court of its terms. Mattox v. Cassady (S.C.App. 1986) 289 S.C. 57, 344 S.E.2d 620.

Property settlement agreements which call for installment payments, and decrees incorporating them, generally cannot thereafter be changed. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

2. Construction and application

Evidence was sufficient to support modification of alimony upward from less than $700 per month to $1200 on basis of parties’ changed circumstances; husband was earning $100,000 per year over his retirement annuity, not the $38,000 per year without retirement income when parties last appeared, his income exceeded his expenses by more than $4,000, and he intentionally filed false financial declarations with the court, while wife was unemployed, suffered from multiple ailments, had no health insurance, and had become homeless. Fiddie v. Fiddie (S.C.App. 2009) 384 S.C. 120, 681 S.E.2d 42, rehearing denied. Divorce 632(3)

Amendment to alimony statute allowing for termination of alimony when supported spouse cohabits with another in relationship tantamount to marriage did not apply retroactively to allow for termination of husband’s alimony obligation pursuant to separation agreement that allowed modification of terms only by mutual agreement of parties. Degenhart v. Burriss (S.C.App. 2004) 360 S.C. 497, 602 S.E.2d 96. Divorce 510(2)

3. Allocation

Amount of unallocated support awarded to former wife was alimony, and not subject to reduction by a portion attributable to child support when parties’ child graduated from college, where New York consent order subsequent to the divorce decree changed former husband’s support from child support and alimony to unallocated support, South Carolina enforcement order continued that characterization, former husband’s time to appeal underlying orders had long passed, neither order provided for automatic proration based upon the contingent event of the parties’ child’s emancipation, and former husband had been deducting the amounts paid on his income taxes as alimony. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Divorce 627(1)

A trial court did not abuse its discretion in failing to allocate the child support among the parties’ 3 children as there is no rule requiring a court to allocate child support among dependent children not in the parent’s custody. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21. Child Support 140(2)

Under Section 20‑3‑150, an award of unallocated alimony and support payments requires a finding of good cause to make this award rather than allocated awards, and further requires the finding to be incorporated in the decree. Aycock v. Aycock (S.C.App. 1984) 284 S.C. 193, 324 S.E.2d 650.

The trial court properly ordered a consolidated award of support for a wife and her three minor children in the amount of $1,100 per month since shifting tax liability from the supporting spouse to the supported spouse, which permits the supported spouse to net tangibly more child support and alimony due to the decrease in the supporting spouse’s tax burden, constituted good cause for non‑allocation of child support and alimony. Delaney v. Delaney (S.C. 1982) 278 S.C. 55, 293 S.E.2d 304. Child Support 141; Divorce 579

4. Effect of remarriage

Wife’s relationship with another man was not tantamount to marriage, as grounds to terminate alimony under alimony statute; wife and man held themselves out to be friends rather than husband and wife, though they admitted relations had occurred, their shared living arrangement was temporary, and wife also resided with a sister and another friend. Fiddie v. Fiddie (S.C.App. 2009) 384 S.C. 120, 681 S.E.2d 42, rehearing denied. Divorce 247

Since an award of periodic alimony normally ceases upon remarriage of the supported spouse, it was the supported spouse’s responsibility to include a provision in the agreement about the effect of her remarriage on the support payments. Medlin v. King (S.C.App. 1988) 294 S.C. 406, 365 S.E.2d 36. Divorce 928

An agreement incorporated into a divorce decree constituted a property settlement, and not alimony, and former husband’s obligation thereunder did not cease upon the remarriage of the former wife. Jennings v. Hagan (S.C. 1986) 288 S.C. 393, 343 S.E.2d 25.

Divorced husband’s obligation to pay court‑awarded alimony terminates upon wife’s remarriage. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Where an agreement is contractual in nature, and is intended as a final and binding settlement of the parties’ rights and duties with respect to support and property, there can be no modification of a husband’s obligation based on a remarriage of his former wife or a change of circumstances. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Remarriage of a wife of itself does not necessarily call for modification of an agreement. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776. Divorce 943(1)

A contract which provides that the payments shall not cease if the wife remarries obviously requires that payments continue after her marriage. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Remarriage of a divorced wife is not of itself ground for reducing the amount required by the divorce decree to be paid to her by her former husband for the support of their minor child, nor does the betterment of a divorced wife’s financial condition as the result of her remarriage require such modification of the decree where there is no proof of assumption by the second husband of obligation to support the child or children of the first marriage. Sanders v. Sanders (S.C. 1956) 230 S.C. 263, 95 S.E.2d 440.

5. Cohabitation

The family court can terminate alimony if it determines the supported spouse was cohabiting with someone in a romantic relationship for less than ninety days if the pair separated periodically for purposes of circumventing the ninety‑day requirement. Biggins v. Burdette (S.C.App. 2011) 392 S.C. 241, 708 S.E.2d 237, certiorari granted, certiorari dismissed as improvidently granted 401 S.C. 362, 737 S.E.2d 502. Divorce 609(2)

Evidence was insufficient to establish that former wife had continually cohabited with her boyfriend, and thus former husband was not entitled to termination of his alimony obligation, even though observations of private investigators confirmed that former wife and boyfriend were spending the night together at former wife’s home on a recurring basis; former wife and her boyfriend testified that they did not live together and did not spent 90 consecutive nights together, and that boyfriend maintained his own residence and kept most of his personal items there, and boyfriend’s roommate testified that former wife “kicked [boyfriend] out” when she had visitors. Biggins v. Burdette (S.C.App. 2011) 392 S.C. 241, 708 S.E.2d 237, certiorari granted, certiorari dismissed as improvidently granted 401 S.C. 362, 737 S.E.2d 502. Divorce 610

Evidence was sufficient to support finding that wife did not stay with her sister and friend in an attempt to circumvent the continued cohabitation statute’s provision of 90 days of continuous cohabitation as grounds for termination of alimony, by her staying a part of each month with her sister; there was evidence wife was unaware of the statute until the litigation began, and thus also unaware of the potential consequences of cohabitating with another person. Fiddie v. Fiddie (S.C.App. 2009) 384 S.C. 120, 681 S.E.2d 42, rehearing denied. Divorce 609(2)

Evidence was sufficient to support finding that wife did not meet the statutory grounds of 90 days of continuous cohabitation for termination of alimony, under the continued cohabitation statute; there was uncontroverted evidence that wife stayed with at least three people other than male companion every month in question. Fiddie v. Fiddie (S.C.App. 2009) 384 S.C. 120, 681 S.E.2d 42, rehearing denied. Divorce 247

Because ex‑wife and her boyfriend did not live together under the same roof, ex‑wife’s relationship with her boyfriend did not amount to “continued cohabitation” so as to warrant termination of ex‑husband’s ongoing alimony obligation. Strickland v. Strickland (S.C. 2007) 375 S.C. 76, 650 S.E.2d 465. Divorce 609(2)

6. Modification

A substantial element of determining whether a relationship is tantamount to marriage, for the purposes of modifying an alimony obligation, is the cohabitation of the parties. Degenhart v. Burriss (S.C.App. 2004) 360 S.C. 497, 602 S.E.2d 96. Divorce 627(13)

An award of periodic payments of alimony may be modified by the court upon a showing of altered circumstances. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776. Divorce 627(3)

If the divorce court awards alimony in gross, or in a lump sum, without reserving the power to amend, the court cannot modify the provision, even where it is payable in installments. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Where an award of alimony is based upon, or refers to, or incorporates, an agreement entered into by the parties, the court may or may not be empowered to modify such agreement or award at a later date. Whether such agreement or award may subsequently be modified is to be determined by attempting to ascertain the intent of the parties upon their execution of the agreement. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If a mere agreement for alimony or support is involved, the court as a rule may subsequently modify it. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If the parties intended the “wife’s alimony” section of an agreement to be mere alimony, then there may be some basis for its modification. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If a true property settlement agreement is involved, it ordinarily may not thereafter be modified by the court. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If the parties intended the “wife’s alimony” section of the agreement to be an integral and inseparable part of a property settlement agreement, then the court ordinarily cannot properly modify it. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

**SECTION 20‑3‑160.** Care, custody, and maintenance of children.

In any action for divorce from the bonds of matrimony the court may at any stage of the cause, or from time to time after final judgment, make such orders touching the care, custody and maintenance of the children of the marriage and what, if any, security shall be given for the same as from the circumstances of the parties and the nature of the case and the best spiritual as well as other interests of the children may be fit, equitable and just.

HISTORY: 1962 Code Section 20‑115; 1952 Code Section 20‑115; 1949 (46) 216.

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C.J.S. Infants Sections 10 to 11.

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S.C. Jur. Children and Families Section 153, Jurisdiction.

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S.C. Jur. Children and Families Section 162, Prospective Modification of Child Support.

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Attorney General’s Opinions

Absent precedential authority in South Carolina, where a divorce decree granted prior to February 6, 1975, the date of the lowering of the age of majority in South Carolina from 21 to 18, provides that a father shall make child support payments “until child reaches his majority,” and subsequent to February 6, 1975, said child attains the age of 18, then the father’s liability for child support payments under the divorce decree terminates upon the child’s 18th birthday based on the present majority view. If, however, the divorce decree is based on a contractual agreement between the parties and provides for child support payments “until the child reaches the age of 21,” then the father’s liability for child support payments continues until the child’s 21st birthday, in spite of the subsequent lowering of the age of majority, based on the present majority view; in order to determine whether or not a child has become “self‑supporting,” it is necessary to look at the facts of the individual’s case. There is no specific legal definition of the term. 1975‑76 Op Atty Gen, No. 4446, p. 305 (September 15, 1976) 1976 WL 23063.

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1. In general

Applied in Machado v Machado (1951) 220 SC 90, 66 SE2d 629, commented on in 4 SCLQ 318 (1951). Wolfe v Wolfe (1951) 220 SC 437, 68 SE2d 348. Poliakoff v Poliakoff (1952) 221 SC 391, 70 SE2d 625. Dobson v Atkinson (1957) 232 SC 12, 100 SE2d 531.

Child is entitled to live and be supported in a lifestyle commensurate with the current income of his or her parents. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Child Support 100

Family court is given wide latitude to take whatever actions it deems necessary in best interest of child. Watson v. Poole (S.C.App. 1997) 329 S.C. 232, 495 S.E.2d 236, rehearing denied, certiorari denied. Child Custody 76; Child Custody 178

The husband was not required to pay alimony for expenses incurred by the wife for the care of her child by a previous marriage, despite the wife’s assertion that such expense would be necessary to enable her to work. Conklin v. Conklin (S.C.App. 1992) 308 S.C. 84, 417 S.E.2d 94, rehearing denied. Marriage And Cohabitation 1216

The provisions of a divorce decree directing the parties to consult with each other on “important matters of health, education and welfare affecting the minor children” conferred a mutual obligation on the parties to talk over and discuss such matters with each other, but the provision did not require the mother to obtain the father’s permission or approval before exercising her authority as sole custodial parent. Weil v. Weil (S.C.App. 1989) 299 S.C. 84, 382 S.E.2d 471.

Although both parents are obligated to support their child under Section 20‑7‑40, financial assistance is just one aspect of a support obligation. Another aspect of support includes the services parents provide for a child. Thus, a family court did not abuse its discretion in failing to require a custodial parent to contribute to the support of the minor child since the custodial parent has the responsibility of performing the daily services the child requires such as preparing meals, helping with homework and washing clothes. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178.

A trial court did not abuse its discretion in failing to allocate the child support among the parties’ 3 children as there is no rule requiring a court to allocate child support among dependent children not in the parent’s custody. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21. Child Support 140(2)

Under Section 20‑3‑160, the trial judge has the authority to make any orders concerning the maintenance of a child, as the circumstances of the parties, the nature of the case, and the best interests of the child require. Barnett v. Barnett (S.C.App. 1984) 282 S.C. 343, 318 S.E.2d 570.

Cited in Bennett v. Bennett (S.C. 1973) 260 S.C. 605, 198 S.E.2d 114.

An action for divorce brings with it the issue of child custody. Knopf v. Knopf (S.C. 1966) 247 S.C. 378, 147 S.E.2d 638.

That the issue of child custody in divorce cases is incident and subsidiary to the principal issue of divorce is suggested by this section [Code 1962 Section 20‑115]. Jackson v. Jackson (S.C. 1962) 241 S.C. 1, 126 S.E.2d 855.

The fact that the wife is guilty of adultery and is therefore precluded from receiving support does not affect the legal liability of a father to support his children. Lee v. Lee (S.C. 1961) 237 S.C. 532, 118 S.E.2d 171.

2. Constitutional issues

Ordering mother and her husband to allow visitation by maternal grandparents unduly interfered with due process rights in the care, custody, and control of the children; although the family court concluded that visitation would be in the children’s best interest as a stabilizing factor in their lives in light of mother’s perceived instability, no clear and convincing evidence indicated that mother or husband was unfit, and no compelling circumstances overcame the presumption that the decision by fit parents was in the children’s best interest. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 286; Child Custody 473; Constitutional Law 4396

3. Custody—In general

In custody matters, the father and mother are in parity as to entitlement to the custody of a child; when analyzing the right to custody as between a father and mother, equanimity is mandated. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 458

In determining custody, the family court must consider the character, fitness, attitude, and inclinations on the part of each parent as they impact the children. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 51

Because all relevant factors must be taken into consideration in determining custody of children at divorce, the court should also review the psychological, physical, environmental, spiritual, educational, medical, family, emotional and recreational aspects of each child’s life; in other words, the totality of circumstances unique to each particular case constitutes the only scale upon which the ultimate decision can be weighed. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 21

In child custody case, Family Court should consider how the custody decision will impact all areas of the child’s life, including physical, psychological, spiritual, educational, familial, emotional, and recreational aspects; additionally, Court must assess each party’s character, fitness, and attitude as they impact the child. Dixon v. Dixon (S.C.App. 1999) 336 S.C. 260, 519 S.E.2d 357. Child Custody 33

In making custody determinations when natural parent seeks to reclaim custody of his child from third party, court should consider: whether parent has proved that he is fit parent, able to properly care for child and provide good home; amount of contact, in form of visits, financial support or both, which parent had with child while child was in care of third party; circumstances under which temporary relinquishment occurred; and degree of attachment between child and temporary custodian. Harrison v. Ballington (S.C.App. 1998) 330 S.C. 298, 498 S.E.2d 680, rehearing denied, certiorari denied. Child Custody 68

The court should consider the following criteria in making custody determinations when a natural parent, who temporarily relinquished custody of his or her child, seeks to reclaim custody of the child: (1) the parent’s ability to properly care for the child and provide a good home; (2) the amount of contact, in the form of visits, financial support or both, which the parent had with the child while it was in the care of a third party; (3) the circumstances under which temporary relinquishment occurred; and (4) the degree of attachment between the child and the temporary custodian. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456. Child Custody 42; Child Custody 68

In an action for legal separation, child custody and other relief, the family court did not abuse its discretion in failing to award custody of the parties’ minor children to the wife and to award her child support where both parties remained in the marital home and nothing in the record suggested that the husband was not providing for the support of the parties’ children. Ariail v. Ariail (S.C.App. 1988) 295 S.C. 486, 369 S.E.2d 146. Divorce 108

There is no inconsistency between denying primary custody to the mother on the one hand, and enlarging the provisions for her visiting with her children on the other. Jackson v. Jackson (S.C. 1971) 256 S.C. 127, 181 S.E.2d 266.

Upon the question of the custody of children as between their estranged parents, the recommendation of a master or special referee is entitled to great weight because of his opportunity to observe the witnesses while the court is confined in its consideration on appeal to the cold record of their testimony. Powell v Powell (1957) 231 SC 283, 98 SE2d 764. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

It is usual for the custody of children of divorced parents to be awarded to the parent who is innocent of the conduct which led to the divorce. Powell v. Powell (S.C. 1957) 231 S.C. 283, 98 S.E.2d 764.

4. —— Preference of child, custody

The wishes of a child of sixteen years of age, intelligence and experience, although probably not controlling, ordinarily are entitled to great weight in awarding his custody as between estranged parents. Guinan v. Guinan (S.C. 1970) 254 S.C. 554, 176 S.E.2d 173. Child Custody 78

5. —— Welfare of the child, custody

This section [Code 1962 Section 20‑115] and Code 1962 Section 31‑51 expressly provide that the welfare of the child is the first consideration of the court. Ex parte Atkinson (1961) 238 SC 521, 121 SE2d 4. Todd v Todd (1963) 242 SC 263, 130 SE2d 552.

The welfare of the child required that custody be awarded to her father with liberal visitation accorded the mother, where the mother planned to practice medicine as an OB/GYN, she would have to make daily rounds at the hospital, schedule time for surgery, be available for emergencies and to deliver babies, the father had been in the oil business for 10 years, he planned to continue living in the same house where the child had lived for the previous 2 years, the child would be able to attend the same school and church and would remain in the same neighborhood if she lived with her father, and the father’s home was spacious and in a good neighborhood near the child’s paternal grandparents and many of her first cousins. Richmond v. Tecklenberg (S.C.App. 1990) 302 S.C. 331, 396 S.E.2d 111.

Family Court judge did not abuse his discretion in awarding custody of children to husband where, although wife primarily cared for children while they were infants, husband contributed substantially to their care including, inter alia, changing diapers, feeding children, bathing children, and reading to them, giving them medication when necessary, attending and participating in many school and extracurricular activities with children, and was well organized and work schedule allowed him flexibility to leave work if necessary for children’s welfare; wife’s argument that Family Court put too much emphasis on her adultery was rejected, where judge had stated that husband would be granted custody even absent wife’s adultery. Burns v. Burns (S.C.App. 1987) 293 S.C. 1, 358 S.E.2d 168.

Evidence that husband contributed substantially to daily care of children, demonstrated genuine love and concern for children and that they love him, participated in many of their school and extracurricular activities, demonstrated considerable skill in household chores, is well organized and his work schedule allows him flexibility to leave work, if necessary, for one of children’s welfare, concluding that husband is obviously outstanding parent, warranted family court’s decision to grant custody of children to husband. Burns v. Burns (S.C.App. 1987) 293 S.C. 1, 358 S.E.2d 168. Child Custody 469

While the controlling consideration in determining custody is the welfare of the child and what is in his interest, the morality of a parent bears on that parent’s fitness to raise the child and is a proper factor for consideration. There was no abuse of discretion in awarding custody to the father where the mother had openly entered into a relationship with another man while still the wife of the father. Wilson v. Wilson (S.C. 1985) 285 S.C. 481, 330 S.E.2d 303. Child Custody 32

That the welfare of the children is the primary consideration for the court is recognized in this section [Code 1962 Section 20‑115] and Code 1962 Section 31‑51. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376.

6. —— Primary caretaker, custody

Although there is no rule of law requiring custody be awarded to the primary caretaker, there is an assumption that custody will be awarded to the primary caretaker. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Child Custody 459

In awarding custody to adoptive mother following divorce, family court’s consideration of mother’s sensitivity to children’s national origin was not improper, in light of court’s consideration of other proper factors, including: mother’s role as children’s primary caregiver since their infancy; fact that change of custody would completely isolate children from mother; mother’s efforts to integrate father into children’s lives; and quality of mother’s care for children. Henggeler v. Hanson (S.C.App. 1998) 333 S.C. 598, 510 S.E.2d 722, rehearing denied, certiorari denied. Child Custody 31

A trial court did not abuse its discretion in awarding custody of the parties’ children to the husband, even though the wife loved the children and was a fit parent, where the husband had had primary custody of the children since he and the wife separated, he lived with his mother who helped him take care of the children, the children had been well cared for during that period, the husband loved the children, and the wife had tended to put her active social life before the interests of the children. Husband v. Wife (S.C.App. 1990) 301 S.C. 531, 392 S.E.2d 811.

Trial court did not abuse its discretion in granting custody of parties’ children to wife where trial court noted that wife had been children’s primary care taker all their lives and they had been in her custody since parties separated, latter factor alone supporting trial court’s decision. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404. Child Custody 25; Child Custody 44

Award of permanent custody of child to father was proper where child was well adjusted and cared for during 2 years he resided in home of father, father’s new wife cared for child as she did her own children, but mother’s conduct towards son was inconsistent and child was frequently left in care of others during her times of visitation. Matthews v. Matthews (S.C. 1979) 273 S.C. 130, 254 S.E.2d 801. Child Custody 469

7. —— Best interest of the child, custody

The welfare of the children, and what is for their best interests, is the primary, paramount and controlling consideration in all controversies between parents as to their custody. Adams v Miller (1969) 253 SC 118, 169 SE2d 391. Mixson v Mixson (1969) 253 SC 436, 171 SE2d 581. Powell v Powell (1971) 256 SC 111, 181 SE2d 13.

Court’s award of primary custody of couple’s four children to wife in divorce action was in the children’s best interests; wife was primary caretaker for the entirety of children’s lives, children attended same school where wife was a teacher while husband’s employment required him to travel frequently, and a primary custody award to husband would have required the children to move to another state. Brown v. Brown (S.C.App. 2015) 412 S.C. 225, 771 S.E.2d 649. Child Custody 44

Family court is required to consider a child’s reasonable preference for custody; however, the weight given to the child’s preference depends upon the child’s age, experience, maturity, judgment, and ability to express a preference, and a determination of the best interests of the child is paramount to the child’s preference. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 78

Award of custody of children to father was in the best interests of the children; when mother had children, they were often tardy to school, sometimes did not have lunches, and mother was sometimes late to get them, whereas father had no similar problems, children were better groomed and clothed in winter months when with father, mother was often late to or absent from children’s birthday parties, award functions, and sporting events, mother lost her job for excessive tardiness and absenteeism, mother had poor temperament and cursed at children, and father was active in raising children, helped with school work, took them to church, and attended their recreational events. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 51

Award of custody to ex‑husband was in child’s best interests; ex‑wife had been child’s primary caretaker, but ex‑wife had stated her desire to relocate if granted custody, and psychologist and guardian ad litem, while testifying that it would be in child’s best interest to be with ex‑wife, changed their recommendations when they considered ex‑wife’s desire to move to area several hours away, and, under such scenario, recommended that ex‑husband receive custody of child. Davis v. Davis (S.C. 2003) 356 S.C. 132, 588 S.E.2d 102, rehearing denied. Child Custody 474

In a child custody case, a determination of the best interests of the child is an inherently case‑specific and fact‑specific inquiry. Rice v. Rice (S.C.App. 1999) 335 S.C. 449, 517 S.E.2d 220. Child Custody 21

Upon determining that the best interest of the children of the parties would be served by allowing them to remain in their current environment and surroundings as much as possible, the family court properly awarded custody of the minor children to the mother, even though she allegedly neglected them by leaving them with a babysitter until late at night and sometimes all night. Hamiter v. Hamiter (S.C.App. 1986) 290 S.C. 508, 351 S.E.2d 581.

Award of custody of parties’ young daughter to the father was in the best interest of the child in view of record showing mother’s adulterous conduct, excessive use of drugs, and settled pattern of inattentiveness to the child. Jones v. Jones (S.C.App. 1986) 290 S.C. 49, 348 S.E.2d 178. Child Custody 48

In a custody dispute the controlling question and the dominant consideration is the welfare of the children, and what is for their best interest. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376. Child Custody 76

The custody of children of separated and contending parents usually presents a difficult and delicate problem. The controlling question and the dominant consideration is the welfare of the child, and what is for the child’s best interest. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

8. —— Tender years doctrine, custody

The family court, hearing a petition to review a joint custody order, gave proper consideration to the “tender age doctrine” prior to awarding sole custody to the father where the doctrine created no presumption in favor of either parent, the evidence showed that during the joint custody the father had joint or sole custody of the child, and the judge’s order stated that he had considered “the psychological, physical, environmental, and recreational aspects of the child’s health, age, and sex in awarding custody.” Wheeler v. Gill (S.C.App. 1992) 307 S.C. 94, 413 S.E.2d 860.

A family court erred in holding that the tender years doctrine mandated that custody be given to the mother because the children were young females. Radtke v. Radtke (S.C. 1989) 297 S.C. 260, 376 S.E.2d 275. Child Custody 26

South Carolina courts feel that in a situation in which the mother is found to be a fit and proper person and the children are of “tender years,” it is in the best interest of the children to be in the custody of their natural mother. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376.

The right of the mother to the custody of children of tender years may be recognized although she is the party in fault, if such fault does not reflect on her moral character. Powell v. Powell (S.C. 1957) 231 S.C. 283, 98 S.E.2d 764.

And custody of children of tender years may be awarded to the father rather than to the mother, the controlling consideration being the welfare of the children. Powell v. Powell (S.C. 1957) 231 S.C. 283, 98 S.E.2d 764.

9. —— Grandparents, custody

Custody award to father was not de facto custody award to children’s paternal grandparents, despite father’s third shift job and his living with his parents; court did not recognize de facto custody principle, and court awarded custody to father, not grandparents. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 531(1)

The Family Court properly awarded a mother the custody of her 6‑year‑old son, even though he had been living with his grandparents since he was 9‑months‑old, where the mother was fit and in a stable marriage, she had maintained contact with him in the form of visits and financial support, she had transferred his custody at a time when she was the victim of an abusive spouse, and she had bonded with him, despite his having lived with his grandparents. Malpass v. Hodson (S.C. 1992) 309 S.C. 397, 424 S.E.2d 470.

The bond of love and affection existing between grandparents and a child does not, in and of itself, justify carving out of the custody and visitation of the natural parents another visitation right and vesting it in the grandparents. Grandparents are not entitled to contend for autonomous visitation privileges absent a showing of exceptional circumstances. Thus, a child’s paternal grandparents were not entitled to court‑ordered visitation rights where the father maintained strong parental ties with the child following the divorce of the child’s parents, the father was awarded regular visitation with the child, the grandparents saw the child on visits with her father, and there was no evidence that the grandparents would be unable to continue their relationship with their grandchild without court‑ordered visitations. Brown v. Earnhardt (S.C. 1990) 302 S.C. 374, 396 S.E.2d 358.

Showing of emotional instability of wife, together with active concern and attention of highly responsible paternal grandmother, with whom child would reside, amply sustained conclusion of trial judge that best interests of child were served by granting custody to husband. Peeples v. Peeples (S.C. 1978) 270 S.C. 116, 241 S.E.2d 159. Child Custody 469

Award giving custody to grandmother was improper where grandmother was not party and did not even state she wanted custody, where evidence of her fitness as custodian was incomplete, and where there was no specific finding that parties were unfit or that it would be clearly inimical to child’s best interest to be in custody of one of parents. Pride v. Pride (S.C. 1977) 269 S.C. 70, 236 S.E.2d 404. Child Custody 473

The family court, in order to change the custody of a child placed in the custody of its paternal grandparents by agreement of its parents, and pursuant to a former decree of the court, should have joined as parties to the action the paternal grandparents, who had a right to resist any change in the custody of the child and their custody could not be affected without being given the opportunity of being heard in opposition thereto. Powell v. Powell (S.C. 1971) 256 S.C. 111, 181 S.E.2d 13. Child Custody 605

10. —— Psychological parent‑child relationship, custody

In order to demonstrate the existence of a psychological parent‑child relationship, the petitioner must show: (1) that the biological or adoptive parents consented to, and fostered, the petitioner’s formation and establishment of a parent‑like relationship with the child; (2) that the petitioner and the child lived together in the same household; (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child’s care, education and development, including contributing towards the child’s support, without expectation of financial compensation; and (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature. Middleton v. Johnson (S.C.App. 2006) 369 S.C. 585, 633 S.E.2d 162, rehearing denied. Parent And Child 384

Although there might have existed a psychological parent‑child relationship between a child and foster parents to whom the child’s father had temporarily relinquished custody, the mere existence of such a bond was an inadequate ground to justify awarding permanent custody to the foster parents, particularly where such a relationship was built on the foster parents’ overt acts which inhibited the development of a normal relationship between the natural parent and his child. Bonding is only one of the major factors to be considered in deciding a custody dispute involving third parties seeking to deprive a natural parent of custody of his or her child. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456.

11. —— Divided custody

A visitation award was not excessive as “tantamount to divided custody,” even though it provided for 2 weeks of visitation during each of the 3 summer months, where the award otherwise provided only for visitation every other weekend, alternate Thanksgiving and spring break holidays, and one week at Christmas. Johns v. Johns (S.C.App. 1992) 309 S.C. 199, 420 S.E.2d 856. Child Custody 212

Ordinarily, it is not conducive to the best interest and welfare of a child for it to be shifted and shuttled back and forth as such an arrangement is likely to cause confusion, interfere with the proper training of the child and make the child the basis of many quarrels between its custodians. The best interest and welfare of the child demands that divided custody be avoided if at all possible and such will not be approved except under exceptional circumstances. Bolick v. Bolick (S.C.App. 1989) 297 S.C. 312, 376 S.E.2d 785. Child Custody 210

Since divided custody is to be avoided if at all possible, an award of 165 days of visitation per year to the father, which was tantamount to joint custody, was excessive, and constituted an abuse of discretion as a matter of law. Courie v. Courie (S.C.App. 1986) 288 S.C. 163, 341 S.E.2d 646. Child Custody 210

The best interest and welfare of the children demand that divided custody should be avoided if possible, and it will not be approved except under exceptional circumstances or for strong and convincing reasons. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581. Child Custody 123

Divided custody is usually harmful to and not conducive to the best interest and welfare of the children. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581.

The courts generally endeavor to avoid dividing the custody of a child between contending parties, and are particularly reluctant to award the custody of a child in brief alternating periods between estranged and quarrelsome persons. Under the facts and circumstances of particular cases, it has been held improper to apportion the custody of a child between its parents, or between one of its parents and a third party, for ordinarily it is not conducive to the best interests and welfare of a child for it to be shifted and shuttled back and forth in alternative brief periods between contending parties, particularly during the school term. Furthermore, such an arrangement is likely to cause confusion, interfere with the proper training and discipline of the child, make the child the basis of many quarrels between its custodians, render its life unhappy and discontented, and prevent it from living a normal life. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581.

12. —— Sufficiency of evidence, custody

Minor children’s expressed preference to live with their mother was insufficient to warrant custody award to mother; children were ages six and 10, guardian ad litem recommended custody be awarded to father and stated that children were not mature enough to tell him why they wanted to live with mother, preference of children was only one factor in custody analysis and was not determinative, and family court considered children’s wishes. Brown v. Brown (S.C.App. 2004) 362 S.C. 85, 606 S.E.2d 785. Child Custody 78; Child Custody 421

There was sufficient evidence to support award of custody of minor children to mother at divorce, even though father was a concerned and loving parent, mother admitted to an affair, and father’s experts testified that father should be awarded custody; father presented no evidence that affair had adverse affect on children, mother’s experts testified that she should be awarded custody, and guardian ad litem recommended custody to mother. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 469

Ex‑wife was entitled to primary physical custody of child; doctor, who conducted psychological evaluations, recommended that custody be granted to ex‑wife based on his conclusion that she would more likely promote the individuation of the child and foster a healthy sense of his independence, and doctor noted that, after ex‑husband remarried, he and child still slept in the same bed while his new wife slept in different bed. Dixon v. Dixon (S.C.App. 1999) 336 S.C. 260, 519 S.E.2d 357. Child Custody 616

The evidence supported awarding custody of children to their mother where she had been the primary caretaker of the children throughout their lives, the guardian ad litem found that the children were well cared for by her, and the tender years doctrine militated in favor of awarding custody to her. Epperly v. Epperly (S.C. 1994) 312 S.C. 411, 440 S.E.2d 884, rehearing denied. Child Custody 469

The family court did not err by granting sole custody of a 3‑year‑old girl to her father where the evidence showed that although both parents were loving and had family nearby, the mother, who had committed adultery, had married her paramour and held 3 jobs in the course of a year, the father continued to live in the familial home and held the same job for 7 years, and the father and the child were closely bonded. Wheeler v. Gill (S.C.App. 1992) 307 S.C. 94, 413 S.E.2d 860.

There was no abuse of discretion where court awarded custody of minor children to husband and record revealed both parties shared responsibility of rearing children, but husband had been primary caretaker during months prior to separation; he bathed children on regular basis, put them to bed, fixed meals, took them to school, assisted with homework, and attended church with children. Record also revealed wife was user of profane language around children and her lifestyle revealed she planned her personal and professional life above her care for children and home life. Welfare and best interest of children is “primary, paramount and controlling consideration of the court in all custody controversies.” West v. West (S.C.App. 1987) 294 S.C. 190, 363 S.E.2d 402.

Wife was proper party to receive custody of young child in separation in view of record indicating father drank heavily, used foul and harsh language in child’s presence, and engaged in conduct that ultimately led to parties’ separation, whereas wife’s conduct was always circumspect, where both parents were employed during day, where child would attend same school regardless of which parent had custody, and where child had expressed desire to reside with mother. Wood v. Wood (S.C. 1977) 269 S.C. 600, 239 S.E.2d 315.

13. Change of custody—In general

To get a change of custody, there must be a showing of new facts and circumstances. Pullen v Pullen (1969) 253 SC 123, 169 SE2d 376. Powell v Powell (1971) 256 SC 111, 181 SE2d 13.

Changed circumstances may authorize a change of custody. Ex parte Atkinson (1961) 238 SC 521, 121 SE2d 4. Pullen v Pullen (1969) 253 SC 123, 169 SE2d 376.

A judicial award of the custody of a child and the fixing of visitation rights is not final and changed circumstances may authorize the change of custody or visitation rights in the future. Porter v Porter (1965) 246 SC 332, 143 SE2d 619. Long v Long (1966) 247 SC 250, 146 SE2d 873.

Trial court was not required to consider Moore factors in determining whether to grant post‑divorce custody of minor children to mother or paternal grandparents, where mother was found to be unfit parent. Baker v. Wolfe (S.C.App. 1998) 333 S.C. 605, 510 S.E.2d 726. Child Custody 579

When determining whether a change of circumstance has been established in a custody case, the issue is whether the evidence, viewed as a whole, establishes that the circumstances of the parties have changed enough that the best interests of the children will be served by changing custody. Housand v. Housand (S.C.App. 1998) 333 S.C. 397, 509 S.E.2d 827, rehearing denied. Child Custody 553

A change of circumstances justifying a change in the custody of the child simply means that sufficient facts have been shown to warrant the conclusion that the best interest of the child will be served by the change. Housand v. Housand (S.C.App. 1998) 333 S.C. 397, 509 S.E.2d 827, rehearing denied. Child Custody 553

If a parent relinquishes custody of his or her child in good faith because of some temporary inability to provide for the child, the parent should be able to regain custody upon a showing that the condition which required relinquishment has been resolved. Child custody should not be subject to change because of adverse possession. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456. Child Custody 68

Under Section 20‑3‑160, a family court has continuing jurisdiction to enter orders relating to the support of the children. Thompson v. Brunson (S.C.App. 1984) 283 S.C. 221, 321 S.E.2d 622.

Rule requiring changed conditions accruing subsequent to entry of custody decree, which would warrant modification in best interest of child applies to both contested and uncontested divorce actions. McSwain v. Holmes (S.C. 1977) 269 S.C. 293, 237 S.E.2d 363. Child Custody 555

The award of the custody of children is not final and changed circumstances may authorize the change of custody in the future. Powell v. Powell (S.C. 1971) 256 S.C. 111, 181 S.E.2d 13. Child Custody 555

In order to change the custody, however, there must be a showing of changed circumstances accruing subsequent to the entry of the decree and warranting a modification with a view to the personal welfare of the children. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581.

The custody of children is always to some extent subject to reexamination. Adams v. Miller (S.C. 1969) 253 S.C. 118, 169 S.E.2d 391.

The general rule is that the divorce court may modify or revise its decree or order as to custody as changed circumstances or conditions may require or justify. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376. Child Custody 555

A judicial award of the custody of a child is never final. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

The court may at any time on the application of any interested party or even on its own motion, upon sufficient showing, make further disposition of the custody of a child, if new facts and circumstances make it necessary or desirable for the child’s welfare. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

14. —— Best interests of child, change of custody

Change of custody from divorced mother to divorced father was in the best interests of children, based on substantial change of circumstances since original custody order, where totality of evidence established that father’s circumstances had substantially improved, while mother’s circumstances had deteriorated. Housand v. Housand (S.C.App. 1998) 333 S.C. 397, 509 S.E.2d 827, rehearing denied. Child Custody 637

Change in custody from ex‑wife to ex‑husband served child’s best interest even without considering ex‑wife’s unfounded allegations that ex‑husband sexually abused child, where ex‑wife exhibited unwillingness to facilitate child’s visitation with ex‑husband, arbitrarily canceled ex‑husband’s weekend visitation, and behaved improperly during exchanges with ex‑husband, and ex‑husband’s home was inherently more stable than home ex‑wife occupied with grandmother, who openly acknowledged her vehement dislike for ex‑husband. Watson v. Poole (S.C.App. 1997) 329 S.C. 232, 495 S.E.2d 236, rehearing denied, certiorari denied. Child Custody 554; Child Custody 569

Flagrant promiscuity on the part of a custodial parent will inevitably affect the welfare of the child and establish a watershed in the court’s quest to protect the best interest of a minor child. Thus, a change of custody of a minor child to the father was warranted where the mother was accustomed to partying with various friends, had previously, on occasion, smoked marijuana, and admitted that she had sexual relations with at least 5 men during a period of less than a year, on one occasion with an airman in a barracks at an air force base. Boykin v. Boykin (S.C.App. 1988) 296 S.C. 100, 370 S.E.2d 884.

Where child suffered learning disability and father had home in Atlanta, Georgia, the location of one of only three schools in nation noted for treatment of child’s particular disorder, change of custody from mother to father was justified as being in child’s present best interest, and was ordered, subject to annual reappraisal of child’s progress in light of success of program for such children initiated in Charleston County, where mother resided. Gilbert v. Gilbert (S.C. 1978) 270 S.C. 202, 241 S.E.2d 559.

In order to change custody fixed by an order of court, there must be a showing of changed circumstances accruing subsequent to the entry of the decree, which would warrant modification for the best interests of the child; where custody had been fixed by order of the County Court pursuant to an agreement of the parties, subsequent Family Court order changing custody was without necessary evidentiary support as to material change in circumstances. Heckle v. Heckle (S.C. 1976) 266 S.C. 355, 223 S.E.2d 590.

15. —— Remarriage, change of custody

Remarriage of mother who had custody of 3‑year‑old daughter to man of different race is not sufficient reason to justify divesting mother of custody of child. Palmore v. Sidoti, U.S.Fla.1984, 104 S.Ct. 1879, 466 U.S. 429, 80 L.Ed.2d 421.

Mother’s remarriage did not in itself justify the change of custody of a child of tender years from the father to the mother, especially in view of the mother’s earlier history. Alligood v. Hunt (S.C. 1987) 291 S.C. 368, 353 S.E.2d 699.

Remarriage of a non‑custodial parent is not of itself a sufficient change of circumstances to warrant change of custody of minor. Fisher v. Miller (S.C. 1986) 288 S.C. 576, 344 S.E.2d 149.

16. —— Change in residence, change of custody

Even if the family court had authority to order mother to move back to state from Maine with her children, in action for divorce, mother’s move to Maine with children was in the best interests of the children, where mother was the children’s primary caretaker, the quality of life that mother could maintain in Maine was superior to that she could obtain in state, there was no evidence that mother moved in an attempt to frustrate father’s visitation rights, father had only been awarded weekend visitation once a month, and mother volunteered to reduce father’s child support obligations to make visitation more feasible. Rice v. Rice (S.C.App. 1999) 335 S.C. 449, 517 S.E.2d 220. Child Custody 261

The question of whether relocation of child will be allowed requires a determination of whether the relocation is in the best interest of the children, the primary consideration in all child custody cases. Rice v. Rice (S.C.App. 1999) 335 S.C. 449, 517 S.E.2d 220. Child Custody 261

The court’s authority to prohibit an out‑of‑state move by custodial parent in child custody case should be exercised sparingly, because forcing a person to live in a particular area encroaches upon the liberty of an individual to live in the place of his or her choice. Rice v. Rice (S.C.App. 1999) 335 S.C. 449, 517 S.E.2d 220. Child Custody 261

A mother’s move to Virginia to be nearer to her family and to obtain more advantageous employment, despite being a change of circumstance, would not, standing alone, warrant a change of custody to the father. VanName v. VanName (S.C.App. 1992) 308 S.C. 516, 419 S.E.2d 373, rehearing granted, certiorari denied. Child Custody 568

A mother would not be restrained from moving with her children to Virginia, nor would custody be given to the father if she moved, where (1) she was without fault in bringing about the divorce, which was granted on the ground of adultery admitted by the father, (2) she had family and full‑time employment in Virginia, (3) the father’s paramour stayed overnight at his residence, and (4) the record was silent as to how the father would care for the children if custody were granted to him. VanName v. VanName (S.C.App. 1992) 308 S.C. 516, 419 S.E.2d 373, rehearing granted, certiorari denied.

The family court erred in limiting a child custody award to a wife by requiring that she reside within 250 miles of the city in which she and her husband had lived, and where his business was located, where no showing was made that such a limitation would be in the best interests of the children, neither the husband nor the wife had any family living in the state, and the wife’s career as an engineer made it highly conceivable that she would be forced to move to another state in order to maximize her employment potential; the husband could petition for a change of custody if he could show that such a requirement would be in the children’s best interests. Eckstein v. Eckstein (S.C.App. 1991) 306 S.C. 167, 410 S.E.2d 578.

17. —— Fitness, change of custody

A father, who, at the time of the entry of the divorce decree which awarded the mother custody of the daughter, knew of the mother’s homosexuality, was not entitled to obtain custody of the child from the mother on the ground that the mother’s homosexual relationship with another within her home rendered the mother unfit as a matter of law, where the record contained no evidence that the daughter was being exposed to deviant sexual acts or that her welfare was being adversely affected in any substantial way. Stroman v. Williams (S.C.App. 1987) 291 S.C. 376, 353 S.E.2d 704.

In action by former husband to obtain custody of children from former wife, where alleged sexual act of wife with another man was isolated occurrence and her subsequent conduct was not indicative of moral laxity such as to affect welfare of children, custody would not be given to husband; nor was illegitimate child born to wife after marriage untouchable outcast whose mere presence in mother’s home made it unfit for her to rear her legitimate children; nor was temporary emotional stress suffered by wife which occurred at time of her separation from husband and which was not of permanent nature grounds for change of custody to husband; if it later develops that presence of illegitimate child in home creates circumstances detrimental to best interests of children, continuing jurisdiction of court will afford opportunity to reconsider question of custody. Dent v. Dent (S.C. 1979) 273 S.C. 387, 256 S.E.2d 743.

Failure of trial judge to find that divorced mother was unfit to retain custody of child is not inconsistent with award changing custody of child to father. Ex parte Soles (S.C. 1976) 267 S.C. 29, 225 S.E.2d 859. Child Custody 552; Child Custody 659

18. —— Sufficient changed circumstances, change of custody

Mother failed to establish a substantial change in circumstances that warranted a change in child custody from father to mother; father’s remarriage and relocation out of state were not sufficient to show a substantial change in circumstances, and the best interests of child were served by father’s relocation with child since father’s new job did not require travel, father was relocating near family, and father had a stable family history while mother and her family had a history of discord. Latimer v. Farmer (S.C. 2004) 360 S.C. 375, 602 S.E.2d 32. Child Custody 567; Child Custody 568

Evidence offered by biological father and his witnesses in post‑divorce custody proceeding that mother and stepfather were drug users and dealers, and that mother and children suffered physical abuse at hands of stepfather, was sufficient to support trial court’s finding that mother was unfit to parent children. Baker v. Wolfe (S.C.App. 1998) 333 S.C. 605, 510 S.E.2d 726. Child Custody 637

Evidence in custody hearing failed to show sufficient change of circumstances, since parties’ divorce, to justify family court’s decision to grant mother sole custody of parties’ child; although father did not keep mother informed about child’s progress and cooperate with her so she could have additional time with child, there was no evidence that these problems adversely affected child or otherwise amounted to flagrant disregard of the prior order to warrant changing custody, child had been doing well while in father’s primary custody, and guardian ad litem believed that change in primary custody was not warranted. Allison v. Eudy (S.C.App. 1998) 330 S.C. 427, 499 S.E.2d 227, rehearing denied. Child Custody 637

Evidence in custody hearing did not establish sufficient change of circumstances, since parties’ divorce, to warrant grant sole custody to father; although child stated that she did not want to spend all of her time with mother, and father and mother had trouble communicating and cooperating with each other, record did not support finding that these problems had affected child to extent that joint custody arrangement needed to be changed. Allison v. Eudy (S.C.App. 1998) 330 S.C. 427, 499 S.E.2d 227, rehearing denied. Child Custody 637

The evidence established that a mother’s outlook and approach to her child’s education adversely affected the child, justifying a change in the primary placement of the child from the mother to the father, where the mother refused to allow the child to be tested when his school performance began to deteriorate rapidly, and she interfered with the child’s education by personally doing or correcting his homework. Glanton v. Glanton (S.C.App. 1994) 314 S.C. 58, 443 S.E.2d 810. Child Custody 637

Mother’s failure to comply with court ordered custody arrangements did not constitute sufficient changed circumstances to justify change of custody where father had failed to make support payments, alleged violations had no effect on mother’s fitness as parent, change in circumstances had not remained constant, nor had there been sufficient showing that it was in best interest of child. Pinckney v. Hudson (S.C. 1988) 294 S.C. 332, 364 S.E.2d 462.

Evidence of mother’s remarriage and present ability to provide stable home for young child held insufficient changed circumstance to warrant change of custody, where there was no showing that father was unfit parent or that child’s welfare depended on her placement with mother. Green v. Loveday (S.C. 1978) 270 S.C. 410, 242 S.E.2d 441. Child Custody 567

Court’s refusal to transfer custody of child was amply supported by record, including testimony of numerous witnesses and detailed reports of Department of Social Services’ home investigations concluding that each party’s home was respectively suitable for continued custody of child therein. McSwain v. Holmes (S.C. 1977) 269 S.C. 293, 237 S.E.2d 363. Child Custody 637

Conduct of divorced mother in secretly and suddenly taking child from familiar surroundings and close relatives to accompany her in pursuit of illicit affair with a singer was sufficient to sustain finding of change in conditions affecting the best interests of the child and to justify placing custody with father. Branham v. Branham (S.C. 1976) 266 S.C. 581, 225 S.E.2d 343. Child Custody 562

19. Child support—In general

Final order of Texas Court establishing divorced father’s child support obligations, even though modifiable, was entitled to full faith and credit. Marsh v. Hancock (S.C. 1986) 288 S.C. 341, 342 S.E.2d 607.

The question of child support is largely within the discretion of the family court whose decision will not be disturbed on appeal unless an abuse of discretion is shown. Determination of the amount of support to be ordered must be made in such a way as to reflect fairness for all the parties involved. Fairness requires that the court consider both the needs of the child and the abilities of the parents to provide support. Both parents have an obligation to contribute to the support of their children. Sauls v. Sauls (S.C.App. 1985) 287 S.C. 297, 337 S.E.2d 893.

The custodial parent needs to know with some certainty the amount of support he or she can expect to receive on a regular basis so that the parent can make a financial plan for the family. Family court child support orders should, therefore, provide for regularity and specificity of a given amount of support to meet specific needs. In determining the adequacy of support, the Court of Appeals would not consider provisions of a support order that the father spend at least $900 annually on the children’s clothing and extracurricular activities, and that he establish a trust fund at the rate of $150 a month for the children’s extraordinary needs. Smith v. DeLaney (S.C.App. 1985) 286 S.C. 583, 334 S.E.2d 821.

The family court judge should be guided by the following legal principles in determining the amount of child support. First, the court’s goal should be to order an amount of support that provides for the needs of the child. Second, the parents should not be ordered to contribute a greater amount of support than they are capable of contributing, giving due consideration to their reasonable needs and expenses. Third, the support ordered should be sufficient to permit the children to live commensurate with the standard of living to which they have been accustomed and commensurate with the father’s standard of living. Smith v. DeLaney (S.C.App. 1985) 286 S.C. 583, 334 S.E.2d 821. Child Support 62; Child Support 70

Relevant factors in a court’s consideration of child support include the needs of the children; the incomes, earning capacities, and assets of the parents; the health, age, and general physical conditions of the parents; and the necessities and living expenses of the parents. Bradley v. Bradley (S.C.App. 1985) 285 S.C. 170, 328 S.E.2d 647. Child Support 62; Child Support 70

Under Section 20‑8‑160, the trial court erred in a divorce proceeding by failing to consider a former wife’s request for child support during the pendency of the action. Miller v. Miller (S.C. 1984) 280 S.C. 314, 313 S.E.2d 288. Child Support 56

Amount to be awarded for child support rests within sound discretion of trial judge whose determination will not be disturbed on appeal unless abuse of discretion is shown. Zeigler v. Zeigler (S.C. 1976) 267 S.C. 9, 225 S.E.2d 849. Child Support 140(2); Child Support 556(2)

The amount to be allowed for child support is, under all of the facts and circumstances of the particular case, generally within the sound discretion of the trial court, and will not be disturbed on appeal unless an abuse of discretion is shown. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

The only limitations upon the power of the court to provide for the maintenance of children, including security therefor, is that such provisions shall be just and equitable, considered in the light of the circumstances of the parties, the nature of the case, and the best interests of the children. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

The basic statutory consideration governing the allowance of support and maintenance is the welfare of the children. In order to accomplish this purpose, the grant of power is broad and comprehensive. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

The amount of alimony and child support cannot be determined by any mathematical formula but is a matter resting within the sound discretion of the trial judge and the amount awarded will not be disturbed on appeal unless an abuse of discretion is shown upon a view of all the circumstances of the particular case. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704. Child Support 9; Child Support 556(1); Divorce 565(2); Divorce 1281(1)

The award for alimony and child support should not be excessive but should be fair and just to all parties concerned. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704.

In arriving at the amount of alimony and child support, the trial judge should take into consideration the needs of the wife and child and the financial ability of the husband and father to meet them, considering his income and assets. It is proper to consider the wife’s health, age, general physical condition, and her income and earning capacity. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704. Child Support 62; Divorce 572

It is proper to consider the husband’s necessities and living expenses in fixing the amount of alimony and child support. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704. Child Support 83; Divorce 572

Amount of allowance for the support of minor children of divorced parents is generally within the sound discretion of the court, and all the circumstances of the particular case should be considered in fixing it. Lee v. Lee (S.C. 1961) 237 S.C. 532, 118 S.E.2d 171. Child Support 140(2)

20. —— Marital home, child support

The family court should have awarded a husband exclusive possession of the marital home as an incident of child support rather than ordering the marital home to be sold and the proceeds divided evenly where the husband was awarded custody of the parties’ minor child and the wife was not required to pay child support. Stevenson v. Stevenson (S.C. 1988) 295 S.C. 412, 368 S.E.2d 901.

21. —— Income, child support

Husband was not voluntarily unemployed or underemployed, and thus, trial court abused its discretion in imputing income to husband in the amount of $64,000 per year for purposes of establishing his alimony and child support obligations, in divorce proceeding; husband had a good recent work history, but his qualifications, while high, were confined to a specific area, when husband earned $64,000 per year, it was in the field in which job opportunities had significantly decreased, and that earning capacity, even though it may have been accurate a decade earlier, did not clearly translate into a job market in which similar jobs were no longer readily available. Sanderson v. Sanderson (S.C.App. 2010) 391 S.C. 249, 705 S.E.2d 65. Child Support 88; Divorce 576

Income imputed to husband of $100,000 per year for purposes of calculating child support obligations was not warranted; there was no evidence that failure to make additional income was motivated by desire to decrease support obligation, wife presented no evidence that any jobs for which husband was qualified existed or were available in community, husband’s poor health and fact he was trying to secure employment or establish business indicated that unemployment or underemployment was not entirely voluntary, his efforts to save his prior job likely exacerbated his physical impairment, increased his reliance on pain medication, and accelerated his overall decline, and it was doubtful he could return to demanding work environment of senior executive. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Child Support 88

The family court did not err in determining a husband’s child support obligation based on the wife’s potential income where, even though the wife was capable of earning a gross income of $2,833.33 per month, she was responsible for the care of the 2 young children; the wife’s potential income is a factor pursuant to Reg. 114‑47‑20, and the judge specifically included child care costs in his determination. Eckstein v. Eckstein (S.C.App. 1991) 306 S.C. 167, 410 S.E.2d 578.

22. —— Benefits, child support

The father’s child support obligation would not be reduced by the amount of Social Security benefits received by the children as a result of the mother’s disability, since the purpose of such payments is to replace income lost because of the mother’s inability to work, and thus such payments operate only as an offset in favor of the disabled parent. Lovett v. Lovett (S.C. 1993) 311 S.C. 279, 428 S.E.2d 874.

23. —— Amount, child support

Award of $1,750 per month in child support was not excessive when considered independently and in conjunction with alimony award, in light of husband’s $500,000 per year income, child’s history of attending private school, and lifestyle child had enjoyed during marriage. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Child Support 159

A court order requiring a father to pay child support in the amount of $1,000 per month was proper where the mother was working part‑time making approximately $344 per month, the father had a gross monthly income of approximately $7,305, he received large income tax returns each year, the father did not dispute the figure of $3,654 which the mother reported as monthly expenses for herself and the children, and the father reported an excess of $2,800 per month in income after his expenses were computed. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165.

Trial judge did not err in awarding wife $2,500 per month alimony, $500 per month child support, and 25 per cent equitable distribution of marital assets where husband was earning almost $5,000 per month from job, and even if he left employment, as he testified he expected to do, he would receive $8,000 per month until all his preferred stock had been repurchased. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259. Child Support 87; Divorce 576; Divorce 732

Trial court did not abuse its discretion in not requiring wife to contribute to support of children while at same time requiring husband to pay $750 per month; support encompasses more than financial aid, also including services rendered to children. As custodial parent, while in performing for her children all day‑to‑day services demanded of her, such as preparing meals, washing clothes, and the like, parent can reasonably be expected to contribute substantially to support of children. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

Trial court did not abuse its discretion in requiring wife to pay $55 per week child support, because in South Carolina both father and mother are primarily liable for child’s support, amount was not excessive, and court considered wife’s income and her expenses. West v. West (S.C.App. 1987) 294 S.C. 190, 363 S.E.2d 402.

Based upon the lifestyle of the family, an award of $500 per month for child support was not excessive, as the award would allow the child to live at the standard of living to which he had become accustomed. Casey v. Casey (S.C.App. 1986) 289 S.C. 462, 346 S.E.2d 726, certiorari granted in part 291 S.C. 284, 353 S.E.2d 287, reversed 293 S.C. 503, 362 S.E.2d 6. Child Support 100

There was no abuse of discretion in refusing to require the husband to pay more than $25 per week child support, and in refusing to require him to pay medical bills for the child in the custody of the wife, where each party had been awarded the custody of one child, the wife testified that $100 per week was needed to support both children, the court did not require the wife to pay the husband anything for the child in his custody despite the fact that the wife’s income was substantially in excess of the husband’s income, the husband carried hospitalization insurance on both children, and there was no evidence that either child was incurring unusual medical bills. Sauls v. Sauls (S.C.App. 1985) 287 S.C. 297, 337 S.E.2d 893.

24. —— Education, child support

Divorce decree requiring parents to pay children’s college education mandated that parties bear burden of education costs according to their respective abilities, and thus, trial court improperly placed equal payment burden of educational expenses on ex‑husband and ex‑wife; at time of trial, ex‑husband earned approximately $88,392 annually and had earned as much as $140,000 annually, whereas ex‑wife earned approximately $46,440 annually, so ex‑husband should have been required to pay 66 percent of expenses to ex‑wife’s 34 percent of expenses. Lacke v. Lacke (S.C.App. 2005) 362 S.C. 302, 608 S.E.2d 147, certiorari dismissed. Child Support 52

Divorce decree required parents exclusively to pay children’s college education, and thus, requiring daughter to incur debt in form of student loans and to work to support herself prior to parents being responsible for any payment of her college expenses was error; although agreement required daughter to apply for scholarships and grants, neither type of financial aid required reimbursement, and neither required daughter to assume debt and make payments of principal and interest, agreement did not require that daughter work to support herself through college, and agreement made clear that daughter should incur no cost for her education. Lacke v. Lacke (S.C.App. 2005) 362 S.C. 302, 608 S.E.2d 147, certiorari dismissed. Child Support 52

Transportation costs were not intended to be included as college education expenses in parties’ divorce decree regarding parties’ obligation to pay children’s “college education”; nothing in agreement indicated it was to include transportation costs, statute which discussed inclusion of transportation costs in education expenses used word “may,” which merely indicated transportation expenditures were not prohibited from inclusion as education‑related expense, agreement did not reference statute, and neither party expressed intent that vehicle be covered cost of daughter’s education. Lacke v. Lacke (S.C.App. 2005) 362 S.C. 302, 608 S.E.2d 147, certiorari dismissed. Child Support 52

The word “reasonable” in a separation agreement which obligated the father to pay the “reasonable” cost of his children’s college educations did not exclude the cost of private colleges, even though the cost of a private college was twice that of a state supported school. Ellis v. Taylor (S.C.App. 1992) 311 S.C. 66, 427 S.E.2d 678, rehearing denied, certiorari granted, affirmed in part, reversed in part 316 S.C. 245, 449 S.E.2d 487.

A private college’s offer to loan a child $4,000 for his expenses constituted “other assistance” for purposes of a separation agreement which obligated the father to pay the reasonable cost of his children’s college educations to the extent that such expenses were not provided by “other assistance available to the children.” Ellis v. Taylor (S.C.App. 1992) 311 S.C. 66, 427 S.E.2d 678, rehearing denied, certiorari granted, affirmed in part, reversed in part 316 S.C. 245, 449 S.E.2d 487.

In an action against a father for the cost of his child’s college education, the court properly ordered him to pay $10,000 per year toward the education, even though the parents’ separation agreement provided that he would pay all reasonable costs, and the cost of the private college which the child attended was $13,200 per year, where the father was in financial straits, the child was offered a $4,000 loan by the college, and the child earned $3,000 during the summer before entering college. Ellis v. Taylor (S.C.App. 1992) 311 S.C. 66, 427 S.E.2d 678, rehearing denied, certiorari granted, affirmed in part, reversed in part 316 S.C. 245, 449 S.E.2d 487.

The Family Court erred in ordering a mother to contribute to her emancipated son’s college expenses, despite her deposition statement that she would be willing to give him support, where (1) the mother was unemployed and under a doctor’s care, (2) the son was attending college, living in his father’s home, and working part‑time at the time of trial, and thus was able to attend college without his mother’s help, and (3) the son had made no attempt to apply for educational loans; a parent’s stated willingness to obligate herself beyond the support requirements imposed by law could not be twisted into a binding agreement. Kelly v. Kelly (S.C.App. 1992) 310 S.C. 299, 423 S.E.2d 153.

A father could be required to pay for more than 4 years of undergraduate education for his daughters pursuant to a divorce decree from their mother which obligated him to pay college expenses “for the normal amount of time necessary” for the attainment of an undergraduate degree, since it would not be abnormal for a college student to require extra time to attain a degree due to changing majors, illnesses, transferring to other schools, or other reasons. McDuffie v. McDuffie (S.C.App. 1992) 308 S.C. 401, 418 S.E.2d 331, rehearing denied, opinion after grant of review 313 S.C. 397, 438 S.E.2d 239.

A father was not required to pay for his daughter’s college transportation expenses, incidental expenses, and $400 per month spending money where (1) under the terms of his separation agreement with the daughter’s mother he was only required to pay for tuition and fees, room and board, and school fees, and (2) the daughter did not attempt to help minimize her college expenses by seeking loans or working during the school year. McDuffie v. McDuffie (S.C.App. 1992) 308 S.C. 401, 418 S.E.2d 331, rehearing denied, opinion after grant of review 313 S.C. 397, 438 S.E.2d 239.

An ex‑husband was required to pay for his child’s education at a technical college which did not offer a 4‑year degree where the settlement agreement which was merged into his divorce decree provided only that he would pay for the costs of a 4‑year undergraduate education. Cathcart v. Cathcart (S.C.App. 1992) 307 S.C. 322, 414 S.E.2d 811.

The mother of a child, who was diagnosed as severely dyslexic and sent to a special school at a cost of over $44,000 to the father with whom the child lived, had the ability to pay child support where she had a potential income of $38,000 a year, owned several pieces of investment real estate, managed to service a debt of $450,000, and had many assets which she could look to in order to satisfy her child support obligation. Holcombe v. Hardee (S.C. 1991) 304 S.C. 522, 405 S.E.2d 821.

When addressing the issue of the obligation of a divorced parent to help pay for a college education for a child over 18 years of age, in considering the factor of whether the child cannot otherwise go to school without the financial assistance of the parent, the availability of grants and loans and the ability of the child to earn income during the school year or on vacation are relevant factors to be considered because an emancipated child has a duty to help minimize college expenses when a parent’s financial support for these expenses is sought. Thus, the issue of whether a divorced father should be required to contribute to his son’s college education would be remanded to the family court for a consideration of these factors where there was no evidence in the record to support the conclusion that the son could not attend college without the financial assistance of his father and the family court made no findings on the availability of grants and loans or the ability of the son earn an income. Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254.

In determining whether exceptional circumstances exist which require a parent to contribute to the educational expenses of a child over the age of 18, a family court must consider the following factors: (1) whether the characteristics of the child indicate that he or she will benefit from college; (2) whether the child demonstrates the ability to do well, or at least make satisfactory grades; (3) whether the child cannot otherwise go to school; (4) whether the parents have the financial ability to help pay for such an education; (5) the availability of grants and loans; and (6) the ability of the child to earn income during the school year or on vacation. Bull v. Smith (S.C. 1989) 299 S.C. 123, 382 S.E.2d 905. Child Support 393

Although an ex‑spouse’s duty to support a child of the marriage ends by operation of law when the child turns 18, the family court may order a divorced parent to pay for the educational expenses of an emancipated child under certain “exceptional circumstances.” Thus, the family court erred in applying a “change of circumstances” test in determining whether a divorced mother should provide support for her daughter’s educational expenses after the daughter’s eighteenth birthday. Bull v. Smith (S.C. 1989) 299 S.C. 123, 382 S.E.2d 905.

A divorce decree requiring the father to be “responsible for the cost of private school tuition for the minor children so long as they are enrolled in private school” required the father to pay for private school tuition for the parties’ minor child without limitation as to type, character or cost of the school. Weil v. Weil (S.C.App. 1989) 299 S.C. 84, 382 S.E.2d 471. Child Support 149

A father was not required to pay a portion of his 2 sons’ college education expenses where, concerning the older son, there were no findings by the trial court regarding his financial ability to attend college without his father’s assistance, there were no findings regarding the availability of grants and loans, there were no findings regarding his ability to earn income during the school year and during vacation periods, and there were no findings regarding what the reasonable costs of his education would be and, concerning the younger son, the requirement that the father pay a portion of his college expenses was premature since the son was only in ninth grade at the time of the hearing. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21.

Family court erred in ordering the former husband to set aside $300 per month to purchase an annuity for the children’s college education or post‑high school training in absence of a showing that the characteristics of the children indicate they will benefit from college; the children demonstrate the ability to do well, or at least to make satisfactory grades; the children cannot otherwise go to school; and the parent has a financial ability to help pay for such education. Voelker v. Hillock (S.C.App. 1986) 288 S.C. 622, 344 S.E.2d 177. Child Support 149

Educational needs are exceptional circumstances justifying, under certain situations, support payments of a dependent child beyond the age of 18. In determining whether such support payments should be ordered, the court should consider whether the characteristics of the child indicate that he or she will benefit from college; whether the child demonstrates the ability to do well, or at least make satisfactory grades; whether the child cannot otherwise go to school; whether the parent has the financial ability to help pay for the education; the availability of grants and loans; and the ability of the child to earn income during the school year or on vacation. Wagner v. Wagner (S.C.App. 1985) 285 S.C. 430, 329 S.E.2d 788.

Circuit judge’s award of alimony of $1,000 per month and child support of $100 per month for each of two children was more appropriate than referee’s recommendation of $500 alimony per month, and $250 support per month per child, where record showed husband was dentist with annual gross income of approximately $400,000, while wife had 10th grade education and was unemployed. Jones v. Jones (S.C. 1978) 270 S.C. 143, 241 S.E.2d 417.

Court order requiring divorced husband to pay $500 a semester for child’s education so long as child is in school, without setting time limit on payments, interpreted as including a reasonable time limit upon payments for higher education. Hinson v. Hinson (S.C. 1977) 269 S.C. 268, 237 S.E.2d 81.

Agreement incorporated in divorce decree that husband would pay child support until child reached the age of 21 if child was enrolled in school would be enforced despite contention that Article XVII Section 14 of the South Carolina Constitution sets the age of majority at 18. Schadel v. Schadel (S.C. 1977) 268 S.C. 50, 232 S.E.2d 17.

25. —— Sufficiency of evidence, child support

Father did not fulfill child support obligation by making downpayment on house titled in his name in which mother made all mortgage payments, while father claimed tax advantages and retained title to property; voluntary expenditures not prescribed by decree are considered gifts or gratuities, and general rule is that it is obligation of divorced husband to pay specified amounts according to terms of decree and he should not be permitted to vary these terms to suit his own convenience. Foster v. Foster (S.C.App. 1988) 294 S.C. 373, 364 S.E.2d 753.

Evidence supported trial judge’s award of alimony and child support where husband argued this amount exceeded needs of wife and consumed his anticipated income; in determining alimony, factors to be considered are, inter alia, (1) financial condition of husband and needs of wife, (2) age and health of parties, respective earning capacities, and their individual wealth, (3) wife’s contribution to accumulation of joint wealth, and (4) amount of property awarded in equitable distribution. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259.

A family court order that a divorced mother should contribute financially to the support of children with proceeds from the sale of property was clearly erroneous and against the preponderance of evidence where the mother had the care and responsibility of three young children and was expecting a fourth child, the mother had no income or other substantial assets whereas the father had the means to provide for the children’s financial support, and the trial court gave no value whatsoever to the mother’s investment of her time and service in caring for the young children. Smith v. DeLaney (S.C.App. 1985) 286 S.C. 583, 334 S.E.2d 821. Child Support 199

26. Change in amount of support—In general

A substantial or material change in circumstances warranting a modification in child support might result from changes in the needs of the children or the financial abilities of the supporting parent to pay among other reasons; generally, however, changes in circumstances within the contemplation of the parties at the time the initial decree was entered do not provide a basis for modifying a child support award. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 258; Child Support 290

Courts are reluctant to invade a party’s freedom to pursue the employment path of their own choosing or impose unreasonable demands upon parties with regard to child support obligations; nonetheless, even otherwise unreviewable career choices are at times outweighed by countervailing considerations, particularly child support obligations. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 87

Trial court’s mention of father’s individual retirement account “which he could utilize to pay his child support” was merely for the purpose of comparing father’s assets to mother’s assets in making a determination as to whether father was able to pay child support from his own resources. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 82; Child Support 85

A family court has authority to modify the amount of a child support award upon a showing of a substantial or material change of circumstances. The burden is upon the party seeking the change to prove the change in circumstances warranting a modification. A substantial or material change in circumstances might result from changes in the needs of the children or the financial ability of the supporting parent to pay, among other reasons. Generally, however, changes in circumstances within the contemplation of the parties at the time the initial decree was entered do not provide a basis for modifying a child support award. A downward modification in child support based upon a decrease in the non‑custodial parent’s income is not warranted absent a strong showing by the party seeking the change that he or she is no longer in a condition to make the support payments prescribed by an earlier family court order. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715.

In determining whether to modify a parent’s child support obligation, the trial judge has the discretion to consider the income of a new spouse, depending upon the facts of each particular case. Broome v. Larkin (S.C.App. 1988) 295 S.C. 498, 369 S.E.2d 153. Child Support 265

The family court retains continuing jurisdiction to enforce and modify child support despite any provisions of an agreement between the parties. Where there is an agreement regarding child support, however, the family court should not decide support issues as if there is no agreement. A parent can contractually obligate himself or herself beyond the support requirements imposed by law. Ratchford v. Ratchford (S.C.App. 1988) 295 S.C. 297, 368 S.E.2d 214.

Trial judge did not abuse his discretion in increasing father’s child support obligations based on a change of circumstances, in view of the evidence of the child’s increased financial requirements and an improvement in the father’s financial condition since the last hearing. Sutton v. Sutton (S.C.App. 1987) 291 S.C. 401, 353 S.E.2d 884.

It is within the authority of the Family Court under URESA to modify the amount of child support granted by an out‑of‑state divorce decree. Balestrine v. Jordan (S.C. 1980) 275 S.C. 442, 272 S.E.2d 438. Child Support 509(1)

Where wife, in action for increase in child support, showed a change of condition entitling her to relief, reasonable attorneys fees should have been awarded. Campbell v. McPherson (S.C. 1977) 268 S.C. 444, 234 S.E.2d 774.

Code 1962 Section 20‑115 [Code 1976 Section 20‑3‑160] authorizes a court to increase, decrease, or terminate child support upon a proper showing of change of conditions. Campbell v. McPherson (S.C. 1977) 268 S.C. 444, 234 S.E.2d 774. Child Support 233; Child Support 375

The trial court has authority to increase, decrease, or terminate, upon proper showing of a change of condition, the support payments provided for in a judgment of divorce. Smith v. Smith (S.C. 1974) 262 S.C. 291, 204 S.E.2d 53.

An adjudication under this section [Code 1962 Section 20‑115] is not final, in the face of changed conditions and circumstances which may be made the grounds for future application to the court for the modification of the allowance for support of the children. Lee v. Lee (S.C. 1961) 237 S.C. 532, 118 S.E.2d 171.

27. —— Benefits, change in amount of support

A trial court did not abuse its discretion in increasing a father’s child support obligation from $275 per month to $400 per month and crediting him with the amount of social security benefits received on behalf of the child, where the father had been unaware of his daughter’s eligibility for benefits under his social security record at the time he entered the settlement agreement incorporating the $275 monthly support provision. Ward v. Marturano (S.C.App. 1990) 302 S.C. 112, 394 S.E.2d 16. Child Support 363

28. —— Retroactive support, change in amount of support

The Family Court properly awarded retroactive child support to the mother in accordance with the terms of the parents’ separation agreement, even though the court refused to adopt the agreement itself because it was not fair and equitable, since the court’s refusal to adopt the agreement did not discharge the husband from his obligation to support his children. Wint v. Wint (S.C.App. 1992) 310 S.C. 48, 425 S.E.2d 48.

The Family Court acted within its discretion in refusing to award retroactive child support to a father for the periods in which the children resided with him where the father had made child support payments to the mother during times when she did not have physical custody of either child involved, and during such times he did not seek to have the court either terminate or modify his support obligation. Kelly v. Kelly (S.C.App. 1992) 310 S.C. 299, 423 S.E.2d 153. Child Support 452

Former husband was not required to pay past medical bills where the former wife failed to comply with the family court order which made the former husband responsible for such bills only if he were supplied with medical information and reports promptly. Garris v. McDuffie (S.C.App. 1986) 288 S.C. 637, 344 S.E.2d 186.

Respondent should not be compelled to pay retroactive support where records shows that ex‑wife has remarried and her second husband has supported child, where support was never officially demanded prior to present action and where award of lump sum of retroactive support would amount to inequitable burden. McSwain v. Holmes (S.C. 1977) 269 S.C. 293, 237 S.E.2d 363.

29. —— Needs of child, change in amount of support

No abuse of discretion was shown by the increase of a father’s child support obligation from $250 to $700 per month where the mother had a $300 surplus per month, the father earned $6,784 per month but claimed a surplus of only $138, neither party included a copy of their financial declarations in the record, and the child involved was 15 at the time of the final hearing since as a child becomes a teenager he has additional needs. Abbott v. Gore (S.C.App. 1991) 304 S.C. 116, 403 S.E.2d 154.

The record reflected a substantial change in the needs of a child, warranting an increase in the amount of child support, where, at the time of the divorce, the child was only 6 years old but had reached the age of 14 at the time of the support modification hearing, and the child’s mother, with whom he lived, testified to an increase in expenses for the child’s food, clothes, school and social activities. Nicholson v. Lewis (S.C.App. 1988) 295 S.C. 434, 369 S.E.2d 649.

A trial court did not abuse its discretion in ordering a non‑custodial mother to contribute 45 percent of the cost of her son’s orthodontic care where an agreement which was incorporated into the parents’ divorce decree provided that any medical expenses for the children not otherwise covered would be equally divided between them, both parents agreed that the dental treatment was necessary and the mother was financially able to contribute to her son’s orthodontic expenses. Thornton v. Thornton (S.C.App. 1988) 294 S.C. 512, 366 S.E.2d 37.

Support payments increased due to dental expenses. Smith v. Smith (S.C. 1974) 262 S.C. 291, 204 S.E.2d 53.

Increased cost of maintaining child required a substantial increase in the contributions of the husband for that purpose. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

30. —— Automatic changes, change in amount of support

Automatic increases in child support at a designated future date are invalid. Increases or decreases in child support must be based on evidentiary findings showing a change of conditions at the time the modification is ordered. Herring v. Herring (S.C. 1985) 286 S.C. 447, 335 S.E.2d 366. Child Support 223; Child Support 233

Pursuant to Sections 20‑3‑160 and 20‑7‑420(17), the trial judge’s order in a divorce action providing that the amount of child support would automatically increase from $390 per month to $540 per month after 24 months was without precedent and an abuse of discretion, since it arbitrarily increased the amount of support without any showing of a change of conditions. Condon v. Condon (S.C.App. 1984) 280 S.C. 357, 312 S.E.2d 588. Child Support 164

31. —— Emancipation, change in amount of support

Although minor had moved out of ex‑wife’s home and was residing with her boyfriend and was pregnant with boyfriend’s child, minor was not fully emancipated so as to warrant termination of ex‑husband’s child support obligation before minor had reached age of majority; ex‑wife, who was primary custodial parent, objected to minor’s move and did not agree that minor should be emancipated, ex‑husband testified he gave minor $700 for “down payment” on apartment, minor and her boyfriend were not married and, therefore, boyfriend was not legally obligated to contribute to minor’s support, and there was no evidence that minor could have supported herself in the event her relationship with her boyfriend deteriorated. Purdy v. Purdy (S.C.App. 2003) 353 S.C. 400, 578 S.E.2d 30. Child Support 386

Generally, a parent’s obligation to pay child support extends until the child reaches majority, becomes self‑supporting, or marries, then ends by operation of law. Purdy v. Purdy (S.C.App. 2003) 353 S.C. 400, 578 S.E.2d 30. Child Support 386; Child Support 387; Child Support 390

Finding that wife was not entitled to child support for learning‑disabled adult child, in action for divorce, was supported by evidence that child, who was living with wife, had been employed as a convenience store clerk on a full‑time basis for over one year, earning $6.45 per hour. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Child Support 111

A court’s statement that the emancipation of the oldest of 4 children would not constitute a change in circumstances so as to constitute a ground for reduction in child support was error since such a finding with no apparent basis in the record is analogous to an improper automatic increase in child support without a showing of a change in circumstances. Thus, the father would be permitted to petition for a modification of child support upon the emancipation of the oldest child. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165.

It was within trial judge’s discretion to reduce child support payments from $100 to $75 per month based upon, inter alia, admitted fact that one of 2 children had reached majority. Foster v. Foster (S.C.App. 1988) 294 S.C. 373, 364 S.E.2d 753.

A support order providing for payments for the benefit of 2 children was not required to be reduced by half upon the emancipation of one of the children. Stroman v. Williams (S.C.App. 1987) 291 S.C. 376, 353 S.E.2d 704.

32. —— Income, change in amount of support

Evidence of father’s reduced income was insufficient to warrant a change in child support based upon a showing of a substantial or material change in circumstances; father admitted he was terminated from his employment before he signed consent order, prior to signing consent order he was told it would be difficult to find another job in his former pharmaceutical field and should expect decreased income from future employment, and father had obtained new employment with the potential to make his prior income. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 258

Family court’s consideration of father’s new spouse’s income as an additional source of income for father’s household when determining whether father presented evidence sufficient to show a substantial or material change of circumstances warranting a reduction in father’s child support obligation, did not constitute an abuse of discretion; the family court was given a sealed envelope containing father’s new spouse’s salary, but never opened it, and made its determination without considering the exact salary she may have made. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 265

Whether termed voluntary underemployment, imputation of income, or the failure to reach earning potential, when a payor spouse seeks to reduce support obligations based on his diminished income, a court should consider the payor spouse’s earning capacity; likewise, it is proper to consider a supported spouse’s earning capacity and impute income to a spouse who is underemployed or unemployed. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 259; Child Support 260

It was error for the trial court to reduce ex‑husband’s child support and alimony obligations on ground that ex‑wife’s income had increased since the divorce when such a change was expected; by agreement of the parties, ex‑husband’s alimony payments were to be reduced over time, beginning only six months after the final order granting modification, and although the divorce decree did not explain the reason for the automatic decreases in ex‑husband’s support obligations, record supported trial court’s finding they were in anticipation of ex‑wife increasing her income. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 277; Divorce 627(6)

Where ex‑husband initially represented his annual income as $140,000 in his financial declaration and, subsequently, in his action for reduction of his alimony and child support obligations, testified that his current income was $120,000 and that his previous income had been under‑reported by him and that it was actually $168,996, and not $140,000, it was error for trial court to utilize the inflated figure of $168,996, rather than relying on the figure of $140,000 reported in his original financial declaration, to reduce his support obligations on ground that decrease in his income to $120,000 constituted substantial change in circumstances. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 261; Divorce 627(6)

Family Court’s imputation of income to ex‑husband, for child support purposes, was tantamount to finding ex‑husband underemployed, and, as such, Court was justified in examining ex‑husband’s earning potential based upon recent work history and qualifications, and since he was earning approximately $120,000 before he voluntarily moved to Atlanta, where his minimum salary from his Atlanta medical practice was $100,000, Court did not err in imputing that level of income to him, and this was especially true considering ex‑husband’s current job in Atlanta allowed him the opportunity to work more hours and increase his annual salary. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 259

Income reduction of father, a medical doctor, from $250,000 a year to approximately $186,000 a year after father opened his own medical practice was not substantial or material change in circumstances warranting decrease in child support; father continued to maintain high standard of living, notwithstanding his change of jobs, and, although father’s earnings had decreased since he opened his own medical practice, his earning potential had not been adversely affected by move. Townsend v. Townsend (S.C.App. 2003) 356 S.C. 70, 587 S.E.2d 118, rehearing denied, certiorari denied. Child Support 258

A reduction in the former husband’s income from $300,000 per year to $180,000 per year was not a material change of circumstances warranting a modification of the alimony to his former wife or requiring that she pay him child support for the care of their 3 children, even though the wife’s income had increased, where his income was still enough to pay her alimony and support the children without reducing his standard of living, and her standard of living, although comfortable, was still less than it had been during the marriage. Kielar v. Kielar (S.C.App. 1993) 311 S.C. 466, 429 S.E.2d 851. Divorce 627(6)

While a trial judge has the discretion to consider the income of a parent’s new spouse in making a determination regarding a modification of child support, the fact that a parent has remarried and had other children is not, in and of itself, sufficient to show a change of circumstances warranting modification of child support. Thus, a father’s child support obligation for his minor daughter would not be modified, even though the mother had remarried and had another child, where the daughter’s needs had not changed, there had been no substantial change in either parent’s income, and the record was devoid of any evidence of the mother’s husband’s income. Fischbach v. Tuttle (S.C.App. 1990) 302 S.C. 555, 397 S.E.2d 773.

Although there had been a reduction in the father’s income, the reduction was insufficient to allow a reduction in child support where the father had the means to contribute to the support of his child, and the father had voluntary assumed the financial responsibility of a new wife and her three children, for which his own child should not be forced to suffer the consequences. Vestal v. Vestal (S.C.App. 1988) 297 S.C. 215, 375 S.E.2d 355.

Substantial increase in earnings of respondent, skilled laborer earning hourly wage, held to constitute sufficient basis for ordering respondent to pay future support of child in wife’s custody. McSwain v. Holmes (S.C. 1977) 269 S.C. 293, 237 S.E.2d 363. Child Support 87

Where father’s income rose from $7,000 to $15,000 in 6 years after decree for divorce, wife had spent $14,000 in a year for daughter’s support, and daughter had increased needs as a teen‑ager, decree determination of $125 per month for child support was inadequate to meet the reasonable present needs of the daughter. Campbell v. McPherson (S.C. 1977) 268 S.C. 444, 234 S.E.2d 774.

In an action to reduce child support payments, where husband had income in excess of $12,000.00 per year and his new wife had income of approximately $8,000 per year, and the former wife has an annual income of approximately $7,000 a year, a finding of $400 per month for child support was proper. Schadel v. Schadel (S.C. 1977) 268 S.C. 50, 232 S.E.2d 17.

33. —— Sufficiency of evidence, change in amount of support

Decrease in ex‑husband’s annual salary from $140,000 to $120,000 was not significant enough to severely impact his standard of living or his ability to pay his child support and alimony obligations, particularly where that decrease was due to a voluntary relocation, and thus, there was no substantial change in circumstances sufficient to support a reduction of ex‑husband’s alimony and child support obligations. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 258; Divorce 627(6)

The evidence was sufficient to support the denial of a former husband’s request for a reduction in alimony and child support, in spite of the husband’s assertions of financial difficulty due to setbacks in his business and a personal injury which caused him to lose time from work, where his financial statement indicated that he received more income from his employment at the time of the hearing than he was receiving at the time the court order was entered, and the evidence showed that he continued to maintain a nonfrugal lifestyle. Pirkle v. Pirkle (S.C.App. 1990) 303 S.C. 266, 399 S.E.2d 797.

In modifying a child support award, once a substantial and material change in circumstances is found, the court must review the facts and circumstances in order to determine an appropriate amount of child support. The court should be guided by the same principles which guide the court in making its initial award; the factors to be considered by the court in establishing the amount of child support obligations are both parents’ income, ability to pay, education, expenses, and assets, and the facts and circumstances surrounding each case. The court is to award support in an amount sufficient to provide for the needs of the children and to maintain the children at the standard of living they would have been provided but for the divorce. The award should be an amount that the parent can pay and still meet his or her own needs. Thus, a family court judge erred in modifying a prior child support award where he did not address any of these factors beyond the income and expenses of the parents, but instead relied entirely upon the South Carolina Child Support Guidelines. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715.

Changes of circumstances resulting from a divorce decree that were within the contemplation of the parties at the time the decree was entered do not provide an adequate basis for modifying a child support award. The effects of a division of property in a divorce proceeding are ordinarily an anticipated change of circumstances that will not provide a sufficient basis for modifying a child support award. Kneece v. Kneece (S.C.App. 1988) 296 S.C. 28, 370 S.E.2d 288.

Increased school costs and related expenses resulting from the mother’s voluntary enrollment of the parties’ 4 children in a private school upon the removal of herself and children to her new husbands residence required an increase in the father’s allocated support, rather than a reduction in such support as determined by the family court, since the children would benefit from the excellent academic and extracurricular activities available at the private school and the father, who was in good health, was financially able to meet the increased expenses, while the mother was unable to make any significant contribution towards the tuition costs. Rabon v. Rabon (S.C. 1986) 288 S.C. 338, 342 S.E.2d 605.

Evidence was insufficient to establish a change of conditions warranting a modification in child support, pursuant to Section 20‑3‑160, where the mother offered evidence that her daughter attended a university full‑time and had expenses of approximately $400 per month, and where the lower court found that the father was contributing approximately $5,000 annually toward his daughter’s support, which figure included tuition and other college related expenses, as well as court‑ordered monthly support payments of $200. Perkins v. Parkins (S.C.App. 1983) 279 S.C. 508, 309 S.E.2d 784. Child Support 362

34. Settlement agreements

A party cannot misrepresent income and expenses on a financial declaration for purposes of having an agreement approved and then refute the accuracy of that document in a subsequent action for modification of alimony or child support. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 258; Divorce 627(1)

Where there is an agreement regarding the support of an adult child, the family court should not decide support issues as if there were no agreement. Parents can contractually obligate themselves beyond the support required by law. A parent can contractually obligate himself or herself to support or pay the educational expenses of a child past majority and such an agreement is not modifiable by the court without the consent of the parties. Petition of White (S.C.App. 1989) 299 S.C. 406, 385 S.E.2d 211.

Rights of minor children cannot be prejudiced by agreement between father and mother. Foster v. Foster (S.C.App. 1988) 294 S.C. 373, 364 S.E.2d 753. Child Support 46

The basic right of minor children to support is not to be adversely affected by an agreement between the parties to the divorce as to such support, and, so a settlement agreement incorporated into the divorce decree, even though it was within the bounds of reasonableness with respect to the former wife who received custody of the children, would be remanded for findings as to its fairness to the children. Forsythe v. Forsythe (S.C.App. 1986) 290 S.C. 253, 349 S.E.2d 405.

Contracts between spouses as to the custody of children will be recognized unless the welfare of the children requires a different disposition. Powell v. Powell (S.C. 1971) 256 S.C. 111, 181 S.E.2d 13.

A final decree awarding the custody of a child in a divorce case, based on an agreement of the parties, is conclusive as between them if no change of circumstances affecting the welfare of the child is shown. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376.

35. Morality

Conduct which is “immoral” must also be shown to be detrimental to the welfare of the child before it is of legal significance in a custody dispute. Shainwald v. Shainwald (S.C.App. 1990) 302 S.C. 453, 395 S.E.2d 441. Child Custody 32

36. Security

No compelling reason justified requiring husband to secure his child support and alimony payments, in absence of evidence that he suffered from any major health problems, had shunned his support obligations, or had inadequate income to meet obligations. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Child Support 152; Divorce 615

Generally, the court may require a supporting spouse to secure his or her child support or alimony obligations; however, there must be a compelling reason to do so, and the ability of the supporting spouse to pay, whether he or she earns adequate income to meet the obligation, and the spouse’s willingness to pay are relevant factors. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Child Support 152; Divorce 615

The family court is within its legal authority to require a supporting spouse to maintain a life insurance policy naming the child as beneficiary to insure the continued support of the minor child under Section 20‑3‑160. However, this imposition must be based on justice, equity and compelling reasons, such as the supporting spouse’s failure to make support payments. Where no such compelling reason appeared, and the husband had sufficient income to maintain his obligation, an order that he make his child the beneficiary of his $100,000 insurance policy would be reversed. Ivey v. Ivey (S.C.App. 1985) 286 S.C. 315, 334 S.E.2d 123. Child Support 156

It was proper to order husband in divorce to maintain insurance to pay for son’s college education, should future circumstances warrant it. Brown v. Brown (S.C. 1978) 270 S.C. 370, 242 S.E.2d 422. Child Support 156

The power of the court to require, in proper cases, that security be given to assure compliance with its orders touching the care, custody and maintenance of children is expressly granted by this section [Code 1962 Section 20‑115]. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

Whether such security will be required rests within the sound discretion of the court. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

In order to justify a requirement that security be given, the record should show that it is reasonably necessary to assure compliance with the order of the court. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755. Child Support 152

If it subsequently appears that security is necessary, the continuing jurisdiction of the court affords ample opportunity to require that it be given. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

This broad statutory authorization includes the power, where the circumstances warrant, to require a father to provide a fund, effective at his death, for the continued support of his minor child. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

The court acted within its legal authority in requiring that the father secure a whole life policy of insurance, in order to assure that funds would be available for the college education of the minor child in the event of the early death of the father. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

Where the record contained no showing that security was necessary, that portion of the order requiring that a savings account be established as security for the payment of child support was reversed. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

37. Insurance

A family court order requiring the husband to make the wife the beneficiary of his $150,000 life insurance policy and ordering that she was to remain the beneficiary until no child was receiving support or was engaged in his or her college education, was error where the children were not the named beneficiaries of the policy and there was no compelling reason for the requirement of life insurance. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165. Child Support 156

The law requires a compelling reason, amounting to a necessity, before a supporting spouse will be required to maintain life insurance to secure a child’s future support. Shambley v. Shambley (S.C.App. 1988) 296 S.C. 405, 373 S.E.2d 689.

Although Section 20‑3‑160 allows the trial judge to provide security for an award of child support, a $40,000 life insurance policy as security for child support was excessive, where the underlying award of $700 per month was an excessive amount of child support. Jackson v. Jackson (S.C.App. 1983) 279 S.C. 618, 310 S.E.2d 827. Child Support 156

38. Enforcement

The family court properly denied a Rule 60(b), SCRCP, motion to set aside the portion of its separate maintenance and support order that held a husband was the father of a child born of the marriage where the husband merely alleged by way of an unverified counterclaim and his attorney’s arguments that he had been informed by a third party that his wife was having an adulterous affair at the time of conception, but did not offer any affidavits or other evidence in support thereof; thus, the husband failed to demonstrate a meritorious defense to the claim of paternity. Bowers v. Bowers (S.C.App. 1991) 304 S.C. 65, 403 S.E.2d 127.

A wife who counterclaimed for past due child support in a divorce action filed by the husband was not entitled to 16 years of retroactive child support where the mother did not attempt to enforce the child support during the child’s minority and the child was 24 years old at the time of divorce, since it would have been inequitable to require the father to pay child support at that juncture. Hallums v. Hallums (S.C. 1988) 296 S.C. 195, 371 S.E.2d 525. Child Support 150

Where former husband petitioned for a reduction in the amount of child support, and the master made a reduction which was overturned by the trial court, arrearages could not be imposed on the husband for the amount of the master’s reduction. Schadel v. Schadel (S.C. 1977) 268 S.C. 50, 232 S.E.2d 17.

Where the record is clear and specific that the divorced wife refused the husband child visitation in contravention of court orders, a finding of contempt should be entered. Schadel v. Schadel (S.C. 1977) 268 S.C. 50, 232 S.E.2d 17.

It is the obligation of the divorced husband to pay the specified amounts of alimony and support money according to the terms of the decree and he should not be permitted to vary these terms to suit his own convenience. The amounts spent on the children for a trip to the beach and at Christmas time must be regarded as gifts or gratuities and they cannot be credited on his obligation to pay according to the terms of the decree. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581.

A husband, charged with contempt for nonpayment of alimony or support money, is entitled to credit for such amounts as he may have paid under the decree. The fact that he has made some payments, however, will not purge him of contempt or prevent his commitment therefor, as default as to each new installment is a fresh contempt. Nor is he entitled to credit for payments made, enuring to the benefit or welfare of his wife or children, if they are not made pursuant to or for the purposes prescribed by the decree. Under circumstances short of abandonment of the child by the wife, the husband may be considered merely a volunteer with respect to his expenditures in the child’s behalf while in his custody, and is therefore not entitled to credit for them as against payments due his wife by order of the court. Mixson v. Mixson (S.C. 1969) 253 S.C. 436, 171 S.E.2d 581.

39. Guidelines

Where the amount of child support is based on a settlement agreement, party requesting a modification has a heavier burden. Townsend v. Townsend (S.C.App. 2003) 356 S.C. 70, 587 S.E.2d 118, rehearing denied, certiorari denied. Child Support 240

Family court did not improperly apply child support guidelines in directing wife to pay for all uninsured medical, denial, and orthodontic expenses of parties’ three children, even though family court referenced guidelines and concluded that husband would owe $4,400 in monthly support under guidelines, given that combined gross income of parties was $490,000 per year, which made guidelines inapplicable, family court determined, based on equitable division award wife received, husband should pay only $3,500 per month in child support, and ordered that husband should continue to carry medical and dental insurance for benefit of minor children. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Child Support 143

There is no maximum award of child support under the Child Support Guidelines. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Child Support 146

Cases wherein the parents’ income exceeds the highest amount contemplated by the Child Support Guidelines are to be decided on a case by case basis. McElveen v. McElveen (S.C.App. 1998) 332 S.C. 583, 506 S.E.2d 1. Child Support 145

While Section 20‑7‑852 becomes effective January 31, 1990, it will not be fully effective until the Department of Social Services promulgates enabling regulations through the State Register pursuant to Section 20‑7‑852(c). However, at the present time, it is not inappropriate for family courts to use the South Carolina Child Support Guidelines as an aid in determining the proper level of child support to be awarded in domestic actions. Although the guidelines are not properly promulgated ones, their wide circulation to the bench, bar and public permits the family courts to take judicial notice of them. In instances where the guidelines are utilized, they must be used properly. Thus, a family court judge erred in failing to include monthly work‑related child care costs, less federal income tax credits attributable to this amount, in calculating a father’s child support obligation since the guidelines are clear that day care expenses are to be added to the basic obligation. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715.

40. Visitation

Evidence was insufficient to support finding that former wife was in contempt of court due to her denial of former husband’s Labor Day visitation; there was no evidence that former wife willfully violated the court’s visitation order as she testified that she believed the order prohibited former husband from selecting Labor Day visitation, and thus she was in compliance with the order when she denied former husband’s Labor Day visitation request. Ward v. Washington (S.C.App. 2013) 406 S.C. 249, 750 S.E.2d 105. Child Custody 854

Former husband should have been awarded Easter and summer visitation with child; considering the significance of Easter weekend to parties’ religious faith, it was in child’s best interest to share that holiday in a manner similar to schedule provided for during Thanksgiving and Christmas holidays, and extended summer visitation with husband, which would reduce stress associated with frequent travel and allow child to bond with husband, was in child’s best interest. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Child Custody 210; Child Custody 212

Parents and grandparents are not on an equal footing in a contest over visitation. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 283

The fact that a child may benefit from contact with the grandparent, or that the parent’s refusal is simply not reasonable in the court’s view, does not justify government interference in the parental decision not to allow visitation. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 286

The court must give special weight to a fit parent’s decision regarding visitation. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 180

Evidence did not support visitation award to father that restricted visitation to alternate weekends, one week at Christmas, four weeks in the summer, and alternating holidays; in light of father’s active involvement in raising his children and in their day‑to‑day activities, additional visitation of one‑half the children’s summer vacation and one day and evening of each week preceding and following the weekend he did not have visitation during the school year was warranted. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 471

As with child custody, the welfare and best interests of the child are the primary considerations in determining visitation. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 178

Visitation is addressed to the broad discretion of the family court and its decision will not be disturbed on appeal absent abuse. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 176; Child Custody 921(3)

An insufficient change of circumstances was shown to warrant a reduction in a child’s visitation with its father from 6 weeks to 3 weeks where the parties had originally entered into a detailed agreement regarding a 6‑week visitation period and at that time knew that they would live thousands of miles apart, no evidence supported the mother’s claim that a 6‑week period would adversely affect the child, the father had married his live‑in girlfriend, and the mother did not show that a prior 6 week visitation had been detrimental to the child. Ingold v. Ingold (S.C.App. 1991) 304 S.C. 316, 404 S.E.2d 35, certiorari denied.

A trial judge did not abuse his discretion in limiting a father’s visitation with his child to only 6 hours per month where the record was replete with evidence of the father’s irrational rage and uncontrollable temper. Hyde v. Hyde (S.C.App. 1990) 302 S.C. 280, 395 S.E.2d 186.

There was no abuse of discretion in a judge’s suspension of a father’s visitation privileges until he underwent counseling and reestablished his relationship with his child where the father had refused to work to resolve visitation problems, the father had spurned the child’s psychologist’s invitations to meet with him to attempt to resolve the visitation conflicts, and he had simply demanded his visitation rights without regard for the feelings and sensitivities of the child. Nash v. Byrd (S.C.App. 1989) 298 S.C. 530, 381 S.E.2d 913.

Family court judge erred in reducing mother’s visitation rights, where, even though the reduction was intended to overcome visiting right implementation problems there was no finding of which the parents was responsible for the implementation problems, and there was no finding that a reduction of the mother’s visitation was in the best interest of the child. Fisher v. Miller (S.C. 1986) 288 S.C. 576, 344 S.E.2d 149. Child Custody 577

Reduction of mother’s visitation rights with son from Saturday morning to Sunday evening, to 1 day of visitation every 2 weeks, so that child could be regular in his attendance of Sunday school and church, was not proper. Matthews v. Matthews (S.C. 1979) 273 S.C. 130, 254 S.E.2d 801. Child Custody 471

Where father acknowledged his explosive personality and admitted abusing son, court order that he could visit with son only at residence of mother, providing he was on good and proper behavior, would be restricted by requiring that prior to visiting with boy in mother’s home, father must notify mother and her attorney and obtain permission from family court. Venable v. Venable (S.C. 1979) 273 S.C. 96, 254 S.E.2d 309. Child Custody 577; Child Custody 659

Decision to terminate visitation between parent and child is drastic one; while court has power to absolutely forbid visitation in extreme case, power should be sparingly used. Venable v. Venable (S.C. 1979) 273 S.C. 96, 254 S.E.2d 309. Child Custody 175

The general rule is that in determining or limiting visitation rights the matter is one addressed to the trial court’s broad discretion and that in the absence of a clear abuse of such, the order granting, denying or limiting visitation rights will not be disturbed. Porter v Porter (1965) 246 SC 332, 143 SE2d 619. Graham v. Graham (S.C. 1970) 253 S.C. 486, 171 S.E.2d 704.

41. Guardian ad litem

Recommendation by guardian ad litem for children involved in custody dispute in divorce proceeding that husband should have custody of children was the product of an independent, balanced, and impartial investigation into the best interests of the children, which did not create the potential for bias in favor of the husband, where the guardian compiled two separate reports to assist the family court, she interviewed 16 individuals, including the parties, their children, the maternal grandmother, counselors, neighbors, teachers, and fellow employees, she visited both homes, she orchestrated counseling for the parties and children, and she reviewed counseling records, school files, psychological evaluations, and police reports. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Child Custody 421

A trial judge in a child custody action did not err in allowing the guardian ad litem (GAL) to give her opinion as to whom custody should be awarded and in receiving the written report of the GAL recommending that custody be awarded to the father, where the GAL interviewed 41 witnesses, approximately 20 of those witnesses testified, the names of all the persons interviewed by the GAL were made available to counsel, each interviewee could have been deposed by counsel for the mother, and full right of cross‑examination of the testifying witnesses was afforded. Richmond v. Tecklenberg (S.C.App. 1990) 302 S.C. 331, 396 S.E.2d 111. Evidence 318(3); Evidence 472(1)

It was error for a court to receive and utilize a guardian ad litem’s report in making its custody determinations without first affording the parties an opportunity to see the report, where the parties were left with the impression by the judge that it was not necessary for the guardian ad litem to furnish a written report after the hearing. The court also erred in not affording the parties the right to examine the guardian ad litem and other witnesses who furnished facts contained in the report. However, while some of the language contained in the court’s order was similar to that contained in the report, the court’s use of the report was harmless error in view of the fact that there was other evidence to support the findings of the trial judge. Shainwald v. Shainwald (S.C.App. 1990) 302 S.C. 453, 395 S.E.2d 441.

42. Attorney’s fees

Ex‑wife was not entitled to attorney fees in child support modification case; parties were in a similar position with regard to their financial conditions, ex‑husband was more successful than ex‑wife in this litigation, in that his child support was reduced, and record did not support the family court’s conclusion that ex‑husband’s lack of cooperation merited an imposition of attorney fees. Brown v. Brown (S.C.App. 2014) 408 S.C. 582, 758 S.E.2d 922. Child Support 603

Evidence did not support the family court’s conclusion that ex‑husband’s lack of cooperation merited an imposition of attorney fees against him in child support modification case; although ex‑husband was late in paying child support and attorney fees pursuant to the pendente lite order, there was no evidence that ex‑husband’s failure to timely pay child support prolonged these proceedings, he paid his arrearage and fees in full by the date of the final hearing, and court declined to hold him in contempt for his failure to timely pay child support. Brown v. Brown (S.C.App. 2014) 408 S.C. 582, 758 S.E.2d 922. Child Support 603

Before awarding attorney fees in an action to modify child support, the family court should consider: (1) each party’s ability to pay his or her own fee; (2) the beneficial results obtained by the attorney; (3) the parties’ respective financial conditions; and (4) the effect of the attorney fee on each party’s standard of living. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 603

In determining the amount of attorney fees to award in an action to modify child support, the court should consider: (1) the nature, extent, and difficulty of the services rendered; (2) the time necessarily devoted to the case; (3) counsel’s professional standing; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 603

A preponderance of the evidence supported family court’s award of attorney fees to mother for having to defend against father’s action to terminate or reduce his child support obligations based on a marital settlement agreement that he purported required an automatic annual recalculation pursuant to the Child Support Guidelines; the agreement merely allowed for the support payments to be revisited annually and did not specifically require an automatic annual recalculation, and the court considered the proper factors in determining attorney fees, and gave a thorough explanation of its decision. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 603

Former wife was entitled to attorney fees in her contempt motion against former husband for failing to comply with family court orders in divorce proceeding, where former husband had been financially stable throughout divorce proceedings but refused to obey the directives of the court. Buckley v. Shealy (S.C. 2006) 370 S.C. 317, 635 S.E.2d 76, rehearing denied. Divorce 1162

Ex‑wife, as opposed to ex‑husband, was entitled to attorney fees in ex‑husband’s action seeking reduction in his child support and alimony obligations; though ex‑wife’s annual income had nearly doubled since the parties’ divorce, ex‑husband had a much greater earning potential as a pediatrician, and, as such, ex‑husband was more able to pay both his own attorney fees and those accrued by wife, ex‑husband’s standard of living would be better able to absorb the fees in view of his income, and ex‑wife had prevailed in ex‑husband’s attempt to alter the support obligations. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 603; Divorce 1144; Divorce 1160

A mother was entitled to more than $650 in attorney fees to defend against a custody claim brought by her child’s father where the claim was presented with sufficient vigor to require the appointment of a guardian ad litem, pendente lite court action, and a psychologist’s examination of the child, and where the mother had limited resources to bear the cost of the litigation. Johns v. Johns (S.C.App. 1992) 309 S.C. 199, 420 S.E.2d 856. Child Custody 949

Attorney fees, costs and expenses were recoverable in post‑divorce litigation concerning visitation and support of the parties’ 2 minor sons regardless of which party brought the action. Golden v. Gallardo (S.C.App. 1988) 295 S.C. 393, 368 S.E.2d 684.

In custody dispute, paramount and controlling factor is welfare and best interests of child; court had discretion in action in which father was awarded permanent custody of parties’ child to refuse to grant attorney’s fees to mother. Matthews v. Matthews (S.C. 1979) 273 S.C. 130, 254 S.E.2d 801.

43. Guardian ad litem fees

Family court’s requirement that wife pay 22% of guardian ad litem fee for children involved in custody dispute in divorce proceeding was fair and did not create a hardship, where wife was awarded alimony, was not required to pay child support, and could pay the fee at a rate of $50 per month. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Infants 1244

Imposing upon former husband the entire cost of the guardian ad litem’s fees incurred during divorce trial was error; husband, who had a legitimate interest in seeking overnight visitation in his own home, had no obligation to accept guardian’s contrary recommendation regarding visitation and should not have been penalized for litigating a meritorious issue. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Infants 1244

44. Jurisdiction

The law of South Carolina, rather than the law of the state of the father’s residence, governed the question of whether a daughter was entitled to continued child support to allow her to attend college, even though her parents’ divorce decree was rendered in the state of her father’s residence, since the daughter was residing in South Carolina at the time she reached 18 years of age, and thus the exceptional circumstances which vested the Family Court with jurisdiction of the subject matter arose in South Carolina. West v. West (S.C.App. 1992) 309 S.C. 28, 419 S.E.2d 804.

The family court had jurisdiction to decide whether a mother was entitled to child support retroactively even though the child was no longer a minor. Hallums v. Hallums (S.C. 1988) 296 S.C. 195, 371 S.E.2d 525. Child Support 470

Initial determination of visitation is subject to appellate review, where abuse of discretion is shown, and family court judge may not act in capacity of reviewing court in finding abuse of discretion in reversing previous family court judge on issue of visitation but must only assess current situation in terms of welfare and best interest of child. King v. Gardner (S.C. 1980) 274 S.C. 493, 265 S.E.2d 260.

Under this section [Code 1962 Section 20‑115] the jurisdiction of the divorce court to entertain the mother’s petition for modification of her rights of visitation, upon the record of a previous hearing on her petition for a change of custody, which was dismissed, and, in effect, to reconsider this aspect of the custody issue is clear. Jackson v. Jackson (S.C. 1971) 256 S.C. 127, 181 S.E.2d 266.

The divorce court has continuing jurisdiction of the issue of child custody as incident and subsidiary to the principal issue of divorce. Knopf v. Knopf (S.C. 1966) 247 S.C. 378, 147 S.E.2d 638. Child Custody 404

This section [Code 1962 Section 20‑115] and Code 1962 Section 20‑116 expressly vest in the court issuing a divorce decree the power to modify or vacate its order with reference to the custody of children, and the granting of alimony and support money, and such jurisdiction is continuing and exclusive. Porter v. Porter (S.C. 1965) 246 S.C. 332, 143 S.E.2d 619.

Under this section [Code 1962 Section 20‑115] a divorce suit is pending for the purpose of an order as to the custody of children after as well as before final judgment. This section [Code 1962 Section 20‑115] expressly vests in the divorce court the power to award the custody of children, and from time to time to modify or vacate its orders, and the necessary implication is that this jurisdiction is exclusive. Clinkscales v. Clinkscales (S.C. 1963) 243 S.C. 377, 134 S.E.2d 216.

The exclusive and continuing jurisdiction of the court granting the divorce under this section [Code 1962 Section 20‑115] precludes another court of like jurisdiction from changing the custody previously adjudicated. Clinkscales v. Clinkscales (S.C. 1963) 243 S.C. 377, 134 S.E.2d 216.

If jurisdiction to award custody of the minor child of parties to a divorce action were dependent upon domicile, as distinguished from actual residence, of the child within the State, the court having jurisdiction of the divorce could never make a valid custody award in any case where the parent, whose domicile determines that of the child, is domiciled in another state, though both parents and the child actually reside in the State of the forum and both parents submit the issue of custody to the court. Jackson v. Jackson (S.C. 1962) 241 S.C. 1, 126 S.E.2d 855.

Where both parents are residents of the State and personally present before a court having jurisdiction of the primary issue of their divorce, that court has also jurisdiction, in its concern for the welfare of their child, to adjudicate the child’s custody, though it be absent. Jackson v. Jackson (S.C. 1962) 241 S.C. 1, 126 S.E.2d 855.

The sudden removal of the child to Illinois, without the knowledge of the parent, just before the divorce proceeding was filed, did not effect a bona fide change of its residence from South Carolina, where it had been living since its birth and where both of its parents still resided. Jackson v. Jackson (S.C. 1962) 241 S.C. 1, 126 S.E.2d 855.

45. Pleadings

The trial court erred in ordering the award of the dependent tax exemption to the father where the father made no request for such relief in his pleadings and there was no indication that the issue was raised at the hearing to increase his child support obligation; due process requires (1) that a litigant be placed on notice of the issues to be considered; and (2) that the relief awarded be contemplated by the proceedings, and although related to the issue of child support, the tax exemption is a separate issue. Abbott v. Gore (S.C.App. 1991) 304 S.C. 116, 403 S.E.2d 154.

It was not error for a trial judge in a divorce action instituted by the husband to permit the husband to orally amend his pleadings to seek child custody where the wife alleged in her counterclaim that the best interests of the children would be served by placing sole custody in her, and the husband, by way of reply, specifically denied this allegation, thus properly placing the issue of custody before the court. Henry v. Henry (S.C.App. 1988) 296 S.C. 285, 372 S.E.2d 104, certiorari denied. Child Custody 413

The Family Court erred in reducing the frequency and amount of child support payments where a reduction in child support was not requested by the pleadings. Dake v. Painter (S.C. 1986) 288 S.C. 118, 341 S.E.2d 620. Child Support 332

46. Presumptions and burden of proof

A family court has authority to modify the amount of a child support award upon a showing of a substantial or material change of circumstances; the burden is upon the party seeking the change to prove the changes in circumstances warranting a modification. Hawkins v. Hawkins (S.C.App. 2013) 403 S.C. 228, 742 S.E.2d 677. Child Support 233; Child Support 336

Before visitation may be awarded over a parent’s objection, one of two evidentiary hurdles must be met: the parent must be shown to be unfit by clear and convincing evidence, or there must be evidence of compelling circumstances to overcome the presumption that the parental decision is in the child’s best interest. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 461; Child Custody 465

The presumption that a fit parent’s decision is in the best interest of the child may be overcome only by showing compelling circumstances, such as significant harm to the child, if visitation is not granted. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 461

Parental unfitness must be shown by clear and convincing evidence. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 465

A court considering grandparents’ visitation over a parent’s objection must allow a presumption that a fit parent’s decision is in the child’s best interest. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 463

When a party seeks to alter a joint custody arrangement, the party has the burden of establishing a material change of circumstances substantially affecting the child’s welfare, and such a change in circumstances simply means that sufficient facts have been shown to conclude that the best interests of the child would be served by the change. Dixon v. Dixon (S.C.App. 1999) 336 S.C. 260, 519 S.E.2d 357. Child Custody 576

In child custody cases, there is a presumption against removing children from the state. Rice v. Rice (S.C.App. 1999) 335 S.C. 449, 517 S.E.2d 220. Child Custody 464

In child custody cases, the presumption against removing child from state may be rebutted by a showing that the move will benefit the child. Rice v. Rice (S.C.App. 1999) 335 S.C. 449, 517 S.E.2d 220. Child Custody 464

While there is presumption in favor of awarding custody to natural parent over third party, that presumption applies only if parent is found to be fit. Baker v. Wolfe (S.C.App. 1998) 333 S.C. 605, 510 S.E.2d 726. Child Custody 510

Presumption against removal did not justify change of custody when adoptive mother decided to relocate out of state with children after parties divorced, where mother was unable to obtain comparable employment in state, and original custody agreement indicated that mother might be required to move. Henggeler v. Hanson (S.C.App. 1998) 333 S.C. 598, 510 S.E.2d 722, rehearing denied, certiorari denied. Child Custody 261

Evidence of strong bond between children and their maternal grandparents and stepfather, and that children were happy in area where they lived, was insufficient to rebut presumption that custody would revert to father after mother died; family court had determined that father was fit despite his prior federal prison sentences, father had regularly exercised visitation with children even while he was in prison, and while children had close and loving relationship with their stepfather and grandparents, there was evidence that psychological parent‑child relationship did not exist between children and their stepfather or grandparents. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 473

Generally, there exists rebuttable presumption that right to custody of a minor child automatically reverts to surviving parent when custodial parent dies; however, in all custody controversies, including those between natural parents and third parties, best interest of child remains primary and controlling consideration. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 510

Four factors to consider in determining custody when a natural parent seeks to reclaim custody from a third party are: (1) parent must prove that he is a fit parent, able to properly care for child and provide a good home; (2) amount of contact, in form of visits, financial support or both, which the parent had with child while child was in care of a third party; (3) circumstances under which temporary relinquishment occurred; and (4) degree of attachment between child and temporary custodian. Dodge v. Dodge (S.C.App. 1998) 332 S.C. 401, 505 S.E.2d 344, rehearing denied. Child Custody 578

In action in which biological father sought to reclaim custody of his son from grandmother and her husband, circumstances in case did not overcome presumption that return of custody of child to father was in best interests of child, despite child’s close relationship with grandmother and her husband, where father only temporarily relinquished custody of child, was never found unfit, had remarried with stable home, employment and financial situation, had close relationship with child, had continuously maintained contact with him and paid child support, and had relinquished child after death of child’s mother. Harrison v. Ballington (S.C.App. 1998) 330 S.C. 298, 498 S.E.2d 680, rehearing denied, certiorari denied. Child Custody 510

In making custody determinations when natural parent seeks to reclaim custody of his child from third party, question is not simply who has most suitable or stable home environment at time of hearing; rather, court must determine if circumstances in case overcome presumption that return of custody to the biological parent is in best interest of child. Harrison v. Ballington (S.C.App. 1998) 330 S.C. 298, 498 S.E.2d 680, rehearing denied, certiorari denied. Child Custody 510

Father did not waive his priority status to custody of his biological child, under rebuttable presumption which favors placing child with biological parent over third party, by agreeing to allow his mother and her husband to keep and care for child until he was able to support and provide for him after child’s natural mother died, where final award granting custody of child to grandmother and her husband did not provide that father was permanently relinquishing custody of his son. Harrison v. Ballington (S.C.App. 1998) 330 S.C. 298, 498 S.E.2d 680, rehearing denied, certiorari denied. Child Custody 510

Although the best interest of the child is the primary and controlling consideration of the court in all child custody controversies, there is a rebuttable presumption that it is in the best interest of any child to be in the custody of its biological parent. The rebuttable presumption standard requires a case‑by‑case analysis. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456.

Although the introduction to the South Carolina Child Support Guidelines states that they are “available to be employed as a rebuttable presumption for the establishment of child support,” the statutes do not give these guidelines the status of a “rebuttable presumption.” In fact, Section 43‑5‑220, which directs the Department of Social Services to establish the guidelines, does so only in the context of aid to dependent children. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715.

While there is a presumption against removing a child from the state, a parent cannot be denied custody simply because that parent intends to take the child to another state. Sealy v. Sealy (S.C.App. 1988) 295 S.C. 281, 368 S.E.2d 85.

47. Admissibility of evidence

Testimony concerning mother’s adulterous conduct prior to the adoption of child was not barred by the doctrine of res judicata, in child custody modification proceeding; the child custody modification proceeding did not include the same issues as the adoption hearing, and the finding of parental fitness for adoption had no bearing on any future child custody determination. Latimer v. Farmer (S.C. 2004) 360 S.C. 375, 602 S.E.2d 32. Adoption 14

The determination as to whether the opinion of a guardian ad litem or a social worker should be admitted for advisory purposes in a child custody action is within the discretion of the family court judge, provided that full right of cross‑examination is afforded. Richmond v. Tecklenberg (S.C.App. 1990) 302 S.C. 331, 396 S.E.2d 111.

The extent to which a guardian ad litem is permitted to testify and give an opinion or recommendation in a child custody case is left to the sound discretion of the trial judge. The trial judge’s duty to assure that the child’s best interests are protected requires as a minimum that: (1) the judge select a competent person to serve as guardian ad litem; (2) the judge select a person with no adverse interests to the minor; and (3) the person so selected is adequately instructed on the proper performance of his or her duties. Shainwald v. Shainwald (S.C.App. 1990) 302 S.C. 453, 395 S.E.2d 441.

48. Judgments

An order of the family court at best minimally complied with Family Court Rule 26(a), requiring that an order of judgment in a domestic relations case set forth the specific findings of fact and conclusions of law to support the court’s decision, where the family court listed the factors to be considered in awarding child support, stated that it had considered them, and ruled that the mother was not able to contribute to her son’s support, but failed to make findings of facts regarding the factors. Holcombe v. Hardee (S.C. 1991) 304 S.C. 522, 405 S.E.2d 821.

Failure of trial court to make specific finding as to whether psychiatric care, included in the cost of child support, was necessary, was error. Campbell v. McPherson (S.C. 1977) 268 S.C. 444, 234 S.E.2d 774.

49. Review

Wife’s claims that family court erred in its child support determination by failing to impute income to husband or deviate from the Child Support Guidelines were not preserved for appeal, where wife failed to raise those issues to the family court and never filed a motion to alter judgment for the family court to consider the issues. Srivastava v. Srivastava (S.C.App. 2015) 411 S.C. 481, 769 S.E.2d 442. Child Support 539

Wife’s claim that the family court erred in giving credit to husband for overpayment of child support was not preserved for appeal, where wife did not file a motion to alter judgment and to reconsider ruling after the family court issued its final order. Srivastava v. Srivastava (S.C.App. 2015) 411 S.C. 481, 769 S.E.2d 442. Child Support 539

While a court of appeals may make findings of fact based on its own view of the preponderance of the evidence when reviewing a family court order, questions concerning child support are ordinarily committed to the discretion of the family court, whose conclusions will not be disturbed on appeal absent a showing of an abuse of discretion; an “abuse of discretion” occurs either when a court is controlled by some error of law or where order, based upon findings of fact, lacks evidentiary support. Townsend v. Townsend (S.C.App. 2003) 356 S.C. 70, 587 S.E.2d 118, rehearing denied, certiorari denied. Child Support 9; Child Support 556(1)

Although the Court of Appeals may find facts in accordance with its own view of the preponderance of the evidence in a custody matter, it is not required to ignore the fact that the trial judge, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 922(2)

The Court of Appeals’ broad scope of review does not relieve an appellant of his burden to convince the court that the family court erred in its factual findings and conclusions. Paparella v. Paparella (S.C.App. 2000) 340 S.C. 186, 531 S.E.2d 297, rehearing denied. Child Custody 920

Family Court’s finding that substantial changes in circumstances existed requiring a change in the custody of child became law of the law when neither party appealed this finding. Dixon v. Dixon (S.C.App. 1999) 336 S.C. 260, 519 S.E.2d 357. Child Custody 662

The Family Court’s award of child support would be remanded for redetermination where it was based on the father’s financial declaration which only included income from his salary, dividends, and rent, and failed to account for the value of the father’s employee benefits including bonuses, truck allowances, housing and utilities. Mobley v. Mobley (S.C.App. 1992) 309 S.C. 134, 420 S.E.2d 506.

Denial of divorce and award of separate maintenance and child custody to wife affirmed by Supreme Court where lower court findings concurred with referee and were not found to be without evidentiary support due to conflicting testimony as to whether husband had inflicted physical abuse on wife, and as to whether wife continued to have drug problem so as to affect her responsibilities as mother. Jones v. Jones (S.C. 1978) 270 S.C. 143, 241 S.E.2d 417.

Where denial of alimony by lower court on basis of wife’s adultery was reversed, because alleged adultery had occurred after husband obtained Haitian divorce which he was now estopped to deny validity of, issue of inadequacy of child support and house occupancy was remanded for consideration in light of such alimony as might be awarded. Smoak v. Smoak (S.C. 1977) 269 S.C. 313, 237 S.E.2d 372.

Termination of child support payments issue held moot where, during course of appeal, appellant complied with court order to continue payments until son reached age 21, son reached age 21, and appellant stopped making payments. Hinson v. Hinson (S.C. 1977) 269 S.C. 268, 237 S.E.2d 81.

Where the divorce decree eliminated the right of the wife and child to continue to reside in the family home, case would be remanded for consideration of whether the alimony and support award was adequate to allow the wife to secure other living quarters. Morris v. Morris (S.C. 1977) 268 S.C. 104, 232 S.E.2d 326.

Charge of error in the failure of the lower court to specifically award child support constitutes exception that was not taken to Master’s Report and, thus, is not available to wife in Supreme Court. Reece v. Reece (S.C. 1976) 266 S.C. 316, 223 S.E.2d 182.

An adjudication by the Supreme Court reversing a judgment as to support and custody of a child and awarding custody to another is not final in the face of changed circumstances which may be made the ground of future application to the court for modification of the judgment. Powell v. Powell (S.C. 1957) 231 S.C. 283, 98 S.E.2d 764.

Where the Supreme Court does not feel justified in disturbing the conclusion of a master concurred in by the judge of the juvenile domestic relations court and the circuit judge that the custody and control of children should be divided, if the procedure approved should be inimical to their interest, application may be made to the court for any necessary change. Mincey v. Mincey (S.C. 1954) 224 S.C. 520, 80 S.E.2d 123.

**SECTION 20‑3‑170.** Modification, confirmation, or termination of alimony; retirement by supporting spouse.

(A) Whenever any husband or wife, pursuant to a judgment of divorce from the bonds of matrimony, has been required to make his or her spouse any periodic payments of alimony and the circumstances of the parties or the financial ability of the spouse making the periodic payments shall have changed since the rendition of such judgment, either party may apply to the court which rendered the judgment for an order and judgment decreasing or increasing the amount of such alimony payments or terminating such payments and the court, after giving both parties an opportunity to be heard and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the supporting spouse, decreasing or increasing or confirming the amount of alimony provided for in such original judgment or terminating such payments. Thereafter the supporting spouse shall pay and be liable to pay the amount of alimony payments directed in such order and judgment and no other or further amount and such original judgment, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this State, shall be deemed to be and shall be modified accordingly, subject in every case to a further proceeding or proceedings under the provisions of this section in relation to such modified judgment.

(B) Retirement by the supporting spouse is sufficient grounds to warrant a hearing, if so moved by a party, to evaluate whether there has been a change of circumstances for alimony. The court shall consider the following factors:

(1) whether retirement was contemplated when alimony was awarded;

(2) the age of the supporting spouse;

(3) the health of the supporting spouse;

(4) whether the retirement is mandatory or voluntary;

(5) whether retirement would result in a decrease in the supporting spouse’s income; and

(6) any other factors the court sees fit.

HISTORY: 1962 Code Section 20‑116; 1952 Code Section 20‑116; 1949 (46) 216; 1979 Act No. 71 Section 9; 2012 Act No. 260, Section 1, eff June 18, 2012.

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1. In general

The court has the authority, under this section [Code 1962 Section 20‑116] to increase, decrease or terminate, upon proper showing of a change of condition, the alimony and support payments provided for in a judgment of divorce. Porter v Porter (1965) 246 SC 332, 143 SE2d 619. Long v Long (1966) 247 SC 250, 146 SE2d 873.

Many of the same considerations relevant to the initial setting of an alimony award may be applied in the modification context as well, including the parties’ standard of living during the marriage, each party’s earning capacity, and the supporting spouse’s ability to continue to support the other spouse. Fuller v. Fuller (S.C.App. 2012) 397 S.C. 155, 723 S.E.2d 235; Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136.

Many of the considerations relevant to the initial setting of an alimony award may be applied in the modification context, including the parties’ standard of living during the marriage, each party’s earning capacity, and the supporting spouse’s ability to continue to support the other spouse. Roof v. Steele (S.C.App. 2015) 413 S.C. 543, 776 S.E.2d 392, rehearing denied, certiorari denied. Divorce 627(2); Divorce 627(6)

Generally, the purpose of alimony is to place the supported spouse, to the extent possible, in the position she enjoyed during the marriage; however, upon a change in circumstances, the family court may modify an alimony obligation. Holmes v. Holmes (S.C.App. 2012) 399 S.C. 499, 732 S.E.2d 213, rehearing denied. Divorce 559; Divorce 627(3)

As a general rule, a court hearing an application for a change in alimony should look not only to see if the substantial change was contemplated by the parties, but most importantly whether the amount of alimony in the original decree reflects the expectation of that future occurrence. Fuller v. Fuller (S.C.App. 2012) 397 S.C. 155, 723 S.E.2d 235. Divorce 627(2); Divorce 627(3)

Questions concerning alimony rest with the sound discretion of the family court. Bryson v. Bryson (S.C.App. 2001) 347 S.C. 221, 553 S.E.2d 493. Divorce 565(1); Divorce 606

Periodic alimony may be modified. Sharps v. Sharps (S.C. 2000) 342 S.C. 71, 535 S.E.2d 913, rehearing denied. Divorce 622

Question of whether to increase or decrease spouse’s support based on finding of changed circumstances is matter committed to sound discretion of family court. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Divorce 626

The trial court’s denial of the husband’s Rule 60(b), SCRCP, motion for relief from alimony, on the ground that it was untimely, became the law of the case where the husband did not except to the court’s finding that the one‑year limitation applied. Smith v. Smith (S.C.App. 1992) 308 S.C. 492, 419 S.E.2d 232, rehearing denied.

The fact that a spouse who is obligated to make support payments incurs some medical disability, standing alone, is not sufficient to meet the change of circumstances test for modification of alimony. Henderson v. Henderson (S.C. 1989) 298 S.C. 190, 379 S.E.2d 125. Divorce 627(5)

The family court has authority to modify an award of periodic alimony upon a proper showing of a change of circumstances of the parties or the financial ability of the spouse making the periodic payments. White v. White (S.C.App. 1986) 290 S.C. 515, 351 S.E.2d 585. Divorce 622

Since the Family Court had properly considered the parties’ incomes and expenses, as well as other factors, including the appreciation in value of former wife’s stock, order requiring increase in former husband’s alimony payments was not an abuse of discretion. Spearman v. Spearman (S.C.App. 1986) 290 S.C. 46, 348 S.E.2d 177.

The court has the power to make such changes in the amount of alimony originally granted as the altered circumstances of the parties show to be equitable. This includes the power to modify a decree as to installments of alimony which have accrued. The court may consider whether the husband is unable to pay accrued alimony due to financial reasons or other just cause, and may modify the alimony decree accordingly. Alliegro v. Alliegro (S.C.App. 1985) 287 S.C. 154, 337 S.E.2d 252. Divorce 622; Divorce 1026

Changes in circumstances within the contemplation of the parties at the time the divorce decree was entered do not generally provide a basis for modifying alimony or child support. Where divorcing parties expressly contracted to use the cost of living index as a means of determining periodic automatic increases or decreases in alimony and child support, an increase in the cost of living was clearly within the contemplation of the parties at the time of the divorce, and therefore an increase in the cost of living could not be used by the former husband as a change in circumstances justifying a decrease in his alimony and child support payments. Calvert v. Calvert (S.C.App. 1985) 287 S.C. 130, 336 S.E.2d 884.

The family court has authority to modify an award of periodic alimony upon a showing of altered circumstances. Brown v. Brown (S.C. 1982) 278 S.C. 43, 292 S.E.2d 297. Divorce 627(3)

An award of periodic payments of alimony may be modified by the court upon a showing of altered circumstances. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776. Divorce 627(3)

If the divorce court awards alimony in gross, or in a lump sum, without reserving the power to amend, the court cannot modify the provision, even where it is payable in installments. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

This section [Code 1962 Section 20‑116] provides only that the court may increase, decrease or terminate any alimony payments provided for in a judgment of divorce. Taylor v. Taylor (S.C. 1962) 241 S.C. 462, 128 S.E.2d 910.

And where no alimony was awarded, this section [Code 1962 Section 20‑116] is inoperative. Taylor v. Taylor (S.C. 1962) 241 S.C. 462, 128 S.E.2d 910.

Where no award of alimony made in divorce decree, alimony may be granted after decree of divorce if right to have it subsequently determined is reserved in decree. Taylor v. Taylor (S.C. 1962) 241 S.C. 462, 128 S.E.2d 910.

2. Substantial or material changes, generally

To justify modification or termination of an alimony award, the changes in circumstances must be substantial or material. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 609(1); Divorce 627(3)

To justify modification of alimony, the changes in circumstances must be substantial or material. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Divorce 627(3)

In order to justify modification or termination of an alimony award, the changes in circumstances must be substantial or material. Shannon v. Shannon (S.C.App. 2003) 354 S.C. 4, 578 S.E.2d 753. Divorce 609(1); Divorce 627(3)

Family court was required to consider whether material changes in circumstances since the parties’ divorce warranted modification of husband’s alimony award, rather than whether a material change in circumstances had occurred since the parties’ last modification to the alimony provision of the divorce decree; the parties most recent modification to the alimony provision of their divorce decree was not a final adjudication of the parties’ rights and responsibilities, rather it was an amended temporary order. Eubank v. Eubank (S.C.App. 2001) 347 S.C. 367, 555 S.E.2d 413. Divorce 627(3)

In order to justify modification of periodic alimony, the changes in circumstances must be substantial or material. Sharps v. Sharps (S.C. 2000) 342 S.C. 71, 535 S.E.2d 913, rehearing denied. Divorce 627(3)

As a general rule, a court hearing an application for a change in alimony should look not only to see if the substantial change was contemplated by the parties, but most importantly whether the amount of alimony in the original decree reflects the expectation of that future occurrence. Sharps v. Sharps (S.C. 2000) 342 S.C. 71, 535 S.E.2d 913, rehearing denied. Divorce 627(3)

Change in circumstances must be substantial or material to justify modification of previous alimony obligation. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Divorce 627(3)

3. Retirement

Former husband was not required to initiate new action for modification of his alimony obligation upon his retirement. Smith v. Smith (S.C.App. 2004) 359 S.C. 393, 597 S.E.2d 188. Divorce 627(6)

4. Award based on agreement

Parties to a separation agreement may either agree to make alimony unmodifiable, or leave the issue within the traditional oversight of the family court; should the parties agree to the latter, the family court may modify alimony to the same extent permissible in court‑awarded alimony, a scope of authority which certainly includes the power to terminate payments based on substantial changes in the parties’ circumstances. Love v. Love (S.C.App. 2006) 367 S.C. 493, 626 S.E.2d 56. Divorce 609(1); Divorce 628(2); Divorce 919(2)

A party cannot misrepresent income and expenses on a financial declaration for purposes of having an agreement approved and then refute the accuracy of that document in a subsequent action for modification of alimony or child support. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 258; Divorce 627(1)

Any oral agreement by the parties regarding the termination of alimony was not enforceable, given that the agreement reached between the parties and adopted by the Family Court in the final divorce decree specifically provided that the agreement and any order approving the agreement would not be modified by the parties or any court without written consent of husband and wife. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 945

A former husband was prevented from seeking to enforce a prior agreement with his former wife to terminate alimony on their child’s commencement of college since he had failed to appeal a subsequent order modifying his alimony obligation to provide that his payments would continue until “further order of the court.” McAleese v. McAleese (S.C.App. 1992) 309 S.C. 548, 424 S.E.2d 558, rehearing denied.

An ex‑husband was not entitled to terminate alimony payments made pursuant to a settlement agreement which provided that the ex‑wife would receive a set sum until she remarried where, although a man lived on the ex‑wife’s property with her, the 2 did not refer to each other as husband and wife, they had no intent to marry, the man dated other women, and they did not file joint tax returns, have a joint bank account, or receive their mail at the same address; thus, no common‑law marriage was proven. Cathcart v. Cathcart (S.C.App. 1992) 307 S.C. 322, 414 S.E.2d 811.

Spousal “support” and “alimony” are synonymous. Thus, an agreement unambiguously providing for periodic alimony was subject to subsequent modification by the family court upon a showing of altered circumstances. Medlin v. King (S.C.App. 1988) 294 S.C. 406, 365 S.E.2d 36.

A property settlement and separation agreement previously entered into between the parties and which was incorporated into a divorce decree was binding on the former wife where the agreement was substantively within the bounds of reasonableness, and there was no evidence that a former wife had been compelled to enter into it as a result of being overreached or subjected to duress. Burnett v. Burnett (S.C.App. 1986) 290 S.C. 28, 347 S.E.2d 908.

Modification of a support agreement was properly denied for failure of the husband to show a present change of condition warranting termination of or reduction in the amount of support where the evidence established that, despite a showing that his practice of medical surgery had declined, the husband’s earnings and net worth had increased substantially since the execution of the agreement but that the wife was in poor health and unable to work. Brockington v. Brockington (S.C. 1982) 277 S.C. 304, 286 S.E.2d 381.

A consent decree providing for alimony and support may be modified, even though the decree contains some arrangements for property distribution incidental to the separation. Winterbottom v. Winterbottom (S.C. 1977) 268 S.C. 361, 234 S.E.2d 14.

A decree incorporating an agreement to make periodic support payments until the wife remarries or until either party dies can be modified. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If the parties intended the “wife’s alimony” section of an agreement to be mere alimony, then there may be some basis for its modification. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If a mere agreement for alimony or support is involved, the court as a rule may subsequently modify it. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If the parties intended the “wife’s alimony” section of the agreement to be an integral and inseparable part of a property settlement agreement, then the court ordinarily cannot properly modify it. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

If a true property settlement agreement is involved, it ordinarily may not thereafter be modified by the court. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Property settlement agreements which call for installment payments, and decrees incorporating them, generally cannot thereafter be changed. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Where an award of alimony is based upon, or refers to, or incorporates, an agreement entered into by the parties, the court may or may not be empowered to modify such agreement or award at a later date. Whether such agreement or award may subsequently be modified is to be determined by attempting to ascertain the intent of the parties upon their execution of the agreement. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Where an agreement as to alimony becomes merged in the supplemental decree, it loses its contractual nature, at least to the extent that the court has the power to modify the decree, if such modification be warranted. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

Where an agreement is contractual in nature, and is intended as a final and binding settlement of the parties’ rights and duties with respect to support and property, there can be no modification of a husband’s obligation based on a remarriage of his former wife or a change of circumstances. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

The power of the court to modify a decree for alimony, based upon an agreement of the parties, was sustained in Ex parte Jeter (1940) 193 SC 278, 8 SE2d 490. While the court in Kendall v Kendall (1948) 213 SC 471, 50 SE2d 191, refused, under the particular facts, to modify the award for alimony in that case, the decision in no way impinged upon the rule firmly adopted in Jeter. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755.

5. Cost of living

Inflation, without more, is insufficient to establish changed circumstances or justify an increase in alimony. Baker v. Baker (S.C.App. 1985) 286 S.C. 200, 332 S.E.2d 550. Divorce 627(4)

Unwarranted debts incurred by the party receiving alimony, without more, are insufficient to establish changed circumstances or justify an increase in alimony. Baker v. Baker (S.C.App. 1985) 286 S.C. 200, 332 S.E.2d 550. Divorce 627(4)

6. Living arrangements

Living with another, whether it is with a live‑in‑lover, a relative, or a platonic housemate, changes the supported ex‑spouse’s circumstances and alters the need for financial support. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 627(13)

A former husband was not entitled to a reduction in alimony on the ground that his former wife was living with another man where, regardless of what the relationship may have been between the former wife and the man she was living with, it did not have any substantial impact on the financial condition of the former wife. Cartee v. Cartee (S.C.App. 1988) 295 S.C. 103, 366 S.E.2d 269.

Former wife’s living with another, whether it is with live in lover, relative, or platonic housemate, sufficiently changes wife’s circumstances and alters her required financial support as to justify reduction of former husband’s alimony obligation. Vance v. Vance (S.C.App. 1986) 287 S.C. 615, 340 S.E.2d 554. Divorce 627(13)

7. Income changes

When considering a request to modify alimony based on diminished income, it is proper to consider a supported spouse’s earning capacity and impute income to a spouse who is underemployed or unemployed; however, courts are reluctant to invade a party’s freedom to pursue the employment path of their own choosing or impose unreasonable demands upon parties. Roof v. Steele (S.C.App. 2015) 413 S.C. 543, 776 S.E.2d 392, rehearing denied, certiorari denied. Divorce 627(6)

Whether termed voluntary underemployment, imputation of income, or the failure to reach earning potential, when a payor spouse seeks to reduce spousal support obligations based on his diminished income, a court should consider the payor spouse’s earning capacity. Roof v. Steele (S.C.App. 2015) 413 S.C. 543, 776 S.E.2d 392, rehearing denied, certiorari denied. Divorce 627(6)

Where a payor spouse’s actual income versus earning capacity is at issue on a motion to reduce support obligations based on diminished income, the court must closely examine the payor spouse’s good faith and reasonable explanation for the decreased income; however, a payor spouse can be found to be voluntarily underemployed even in the absence of a bad faith motivation. Fuller v. Fuller (S.C.App. 2012) 397 S.C. 155, 723 S.E.2d 235. Child Support 259; Child Support 260; Divorce 627(6)

When a payor spouse seeks to reduce support obligations based on his diminished income, a court should consider the payor spouse’s earning capacity. Fuller v. Fuller (S.C.App. 2012) 397 S.C. 155, 723 S.E.2d 235. Child Support 260; Divorce 627(6)

Where ex‑husband initially represented his annual income as $140,000 in his financial declaration and, subsequently, in his action for reduction of his alimony and child support obligations, testified that his current income was $120,000 and that his previous income had been under‑reported by him and that it was actually $168,996, and not $140,000, it was error for trial court to utilize the inflated figure of $168,996, rather than relying on the figure of $140,000 reported in his original financial declaration, to reduce his support obligations on ground that decrease in his income to $120,000 constituted substantial change in circumstances. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 261; Divorce 627(6)

Former husband failed to prove reduction in alimony was warranted; although former husband argued former wife’s income substantially increased during applicable period, no evidence was presented to establish appreciation in assets was extraordinary over the stipulated period, and, even if income were imputable for $148,000.00 increase in value of non‑marital‑real‑estate assets, additional income would not make up for monthly deficit family court found to exist with regard to former wife. Hailey v. Hailey (S.C.App. 2003) 357 S.C. 18, 590 S.E.2d 495. Divorce 632(3)

Former wife failed to demonstrate decline in her standard of living such that alimony increase was warranted; former wife’s description of her own medical condition was unconvincing, especially in light of total failure of proof as to any impact upon her income or economic circumstances, former wife provided no evidence her medication expense increased after initial award of alimony, and alleged deterioration to former wife’s residence did not warrant an increase. Hailey v. Hailey (S.C.App. 2003) 357 S.C. 18, 590 S.E.2d 495. Divorce 632(3)

Ex‑husband’s alimony obligation properly was reduced from $4,583 per month to $2,500 per month, and no greater reduction in ex‑husband’s alimony obligation was warranted; ex‑husband’s gross monthly income was less than $14,000 and his monthly expenses were $11,648, and, in the original agreement incorporated into the court order, it was contemplated that ex‑wife would be unemployed and therefore have no earned income, ex‑wife had remained unemployed, value of ex‑wife’s estate had increased from $594,746 to $648,624, she showed monthly expenses of $4,310, but those expenses included $1,500 per month payments on a bank loan for which there were no records to verify that payments were made on monthly basis and that she had resources to fully satisfy that loan. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 627(15)

Dramatic increase in the deficit between former wife’s income and expenses (more than $500 per month), cessation of child support, and former husband’s increase in income produced a substantial change in circumstances warranting the increase in alimony payments. Sharps v. Sharps (S.C. 2000) 342 S.C. 71, 535 S.E.2d 913, rehearing denied. Divorce 627(15)

A reduction in the former husband’s income from $300,000 per year to $180,000 per year was not a material change of circumstances warranting a modification of the alimony to his former wife or requiring that she pay him child support for the care of their 3 children, even though the wife’s income had increased, where his income was still enough to pay her alimony and support the children without reducing his standard of living, and her standard of living, although comfortable, was still less than it had been during the marriage. Kielar v. Kielar (S.C.App. 1993) 311 S.C. 466, 429 S.E.2d 851. Divorce 627(6)

A change of circumstances must be either substantial or material to warrant a modification of either alimony or child support. The mere fact that a supporting spouse’s salary or income has been reduced does not itself require a reduction of alimony or child support. And an inflationary increase in the cost of living does not, by itself, amount to a change in circumstances. Calvert v. Calvert (S.C.App. 1985) 287 S.C. 130, 336 S.E.2d 884.

Increased income may establish a change in the financial ability of the spouse making support payments, but equity does not necessarily require a corresponding increase in alimony. Where an award of alimony is adequate to maintain a spouse at the standard of living to which he or she was accustomed before divorce, a family court is not required to increase alimony on the basis of increased income alone. Baker v. Baker (S.C.App. 1985) 286 S.C. 200, 332 S.E.2d 550.

Where defendant voluntarily depressed income, trial judge properly ordered payment of alimony and child support in keeping with ability of defendant to earn and pay, though not necessarily in keeping with new income status. Camp v. Camp (S.C. 1977) 269 S.C. 173, 236 S.E.2d 814.

8. Remarriage

Since an award of periodic alimony normally ceases upon remarriage of the supported spouse, it was the supported spouse’s responsibility to include a provision in the agreement about the effect of her remarriage on the support payments. Medlin v. King (S.C.App. 1988) 294 S.C. 406, 365 S.E.2d 36. Divorce 928

Obligation of former husband to support wives from prior and subsequent marriage was not sufficient changed circumstances to justify termination of alimony to second wife. Winterbottom v. Winterbottom (S.C. 1977) 268 S.C. 361, 234 S.E.2d 14.

Remarriage of wife of itself does not necessarily call for modification of agreement. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776. Divorce 943(1)

A contract which provides that the payments shall not cease if the wife remarries obviously requires that payments continue after her marriage. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

9. Emancipation of children

An unallocated support award is subject to modification based on the changes in financial circumstances of the parties because of events involving the children; however, the reduced support obligation presented by a child’s emancipation may be offset by changes in circumstances affecting the remaining support obligations. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Child Support 255; Child Support 290; Divorce 627(4)

10. Health issues

Former wife, who was diagnosed prior to divorce with multiple sclerosis, demonstrated a substantial change in circumstances that warranted an increase in former husband’s alimony obligation; health insurance coverage for wife through husband’s employer’s health insurance plan, which was awarded as component of alimony, was no longer available four years later, premiums for comparable coverage had increased over 1,000%, the other alimony component of $300 per month did not consider wife’s needs should she lose access to health insurance coverage, and husband had financial ability to provide additional alimony to wife. Roof v. Steele (S.C.App. 2011) 396 S.C. 373, 720 S.E.2d 910, rehearing denied. Divorce 627(5)

Amount of increase in former husband’s monthly alimony obligation, as result of substantial change of circumstances in which health insurance coverage under husband’s employer’s health care plan that was awarded as component of alimony was no longer available to wife and premiums for comparable coverage had increased by over $1,000, should not be tied to the ever‑changing market value of wife’s present health insurance coverage, especially considering that husband’s obligation to pay wife’s health insurance premiums ended after that coverage was no longer available through his employer. Roof v. Steele (S.C.App. 2011) 396 S.C. 373, 720 S.E.2d 910, rehearing denied. Divorce 634

11. Relationships

Alimony may be terminated when a supported ex‑spouse is involved in a relationship tantamount to marriage. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 609(2)

Ex‑wife’s relationship with her boyfriend was not tantamount to marriage and did not constitute a change of circumstances so as to warrant termination of her alimony; ex‑wife and her boyfriend maintained separate residences, they maintained separate banking and investment accounts, and with the exception of the travel fund, there was no evidence that ex‑wife and her boyfriend had commingled any funds, and neither ex‑wife nor her boyfriend provided financial support to the other. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 609(2)

Termination of ex‑husband’s alimony obligation to ex‑wife was warranted since ex‑wife’s relationship with her boyfriend was tantamount to marriage; ex‑wife and her boyfriend had been together for over 12 years, they had moved to Florida and purchased a house together, they continued to engage in sexual relations throughout their involvement, and ex‑wife’s grandchildren had developed a relationship with boyfriend to the point that they called him “Pa Pa.” Bryson v. Bryson (S.C.App. 2001) 347 S.C. 221, 553 S.E.2d 493. Divorce 609(2)

A husband was not entitled to have his alimony payments terminated or reduced, even though his ex‑wife was living in an illicit relationship and the husband was in bankruptcy, where the parties had entered into an agreement which was approved and adopted as the order of the court, and which provided (1) for a set amount of alimony, (2) that alimony would be terminated only on the death of a party or the remarriage of the wife, (3) that the agreement could not be modified without the written consent of both parties, and (4) that either party could “date” and neither would seek divorce for adultery; thus, the alimony provision was not modifiable by the court, by reason of either changed circumstances or equitable considerations. Croom v. Croom (S.C.App. 1991) 305 S.C. 158, 406 S.E.2d 381, certiorari denied.

12. Inheritance

Material change in circumstances warranted modification of husband’s alimony obligation; after the divorce wife received large inheritances from her mother and aunt’s estates, and husband’s income had decreased. Eubank v. Eubank (S.C.App. 2001) 347 S.C. 367, 555 S.E.2d 413. Divorce 627(11)

Family court was required to consider wife’s inheritance when determining whether to modify husband’s alimony obligation; original decree failed to reflect the expectation that wife would receive large inheritances, and award of alimony stated that it was modifiable. Eubank v. Eubank (S.C.App. 2001) 347 S.C. 367, 555 S.E.2d 413. Divorce 627(11)

Husband’s knowledge that wife’s family had substantial assets and that she would one day receive an inheritance did not bar a reduction or termination of husband’s alimony obligation based on material change in circumstances. Eubank v. Eubank (S.C.App. 2001) 347 S.C. 367, 555 S.E.2d 413. Divorce 609(1); Divorce 627(11)

13. Retroactive alimony

Statute governing modification of alimony did not apply to wife’s motion to amend final divorce decree, and thus wife was not required to show change in circumstances to have decree amended to include retroactive alimony from date of temporary order. Wannamaker v. Wannamaker (S.C.App. 2011) 395 S.C. 592, 719 S.E.2d 261. Divorce 627(3)

Husband was entitled to suspension of his alimony obligation to wife, retroactive to the date of the filing of his motion for termination or modification of alimony, where wife had been declared a missing person, and wife had been missing for more than two years when husband filed his motion for modification or termination of alimony. Shannon v. Shannon (S.C.App. 2003) 354 S.C. 4, 578 S.E.2d 753. Divorce 609(1)

The wife was not entitled to retroactive alimony from the date of an original trial court order until the date the order was reversed and a higher alimony was awarded where the wife was able to increase her alimony from the original award by her appeal from the divorce decree, rather than suffering a loss of alimony occasioned by an action for reduction or termination of previously awarded alimony. Smith v. Smith (S.C.App. 1992) 308 S.C. 492, 419 S.E.2d 232, rehearing denied.

14. Marital home

As an incident of support, an award of exclusive possession of the marital home to the wife for an indefinite period of time was subject to modification upon the showing of a change in circumstances despite its award for an indefinite term. Hickman v. Hickman (S.C.App. 1988) 294 S.C. 486, 366 S.E.2d 21.

An award of the exclusive right to occupy the marital home is in the nature of support. Thus, in a former wife’s action for an increase in alimony, the former husband had the right to have his request for possession of the marital home heard and decided on the basis of his allegations of altered circumstances. Holme v. Holme (S.C.App. 1985) 287 S.C. 68, 336 S.E.2d 508.

15. Attorney’s fees

Ex‑wife, as opposed to ex‑husband, was entitled to attorney fees in ex‑husband’s action seeking reduction in his child support and alimony obligations; though ex‑wife’s annual income had nearly doubled since the parties’ divorce, ex‑husband had a much greater earning potential as a pediatrician, and, as such, ex‑husband was more able to pay both his own attorney fees and those accrued by wife, ex‑husband’s standard of living would be better able to absorb the fees in view of his income, and ex‑wife had prevailed in ex‑husband’s attempt to alter the support obligations. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 603; Divorce 1144; Divorce 1160

Ex‑husband was not entitled to recover attorney fees with respect to his action seeking to terminate his alimony obligation; although ex‑husband successfully received a reduction in his alimony obligation, he was primarily seeking to terminate his alimony obligation based on either ex‑wife’s cohabitation with her boyfriend or the parties’ oral agreement, he was not successful on either of these claims, and ex‑husband’s substantial income was sufficient to enable him to compensate his attorney. Miles v. Miles (S.C.App. 2003) 355 S.C. 511, 586 S.E.2d 136. Divorce 1140; Divorce 1146; Divorce 1160

Trial court did not abuse its discretion in awarding former wife partial attorney fees in the amount of $6,000, though former wife’s own motions were denied, where New York court issued original divorce decree, former husband sued former wife in South Carolina to reduce unallocated support, former wife had to take time from work and defend action, her defense of the reduction was successful, former husband had the income to afford attorney fees, and former wife could not pay attorney fees without substantially impacting her standard of living. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Divorce 1168(1)

Attorney fees may be awarded in an action arising from the original divorce action, such as an action to modify support or alimony payments. Garrett v. Garrett (S.C. 1986) 288 S.C. 26, 339 S.E.2d 510. Divorce 1160

Financial ability is not one of the main factors to be considered in awarding attorney fees on a petition to increase alimony based on changed circumstances. Baker v. Baker (S.C.App. 1985) 286 S.C. 200, 332 S.E.2d 550. Costs 194.10

16. Jurisdiction

Family court lacked subject matter jurisdiction to interpret alimony obligations under property settlement agreement; settlement agreement was entered into prior to Moseley and incorporated but not merged into divorce decree, and agreement stated that payment of alimony could not in any manner be modified by court. Stoddard v. Riddle (S.C.App. 2004) 362 S.C. 266, 607 S.E.2d 97, rehearing denied, certiorari denied. Divorce 965

The family court was not limited to awarding alimony payments solely from marital assets and, thus, court had jurisdiction to order payment of alimony with nonmarital assets. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 574

The family court was without jurisdiction to modify an award for rehabilitative alimony where (1) the ex‑wife did not base her claim for modification on a change in circumstances, but rather based her claim on Section 20‑3‑170, (2) at the time of the initial award the wife failed to appeal the decision of the family court, which itself did not provide for the possibility of modification, and (3) the case law and statutes prevailing at the time of the initial award did not provide for modification. Jordan v. Jordan (S.C.App. 1992) 307 S.C. 407, 415 S.E.2d 424.

The effect of this statute is a clear reservation of continuing jurisdiction in all cases of periodic alimony to assure the power of the court to modify such alimony upon changed conditions. Mason v. Mason (S.C. 1979) 272 S.C. 268, 251 S.E.2d 198. Divorce 624

The fact that a decree for alimony is based upon an agreement of the parties does not defeat the jurisdiction of an equity court to make changes or modifications when the circumstances so justify. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

This section [Code 1962 Section 20‑116] and Code 1962 Section 20‑115 expressly vest in the court issuing a divorce decree the power to modify or vacate its order with reference to the custody of children, and the granting of alimony and support money, and such jurisdiction is continuing and exclusive. Porter v. Porter (S.C. 1965) 246 S.C. 332, 143 S.E.2d 619.

In absence of express or specific reservation in decree of right to award alimony subsequently, trial judge did not possess power to modify final decree by awarding alimony when none had been granted in original decree, such decree being res judicial as to future alimony. Taylor v. Taylor (S.C. 1962) 241 S.C. 462, 128 S.E.2d 910. Divorce 625

Where divorce decree does not provide for alimony and there is no reservation of jurisdiction in decree, it is final and absolute and wife cannot be allowed alimony in any subsequent proceeding. Taylor v. Taylor (S.C. 1962) 241 S.C. 462, 128 S.E.2d 910.

17. Estoppel

Former wife’s claims for future alimony were barred by the doctrine of equitable estoppel; former wife was granted custody of the parties’ children in the divorce decree, both children decided to live with former husband, former husband believed that former wife agreed to waive alimony in exchange for him having custody of the children, and former husband changed his position in reliance on the parties’ agreement to waive alimony and support when he failed to have his obligation reduced or eliminated after the children began residing with him. Kelley v. Kelley (S.C.App. 2006) 368 S.C. 602, 629 S.E.2d 388. Divorce 569; Divorce 580

18. Res judicata

Law of the case doctrine did not preclude trial court from terminating ex‑husband’s alimony obligation; law of the case doctrine and res judicata did not apply to those family court actions that were modifiable based on changes in circumstances, such as alimony. Bryson v. Bryson (S.C.App. 2001) 347 S.C. 221, 553 S.E.2d 493. Divorce 610

Res judicata was a valid defense in an action brought by a former husband seeking to delete from a settlement agreement a provision requiring the use of the cost of living index to determine automatic increases or decreases in alimony and child support payments, where the prior divorce proceedings had involved an identity of parties and subject matter, the divorce court had approved the cost of living provision, and neither party had appealed from the divorce decree. Calvert v. Calvert (S.C.App. 1985) 287 S.C. 130, 336 S.E.2d 884.

19. Pleadings

The wife was entitled to the dismissal of her husband’s Rule 60(b), SCRCP, motion seeking relief from alimony since the proper procedure for the modification of alimony is a petition based on a change of circumstances pursuant to Section 20‑3‑170. Smith v. Smith (S.C.App. 1992) 308 S.C. 492, 419 S.E.2d 232, rehearing denied.

Former husband’s amended petition for modification of alimony which alleges conduct of former wife in living with another man as change in condition for wife warranting termination of alimony is sufficient, under Family Court Rule 12 provision that petition is to be liberally construed, to notify wife of issues upon which husband bases claims. Vance v. Vance (S.C.App. 1986) 287 S.C. 615, 340 S.E.2d 554. Divorce 609(2)

20. Presumptions and burden of proof

To justify modification of an alimony award, the changes in circumstances must be substantial or material; moreover, the change in circumstances must be unanticipated, and the party seeking modification has the burden to show by a preponderance of the evidence that an unforeseen change has occurred. Fuller v. Fuller (S.C.App. 2012) 397 S.C. 155, 723 S.E.2d 235. Divorce 627(3); Divorce 632(2)

Burden of showing by preponderance of evidence a change has occurred is on party seeking modification of alimony. Hailey v. Hailey (S.C.App. 2003) 357 S.C. 18, 590 S.E.2d 495. Divorce 632(2)

21. Sufficiency of evidence

Preponderance of the evidence in action for modification of alimony did not establish that wife, who worked at frame shop, was capable of working a full‑time job for another employer for 40 hours per week, and thus court would decline to impute income to wife; evidence established that wife suffered myriad symptoms from multiple sclerosis (MS), that her work history consisted of training horses and working in the frame shop, and that she had a high school diploma and no computer skills, and there was no evidence regarding prevailing job opportunities or earning levels in the community for an employee with wife’s skill set or for an employee with MS or other chronic illness. Roof v. Steele (S.C.App. 2015) 413 S.C. 543, 776 S.E.2d 392, rehearing denied, certiorari denied. Divorce 627(6)

Evidence in action for modification of alimony established that alimony award of $1550 per month to wife was appropriate; wife, who had multiple sclerosis (MS), earned $12,000 per year while working at frame shop while husband earned approximately $6,755 per month plus an annual $7,600 incentive bonus, marriage was of a relatively lengthy duration during which the parties enjoyed a comfortable lifestyle wife no longer enjoyed, husband had more education, a more lucrative employment history, and higher anticipated earnings, wife’s expenses were not unreasonable and her physical and emotional health was not as good as husband’s, and the parties had no other support obligations and never alleged misconduct in the breakup of their marriage. Roof v. Steele (S.C.App. 2015) 413 S.C. 543, 776 S.E.2d 392, rehearing denied, certiorari denied. Divorce 627(4); Divorce 627(5); Divorce 627(6)

Evidence of husband’s increased age of 67 was insufficient to support family court’s decision to reduce husband’s alimony obligation from $1,200 per month to $250 per month, without considering all relevant evidence and determining whether there had been a substantial or material, unanticipated change in circumstances that warranted a reduction in husband’s alimony obligation; family court failed to consider husband’s financial ability or other circumstances of the parties, or whether the amount of alimony in the original decree reflected the expectation of any change in circumstances, and family court judge expressly acknowledged he excluded evidence concerning husband’s ability or inability to work. Fuller v. Fuller (S.C.App. 2012) 397 S.C. 155, 723 S.E.2d 235. Divorce 633

Evidence was sufficient to establish relationship tantamount to marriage constituting substantial change in circumstances which warranted termination of ex‑husband’s alimony obligation; ex‑wife and partner had cohabitated for over seven years, despite their assertions to contrary, record reflected pair shared substantial amount of expenses, be it in form of loans, reduced rent, or gifts, and record also reflected romantic nature of party’s relationship and unmistakable connection between partner’s and ex‑wife’s family. Love v. Love (S.C.App. 2006) 367 S.C. 493, 626 S.E.2d 56. Divorce 609(2)

Decrease in ex‑husband’s annual salary from $140,000 to $120,000 was not significant enough to severely impact his standard of living or his ability to pay his child support and alimony obligations, particularly where that decrease was due to a voluntary relocation, and thus, there was no substantial change in circumstances sufficient to support a reduction of ex‑husband’s alimony and child support obligations. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 258; Divorce 627(6)

It was error for the trial court to reduce ex‑husband’s child support and alimony obligations on ground that ex‑wife’s income had increased since the divorce when such a change was expected; by agreement of the parties, ex‑husband’s alimony payments were to be reduced over time, beginning only six months after the final order granting modification, and although the divorce decree did not explain the reason for the automatic decreases in ex‑husband’s support obligations, record supported trial court’s finding they were in anticipation of ex‑wife increasing her income. Penny v. Green (S.C.App. 2004) 357 S.C. 583, 594 S.E.2d 171. Child Support 277; Divorce 627(6)

Trial court’s finding that properties were not as marketable as former husband’s accountant portrayed them to be was an abuse of discretion in proceeding to modify alimony; with the possible exception of former wife’s comment that she did not control property, she did not argue, and offered no proof, that properties had less value than that to which she stipulated. Hailey v. Hailey (S.C.App. 2003) 357 S.C. 18, 590 S.E.2d 495. Divorce 633

Family court did not abuse its discretion in determining there had been no substantial change in circumstances warranting modification of unallocated support found to be alimony to former wife, though parties’ child had graduated from college, where child’s graduation did relatively little to decrease former wife’s expenses or cost of living, in the twenty years since the divorce former wife never sought a cost‑of‑living increase while former husband’s income and concomitant ability to pay alimony had substantially increased, and former husband’s own investigator’s findings supported mother’s testimony she was living in basement of single family home and moved out of apartment because gangs had moved into her neighborhood, rather than former husband’s claim that she was living with a man. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Divorce 627(15)

Family court finding that husband was not entitled to modification of his alimony obligation based on doctrine of “unclean hands” was erroneous; family court was required to consider whether there were changes in either parties’ economic circumstances which would warrant a modification or termination of husband’s alimony obligation. Eubank v. Eubank (S.C.App. 2001) 347 S.C. 367, 555 S.E.2d 413. Divorce 627(3)

Evidence that former wife’s medical problems hampered her earning ability and that former husband’s standard of living had increased was sufficient to support increase in former husband’s support obligation due to change in circumstances. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Divorce 627(5)

Change warranting modification of alimony must be unanticipated and either substantial or material; evidence that former husband’s decreased income significantly impaired his ability to meet his prior support obligations, and that his sincere, reasonable efforts to achieve his earning potential had failed, supported finding of changed circumstances warranting reduction in his alimony obligation; husband’s monthly income had decreased significantly since divorce while his expenses had decreased more slowly, although record did not support argument that his sexual orientation had forced his resignation from previous employment and had hindered his subsequent job prospects. Kelley v. Kelley (S.C.App. 1996) 324 S.C. 481, 477 S.E.2d 727. Divorce 632(3)

The evidence was sufficient to support the denial of a former husband’s request for a reduction in alimony and child support, in spite of the husband’s assertions of financial difficulty due to setbacks in his business and a personal injury which caused him to lose time from work, where his financial statement indicated that he received more income from his employment at the time of the hearing than he was receiving at the time the court order was entered, and the evidence showed that he continued to maintain a nonfrugal lifestyle. Pirkle v. Pirkle (S.C.App. 1990) 303 S.C. 266, 399 S.E.2d 797.

There was no error in the family court’s reduction, due to changed circumstances, of the amount of monthly support an ex‑husband was to pay his ex‑wife where, since entry of the divorce decree, the ex‑husband remarried, the parties’ daughter became emancipated, the family court awarded custody of the parties’ son to the ex‑husband, the ex‑wife for a period of time had a live‑in boyfriend who was unemployed and paid her no rent, and the ex‑wife had no health problems, at 41 was still young, and (although unemployed) was fully capable of earning a livelihood. Brunner v. Brunner (S.C.App. 1988) 296 S.C. 60, 370 S.E.2d 614. Divorce 627(15); Divorce 634

Former wife failed to show by a preponderance of the evidence change sufficient to modify the previous award of alimony on a showing that she had experienced an increase of $392 a month in income, as compared with an increase of $40.39 in taxes and insurance, the latter increases forming the basis for her seeking increased alimony. Boney v. Boney (S.C.App. 1986) 289 S.C. 596, 347 S.E.2d 890.

Trial judge did not abuse his discretion in terminating alimony to the former wife, under evidence showing that, because of the generosity of another man with whom the former wife enjoyed a close personal and emotional relationship, the former wife’s economic circumstances had improved. Palmer v. Palmer (S.C.App. 1986) 289 S.C. 216, 345 S.E.2d 746.

The contention that the increase in the amount of the alimony payments was excessive was without merit where the record amply sustained the findings of the lower court as to the increased need of the wife for additional funds for support, the increased financial ability of the husband and the reasonableness of the increase allowed. Fender v. Fender (S.C. 1971) 256 S.C. 399, 182 S.E.2d 755. Divorce 632(3)

22. Judgments

In action to enforce alimony, trial court erred in entering factual findings for divorced wife, when it did not permit husband’s testimony to establish justification for a reduction or termination of alimony payments. Rice v. Rice (S.C. 1977) 268 S.C. 453, 234 S.E.2d 777.

23. Harmless error

Any error in trial court’s ruling allowing former husband to initiate review of his alimony obligation by filing motion seeking court review of his finances, rather than by filing new action for modification, did not prejudice former wife and was harmless. Smith v. Smith (S.C.App. 2004) 359 S.C. 393, 597 S.E.2d 188. Divorce 1315(4)

24. Review

The determination of whether to increase or decrease alimony based on a finding of changed circumstances is a matter committed to the sound discretion of the family court, and will not be disturbed on appeal unless the family court abused its discretion. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Divorce 626; Divorce 1281(5)

Family court’s determination whether to modify spouse’s support will not be disturbed on appeal unless family court abused its discretion. Thornton v. Thornton (S.C. 1997) 328 S.C. 96, 492 S.E.2d 86. Divorce 1281(5)

Because of the former husband’s failure to include in the record a fuller account of his assets, income, or expenses for review by the Court of Appeals, the court would defer to the trial judge and affirm his decision in refusing to reduce husband’s alimony payments to the former wife. Boney v. Boney (S.C.App. 1986) 289 S.C. 596, 347 S.E.2d 890.

Where denial of alimony by lower court on basis of wife’s adultery was reversed, because alleged adultery had occurred after husband obtained Haitian divorce which he was now estopped to deny validity of, issue of inadequacy of child support and house occupancy was remanded for consideration in light of such alimony as might be awarded. Smoak v. Smoak (S.C. 1977) 269 S.C. 313, 237 S.E.2d 372.

Supreme Court will closely scrutinize facts of case wherein husband and father voluntarily changes employment so as to lessen earning capacity and, in turn, ability to pay alimony and child support. Camp v. Camp (S.C. 1977) 269 S.C. 173, 236 S.E.2d 814. Child Support 88; Divorce 576

The circuit judge, on appeal from the juvenile and domestic relations court, attempted to reserve jurisdiction of the action and to accord to the parties the right to appear before the circuit court for a subsequent determination of the husband’s ability to support the wife and the minor child and to determine his ability to pay attorneys’ fees in excess of those provided in the order. This was clearly error because the juvenile and domestic relations court had original jurisdiction of the action and the circuit court only had jurisdiction as an appellate court. Porter v. Porter (S.C. 1965) 246 S.C. 332, 143 S.E.2d 619.

**SECTION 20‑3‑180.** Change of name after divorce or separation.

The court, upon the granting of final judgment of divorce or an order of separate maintenance, may allow a party to resume a former surname or the surname of a former spouse.

HISTORY: 1962 Code Section 20‑117; 1952 Code Section 20‑117; 1949 (46) 216; 1998 Act No. 431, Section 1, eff June 23, 1998.

CROSS REFERENCES

Proceeding for change of name, generally, see Section 15‑49‑10 et seq.

Library References

Divorce 1362.

Westlaw Topic No. 134.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Divorce Section 71, Use of Former Name.

**SECTION 20‑3‑190.** Divorced wife barred of dower.

On the granting of any final decree of divorce, the wife shall thereafter be barred of dower in lands formerly owned, then owned, or thereafter acquired by her former husband.

HISTORY: 1962 Code Section 20‑118; 1952 Code Section 20‑118; 1949 (46) 216; 1950 (46) 2251; 1953 (48) 318.

Library References

Dower and Curtesy 52.

Westlaw Topic No. 136.

C.J.S. Dower and Curtesy Sections 94 to 96, 236 to 237.

LAW REVIEW AND JOURNAL COMMENTARIES

Chastain, Henry and Woodside, Determination of Property Rights Upon Divorce in South Carolina: An Exploration and Recommendation. 33 S.C. L. Rev. 227, December 1981.

**SECTION 20‑3‑200.** Divorce shall not render children illegitimate.

No judgment of divorce from the bonds of matrimony shall render illegitimate the children begotten of the marriage.

HISTORY: 1962 Code Section 20‑119; 1952 Code Section 20‑119; 1949 (46) 216.

Library References

Children Out‑of‑Wedlock 1.

Westlaw Topic No. 76H.

C.J.S. Children Out‑of‑Wedlock Sections 1 to 8.

**SECTION 20‑3‑210.** Unlawful advertising for purpose of procuring divorce.

It shall be unlawful for any person to print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any card, handbill, advertisement, printed paper, book, newspaper or notice of any kind offering or otherwise to advertise to procure, attempt to procure or aid in procuring any divorce either in this State or elsewhere. But this section shall not apply to the printing or publishing of any notice or advertisement required or authorized by the laws of this State.

HISTORY: 1962 Code Section 20‑120; 1952 Code Section 20‑120; 1949 (46) 216.

Library References

Antitrust and Trade Regulation 163.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 64 to 65.

**SECTION 20‑3‑220.** Unlawful advertising for purpose of procuring divorce; penalty.

Any person violating any of the provisions of Section 20‑3‑210 shall, upon conviction, be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars or by imprisonment for not less than one month or more than one year, or both such fine and such imprisonment, at the discretion of the court.

HISTORY: 1962 Code Section 20‑121; 1952 Code Section 20‑121; 1949 (46) 216.

Library References

Antitrust and Trade Regulation 163, 1020.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 64 to 65.

C.J.S. Monopolies Section 261.

**SECTION 20‑3‑230.** Clerks of court shall file reports of divorces and annulments with Division of Vital Statistics.

Whenever a divorce or annulment is decreed by a court having jurisdiction, the clerk of court shall, no later than thirty days following the filing of the final decree, send a report to the Registrar of the Division of Vital Statistics of the Department of Health and Environmental Control showing such information as may be required on a certificate to be furnished by the Division of Vital Statistics of the Department of Health and Environmental Control.

HISTORY: 1962 Code Section 20‑122; 1962 (52) 2157.

CROSS REFERENCES

Department of Health and Environmental Control regulations, see S.C. Code of Regulations R. 61‑1 et seq.

Library References

Clerks of Courts 69.

Health 396.

Westlaw Topic Nos. 79, 198H.

C.J.S. Courts Section 341.

C.J.S. Health and Environment Section 24.

**SECTION 20‑3‑235.** Decree to set forth social security numbers or alien identification numbers of parties in divorce.

A decree of divorce shall set forth the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the parties in the divorce. Filing the required form with the Department of Health and Environmental Control complies with the requirements of this section.

HISTORY: 1997 Act No. 71, Section 1, eff June 10, 1997; 1999 Act No. 100, Part II, Section 105, eff June 30, 1999.

Editor’s Note

The Preamble of 1997 Act No. 71 provides as follows:

“Whereas, it is the sense of Congress that all states shall have in effect certain laws relative to the enforcement of child support in order to remain eligible for federal funding under Title IV‑D of the Social Security Act. Therefore, this act amends the Code of Laws of South Carolina, 1976, to, among other things, require the collection and use of social security numbers on certain state‑issued documents and applications; to provide authority for the imposition of administrative liens in child support cases; to enhance the information requirements of the parties to a paternity or child support action; to enhance procedures establishing paternity; to conform the state’s Uniform Interstate Family Support Act (UIFSA) to changes made by the National Conference of Commissioners on Uniform State Laws; to enhance income withholding; to provide authority for the Department of Social Services to administratively change the payee in Title IV‑D child support cases; to provide authority for the issuance and enforcement of administrative subpoenas; to enhance the ability to void conveyances fraudulently conducted for purposes of avoiding payment of a child support obligation; to eliminate the payment of a child support disregard check in accordance with the elimination of federal financial participation in the same; to require employers, state and local agencies, financial institutions, and utility companies to provide certain information necessary for the establishment or enforcement of child support obligations; to establish a mandatory new hire reporting program; and to establish a state registry of child support cases.”

Library References

Divorce 152.

Westlaw Topic No. 134.

C.J.S. Divorce Sections 346, 359 to 370.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 161.5, Social Security Numbers Required.

S.C. Jur. Divorce Section 53.5, Social Security Numbers Required.

ARTICLE 3

Uniform Divorce Recognition Act

**SECTION 20‑3‑410.** Short title.

This article may be cited as the “Uniform Divorce Recognition Act.”

HISTORY: 1962 Code Section 20‑131; 1952 Code Section 20‑131; 1950 (46) 2390.

Library References

Divorce 1400 to 1476.

Westlaw Topic No. 134.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 20, Valid Annulment or Divorce.

**SECTION 20‑3‑420.** Nonresident divorce shall be void if parties were domiciled here.

A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this State if both parties to the marriage were domiciled in this State at the time the proceeding for the divorce was commenced.

HISTORY: 1962 Code Section 20‑132; 1952 Code Section 20‑132; 1950 (46) 2390.

Library References

Divorce 1411 to 1414.

Westlaw Topic No. 134.

RESEARCH REFERENCES

ALR Library

166 ALR, Federal 1 , What Constitutes Reverse Sex or Gender Discrimination Against Males Violative of Federal Constitution or Statutes‑Nonemployment Cases.

Encyclopedias

S.C. Jur. Bigamy Section 12, Defendant’s Reliance on Invalid Divorce Decree and Other Factors.

NOTES OF DECISIONS

In general 1

1. In general

The court must give special weight to a fit parent’s decision regarding visitation. Camburn v. Smith (S.C. 2003) 355 S.C. 574, 586 S.E.2d 565, rehearing denied. Child Custody 180

Husband was estopped to assert invalidity of Haitian judgment of divorce for purpose of raising defense of adultery in action by wife for alimony, where wife’s adulterous acts took place after Haitian divorce decree was obtained by him. Smoak v. Smoak (S.C. 1977) 269 S.C. 313, 237 S.E.2d 372.

**SECTION 20‑3‑430.** Prima facie evidence of domicile.

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this State within twelve months prior to the commencement of the proceeding therefor and resumed residence in this State within eighteen months after the date of his departure therefrom or (b) at all times after his departure from this State and until his return maintained a place of residence within this State shall be prima facie evidence that the person was domiciled in this State when the divorce proceeding was commenced. But the provisions of this section shall not apply in cases of divorce when the decree of divorce was issued prior to June 3, 1950.

HISTORY: 1962 Code Section 20‑133; 1952 Code Section 20‑133; 1950 (46) 2390.

Library References

Divorce 1473.

Westlaw Topic No. 134.

RESEARCH REFERENCES

ALR Library

166 ALR, Federal 1 , What Constitutes Reverse Sex or Gender Discrimination Against Males Violative of Federal Constitution or Statutes‑Nonemployment Cases.

LAW REVIEW AND JOURNAL COMMENTARIES

Domestic Relations: Evidence. 22 S.C. L. Rev. 545.

NOTES OF DECISIONS

In general 1

1. In general

Husband failed to overcome statutory presumption of residence where, though he testified that he left South Carolina intending never to return and that he procured Nevada drivers license and hunting license and that while in Nevada he looked for employment, he also testified to contrary, and testified that he traveled to Nevada for express purpose of obtaining divorce, he returned to South Carolina after initiating divorce action and again after securing decree, and was physically present in Nevada only when it was necessary to facilitate his divorce. Powers v. Powers (S.C. 1979) 273 S.C. 51, 254 S.E.2d 289. Divorce 1413

**SECTION 20‑3‑440.** Construction.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact substantially identical legislation.

HISTORY: 1962 Code Section 20‑134; 1952 Code Section 20‑134; 1950 (46) 2390.

Library References

Divorce 1350.

Westlaw Topic No. 134.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 20, Valid Annulment or Divorce.

NOTES OF DECISIONS

In general 1

1. In general

Finding Florida divorce void due to lack of jurisdiction over deceased husband was sustained by record showing deceased had no actual or constructive notice of action brought by respondent wife, by deceased’s subsequent conduct in seeking annulment of marriage to another woman on ground that he was validly married to respondent, and by later filing for divorce against respondent. Payton v. Payton (S.C. 1978) 270 S.C. 275, 241 S.E.2d 901, certiorari denied 99 S.Ct. 145, 439 U.S. 847, 58 L.Ed.2d 148.

In refusing to accord full faith and credit to decree of another state, court had no duty to examine record supporting decree to extent of examining and considering documents not produced into evidence. Payton v. Payton (S.C. 1978) 270 S.C. 275, 241 S.E.2d 901, certiorari denied 99 S.Ct. 145, 439 U.S. 847, 58 L.Ed.2d 148.

ARTICLE 5

Equitable Apportionment of Marital Property

**SECTION 20‑3‑610.** Spousal equity and ownership rights.

During the marriage a spouse shall acquire, based upon the factors set out in Section 20‑3‑620, a vested special equity and ownership right in the marital property as defined in Section 20‑3‑630, which equity and ownership right are subject to apportionment between the spouses by the family courts of this State at the time marital litigation is filed or commenced as provided in Section 20‑3‑620.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑471.

CROSS REFERENCES

Application of Uniform Statutory Rule Against Perpetuities to joint power of appointment governing marital property, see Section 27‑6‑30.

Library References

Divorce 671, 681.

Westlaw Topic No. 134.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 55, Tenancy by the Entirety and Community Property.

S.C. Jur. Divorce Section 56, Marital Assets Defined.

S.C. Jur. Divorce Section 57, Distinguished from Non‑Marital Assets.

S.C. Jur. Divorce Section 60, Effect of Antenuptial Agreements.

S.C. Jur. Mortgages Section 12, Capacity of Parties.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, domestic law. 41 S.C. L. Rev. 79 (Autumn 1989).

Career Assets and the Equitable Apportionment of Marital Property. 38 S.C. L. Rev. 755.

Equitable division of marital property. 39 S.C. L. Rev. 69, Autumn 1987.

Note: The South Carolina Equitable Distribution Act and the common law: the state of the union. 39 S.C. L. Rev. 707 (Spring 1988).

NOTES OF DECISIONS

In general 1

Contribution 2

Improvements to property 3

Intent 4

Jurisdiction 8

Justiciability 9

Lawsuit proceeds 6

Presumptions and burden of proof 10

Retirement benefits 5

Transmutation 7

1. In general

The court was not required to attempt “in kind” distribution of marital assets instead of awarding virtually all property to the husband, and ordering him to pay the wife her share in cash, where the marital home was located across from the husband’s parents’ home, and the other major asset was the husband’s jewelry business (which he testified he wanted to continue operating). Hough v. Hough (S.C.App. 1994) 312 S.C. 344, 440 S.E.2d 387. Divorce 821; Divorce 823

The court properly determined that the marital home, although titled in the name of the husband’s mother, was actually marital property under Section 20‑7‑473, based on (1) testimony that the husband paid for the house through his mother and in cash in order to avoid the attention of the Internal Revenue Service, (2) evidence that the husband reported no earnings during the relevant time period, that the husband and wife insured the home, referred to it as their own, and paid no rent, and (3) expert testimony that the husband’s parents could not have paid for the house from their own earnings or savings. Hough v. Hough (S.C.App. 1994) 312 S.C. 344, 440 S.E.2d 387. Divorce 693; Evidence 571(1)

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), evidence showed that the husband considered the marital residence and rental property, which were nonmarital when he acquired them and were still titled in his name alone, to be his separate property after the marriage where (1) his will provided that on his death all of his real property was to be liquidated, with 1⁄3 of the proceeds to go to his wife and 2⁄3 of the proceeds to go to his children, and (2) the will provided that the wife would remain in the marital home only until the estate was settled. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 683; Divorce 691; Divorce 876.5(9)

A wife’s action for the division of marital property was not abated upon the husband’s death where the property had been identified and divided by the family court, both parties had appealed, but the husband died during the appeal, at which time a representative for the husband’s estate was substituted; upon the filing of marital litigation, property acquired during the marriage becomes vested in an estate called marital property, in which the parties have a vested interest subject to equitable distribution. Hodge v. Hodge (S.C.App. 1991) 305 S.C. 521, 409 S.E.2d 436.

Settlement proceeds from a chose in action which arose during a marriage, but which the parties were not aware of until after the divorce, was marital property pursuant to Section 20‑7‑473 to the extent that the purpose of the compensation was for injuries suffered or property lost prior to the commencement of marital litigation. Mears v. Mears (S.C.App. 1991) 305 S.C. 150, 406 S.E.2d 376, affirmed 308 S.C. 196, 417 S.E.2d 574.

The “ownership right” in “marital property” is acquired during marriage. “Marital property” as such does not exist until the date when marital litigation is filed or commenced. The “ownership right” in “marital property,” therefore, cannot attach until that property is created by the filing of marital litigation. Thus, a wife’s “ownership right” did not attach until the date she filed the divorce petition and a bank’s judgment lien which attached when it was recorded 3 years earlier had priority. Prosser v. Pee Dee State Bank (S.C. 1988) 295 S.C. 212, 367 S.E.2d 698. Divorce 681; Marriage And Cohabitation 425

2. Contribution

One spouse’s contributions to the other spouse’s business may create a special equity in his or her favor. It is not error to consider the assets of a spouse’s business in the division of marital property given evidence that the other spouse materially contributed through personal services to that business. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 703

A wife’s contributions entitled her to an interest in her husband’s dental practice and, therefore, the value of the dental practice was properly included in the marital estate where household expenses and money for family support were provided by the wife during the 4 years the husband attended dental school and thereafter until the opening of his dental practice, the parties lived with the wife’s family for 5 months after the husband’s graduation from dental school before moving into their own home, the wife co‑signed several loans, offering personal property as security, in order to fund the dental practice, and she assisted the husband in preparing for the opening of the practice by selecting furniture and business cards and designing a business sign. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Equitable distribution is based on a recognition that marriage is, among other things, an economic partnership. Upon dissolution of the marriage, property accumulated during the marriage should be divided and distributed in a manner which fairly reflects each spouse’s contribution to its acquisition, regardless of which spouse holds legal title. Walker v. Walker (S.C.App. 1988) 295 S.C. 286, 368 S.E.2d 89.

3. Improvements to property

Wife who made physical and financial efforts to improve home was entitled to 50% special equity in increased value of marital home after marriage as part of equitable distribution; although husband alleged that wife’s efforts constituted maintenance and repair of the marital home, rather than permanent improvements, wife expended substantial time and money refurnishing, decorating, and repairing home. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 693

Spouse has equitable interest in improvements to property to which he or she contributed, even if property is nonmarital. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 684

A spouse has an equitable interest in improvements to property to which he or she has contributed, even if the property is nonmarital. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 689; Divorce 876.2(2)

4. Intent

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the fact that income from rental units, which were nonmarital when the husband acquired them, was put into the parties’ joint bank account did not show the parties’ intent to change nonmarital property to marital property. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 691

Gifts of money totalling between $25,000 and $30,000, made during the marriage by the husband to his mother over the course of 20 years, did not constitute marital property, even though the wife knew nothing about the gifts and did not consent to them, because the money no longer belonged to either the husband or the wife at the time the divorce action was filed and there was no evidence that the husband gave his mother money in contemplation of divorce or with intent to deprive the wife of her right to equitable distribution; in the absence of fraudulent intent, it is not unlawful for spouses to make outright gifts to others during the marriage. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376. Divorce 718; Divorce 1015

5. Retirement benefits

Earlier decision of the court of appeals holding that vested military retirement benefits were subject to equitable distribution was applicable to a divorce action although the earlier decision had not been affirmed by the Supreme Court. Hamby v. Hamby (S.C.App. 1994) 315 S.C. 518, 445 S.E.2d 656. Courts 91(2)

The Family Court properly awarded the wife a portion of the husband’s unvested military pension since a service person’s right to participate in the military retirement program was a legally enforceable chose in action, and thus was marital property subject to distribution; moreover, the court properly awarded the wife a percentage of the benefits, while deferring any payments until the husband’s receipt thereof, since the fact that the court was incapable of determining the exact dollar value of the plan did not prohibit it from equitably distributing the future proceeds. Ball v. Ball (S.C.App. 1993) 312 S.C. 31, 430 S.E.2d 533, rehearing denied, certiorari granted, affirmed 314 S.C. 445, 445 S.E.2d 449.

Vested military retirement benefits constitute an earned property right which, if accrued during the marriage, is subject to equitable distribution. (Overruling Brown v Brown, 279 SC 116, 302 SE2d 860 (1983)). Tiffault v. Tiffault (S.C. 1991) 303 S.C. 391, 401 S.E.2d 157. Divorce 713

Where an employer makes a contribution to a retirement fund as an employment benefit or as a form of additional compensation, as opposed to an outright gift to the employee, the contribution is marital property and is subject to equitable division. Hardwick v. Hardwick (S.C.App. 1990) 303 S.C. 256, 399 S.E.2d 791. Divorce 712

The portion of a husband’s civil service retirement pension which was attributable to the time period during which the husband was employed before the marriage was nonmarital property. Noll v. Noll (S.C.App. 1988) 297 S.C. 190, 375 S.E.2d 338. Divorce 712

A husband’s civil service retirement fund was property acquired during the marriage and, therefore, was part of the marital estate subject to equitable apportionment even though the retirement account was not vested and the husband could not begin receiving his retirement funds immediately. Kneece v. Kneece (S.C.App. 1988) 296 S.C. 28, 370 S.E.2d 288.

Neither trial court nor Court of Appeals has authority to pre‑empt annuity rights vested in wife by Central Intelligence Agency Spouses Retirement Equity Act, and annuity of former wife is property right vested in her by federal statute and not alimony. Gregory v. Gregory (S.C.App. 1987) 292 S.C. 587, 358 S.E.2d 144. Divorce 577; States 18.28

6. Lawsuit proceeds

The proceeds of the husband’s suit for personal injuries which occurred during the marriage was marital property subject to equitable distribution, even though the proceeds represented personal losses of pain and suffering rather than economic losses to the marital partnership, since in jurisdictions having equitable distribution statutes such awards are generally considered marital property regardless of their purpose, and the Equitable Distribution Statute, Section 20‑7‑472, gives Family Court judges sufficient latitude in dividing the marital estate to make adjustments for personal injury awards that represent compensation for injuries uniquely personal to one spouse. Marsh v. Marsh (S.C.App. 1992) 308 S.C. 304, 417 S.E.2d 638, rehearing denied, certiorari granted, affirmed 313 S.C. 42, 437 S.E.2d 34.

A divorce decree did not foreclose a wife’s right to equitable distribution of the husband’s recovery in a malpractice claim which accrued prior to the institution of the divorce proceedings where the decree stated that the parties marital assets consisted primarily of household items, that the parties anticipated that an agreement could be reached concerning those items, but that if an agreement could not be reached “concerning an equitable division of their assets,” the court would adjudicate that issue. Covington v. Covington (S.C.App. 1991) 306 S.C. 473, 412 S.E.2d 455.

7. Transmutation

There was insufficient evidence that wife acquired an interest in real property owned by her husband prior to the marriage, as required to establish element of fraud to prove wife’s entitlement to a constructive trust of the property after husband conveyed it to his daughter, where wife abandoned divorce action, in which any transmutation or special equity issues involving property could have been directly determined. McDaniel v. Kendrick (S.C.App. 2009) 386 S.C. 437, 688 S.E.2d 852, rehearing denied. Trusts 110

Vested retirement funds are considered marital property under the Equitable Apportionment of Marital Property Act, Sections 20‑7‑471 et seq.; however, the portion of a pension attributable to the period of time that a spouse is employed before the marriage is non‑marital property unless it is transmuted into marital property during the marriage. Murphy v. Murphy (S.C. 1995) 319 S.C. 324, 461 S.E.2d 39, rehearing denied. Divorce 712

Under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), nonmarital property may be transmuted into marital property if it becomes so commingled with marital property as to be untraceable, if it is titled jointly, or if it is used by the parties in support of the marriage or in some manner as to evidence an intent by the parties to make it marital property. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 683

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the fact that the parties lived in the marital home for the duration of the marriage (17 years) did not mean that the home, which was nonmarital property when the husband acquired it, was transmuted into marital property; the mere use of nonmarital property to support the marriage, without additional evidence of intent to treat it as marital property, is insufficient to establish transmutation. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied.

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the wife failed to prove that the home and rental properties, which were nonmarital at the time the husband acquired them, were transmuted into marital property during the marriage where (1) the husband paid for all properties prior to the marriage and the wife failed to show that any appreciable amount of marital funds was expended on improvement of the properties, and (2) the record indicated that the wife’s contributions of labor and time to improvement and maintenance of the properties were largely routine duties such as cleaning and painting. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 691; Divorce 693

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the trial court properly determined that mortgages payable to the husband in monthly installments, in connection with his sale of nonmarital property, were not thereby transmuted into marital property. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied.

In certain circumstances, nonmarital property may be transmuted into marital property during the marriage. Property, nonmarital at the time of its acquisition, may be transmuted (1) if it becomes so commingled with marital property as to be untraceable, (2) if it is titled jointly, or (3) if it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. As a general rule, transmutation is a matter of intent to be gleaned from the facts of each case. The spouse claiming transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Such evidence may include placing the property in joint names, transferring the property to the other spouse as a gift, using the property exclusively for marital purposes, commingling the property with marital property, using marital funds to build equity in the property, or exchanging the property for marital property. The mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

8. Jurisdiction

The Family Court had subject‑matter jurisdiction to equitably distribute the property of a bigamous marriage pursuant to “divorce” proceedings, even if the bigamist willfully committed bigamy, since under Sections 20‑7‑472(2) and (15), the Family Court has the discretion to consider misconduct, fault, and “other relevant factors” as it deems appropriate. Splawn v. Splawn (S.C. 1993) 311 S.C. 423, 429 S.E.2d 805. Marriage And Cohabitation 270

The Family Court had no subject matter jurisdiction to distribute the property a couple had accumulated while they were living together, after it had determined that the couple had never been husband and wife under the common law, since there could be no marital property as contemplated by the law. Hallums v. Bowens (S.C.App. 1993) 318 S.C. 1, 428 S.E.2d 894. Courts 175

When property is alleged to be marital property but is owned by a third party, the family court has the subject matter jurisdiction to join all persons with a possible interest in the property as parties to the action and to determine if the property constitutes marital property as defined in Section 20‑7‑473. If it is determined that the property is marital property, then the family court has the authority to determine the parties’ equitable rights therein. Appeal of Sexton (S.C. 1989) 298 S.C. 359, 380 S.E.2d 832. Divorce 70

The family court did not have subject matter jurisdiction to determine a wife’s interest in the property of her marriage where the wife only sought to have the court adjudicate her rights and property and did not seek to have the court alter or terminate her marital status. The fact that her motivation for bringing the suit arose out of marital tensions did not transform her cause of action from nonmarital litigation to marital litigation. When distinguishing marital litigation from nonmarital litigation, it is the nature of the cause of action, not the reason for bringing it which controls. Brown v. Brown (S.C.App. 1988) 295 S.C. 354, 368 S.E.2d 475, certiorari granted 297 S.C. 73, 374 S.E.2d 897.

9. Justiciability

Wife of dentist who was convicted of illegally writing prescriptions for controlled substances resulting in forfeiture action against dentist’s property, had no standing to challenge forfeiture action based on assertion of ownership right in marital property because marital property would not exist until marital litigation had been commenced, which was not the case here. U.S. v. Schifferli (C.A.4 (S.C.) 1990) 895 F.2d 987.

10. Presumptions and burden of proof

Section 20‑7‑472 creates a presumption that the debt of either spouse incurred prior to marital litigation is a marital debt and must be factored in the totality of equitable apportionment, and the burden of proving a spouse’s debt as non‑marital rests on the party making such assertion. Hardy v. Hardy (S.C.App. 1993) 311 S.C. 433, 429 S.E.2d 811. Divorce 748; Divorce 831

Settlement proceeds from a chose in action which arose during a marriage, but which the parties were not aware of until after the divorce, are presumed to be marital property since the unliquidated claim accrued before the date of valuation, and thus the burden will be on the party who wants this amount excluded from equitable distribution to show the proper proportion. Mears v. Mears (S.C.App. 1991) 305 S.C. 150, 406 S.E.2d 376, affirmed 308 S.C. 196, 417 S.E.2d 574.

The spouse claiming an equitable interest in property upon dissolution of the marriage has the burden of proving that the property is part of the marital estate. If the spouse carries this burden, he or she establishes a prima facie case that the property is marital property. If the opposing spouse then wishes to claim that the property so identified is not part of the marital estate, he or she has the burden of presenting evidence to establish its nonmarital character. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

**SECTION 20‑3‑620.** Apportionment factors.

(A) In a proceeding for divorce a vinculo matrimonii or separate support and maintenance, or in a proceeding for disposition of property following a prior decree of dissolution of a marriage by a court which lacked personal jurisdiction over an absent spouse or which lacked jurisdiction to dispose of the property, and in other marital litigation between the parties, the court shall make a final equitable apportionment between the parties of the parties’ marital property upon request by either party in the pleadings.

(B) In making apportionment, the court must give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance or other marital action between the parties;

(2) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage; provided, that no evidence of personal conduct which would otherwise be relevant and material for purposes of this subsection shall be considered with regard to this subsection if such conduct shall have taken place subsequent to the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) the value of the marital property, whether the property be within or without the State. The contribution of each spouse to the acquisition, preservation, depreciation, or appreciation in value of the marital property, including the contribution of the spouse as homemaker; provided, that the court shall consider the quality of the contribution as well as its factual existence;

(4) the income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets;

(5) the health, both physical and emotional, of each spouse;

(6) the need of each spouse or either spouse for additional training or education in order to achieve that spouses’s income potential;

(7) the nonmarital property of each spouse;

(8) the existence or nonexistence of vested retirement benefits for each or either spouse;

(9) whether separate maintenance or alimony has been awarded;

(10) the desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children;

(11) the tax consequences to each or either party as a result of any particular form of equitable apportionment;

(12) the existence and extent of any support obligations, from a prior marriage or for any other reason or reasons, of either party;

(13) liens and any other encumbrances upon the marital property, which themselves must be equitably divided, or upon the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage;

(14) child custody arrangements and obligations at the time of the entry of the order; and

(15) such other relevant factors as the trial court shall expressly enumerate in its order.

(C) The court’s order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑472.

CROSS REFERENCES

Acquisition of a special equity and ownership right in marital property based on factors set out in this section, see Section 20‑3‑610.

Provision that marital property includes property acquired during marriage and owned at the commencement of marital litigation as provided in this section, see Section 20‑3‑630.

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143 Am. Jur. Proof of Facts 3d 93, Proof of Right to Equitable Distribution or Maintenance of Spouse’s Social Security Disability Benefits in Divorce Action.

146 Am. Jur. Proof of Facts 3d 197, Proof of Equitable Distribution of Oil or Mineral Rights in Divorce.

128 Am. Jur. Trials 337, Uncovering Marital Assets in Divorce Proceedings.

134 Am. Jur. Trials 419, Appreciation of Separate Assets in Contested Divorce Proceedings.

135 Am. Jur. Trials 317, Litigating Breach of Fiduciary Duty Cause of Action Under Qualified Domestic Relations Orders (QDRO).

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Note: The South Carolina Equitable Distribution Act and the common law: the state of the union. 39 S.C. L. Rev. 707 (Spring 1988).

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1. In general

The family court does not have the authority to modify court ordered property divisions. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 893(1)

Family court has the authority to equitably divide the marital estate upon request by either party in divorce pleadings. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 652; Divorce 875

Upon dissolution of the marriage, marital property should be divided and distributed in a manner that fairly reflects each spouse’s contribution to its acquisition, regardless of who holds legal title. Sanders v. Sanders (S.C.App. 2011) 396 S.C. 410, 722 S.E.2d 15. Divorce 742

The doctrine of equitable distribution is based on a recognition that marriage is, among other things, an economic partnership. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 650

Upon dissolution of the marriage, marital property should be divided and distributed in a manner which fairly reflects each spouse’s contribution to its acquisition, regardless of who holds legal title. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 741

Upon dissolution of a marriage, property acquired during the marriage should be divided and distributed in a manner which fairly reflects each spouse’s contribution to its acquisition, regardless of which spouse holds legal title. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 741; Divorce 780

A wife’s action for the division of marital property was not abated upon the husband’s death where the property had been identified and divided by the family court, both parties had appealed, but the husband died during the appeal, at which time a representative for the husband’s estate was substituted; upon the filing of marital litigation, property acquired during the marriage becomes vested in an estate called marital property, in which the parties have a vested interest subject to equitable distribution. Hodge v. Hodge (S.C.App. 1991) 305 S.C. 521, 409 S.E.2d 436.

Before requiring the sale of marital property and a division of the proceeds in order to effect an equitable apportionment, the family court should first attempt an “in‑kind” distribution of the assets. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Equitable distribution is based on a recognition that marriage is, among other things, an economic partnership. Upon dissolution of the marriage, property accumulated during the marriage should be divided and distributed in a manner which fairly reflects each spouse’s contribution to its acquisition, regardless of which spouse holds legal title. Walker v. Walker (S.C.App. 1988) 295 S.C. 286, 368 S.E.2d 89.

2. Other marital litigation

“Other marital litigation” referred to in Section 20‑7‑472 should include any type of action or proceeding involving a marital dispute. Rivenbark v. Rivenbark (S.C. 1990) 301 S.C. 175, 391 S.E.2d 232.

3. Discretion of court

Apportionment of marital property in divorce proceedings is within the discretion of the family court and will not be disturbed on appeal absent an abuse of discretion. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 1290(1)

Family court abused its discretion with respect to equitable division of marital assets and debts, where the court ignored the extent to which various properties were been interwoven with debts owed to husband’s brother and ongoing financing of marital business ventures and husband’s newer ventures, the court was not concerned with unauthorized sale of share of business in which husband had a majority interest and wife had a minority interest, the court failed to attribute income from that business to husband, and the court failed to consider brother’s undisclosed interest in a second business and the use of first business to fund other ventures. Stoney v. Stoney (S.C.App. 2016) 417 S.C. 345, 790 S.E.2d 31, rehearing denied. Appeal And Error 946

The family court has wide discretion in determining how marital property is to be distributed; it may use any reasonable means to divide the property equitably. Fitzwater v. Fitzwater (S.C.App. 2011) 396 S.C. 361, 721 S.E.2d 7. Divorce 653; Divorce 820

Statutory criteria governing equitable apportionment of marital property are intended to guide the family court in exercising its discretion over the apportionment of marital property, but the family court has the discretion to decide what weight to assign various factors, and the factors are only equities to be considered in reaching a fair distribution of marital property. Bodkin v. Bodkin (S.C.App. 2010) 388 S.C. 203, 694 S.E.2d 230. Divorce 726

The division of marital property is within the sound discretion of the family court, and on appeal, it will not be disturbed absent an abuse of discretion. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 653; Divorce 1283(1)

The division of marital property is in the family court’s discretion and will not be disturbed on appeal absent an abuse of that discretion. Avery v. Avery (S.C.App. 2006) 370 S.C. 304, 634 S.E.2d 668. Divorce 653; Divorce 1283(1)

Division of marital property in divorce action is within the discretion of the family court judge, and the judge’s decision will not be disturbed on appeal absent an abuse of discretion. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 653; Divorce 1283(1)

Statutory factor analysis, not fortuitous circumstances rule requiring mechanistic 50‑50 split, is proper method for determining equitable apportionment of lottery proceeds in divorce case. Thomas v. Thomas (S.C. 2003) 353 S.C. 523, 579 S.E.2d 310. Divorce 789

Family court has wide discretion in determining how marital property is to be distributed, and in so doing, it may use any reasonable means to divide the property equitably, so the court’s apportionment of marital property will not be disturbed absent an abuse of discretion. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 653; Divorce 1283(1)

The apportionment of marital property is within the family court judge’s discretion and will not be disturbed on appeal absent an abuse of discretion. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 653; Divorce 1283(1)

The trial judge in an action for equitable dissolution fairly divided the personal property involved where he ordered that one party was to value the property and divide it into 2 equal groups, and that the other party was to select one of the 2 groups. Carroll v. Carroll (S.C.App. 1992) 309 S.C. 22, 419 S.E.2d 801.

Family Court judges have great discretion in equitably distributing marital property, and may use any reasonable means to reach an equitable division. Barrett v. Barrett (S.C.App. 1986) 290 S.C. 453, 351 S.E.2d 177. Divorce 653

4. Statutory factors

Although statutory factors provide guidance, there is no formulaic approach for determining an equitable apportionment of marital property. Sanders v. Sanders (S.C.App. 2011) 396 S.C. 410, 722 S.E.2d 15. Divorce 729

The statutory criteria used by the family court in making an equitable apportionment of marital property are intended to guide the family court in exercising its discretion over apportionment of marital property; the family court has the discretion to decide what weight to assign various factors. Sanders v. Sanders (S.C.App. 2011) 396 S.C. 410, 722 S.E.2d 15. Divorce 726

Statutory factors that court must apply in making apportionment apply to the apportionment of marital property, not the valuation of the property. Abercrombie v. Abercrombie (S.C.App. 2007) 372 S.C. 643, 643 S.E.2d 697. Divorce 726; Divorce 760

When distributing marital property in divorce action, the family court should consider all 15 factors set forth in applicable statute. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 726

Family court judge’s equitable division of marital property evidenced fact that he was cognizant of 15 statutory factors for equitably dividing a marital estate. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Divorce 732

Equitable distribution statute vests in the family court the discretion to decide what weight should be assigned to the various statutory factors. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 726

In making equitable distribution of marital property, family court must, among other things: (1) identify marital property, real and personal, to be divided between parties; (2) determine fair market value of property so identified; (3) identify proportionate contributions, both direct and indirect, of each party to acquisition of marital property; and (4) provide for equitable division of marital property. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 680; Divorce 727; Divorce 741; Divorce 768

It is well settled that in making an equitable distribution of marital property, the Family Court must (1) identify the marital property, real and personal, to be divided between the parties, (2) determine the fair market value of the property so identified, (3) identify the proportionate contributions, both direct and indirect, of each party to the acquisition of the marital property, and (4) provide for an equitable division of the marital property. Cannon v. Cannon (S.C.App. 1996) 321 S.C. 44, 467 S.E.2d 132, rehearing denied, certiorari denied.

In making an equitable distribution of marital property, the family court must: (1) identify the marital property, real and personal, to be divided between the parties; (2) determine the fair market value of the property so identified; (3) identify the proportionate contributions, both direct and indirect, of each party to the acquisition of the marital property, their respective assets and incomes, and any special equities they may have in marital assets; and (4) provide for an equitable division of the marital property, including the manner in which distribution is to take place. Therrell v. Therrell (S.C.App. 1989) 299 S.C. 210, 383 S.E.2d 259.

The criteria set forth in Section 20‑7‑472 guides the court in exercising its discretion over apportionment of the marital property. They are nothing more than equities to be considered in reaching a fair distribution of marital property. They subserve the ultimate goal of apportionment, which is to divide the marital state, as a whole, in a manner which fairly reflects each spouse’s contribution to the economic partnership and also the relative effects of ending that partnership on each of the parties. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

In making equitable distribution of marital property, family court must identify marital property, real and personal, to be divided between parties, determine fair market value of property so identified, identify proportionate contributions, both direct and indirect, of each party to acquisition of marital property, their respective assets and incomes, and any special equities they may have in marital assets, and provide for equitable division of marital property, including manner in which distribution is to take place. Toler v. Toler (S.C.App. 1987) 292 S.C. 374, 356 S.E.2d 429. Divorce 689; Divorce 725; Divorce 726; Divorce 727; Divorce 741; Divorce 768; Divorce 881

5. Misconduct

Wife’s unauthorized withdrawal of $16,626 in excess of $15,000 limit authorized by court order while divorce action was pending would be charged against wife’s portion of the marital estate, where court’s temporary order authorized each party to withdraw up to $15,000 from any marital account for payment of attorney fees and litigation costs before the final hearing. Srivastava v. Srivastava (S.C.App. 2015) 411 S.C. 481, 769 S.E.2d 442. Divorce 520

Evidence supported the family court’s determination that wife’s $45,360 transfer to her mother was fraudulent and made in anticipation of divorce and, accordingly, the deduction of the amount wife transferred to her mother from wife’s portion of the marital estate was warranted; wife transferred the money without husband’s knowledge while wife was having an ongoing affair, wife met with a few divorce lawyers during that time, wife herself was an attorney and knowledgeable of the law, and court found on such evidence that wife fraudulently and purposely reduced the marital estate to her advantage in contemplation of divorce. Srivastava v. Srivastava (S.C.App. 2015) 411 S.C. 481, 769 S.E.2d 442. Divorce 1075

Family court’s finding that husband sold five lots below market value in contemplation of marital litigation was insufficient to support alteration of equitable distribution of marital property based on husband’s alleged economic misconduct; family court made no finding that husband engaged in willful misconduct, bad faith, intentional dissipation of marital assets or the like, and, while lots were sold below market value, husband’s decision was reasonable considering husband’s financial condition at the time. Nestberg v. Nestberg (S.C.App. 2011) 394 S.C. 618, 716 S.E.2d 310. Divorce 744(9)

Wife’s overspending during the marriage did not constitute economic misconduct of the sort warranting entry of equitable distribution order more favorable to husband, in divorce proceedings; wife’s overspending did not cause the breakup of the marriage, and parties were similarly situated with respect to other factors the court could consider in equitably apportioning the marital estate, such as age, income, health, work experience, and nonmarital property. Barrow v. Barrow (S.C.App. 2011) 394 S.C. 603, 716 S.E.2d 302. Divorce 744(2)

A party’s marital misconduct does not justify a severe penalty for equitable apportionment purposes. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 743

Included in those factors in making an equitable distribution is the marital misconduct of either party. Fuller v. Fuller (S.C.App. 2006) 370 S.C. 538, 636 S.E.2d 636, rehearing denied. Divorce 743

Family Court adequately considered the statutory factors, including wife’s financial misconduct, in awarding a 59/41 division of the non‑pension marital assets in favor of husband; after wife incurred substantial marital debt and husband paid it off, she again incurred substantial debt and depleted funds from a marital retirement account without informing husband, and wife had $110,980.79 in non‑pension marital assets in her possession, and husband had $175,495.96 in non‑pension marital assets in his possession. Deidun v. Deidun (S.C.App. 2004) 362 S.C. 47, 606 S.E.2d 489. Divorce 744(1)

Although fault is one factor for the court to consider in equitably dividing marital property, it does not justify a severe penalty. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 745

Poor business decisions, in and of themselves, do not warrant a finding of marital “misconduct” for equitable distribution purposes; there must be some evidence of willful misconduct, bad faith, intention to dissipate marital assets, or the like, before a court may alter the equitable distribution award for such misconduct. McDavid v. McDavid (S.C. 1999) 333 S.C. 490, 511 S.E.2d 365. Divorce 744(2)

For equitable distribution purposes, husband should not have been charged with the $24,143.50 that he used in support of his failing business during the marriage; funds were spent two years prior to parties’ separation, and there was no evidence of willful misconduct, bad faith, or intention to dissipate marital assets. McDavid v. McDavid (S.C. 1999) 333 S.C. 490, 511 S.E.2d 365. Divorce 744(2)

The trial court erred in discounting the fault of the husband in the breakup of the marriage when dividing the marital property, despite his testimony that he had stopped drinking 6 months prior to the divorce, where (1) the wife testified that he drank heavily both before and after she left the marital home and that his drinking was the cause of the breakup of the marriage, and (2) the husband never denied the wife’s testimony about the nature of his drinking or the problems it caused in the marriage. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604.

Fault is a factor for the court to consider in an equitable division award although it does not justify a severe penalty. Noll v. Noll (S.C.App. 1988) 297 S.C. 190, 375 S.E.2d 338. Divorce 745

Trial court did not abuse its discretion in awarding each party 50 percent of marital property where trial court expressly considered marital misconduct of wife, but gave it no weight, since wife’s misconduct occurred well after parties separated and there was no evidence that wife’s misconduct placed any extra financial burden on husband during marriage. Weight to be given evidence of marital misconduct as factor in dividing marital property is for trial court to determine in exercise of its discretion. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

6. Marital property

Evidence in divorce action established that family farming business was marital property, and husband failed to carry his burden to show otherwise; during the marriage, husband farmed and received a nominal salary of $120 a week in exchange for an interest in the business, husband’s 50% interest in the business was payment for labor expended during the marriage, and, therefore, the family court properly concluded it was an asset of the marriage. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 692

Although husband obtained purchase money for land, which was purchased during marriage, by refinancing rental home, the land did not fall within marital property exception, holding that property acquired during marriage in exchange for nonmarital property is nonmarital, since rental home was in fact marital property, and, thus, land was part of the marital estate, and wife was entitled to one‑half interest in the land. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 691

Exercise equipment purchased by the husband for his fitness business was marital property where, even though the business itself was separate property, the equipment was purchased with marital funds. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820.

The court properly determined that the marital home, although titled in the name of the husband’s mother, was actually marital property under Section 20‑7‑473, based on (1) testimony that the husband paid for house through his mother and in cash in order to avoid the attention of the Internal Revenue Service, (2) evidence that the husband reported no earnings during the relevant time period, that the husband and wife insured the home, referred to it as their own, and paid no rent, and (3) expert testimony that the husband’s parents could not have paid for the house from their own earnings or savings. Hough v. Hough (S.C.App. 1994) 312 S.C. 344, 440 S.E.2d 387. Divorce 693; Evidence 571(1)

The wife’s wedding ring was non‑marital property where the wife testified that the ring had been given to her as an engagement present 6 months before the wedding. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied. Divorce 694

The increase in the value of the husband’s company was marital property subject to equitable distribution where (1) the wife was with the husband at the company’s inception, (2) she worked side by side with him building it to its present state, (3) she held the position of comptroller general and ran the administrative aspects of the business, (4) she continued to work for the business after opening her own business, (5) she entertained clients in a social and home setting, and (6) she performed the majority of the homemaking duties throughout the marriage. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied.

A wife was not entitled to share in either the husband’s medical partnership or the retirement fund accumulated by the husband after starting the practice where the parties separated in 1977 after the wife refused to give up her relationship with another man, the medical partnership was entered into in 1985, and the wife contributed nothing to either the acquisition or the appreciation of the value of the partnership. Wannamaker v. Wannamaker (S.C.App. 1991) 305 S.C. 36, 406 S.E.2d 180.

A wife was entitled to an interest in a business started by the husband, even though she made no direct financial contribution to the business, where the wife worked in the business and performed bookkeeper services. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

One spouse’s contributions to the other spouse’s business may create a special equity in his or her favor. It is not error to consider the assets of a spouse’s business in the division of marital property given evidence that the other spouse materially contributed through personal services to that business. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 703

Goodwill in a business based upon the owner’s future earnings is too speculative for inclusion in the marital estate. Wood v. Wood (S.C.App. 1989) 298 S.C. 30, 378 S.E.2d 59.

Equitable distribution of a professional degree or license is improper since such a degree or license is not classified as marital property. Heath v. Heath (S.C.App. 1988) 295 S.C. 312, 368 S.E.2d 222. Divorce 696

The “ownership right” in “marital property” is acquired during marriage. “Marital property” as such does not exist until the date when marital litigation is filed or commenced. The “ownership right” in “marital property,” therefore, cannot attach until that property is created by the filing of marital litigation. Thus, a wife’s “ownership right” did not attach until the date she filed the divorce petition and a bank’s judgment lien which attached when it was recorded 3 years earlier had priority. Prosser v. Pee Dee State Bank (S.C. 1988) 295 S.C. 212, 367 S.E.2d 698. Divorce 681; Marriage And Cohabitation 425

Property did not lose characterization as marital property and revert back to being separate property of wife following parties move to new home, where rent collected on mobile home after parties moved out was placed in joint account and used in support of marriage. Wyatt v. Wyatt (S.C.App. 1987) 293 S.C. 495, 361 S.E.2d 777. Divorce 693

7. Contribution

The husband was not entitled to an offset for the contribution he made to the cost of his wife’s education where he had intentionally withdrawn a large amount from his civil service pension, thereby reducing its value for distribution, and the wife had failed to preserve the issue of the withdrawal for appeal; the wife’s failure to make the appropriate motion did not deprive the appellate court of giving weight as it found appropriate to the existence of other property. Smith v. Smith (S.C.App. 1991) 308 S.C. 372, 418 S.E.2d 314, rehearing denied.

Where the family court recognized that a wife contributed her earnings (homemaker services and moral support) to the family but appeared to emphasize the husband’s financial input at her expense in dividing the marital estate, 59‑41 percent in the husband’s favor, the family court’s failure to consider fully the wife’s contributions was error, especially when perceived against the 41‑year duration of the marriage and the fact that the party’s accumulation of wealth resulted mainly from their real estate investments rather than active efforts by the husband. Polis v. Polis (S.C.App. 1988) 295 S.C. 184, 367 S.E.2d 465.

8. Value of marital property

The date of the filing of the litigation should be used as the date of valuation of marital property in dissolution action. Gardner v. Gardner (S.C. 2006) 368 S.C. 134, 628 S.E.2d 37. Divorce 761

Court reviewing a property distribution must look at the appreciation or depreciation of marital assets with regard to the entire marital estate and not the assets individually. Gardner v. Gardner (S.C. 2006) 368 S.C. 134, 628 S.E.2d 37. Divorce 1261(4)

Passive post‑filing changes in the appreciation or depreciation of marital assets may be considered by the family court in determining an equitable apportionment of the marital estate. Bowman v. Bowman (S.C.App. 2004) 357 S.C. 146, 591 S.E.2d 654. Divorce 782

In an action for divorce, the wife was not prejudiced by the trial court’s valuing of her company’s stock at $15,000, notwithstanding the negative value of the company, where the wife’s appraiser had determined that the stock was a corporate liability in valuing the company and decreased the net value of the company by the $15,000 book value assigned to it. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 1300

In an action for divorce, the trial court should have reduced the value of the marital home, awarded to the wife, by the $15,000 the wife had borrowed from the husband for the down payment where the court had required the wife to repay the husband. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 850

The Family Court properly accepted the valuation placed on stock of the husband’s company by the wife’s expert where the only testimony presented by the husband’s expert consisted of his critique of the wife’s expert’s valuation, an he failed to present any alternative valuation. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied.

The Family Court properly valued a couple’s country club membership at $12,000, despite the husband’s contention that it was worth nothing since it was non‑transferable, where the wife testified that the current initiation fee was $12,000, and that if one of the parties dropped the membership and then wanted it back, it would cost $12,000 to rejoin. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied.

A trial judge erroneously valued the husband’s civil service pension as having a present day value of the actual amount contributed by the husband where the pension plan provided for a certain gross monthly benefit until the husband’s death, and thus the testimony of an actuary was essential in order to evaluate the present cash value of the pension. Smith v. Smith (S.C.App. 1991) 308 S.C. 372, 418 S.E.2d 314, rehearing denied.

The family court’s reasoning was contradictory where it accorded weight to goodwill as a business asset, then ruled that goodwill was properly excluded by an expert in computing the value of the business; marital businesses are to be valued at fair market value as ongoing businesses, and there was no showing that the family court considered the appreciation of the business value in it’s valuation. RGM v. DEM (S.C. 1991) 306 S.C. 145, 410 S.E.2d 564. Divorce 706; Divorce 794; Divorce 797

The use of real estate appraisals in the valuation of business property was error where the court failed to consider other factors such as inventory, accounts payable and receivable, and other legitimate assets or liabilities, since the business should have been valued at its fair market value as a going business. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

A trial judge erred in valuing the parties’ household personal property contained in 3 modular homes at $3,000, where the trial judge apparently chose not to accept the only evidence available to him as an accurate value and placed a value of $1,000 on the furnishings in each unit without any evidence to support that value. Hyde v. Hyde (S.C.App. 1990) 302 S.C. 280, 395 S.E.2d 186.

While it is appropriate for a family court judge to select a value for property that falls within the range of values testified to, it is inappropriate to simply average the values testified to by the parties to arrive at a value. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

Goodwill in a professional practice cannot be included in the marital estate subject to equitable distribution because of the intangible nature of goodwill which inevitably results in a speculative valuation. Thus, where an expert testified that the only value of a husband’s dental practice was its goodwill, the wife was not entitled to any money from the practice. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

In valuing a business interest for equitable distribution, the court should determine the fair market value of the corporate property as an established ongoing business by “considering the business’ net asset value, the fair market value for its stock, and earning or investment value.” Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254.

A decree apportioning a business was defective where the decree made no finding on the value of the business and the record did not support a finding that the business had any value. Roberson v. Roberson (S.C. 1988) 296 S.C. 56, 370 S.E.2d 612.

Trial judge undervalued marital residence and surrounding acreage where husband’s expert appraised total value of $227,122 for house, farm buildings, and acreage, and wife’s appraiser valued house and 24 acres at $143,000, but did not value house separate from 24 acres. Woodward v. Woodward (S.C.App. 1987) 294 S.C. 210, 363 S.E.2d 413.

Trial court overvalued two automobiles owned by professional association for equitable division purposes by accepting balance sheet value, despite testimony from parties as to true value. Woodward v. Woodward (S.C.App. 1987) 294 S.C. 210, 363 S.E.2d 413.

Trial court has broad discretion in valuing marital property and committed no abuse of discretion in believing wife’s expert, whose professional qualifications husband did not challenge, instead of accepting husband’s opinion as to value of household furnishings. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

Proper date for valuation of marital property is time marital litigation is filed or commenced, since that is time property must be owned to come within meaning of term “marital property.” Both parties are entitled to appreciation in marital assets that occurs after parties separate and before parties are divorced. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

9. Debts

Marital debt, like marital property, must be specifically identified and apportioned in equitable distribution. Schultze v. Schultze (S.C.App. 2013) 741 S.E.2d 601; Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98.

For purposes of equitable distribution, a “marital debt” is a debt incurred for the joint benefit of the parties regardless of whether the parties are legally liable or whether one party is individually liable. Schultze v. Schultze (S.C.App. 2013) 741 S.E.2d 601; Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98.

In dividing the marital estate, the family court must consider existing debts incurred by the parties or either of them during the course of the marriage. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 748

Evidence supported family court’s decision to hold husband responsible for the repayment of the credit card debt which was accrued during the parties’ marriage; husband’s son, not wife, was responsible for the charges on husband’s credit card, son’s testimony demonstrated that the majority of his purchases benefited neither husband nor wife, as was required for debt to be equitably apportioned, and husband admitted that approximately half of the debt on the credit card was a result of his post‑incarceration expenditures, specifically husband’s food, liquor, and hotel room, which were not expenditures that benefited the marriage. Kennedy v. Kennedy (S.C.App. 2010) 389 S.C. 494, 699 S.E.2d 184. Divorce 835

Credit card debt of $12,332 incurred by wife after the marital litigation was filed did not qualify as marital debt subject to equitable apportionment; the debt was not incurred for the joint benefit of the parties during the marriage. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 835

Increase in value of nonmarital asset resulting from use of marital funds to reduce indebtedness on asset constitutes marital property subject to equitable division. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 684

Increase in indebtedness on marital home resulting from second mortgage taken out by husband was part of marital estate for equitable distribution purposes, even though husband used part of proceeds from second mortgage on his adult children from previous marriage. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 861

Husband’s tax liability for year was marital debt to husband for purposes of equitable distribution in divorce action, as although husband’s tax liability was not payable until after date of divorce filing, liability was incurred prior to date of filing. Ellerbe v. Ellerbe (S.C.App. 1996) 323 S.C. 283, 473 S.E.2d 881, rehearing denied. Divorce 839

Reversal of several issues involving marital assets and debts required redetermination of assets to which each spouse was entitled in divorce action. Ellerbe v. Ellerbe (S.C.App. 1996) 323 S.C. 283, 473 S.E.2d 881, rehearing denied. Divorce 1323(4)

“Marital debt” has been defined as debt incurred for the joint benefit of the parties regardless of whether the parties are jointly liable for the debt or one party is individually liable. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321. Divorce 831

The marital estate that is to be equitably divided by the Family Court judge is the net estate, and thus marital debts must be apportioned as well as the property itself; the rules of fairness and equity that apply to the equitable division of marital property also apply to the division of marital debts. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

If the trial judge finds that a spouse’s debt was not made for marital purposes, it need not be factored into the court’s equitable apportionment of the marital estate, and the judgment may require payment by the spouse who created the debt for nonmarital purposes; however, the words “in such proportion as it finds appropriate,” as used in Section 20‑7‑472, accord much discretion to the trial judge in providing for the payment of marital debts as a consideration in the equitable division of the marital estate. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

In an action for divorce, the trial court erred in awarding the wife a $15,000 debt owed by the couple’s partner in a business venture as a separate item of marital property where the amount of the debt had been used by the wife’s appraiser as an account receivable in calculating the negative value of the business, and the wife had been awarded the business. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 843

In an action for divorce, the trial court properly ordered the wife to repay the husband $5,5000 which she had withdrawn from his account to pay for her attorney and investigator fees where she had withdrawn the money on the day that she filed her complaint seeking a divorce. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 744(8)

Section 20‑7‑472 implicitly requires that marital debt, like marital property, be specifically identified and apportioned in the equitable distribution. Frank v. Frank (S.C.App. 1993) 311 S.C. 454, 429 S.E.2d 823. Divorce 830; Divorce 831

The trial court properly considered as marital debts the loans incurred by the husband during the several year period his wife lived separately from him when making its equitable distribution of marital assets, even though the wife did not receive any of the monies directly, where (1) the husband testified generally that all loan proceeds were spent for family purposes, and (2) his testimony was not contradicted by the wife, who failed to present evidence on the husband’s use of the loan proceeds. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604.

Trial court did not abuse its discretion in ordering husband to be solely responsible for joint debt which was owed by parties to their children, in view of testimony of husband’s greater ability to repay debt. Woodward v. Woodward (S.C.App. 1987) 294 S.C. 210, 363 S.E.2d 413.

Marital debts are factor to be considered by court in determining equitable distribution; judge properly required wife to absorb all remaining debt on her financial declaration; debts of husband to his publisher and his mother did not appear on his financial declaration and evidence of circumstances of loan from bank and on charge account was properly before trial judge, who properly determined apportionment of debt based on ability of parties to pay. O’Neill v. O’Neill (S.C.App. 1987) 293 S.C. 112, 359 S.E.2d 68.

10. Transmutation

Property that wife acquired through inheritance maintained its separate nature, absent evidence establishing transmutation of this nonmarital property into marital property, and husband was not entitled to special equity in wife’s inherited property, absent evidence that he contributed in any way during marriage to appreciation of wife’s inherited property. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 718

When property is determined to have been transmuted, the entire property, not just a portion of the property, is included in the parties’ marital property which is thereafter apportioned by the family court. Calhoun v. Calhoun (S.C. 2000) 339 S.C. 96, 529 S.E.2d 14. Divorce 683

In certain circumstances, nonmarital property may be transmuted into marital property if it becomes so commingled with marital property as to be untraceable, is titled jointly, or is utilized by parties in support of marriage or in some other manner so as to evidence intent by parties to make it marital property. Hatfield v. Hatfield (S.C.App. 1997) 327 S.C. 360, 489 S.E.2d 212, rehearing denied, certiorari denied. Divorce 683

Party claiming transmutation of nonmarital property must produce enough objective evidence that during marriage, parties themselves regarded property as common property of marriage. Hatfield v. Hatfield (S.C.App. 1997) 327 S.C. 360, 489 S.E.2d 212, rehearing denied, certiorari denied. Divorce 683; Divorce 876.4

Transmutation of nonmarital property is matter of intent to be gleaned from facts of each case. Hatfield v. Hatfield (S.C.App. 1997) 327 S.C. 360, 489 S.E.2d 212, rehearing denied, certiorari denied. Divorce 683

Evidence that parties regarded nonmarital property as common property of marriage, as required for transmutation, may include placing property in joint names, transferring property to other spouse as gift, using property exclusively for marital property, commingling property with marital property, using marital funds to build equity in property, or exchanging property for marital property. Hatfield v. Hatfield (S.C.App. 1997) 327 S.C. 360, 489 S.E.2d 212, rehearing denied, certiorari denied. Divorce 683; Divorce 876.5(4)

Nonmarital property may be transmuted into marital property if (1) it becomes so commingled with marital property as to be untraceable, (2) it is jointly titled, or (3) it is utilized by the parties so as to make it marital property. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 683

In determining whether nonmarital property has been transmuted into marital property, transmutation is a matter of intent to be gleaned from the facts of each case. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 683

In determining the division of property arising from marital dissolution, the spouse claiming transmutation must produce objective evidence showing that during the marriage, the parties themselves regarded the property as the common property of the marriage; the mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 683; Divorce 876.4

The marital home, owned by the wife prior to the marriage, was transmuted into marital property where both parties signed a promissory note securing a mortgage on the house, and therefore both parties were liable for the discharge of the debt. Frank v. Frank (S.C.App. 1993) 311 S.C. 454, 429 S.E.2d 823.

Stocks given to a husband by his parents, both before and during the husband’s marriage were not transmuted into marital property, even though funds derived from the sale of the stocks were occasionally used for marital purposes, where they were kept in a separate bank account through which the husband bought and sold, good records were kept showing deposits and disbursements, and no marital funds were used to acquire any of such stock. Wannamaker v. Wannamaker (S.C.App. 1991) 305 S.C. 36, 406 S.E.2d 180. Divorce 705; Divorce 718

A swimming pool which was installed at the marital home and purchased with funds from the wife’s inheritance, was transmuted into marital property where the pool was installed for the purpose of treatment for the parties’ son following hip surgery, and the cost of the pool was submitted as a medical deduction for state and federal income tax. Strickland v. Strickland (S.C. 1989) 297 S.C. 248, 376 S.E.2d 268. Divorce 693

Finding that mobile home and lot were nonmarital property was error where, although wife acquired legal title to mobile home prior to marriage, she paid off only one‑half of mortgage, remainder of debt being discharged through joint efforts of husband and wife, husband made substantial improvements to both mobile home and realty, and residence was occupied by parties for 10 of their 16 years of marriage; clearly this property was used in support of marriage and transmuted into marital property. Wyatt v. Wyatt (S.C.App. 1987) 293 S.C. 495, 361 S.E.2d 777. Divorce 693

11. Marital home

Wife was entitled to special equity in marital home in the amount of $60,000 because she used nonmarital assets in the form of a cashed‑out insurance policy or her retirement account to make a down payment on the home; wife’s premarital contribution should be taken into account in determining the percentage of the marital estate to which each party was equitably entitled upon distribution. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 693; Divorce 857

There was no equity in marital home to be divided in divorce action, where second mortgage was recorded on the home to pay for construction overruns, both parties signed second mortgage, second mortgage constituted marital debt, and the value of the home at the time that the second mortgage was recorded was less than the total of the first and second mortgages. Mosley v. Mosley (S.C.App. 2010) 390 S.C. 524, 702 S.E.2d 253. Divorce 858

Award of marital home to wife was warranted in divorce action; husband owned an interest in at least three other properties, wife had lived in home longer than she had lived in any other home, wife felt safe in home, and children, even though emancipated, maintained rooms in home. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 850

Party who is granted possession of the marital home as an incident to support in divorce action does not obtain a vested right to stay in the home for his lifetime; rather, changed circumstances may necessitate later modifying the possession. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Child Support 350; Divorce 609(1); Divorce 627(3)

To effect an equitable division of property in divorce action, the family court may require the sale of marital home. Craig v. Craig (S.C. 2005) 365 S.C. 285, 617 S.E.2d 359. Divorce 863

A decision on whether to award the marital home to one spouse for a defined period as an incident of support and a decision on whether to award the home permanently to one spouse in equitable distribution require different analyses; while it is proper for the family court to consider support‑related facts in both settings, the lack of a support‑related rationale should not necessarily prevent or reduce the likelihood of an award of the marital home to one spouse in equitable distribution. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 853; Divorce 856

Wife was not entitled, as an incident of support, to use of the marital home, which was given to husband as part of the equitable distribution of the marital estate, where there were no compelling circumstance involving shelter for children since she was not awarded custody, wife was not handicapped, or otherwise unable to find suitable housing, and at the time of the divorce wife was residing in an apartment. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Divorce 853; Divorce 856

The disposition of the marital residence in the context of equitable distribution of the marital estate is largely within the discretion of the family court; although the court is generally required to attempt an in‑kind distribution of assets, an in‑kind distribution of the marital home is not feasible, and the court may either award the home to one of the parties or order the home sold and the proceeds distributed. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Divorce 863

An award of exclusive use of the marital home as incident of support must be supported by compelling circumstances, which include the need for adequate shelter for minors, the necessity of suitable housing for a handicapped spouse, and a spouse’s inability to otherwise obtain accommodations. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Child Support 140(1); Divorce 602

When evaluating the efficacy of a disposition of the marital residence, distinction must be drawn between an award that is incident to support, either child or spousal, and an assignment that is part of the equitable distribution of the parties’ assets. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Child Support 140(1); Divorce 602; Divorce 850

Awards of property incident to support in a divorce proceeding may be made only where compelling circumstances exist, while title to the marital residence may be given to one of the parties in compliance with the ordinary rules of equitable distribution. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Child Support 140(1); Divorce 602; Divorce 850

Apportionment of home and mobile home park as marital property in divorce proceeding was fair and equitable; husband received 65% of mobile home park and wife received 65% of home, husband contributed marital funds from his income for improvements to home owned by wife prior to marriage, wife contributed time and labor to running of mobile home park that husband owned prior to marriage, and apportionment was made in consideration of statutory factors governing apportionment. Roberson v. Roberson (S.C.App. 2004) 359 S.C. 384, 597 S.E.2d 840, rehearing denied, certiorari granted. Divorce 783; Divorce 850; Divorce 851

The trial court did not err in requiring the Commercial Credit judgment be paid out of the gross proceeds from the sale of the marital home even though the judgement arose from the husband’s failure to appear, where the loan giving rise to the judgment was incurred to purchase a and cooling system for the marital home; in making an equitable apportionment of marital property, the court must consider liens and any other encumbrances upon the marital property, which themselves must be equitably divided. Matter of Bennett (S.C. 1996) 321 S.C. 485, 469 S.E.2d 608.

In a divorce action, the Family Court did not abuse its discretion in awarding the wife only 40 percent of the proceeds from the sale of the marital home where the trial court considered the wife’s indirect contribution, understood the actual incomes of the parties, and considered the husband’s use of the marital home in making an award to the wife. Matter of Bennett (S.C. 1996) 321 S.C. 485, 469 S.E.2d 608.

The trial court did not abuse its discretion in ordering a subdivision of the marital home acreage, even though neither party requested the division and the court failed to specify the size of the lots to be created, where the appraisal report stipulated to by both parties concluded that the highest and best use of the property would be to subdivide the land. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604. Divorce 863

It was not error for the trial judge in an action for equitable apportionment to fail to identify the marital home and evaluate it where the deed to the home was of record, the parties had executed a mortgage on the property at the time the deed was executed, both parties filed financial statements with property addenda, and the judge’s order provided that the wife would be awarded a 10 percent interest in such residence, and that either party could petition the court “for further relief” if they could not decide on the home’s value or a method of sale within 30 days. Conklin v. Conklin (S.C.App. 1992) 308 S.C. 84, 417 S.E.2d 94, rehearing denied.

A court order directing the wife to vacate the marital residence on a specified date approximately 40 days from the date of the order would be affirmed, even though the court expressly found that 90 days was a reasonable time for her to find other accommodations, where the wife made no showing that she could not find other accommodations by the date she was ordered to vacate the residence, and she actually obtained another place to live on or before that date and thus she was not prejudiced by the judge’s order. The wife was not entitled to remain in the marital residence any particular length of time; as long as she received a reasonable time, in fact, to leave the marital residence, her interest was fully protected. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376.

An award to the wife of a 50 percent interest in the marital residence was not error where the marriage had lasted 18 years, the wife had worked a significant portion of that time, and the wife was also the primary caretaker of the children. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165. Divorce 851; Divorce 856

A wife was entitled to sole possession of the marital residence rather than merely exclusive possession until the parties’ child completed his education where the amount of equity in the house was de minimis, the husband was physically abusive during the marriage, and the wife was unable to find comparable housing for herself and the parties’ minor child. Roof v. Roof (S.C. 1989) 298 S.C. 58, 378 S.E.2d 251.

An award to a wife of the exclusive use of the marital home for a period of 3 years was error where the marital home was the only major asset of the marriage and the husband’s equity in the home represented nearly all of the marital property awarded to him, the house was in need of repair and seemed likely to decline with a resulting decrease in value especially over a 3‑year period, shelter for minor children was not involved, the wife suffered from some disability but was not critically handicapped, and nothing in the record indicated that a suitable alternative housing arrangement for the wife was not available or that the marital home specially met the wife’s needs as a result of her disability. Cehen v. Cehen (S.C.App. 1988) 295 S.C. 452, 369 S.E.2d 659.

The family court should have awarded a husband exclusive possession of the marital home as an incident of child support rather than ordering the marital home to be sold and the proceeds divided evenly where the husband was awarded custody of the parties’ minor child and the wife was not required to pay child support. Stevenson v. Stevenson (S.C. 1988) 295 S.C. 412, 368 S.E.2d 901.

Award to the former husband of a 40 percent interest in the marital home was error, in view of evidence that the former wife, who had significant income throughout the marriage, had made the entire down payment and had paid for improvements thereon, while the husband, whose earning capacity was limited throughout their marriage, although he had made some monthly payments on the home, had used most of his available income in paying off his debts which had been accumulated prior to the marriage. Gertz v. Gertz (S.C.App. 1987) 291 S.C. 414, 353 S.E.2d 891.

12. Income

A family court’s approximately equal division of marital property was fair, even though the husband provided the bulk of the income, where the wife was a homemaker and also worked for approximately 12 years outside the home, and her income assisted in meeting the family’s needs. Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254. Divorce 738; Divorce 740

13. Retirement benefits

Based on her contributions to the marriage, wife was entitled to 20% of marital portion of husband’s military retirement benefits; wife was the primary caretaker for the parties’ daughter throughout their marriage and assumed a greater financial role in their child’s upbringing than husband, but the fact that wife had a superior education than husband and a higher paying job, while husband’s only income was his retirement benefits, precluded a larger award. Jenkins v. Jenkins (S.C.App. 2012) 401 S.C. 191, 736 S.E.2d 292. Divorce 804

Former husband was entitled to half of marital property in former wife’s individual retirement account (IRA); funds contributed during marriage were marital property to which husband was partially entitled. Jenkins v. Jenkins (S.C.App. 2004) 357 S.C. 354, 592 S.E.2d 637. Divorce 712; Divorce 803

Contributions to an individual retirement account (I.R.A.) during the term of marriage constitute marital property subject to division. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 712

Family court’s award of 45% of husband’s retirement account to wife was fair and equitable, in action for divorce, where court considered several relevant factors in determining an appropriate division of husband’s retirement account, including the length of the marriage, the earning potential of each spouse, tax consequences, existence of other obligations, the ability of each party to meet their financial obligations and expenses, and the husband’s fault in breakdown of marriage, and concluded that husband contributed almost all of the family’s financial support during the marriage and contributed indirect support equal to wife’s indirect contributions. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 803

Parties’ retirement accounts should have been valued at face value, for purposes of determining equitable distribution in divorce action, as accounts were not to be liquidated. Ellerbe v. Ellerbe (S.C.App. 1996) 323 S.C. 283, 473 S.E.2d 881, rehearing denied. Divorce 803

Retirement benefits are marital assets subject to equitable division. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820.

Vested retirement funds are considered marital property under the Equitable Apportionment of Marital Property Act, Sections 20‑7‑471 et seq.; however, the portion of a pension attributable to the period of time that a spouse is employed before the marriage is non‑marital property unless it is transmuted into marital property during the marriage. Murphy v. Murphy (S.C. 1995) 319 S.C. 324, 461 S.E.2d 39, rehearing denied. Divorce 712

Earlier decision of the court of appeals holding that vested military retirement benefits were subject to equitable distribution was applicable to a divorce action although the earlier decision had not been affirmed by the Supreme Court. Hamby v. Hamby (S.C.App. 1994) 315 S.C. 518, 445 S.E.2d 656. Courts 91(2)

The Family Court properly awarded the wife a portion of the husband’s unvested military pension since a service person’s right to participate in the military retirement program was a legally enforceable chose in action, and thus was marital property subject to distribution; moreover, the court properly awarded the wife a percentage of the benefits, while deferring any payments until the husband’s receipt thereof, since the fact that the court was incapable of determining the exact dollar value of the plan did not prohibit it from equitably distributing the future proceeds. Ball v. Ball (S.C.App. 1993) 312 S.C. 31, 430 S.E.2d 533, rehearing denied, certiorari granted, affirmed 314 S.C. 445, 445 S.E.2d 449.

A divorce decree was final on the date it was entered so that the earning’s on the wife’s share of the husband’s pension had to be calculated from that date, even though the trial court gave the husband 60 days from the date of entry of the decree to arrange to pay the wife her share, since to hold otherwise would unjustly enrich the husband. Hunt v. Hunt (S.C.App. 1993) 311 S.C. 355, 428 S.E.2d 899. Divorce 827; Divorce 883

The trial court did not err in awarding the wife an interest in the husband’s military retirement, even though she failed to prove that she had contributed to its acquisition, where she raised the children during the husband’s military service, she continuously moved from place to place as he was reassigned, and she cleaned the house, washed the clothes, cooked the meals, and generally took care of the family. Connors v. Connors (S.C.App. 1992) 310 S.C. 76, 425 S.E.2d 65. Divorce 804

The award to the wife of 40 percent of the husband’s military retirement was not excessive where (1) the marriage lasted more than 30 years, (2) the wife was nearly 60 years old, she had health problems, and her employment prospects were limited, and (3) the record was replete with evidence of marital misconduct on the part of the husband, which undoubtedly contributed to the breakup of the marriage. Connors v. Connors (S.C.App. 1992) 310 S.C. 76, 425 S.E.2d 65.

The award to the wife of 40 percent of the husband’s Navy retirement benefits was not excessive where the husband and wife were married for 16 of the 20 years that the husband was in the Navy, and during the marriage the wife did not work at the husband’s request, but rather took care of the children and home while the husband was out to sea. Curry v. Curry (S.C.App. 1992) 309 S.C. 539, 424 S.E.2d 552.

Vested military retirement benefits which accrued during a marriage constituted a joint investment and earned property right subject to equitable distribution since a military spouse typically must move from place to place, and thus forfeits a separate career. Eckhardt v. Eckhardt (S.C.App. 1992) 309 S.C. 225, 420 S.E.2d 875, rehearing denied, certiorari denied.

A husband’s civil service retirement fund was property acquired during the marriage and, therefore, was part of the marital estate subject to equitable apportionment even though the retirement account was not vested and the husband could not begin receiving his retirement funds immediately. Kneece v. Kneece (S.C.App. 1988) 296 S.C. 28, 370 S.E.2d 288.

Neither trial court nor Court of Appeals has authority to pre‑empt annuity rights vested in wife by Central Intelligence Agency Spouses Retirement Equity Act, and annuity of former wife is property right vested in her by federal statute and not alimony. Gregory v. Gregory (S.C.App. 1987) 292 S.C. 587, 358 S.E.2d 144. Divorce 577; States 18.28

14. Separate maintenance or alimony

A wife was not entitled to an award of alimony where (1) the break‑up of the marriage was the result of her inability to engage in sexual relations, (2) the marriage lasted 4 1⁄2 years, (3) both parties were in good health, 31‑years old, and had college degrees, (4) the husband earned $48,000 per year and the wife earned $20,000, (5) during the marriage the husband paid all the household bills, provided the money for the downpayment of the home, and did extensive home improvements, whereas the wife contributed little, and (6) the wife had savings of $7,000, received $5,666 for her equity in the marital home, and had health insurance which would help with her psychiatry bills. E.D.M. v. T.A.M. (S.C. 1992) 307 S.C. 471, 415 S.E.2d 812.

The family court did not violate public policy by considering the wife’s failure to get alimony in its division of the marital property in a divorce action where, although the wife did not seek alimony, the record contained no allegations of adultery which would have barred her from receiving alimony. Seawright v. Seawright (S.C.App. 1991) 305 S.C. 167, 406 S.E.2d 386.

Generally, the contribution of one spouse to the education of the other spouse may be taken into account by giving the supporting spouse a larger distributive share of the marital property to be divided. This remedy is not, however, sufficient when little or no marital property has been accumulated during the marriage. In these situations, reimbursement alimony may be appropriate regardless of the appropriateness of permanent alimony. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

A trial judge erred in holding that an order resulting from an action for separate maintenance and support constituted an equitable distribution of the marital estate where the order awarded possession of the marital home to the wife as an incident of support without identifying or evaluating the marital estate, and therefore the disposition of property was merely incidental to the separation and was not a true property settlement. Stafford v. Stafford (S.C.App. 1988) 296 S.C. 423, 373 S.E.2d 699.

Trial court erred in indicating that it had increased wife’s distributive share of equitable division of marital property to compensate for alimony which could not be awarded because preclusion of alimony award to spouse found guilty of adultery cannot be used to increase equitable distribution award; such would contravene public policy considerations manifested in alimony‑barring statute. Berry v. Berry (S.C. 1988) 294 S.C. 334, 364 S.E.2d 463.

Contention that trial court abused its discretion in apportioning marital property because it used wife’s failure to request alimony as basis for enhancing wife’s share of marital estate lacked merit where trial court simply noted that neither spouse sought alimony, and nothing in its order suggested that it used wife’s failure to request alimony as basis for enhancing her share of marital property. Failure to award alimony because of marital fault cannot be used to increase spouse’s distributive share of marital property, although fact of whether spouse is awarded alimony is proper matter for trial court to consider in apportioning marital property. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

Good will in husband’s fireworks business did not constitute marital property subject to equitable distribution, where good will was dependent upon owner’s future earnings, and was therefore too speculative for inclusion in marital estate; moreover, these future earnings were accounted for in award of alimony. Casey v. Casey (S.C. 1987) 293 S.C. 503, 362 S.E.2d 6. Divorce 706

15. Tax considerations

Although the court is generally required to attempt an in‑kind distribution of assets, an in‑kind distribution of the marital home is not feasible; accordingly, the court may either award the home to one of the parties, or order the home sold and the proceeds distributed. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 821; Divorce 822; Divorce 863

The disposition of the marital residence as part of the equitable distribution of marital assets is largely within the discretion of the family court. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 850

Wife was entitled to award of marital home as part of equitable division of marital property; there was desirability of maintaining home for minor children, and with minor children who were eight, five, and four years old, in safe and comfortable home well‑suited to their needs, which was only home known to them, avoiding sale of marital home would enhance their stability and promote their best interests. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 856

Although the family court is required to consider the tax consequences to each party resulting from equitable apportionment, if the apportionment order does not contemplate the liquidation or sale of an asset, then it is an abuse of discretion for the court to consider the tax consequences from a speculative sale or liquidation. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 747

Family court’s decision to award the parties’ marital home permanently to wife as part of her division of the marital estate was not an abuse of discretion, despite husband’s claim that the court failed to consider the tax ramifications of its decision; husband’s income and earning potential far exceeded wife’s, and thus, he had a greater ability to purchase a home and acquire other capital assets in the future, wife had a strong emotional attachment to the family home, whereas husband viewed the disposition of the marital home primarily only in financial terms, and the trial court was not required to consider the tax consequences to husband if he was forced to liquidate his retirement account in order to purchase a new residence, since its order neither contemplated nor required, either explicitly or implicitly, the sale of the marital home by wife or the liquidation of retirement funds by husband. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 850

If equitable apportionment order does not contemplate liquidation or sale of asset, it is abuse of discretion for court to consider tax consequences from supposed sale or liquidation. Ellerbe v. Ellerbe (S.C.App. 1996) 323 S.C. 283, 473 S.E.2d 881, rehearing denied. Divorce 822

The family court erred in determining the present liquidated value of a husband’s IRA by deducting from the IRA’s face value only the amount representing the penalty that would be imposed for an early withdrawal of all funds invested in the account; the IRA’s present liquidated value should have also reflected deductions for federal and state income taxes because they too would have to be paid if the account were to be immediately liquidated. Graham v. Graham (S.C.App. 1990) 301 S.C. 128, 390 S.E.2d 469. Divorce 792; Divorce 803

In performing an equitable division of a money market account, the court should have taken into account and appropriately offset the portion of the money market fund used to pay taxes, with the remainder being available for equitable distribution. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178.

Trial judge erred in determining value of professional association where he accepted book value of accounts receivable but made no deduction for uncollectibles and taxes; when valuing business assets of going business for equitable division purposes, family court should value assets as part of “going business,” not as liquidated assets. Woodward v. Woodward (S.C.App. 1987) 294 S.C. 210, 363 S.E.2d 413.

16. Agreements

Prenuptial agreement did not bar wife from receiving an equitable division of the property acquired during the parties’ marriage, in divorce proceeding, where provision of prenuptial agreement stated that disposition of property provisions “shall in no way affect the property, whether real, personal or mixed which shall be acquired by the parties, whether titled separately or jointly, subsequent to the date of this Agreement.” Hardee v. Hardee (S.C. 2003) 355 S.C. 382, 585 S.E.2d 501, rehearing denied. Marriage And Cohabitation 182(3)

Family court did not have authority to reopen parties’ property settlement agreement in divorce case, adjust value of property, and order husband to pay for half of structural repairs to property. Green v. Green (S.C.App. 1997) 327 S.C. 577, 491 S.E.2d 260.

Order approving property settlement agreement in divorce case was “final order” for purposes of property division, although it provided that decree of divorce would not be issued until future date; order provided that agreement was to make complete and final settlement of all claims of parties, and at time order was entered, actual entry of divorce was mere formality delayed by court at request and for benefit of parties. Green v. Green (S.C.App. 1997) 327 S.C. 577, 491 S.E.2d 260.

The wife was not entitled to any property titled in the husband’s name at the time of the divorce, nor was he required to obtain her consent before disposing of property, where the parties’ separation agreement, incorporated in the final order of divorce, provided that all property owned by either of them separately would remain separate property, and that no further grant, release, or quitclaim would be necessary. Cox v. Cox (S.C.App. 1992) 310 S.C. 127, 425 S.E.2d 761, rehearing denied, certiorari denied. Divorce 920

In an action for divorce, the assets of a trust set up to fund the parties’ grandchildren’s educations was properly incorporated into the marital estate where there was no executed trust agreement or initial trust res, the trustees never controlled the trust, and none of the grandchildren would have reached college age before the trust terminated and the assets reverted to the husband. Whetstone v. Whetstone (S.C.App. 1992) 309 S.C. 227, 420 S.E.2d 877, certiorari denied.

If a support and property settlement agreement is executory as to support and a continuance of the separation, while it is executed as to property rights, reconciliation and resumption of cohabitation may terminate the executory support provision while having no effect on the executed property provisions. Thus, a property settlement agreement and reconciliation agreement precluded reapportionment of the property covered by them except to the extent that such property had increased in value due to the joint effort of the parties, where the reconciliation agreement indicated that the parties agreed that they had complied with the provisions of the property settlement agreement. However, the reconciliation of the parties nullified the provisions of the separation and reconciliation agreements regarding the parties’ agreements not to be liable for the support of each other, and therefore the husband’s argument that the trial court should not have awarded alimony to the wife was without merit. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

Although a trial judge in a divorce action failed to make findings regarding the factors to be considered in equitably dividing the marital property, the finding of the trial judge would be affirmed where the property agreement was fair and equitable under the Court of Appeal’s view of the preponderance of the evidence. Perry v. Perry (S.C.App. 1990) 301 S.C. 147, 390 S.E.2d 480. Divorce 1314

A husband in a domestic action was precluded from asserting on appeal an argument that the trial court erred in failing to identify, value, and distribute the personal property of the parties, where the personal property of the parties was equally divided by agreement of the parties. Shannon v. Shannon (S.C.App. 1990) 301 S.C. 107, 390 S.E.2d 380.

The trial court properly approved a settlement agreement in a divorce action even though the husband expressed some uncertainty as to part of the agreement where the momentary equivocation was recanted by the husband, the husband testified that he freely and voluntarily accepted the agreement, and the trial judge made every effort to reiterate to the husband his options. Polin v. Polin (S.C.App. 1988) 295 S.C. 129, 367 S.E.2d 433.

17. Equal division

Apportionment of 50% of marital estate to husband and 50% of estate to wife was warranted in divorce proceedings, despite fact that husband had higher income; wife was in a better financial position as she had no debt, possessed significant nonmarital properties, and had more time before retirement to acquire assets. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 653; Divorce 1283(1)

Evidence was sufficient to support trial court’s equitable distribution of the overall marital estate 50% to husband and 50% to wife; in support of the award, the parties were in a long‑term marriage, any misconduct was disregarded, as the court found misconduct by both parties, both were in good health, wife had a low earning potential, neither party had obligations from a previous marriage, and although husband provided far greater direct contributions to the parties’ assets, wife contributed in the traditional stay‑at‑home spouse role that the parties contemplated and agreed upon. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 749

Trial court did not abuse its discretion in ordering 70/30 equitable division of the marital estate, in favor of wife; wife contributed more than 84% of the parties’ income, she continued to be the primary caregiver for the parties’ son and was responsible for cleaning the house and bathrooms, doing the dishes and laundry, and cooking dinner, and she brought significant non‑marital property into the marriage, and her wealth decreased during the marriage. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 749

Trial court’s determination that equal division of marital estate was warranted would not be set aside based on consideration of statutory factors for apportionment of marital property, although award of greater share of marital estate to wife could be justified; spouses were in good health, were educated, able‑bodied individuals with many future years of strong earning potential, there was no need for separate maintenance or alimony, wife made disproportionately greater contributions towards enhancing spouses’ lighting business, wife served as children’s primary caregiver, wife was awarded full custody of children, and husband’s frequent rages, which although not ultimate basis for divorce, nonetheless contributed to breakup of the marriage. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 749

Equal division of parties’ marital estate was fair in dissolution of marriage proceedings, even though divorced wife had a greater earning capacity, and despite divorced husband’s assertion that wife had significant nonmarital assets in the form of her retirement accounts; only three years of wife’s retirement was nonmarital and the bulk of her retirement accounts were considered marital and divided equally with husband, and there was nothing in the record to indicate husband sought a greater split than fifty‑fifty for equitable distribution. Ricigliano v. Ricigliano (S.C.App. 2015) 413 S.C. 319, 775 S.E.2d 701. Divorce 739; Divorce 742; Divorce 875

In a divorce action, provision in family court’s order of apportionment of marital property that ordered that husband’s real estate investments be sold and the proceeds divided equally between the parties was not inequitable; although the order made the husband responsible for the payment of the debts and expenses associated with each real estate investment, it also provided that he was entitled to reimbursement from the net sales proceeds for any principal reduction on any debt instrument related to the real estate investments made by him through his direct contribution of additional paid capital. Burgess v. Burgess (S.C.App. 2014) 407 S.C. 98, 753 S.E.2d 566. Divorce 822; Divorce 844

In a divorce action, provision in family court’s order of apportionment of marital property that ordered that a real estate investment limited liability company (LLC) owned jointly by the parties be sold and the proceeds divided equally between the parties was not inequitable; although the family court found that the husband had received the direct benefits of the incomes derived from the LLC, and, therefore, he was liable for all tax liability arising from the LLC, the wife agreed at oral argument that the husband was only responsible for taxes on money he received as income from the LLC, and not on any money he reinvested in the LLC for operational necessities. Burgess v. Burgess (S.C.App. 2014) 407 S.C. 98, 753 S.E.2d 566. Divorce 822; Divorce 839

Trial court properly afforded special consideration to husband’s contribution of lot to marital estate before reducing husband’s equitable share of the equity in the lot; in addition to considering the value of the lot, and its passive appreciation while it was part of the marital estate, the trial court considered other factors that mitigated in favor of reducing husband’s equity share, including that the marriage failed due to husband’s habitual drunkenness, that great disparities existed between husband’s and wife’s educations and earning capacities, and that wife was the financial manager of the marital partnership. Curry v. Curry (S.C.App. 2013) 402 S.C. 488, 741 S.E.2d 558. Divorce 881

The purpose of the general fifty‑fifty division of the marital estate is to protect the non‑working spouse who undertook the household duties and prevent an award solely based on the parties’ direct financial contributions. Crossland v. Crossland (S.C.App. 2012) 397 S.C. 406, 725 S.E.2d 509, rehearing denied, certiorari granted, reversed 408 S.C. 443, 759 S.E.2d 419. Divorce 741

While a 50‑50 division is considered appropriate guidance, it is by no means a mandatory division of marital property. Fitzwater v. Fitzwater (S.C.App. 2011) 396 S.C. 361, 721 S.E.2d 7. Divorce 729

Family court did not abuse its discretion in evenly apportioning the household furnishings in divorce proceeding, where wife did not offer a marital asset addendum or other evidence concerning the identity or value of her allegedly separate personal property. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Divorce 764; Divorce 785

Equal distribution of lottery proceeds was fair and equitable in divorce action, although wife bought ticket, since husband and wife jointly shared winnings prior to separation, and lottery winnings were windfall to marriage resulting from luck of the draw. Thomas v. Thomas (S.C. 2003) 353 S.C. 523, 579 S.E.2d 310. Divorce 789

Equal division of marital property was fair and reasonable, given that family court expressly considered factors relevant to making award of equitable apportionment, and fact that wife committed marital misconduct. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 732; Divorce 745

Equal distribution of lottery proceeds to husband and wife was fair and equitable, even though wife purchased winning ticket; evidence indicated husband and wife purchased lottery tickets with marital funds and such was a continuous course of action throughout the marriage, and husband and wife treated the proceeds of winning lottery ticket as marital property. Thomas v. Thomas (S.C.App. 2001) 346 S.C. 20, 550 S.E.2d 580, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 523, 579 S.E.2d 310. Divorce 789

Allocation of marital property did not result in an equal division of marital assets, as required by divorce decree, where wife was awarded marital property in her possession having a value of $8,826, husband was awarded marital property in his possession having a value of $1,975, and remaining marital property was divided equally. Griffith v. Griffith (S.C.App. 1998) 332 S.C. 630, 506 S.E.2d 526. Divorce 883

Apportionment of 50% of marital assets to each party, rather than 32% to wife and 68% to husband which family court had ordered, was appropriate given long duration of marriage, husband’s greater earning capacity, wife’s indirect contributions to marriage and husband’s fault in breakup of marriage. Smith v. Smith (S.C.App. 1997) 327 S.C. 448, 486 S.E.2d 516, rehearing denied. Divorce 749

Award of 50 percent of marital estate to wife in making equitable distribution of property in divorce action was not abuse of discretion where record made clear that family court judge had weighed statutory factors in making award, even though husband contended that he provided majority of marital assets and had monthly income almost twice that of wife. Doe v. Doe (S.C.App. 1996) 324 S.C. 492, 478 S.E.2d 854, rehearing denied. Divorce 738; Divorce 741

The Family Court properly awarded each spouse alternating use of 4 basketball season tickets, rather than awarding each party 2 tickets per game, where all 4 assigned seats were together and the record supported the finding that the parties should not be seated next to each other at the games. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied. Divorce 780

The trial court abused its discretion in awarding a wife 50 percent of the value of the marital home worth $56,000 where (1) the husband earned more than her during the marriage, (2) much of the money paid toward the construction of the house came from the husband’s settlement with a past employer, (3) the father of the husband was owed $18,000 in construction costs, (4) the husband and his family did substantially all of the labor to build the house, (5) the parties lived there only 1 year before separating, and (6) no value was placed on the wife’s indirect contributions to the accumulation of the asset. Sexton v. Sexton (S.C.App. 1992) 308 S.C. 37, 416 S.E.2d 649, rehearing denied, certiorari granted, reversed 310 S.C. 501, 427 S.E.2d 665. Divorce 857

Equal apportionment of the marital estate between the parties was equitable even though most of the appreciation in the value of the assets was attributable to the husband’s earnings and income during the marriage where the wife faithfully performed her homemaker role during the marriage under the most trying of circumstances, and gave up her own career and dutifully contributed her labor to provide a good marital home for her husband. Additionally, since the husband’s earnings were property of the marriage, the contribution of those marital earnings to the appreciation in value of his nonmarital property represented nothing more than a change in form of the marital property ‑ that is, the marital property in the form of earnings simply became marital property in the form of appreciation in the value of the nonmarital estate. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

Husband’s contention that trial court erred in awarding each party 50 percent of marital property despite his expert’s testimony that wife’s contributions to accumulation of marital assets did not exceed 37 percent was rejected; trial court was not bound to accept expert’s testimony regarding wife’s contributions, and wife’s testimony about her contributions indicated that during 18‑year marriage, wife provided homemaker services and on occasion worked either part‑time or full‑time, contributing monies she earned to support family. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

Trial court did not abuse its discretion in awarding wife 50 percent of marital estate where it considered division by parties of proceeds from sale of marital home as indicative of what parties themselves thought was equitable division of marital assets, because inference was fair one for trial court to draw, especially since property parties divided was clearly marital property. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404. Divorce 748; Divorce 920

Trial judge did not commit error in determining that both parties were entitled to 50 percent of all marital property where judge had addressed factors with sufficiency for appellate court to determine he was cognizant of required factors regarding division of marital property, and had found both parties made substantially same incomes and contributed equally to acquisition of marital property. West v. West (S.C.App. 1987) 294 S.C. 190, 363 S.E.2d 402.

18. Apportionment of marital estate

Equitable division of marital estate in divorce action, apportioning 49.60% to wife, fairly reflected the relative contributions of the parties to the marriage, even though parties were only married eight years and husband made far greater financial contributions than wife; wife’s contributions to the marriage, including caring for the couple’s four children and attending to children’s medical conditions while husband was away from the family home working as a government contractor, outweighed husband’s monetary contributions. Brown v. Brown (S.C.App. 2015) 412 S.C. 225, 771 S.E.2d 649. Divorce 741; Divorce 742

The trial court’s equitable division of the marital estate, apportioning 40% to wife and 60% to husband, fairly reflected the relative contributions of the parties to the marriage, even though husband made disproportionately greater contributions to the marriage than wife; although greater direct financial contributions may properly be considered in apportioning a marital estate, that factor was but one of many factors to be considered and did not alone overshadow all of the other relevant factors examined by the family court, including that husband actively concealed assets and knew at the outset of the marriage that wife would not contribute financially to the marriage, and that, before wife’s health deteriorated to the point she was unable to work, she contributed all of her earnings to the parties’ joint accounts. Crossland v. Crossland (S.C. 2014) 408 S.C. 443, 759 S.E.2d 419. Divorce 741; Divorce 744(1)

Wife was entitled to 30%, rather than 40%, of the marital estate, where wife brought no assets to the marriage, brought in no assets during the marriage, was not earning any income at the time of the marriage, and contributed only a negligible amount during the marriage to the parties’ joint accounts, vast majority of the contributions to the accounts during the marriage were made from husband’s social security, retirement, and disability benefits, bulk of the funds in the accounts had been earned by husband prior to the marriage and resulted from decades of living frugally and saving his earnings, both parties acknowledged several periods of separation throughout the 10‑year marriage, and both parties were unemployed for the majority of the marriage and contributed to household duties. Crossland v. Crossland (S.C.App. 2012) 397 S.C. 406, 725 S.E.2d 509, rehearing denied, certiorari granted, reversed 408 S.C. 443, 759 S.E.2d 419. Divorce 738; Divorce 740; Divorce 742

Evidence was sufficient to support family court’s award of 60 percent of the marital estate to husband, in action by wife seeking a decree of separate maintenance and support; wife brought in little or no money or assets during ten‑year marriage, while husband provided the majority of the income and assets, prior to the marriage, husband paid $7,158.99 to one of wife’s credit card debts and provided her a house rent free so she could get her finances in order, and, during marriage, enabled wife to build an inventory of animals and manage farm, against husband’s wishes, even though farm operated at a loss. Fitzwater v. Fitzwater (S.C.App. 2011) 396 S.C. 361, 721 S.E.2d 7. Divorce 740; Divorce 742

Trial court’s overall equitable apportionment in which husband was ordered to pay wife over $500,000 was fair and reasonable, and thus, did not constitute an abuse of discretion, even though husband alleged his yearly income was only $65,000 and he could not afford to pay award, considering husband’s misconduct in attempting to defeat wife’s interest in marital property, and the disparity between the parties’ earning potentials. Reiss v. Reiss (S.C.App. 2011) 392 S.C. 198, 708 S.E.2d 799. Divorce 748

In divorce action, family court did not abuse its discretion in awarding husband 60% of the marital property, totaling $320,655, and awarding wife 40% of the marital estate, totaling $213,876, despite husband’s claim that the family court attempted to compensate wife through equitable distribution because she was statutorily barred from receiving alimony because of her adultery; the family court granted husband a divorce based upon wife’s adultery that took place after the parties separated, the court specifically stated wife’s marital misconduct did not affect the equitable distribution, and the court took into consideration the direct and indirect contributions of both parties and the substantial “sweat equity” of husband. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 743

Award to wife of 37.5 percent of marital estate in dissolution action was abuse of discretion; this was long‑term marriage throughout which wife provided homemaker services, and neither party was found to be at fault for marriage’s breakup. Avery v. Avery (S.C.App. 2006) 370 S.C. 304, 634 S.E.2d 668. Divorce 740; Divorce 741; Divorce 745

The family court’s distribution of 70% of the marital estate to husband and only 30% to wife was an abuse of discretion, in divorce proceeding, and a division of 60% to husband and 40% to wife was warranted; the parties were married for over 30 years, wife’s adultery did not justify a 40% differential between her portion of the marital estate and husband’s portion, and the court relied on testimony concerning the cost of raising a child when the paternity of daughter, who was born during the marriage and was later determined not to be father’s biological child, was not an issue during the proceeding. Doe v. Doe (S.C.App. 2006) 370 S.C. 206, 634 S.E.2d 51, rehearing denied. Divorce 740; Divorce 743

Family court’s distribution of marital estate in divorce proceeding, in which it awarded husband 60% and wife 40%, was fair and equitable given that husband’s direct contributions to the acquisition of property were far greater than wife’s, where husband received the marital home, one automobile, half of the household furnishings, and the couple’s outstanding debt, and wife received a time‑share, one automobile, half of the household furnishings, jewelry, the retirement account, and a lump sum payment from husband to achieve the 60/40 apportionment. Nasser‑Moghaddassi v. Moghaddassi (S.C.App. 2005) 364 S.C. 182, 612 S.E.2d 707, rehearing denied. Divorce 780; Divorce 857

Division of marital property, which gave wife interest in one‑half of marital estate, but which allowed husband to maintain ownership and control of inns that represented bulk of estate, and directed husband to pay wife her remaining share of estate, namely $2,400,000, over 20 years, with interest, and which secured that obligation with mortgage on inns, was equitable, despite consideration of impact of husband’s affair on divorce and parties’ economic status, in light of family court’s authority to weigh relevant factors, and its consideration of 18‑year marriage, marital property, parties’ contributions, disparity of wife’s income and earning potential, devastating effect of divorce on wife, parties’ nonmarital property, lack of vested retirement benefits, tax impact, and generosity of husband’s parents. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 749

The trial court did not abuse its discretion in awarding 60 percent of the marital property to the husband and 40 percent to the wife where the husband made the greater direct contribution to the property and the husband and wife contributed equally in terms of the indirect contributions. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 741; Divorce 742

An award of only 25 percent of the marital estate to the wife would not be disturbed based on the trial court’s erroneously finding that the “value of the wife’s remaining inherited property far exceed[ed] the value of the husband’s remaining inherited property” where there was no indication that the trial court relied on the disparity in the ownership of non‑marital property to justify the wife’s award. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604.

There was no error in an equitable distribution of property or grant of alimony by the award to the wife of a 35 percent share in the marital home, the provision that the husband purchase her share, without the addition of interest, by a payment of $1,500 per month together with an annual payment of $5,000, and the provision that the husband, by way of alimony, was required to maintain medical insurance for the wife through his business and pay all other reasonable medical expenses not covered by insurance where (1) the couple were happily married for many years, (2) the husband owned 2 businesses, several acres of property, life insurance policies with a cash value of $4,846, and personal property worth $3,000, (3) the wife had income of $257 per month, personal property worth $815, a van worth $981, and withdrew $25,000 from various joint bank accounts, (4) the husband was guilty of post‑separation adultery, (5) the wife admitted that she conspired to kill the husband, and (6) the wife had cancer and a life expectancy of less than 5 years. Sharpe v. Sharpe (S.C.App. 1992) 307 S.C. 540, 416 S.E.2d 215.

The percentage of the marital estate granted a wife by the family court was inequitable where (1) at the time of the separation the wife was 47, the husband was 52, and they had been married for 22 years, (2) the husband was at fault in bringing about the separation, (3) for most of the marriage the wife did not work at the insistence of the husband, (4) the wife had an earning capacity of $14,000 per year and the husband of $24,000, (5) the husband received 70 percent of the marital property and the wife 30 percent, (6) the husband was apportioned a large retirement account as part of his share, and (7) although the wife was awarded $200 per month in alimony, the husband died during the appeal. Hodge v. Hodge (S.C.App. 1991) 305 S.C. 521, 409 S.E.2d 436.

The division of marital property was equitable where (1) the wife was awarded the home, with an equity of $50,000, where she and her minor child lived, (2) the husband was awarded $35,000 in marital property and had a retirement fund with over $17,000 in it which he had attempted to shield from the court, (3) the husband was at fault in the break up, (4) the wife did not receive alimony, (4) the husband’s earning potential far exceeded the wife’s, and (5) the court in error found the husband to be the equitable owner of the house in which he was living, which house was in his sister’s name. Seawright v. Seawright (S.C.App. 1991) 305 S.C. 167, 406 S.E.2d 386.

A trial court did not abuse its discretion in awarding a wife 35 percent of the marital property, even though the wife’s adulterous relationship and failure to support the husband in his career development adversely affected the economic status of the parties, and the husband’s direct contributions to the marital estate far exceeded those of the wife, where the parties were married for 17 years, the husband’s future income would far exceed the wife’s, the wife’s health future was uncertain, the wife had a need for additional education and training, and the wife was a good mother and made substantial and valuable contributions to the marriage over the course of the marriage. Hardwick v. Hardwick (S.C.App. 1990) 303 S.C. 256, 399 S.E.2d 791.

An award to the wife of a 30 percent share of the marital estate, though “most liberal,” did not amount to an abuse of discretion where the parties’ marriage lasted 10 years, the parties were of approximately the same age, the husband was in better health than the wife, the court found marital misconduct by the husband which caused the breakup of the marriage, the husband demonstrated a greater earning capacity and had far greater nonmarital assets, and the husband had made most of the direct contributions to the acquisition of the marital property while the wife’s contributions had been primarily indirect contributions as a homemaker. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

A trial court failed to properly value and apportion the marital property in an action for separate maintenance and support where it failed to give adequate consideration to all relevant factors set forth in Section 20‑7‑472; the trial court failed to consider the husband’s savings plans which contained approximately $10,000, the homemaker contributions by the wife, whether the husband’s retirement benefits were divisible, and whether the husband’s company pension plan should have been included in the marital estate. Rivenbark v. Rivenbark (S.C. 1990) 301 S.C. 175, 391 S.E.2d 232.

A division of marital property awarding the wife 53 percent of the marital assets and awarding the husband 47 percent of the marital assets was not an abuse of discretion where both parties were approximately the same age and in good health, the marriage had lasted 18 years, the court found marital misconduct on the part of the husband, the husband had contributed approximately 85 percent of the income to the family while the wife had contributed 15 percent, the wife acted as homemaker and primary caretaker of the parties’ 4 children, the husband’s earning potential was much greater than the wife’s, there was no evidence of nonmarital property held by either spouse or support obligations to another marriage, and the wife was required to assume responsibility for payment of the mortgages on the marital home as she was awarded exclusive possession. Harlan v. Harlan (S.C.App. 1990) 300 S.C. 537, 389 S.E.2d 165.

A trial judge did not abuse his discretion in apportioning the marital property 75 percent to the wife and 25 percent to the husband where the wife brought a fully furnished home into the marriage, she earned $107,332 during the course of the marriage while the husband earned $74,740, and the wife made substantial indirect contributions to the marriage through her services as a wife and mother. Buckler v. Buckler (S.C.App. 1989) 298 S.C. 526, 381 S.E.2d 910.

A trial court did not err in awarding a husband 60 percent of the marital property and ordering him to pay all of the marital debts where, although the husband was responsible for the majority of the financial contributions, the wife worked at various times during the marriage, the wife performed almost all of the household duties, the husband was physically abusive during the marriage, and almost all of the debts were incurred by the husband for his personal, nonmarital use. Roof v. Roof (S.C. 1989) 298 S.C. 58, 378 S.E.2d 251.

An equitable distribution order which awarded the husband personal property in his possession and a 1⁄2 interest in the marital home, but denied him any interest in the wife’s profit sharing plan, was proper where the husband was physically abusive toward his wife throughout the marriage, the parties separated on numerous occasions because of the husband’s conduct, his physical abuse finally drove the wife and children from the home, the profit sharing plan was the only source of retirement security the wife had, and the plan was available to her only upon leaving her employment. Williams v. Williams (S.C.App. 1988) 297 S.C. 208, 375 S.E.2d 349.

A trial court’s determination that a wife should receive 55 percent of the marital property was proper, even though the husband earned most of the marital income, where the wife maintained the home, the wife was a frugal person which helped in the accumulation of marital assets, the wife had little job potential other than bartending, and the court did not find that the adulterous conduct of the wife after the parties’ separation affected the economic circumstances of the marriage. Martin v. Martin (S.C.App. 1988) 296 S.C. 436, 373 S.E.2d 706.

Family court did not abuse its discretion in determining equitable distribution of marital assets when it awarded wife 50 percent of marital home, and 50 percent of joint savings account; although it was true that husband made greater monetary contribution throughout marriage, wife did work at beginning of marriage and later during marriage as necessitated by husband’s indictment; also, wife contributed her services as homemaker and was therefore entitled to equitable interest in property acquired by wage‑earner husband; however, family court abused its discretion in granting wife exclusive possession of marital home for period of approximately 4 years, thus suspending husband’s equity in home, where wife conceded no special circumstances existed to warrant such award. Leatherwood v. Leatherwood (S.C.App. 1987) 293 S.C. 148, 359 S.E.2d 89.

19. Modification

While an agreement concerning alimony or child support may be modified and enforced by the family court unless the agreement clearly provides otherwise, an agreement regarding equitable apportionment claims is final and may not be modified by the parties or the court,although it may be enforced by the family court unless the agreement provides otherwise. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Child Support 239; Divorce 942; Divorce 945

An order of the family court as it affects distribution of marital property may be modified if jurisdiction was specifically reserved in the decree or if allowed by statute. Brown v. Brown (S.C.App. 2011) 392 S.C. 615, 709 S.E.2d 679. Divorce 893(2)

The Family Court does not have the authority to modify property division made in divorce proceedings. Burns v. Burns (S.C.App. 1994) 323 S.C. 45, 448 S.E.2d 571.

The family court properly denied a wife’s supplemental motion to alter or amend a judgment equitably dividing the parties’ marital property in order to have the family court apportion the husband’s civil service retirement fund, since a party cannot use Rule 59(e), SCRCP, to present to the court an issue the party could have raised prior to judgment but did not. Hickman v. Hickman (S.C.App. 1990) 301 S.C. 455, 392 S.E.2d 481.

19.1. Third parties

When property is alleged to be marital property, but is owned by a third party, the family court has the authority to join all persons with a possible interest in the property as parties to the action and to determine if the property constitutes marital property; if the property is found to be marital property, the family court has the authority to apportion it among the parties. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 652; Divorce 874

Family court had the equitable authority to enforce divorce decree, even if it lacked the subject matter jurisdiction to modify the property provisions in the final decree of divorce, and, therefore, even if the final decree mistakenly declared the subject properties to be titled in husband’s name, it was the duty of the family court to interpret the intent of the property divisions and effectuate the division of marital property as written in the final decree, regardless of how legal title was held; because husband and son’s limited liability company (LLC) was joined as a party to the divorce action and the family court determined the subject properties were marital property, it had the authority to award full ownership in the subject property to wife. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 1001; Divorce 1042

20. Interest

An equitable distribution award is a money decree or judgment, pursuant to Section 34‑31‑20, so that it accrues interest at the statutorily prescribed interest rate, and thus fixed awards of money for equitable distribution shall accrue interest at the post‑judgment rate from the date of the judgment or, in the case of specified periodic payments, from the date each payment becomes due and owing. Casey v. Casey (S.C. 1993) 311 S.C. 243, 428 S.E.2d 714.

21. Jurisdiction

Family court lacked subject matter jurisdiction to modify property provisions in final divorce decree; family court’s final order as it affected distribution of marital property was not subject to modification except by appeal or remand following a proper appeal. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 893(2); Divorce 893(10)

The Family Court lacked subject matter jurisdiction to consider the issue of equitable distribution of a husband’s retirement benefits since jurisdiction was not specifically reserved in the divorce decree and there is no statutory authority for modifying an equitable distribution order (e.g., Section 20‑7‑472). Hayes v. Hayes (S.C.App. 1993) 312 S.C. 141, 439 S.E.2d 305. Divorce 893(6); Divorce 893(10)

Proceeds of a personal injury settlement acquired during the marriage are marital property subject to the family court’s jurisdiction. Marsh v. Marsh (S.C. 1993) 313 S.C. 42, 437 S.E.2d 34. Divorce 717

The Family Court had subject‑matter jurisdiction to equitably distribute the property of a bigamous marriage pursuant to “divorce” proceedings, even if the bigamist willfully committed bigamy, since under Sections 20‑7‑472(2) and (15), the Family Court has the discretion to consider misconduct, fault, and “other relevant factors” as it deems appropriate. Splawn v. Splawn (S.C. 1993) 311 S.C. 423, 429 S.E.2d 805. Marriage And Cohabitation 270

The Family Court had no subject matter jurisdiction to distribute the property a couple had accumulated while they were living together, after it had determined that the couple had never been husband and wife under the common law, since there could be no marital property as contemplated by the law. Hallums v. Bowens (S.C.App. 1993) 318 S.C. 1, 428 S.E.2d 894. Courts 175

The Family Court erred in requiring a mother to convey her half of the marital home to her ex‑husband, with whom their son lived while attending college, since the apportionment of marital property had been settled in the original divorce decree, and thus the Family Court lacked subject matter jurisdiction to modify the division of the property in a manner inconsistent with the terms and provisions of the divorce decree. Kelly v. Kelly (S.C.App. 1992) 310 S.C. 299, 423 S.E.2d 153.

The proceeds of the husband’s suit for personal injuries which occurred during the marriage was marital property subject to equitable distribution, even though the proceeds represented personal losses of pain and suffering rather than economic losses to the marital partnership, since in jurisdictions having equitable distribution statutes such awards are generally considered marital property regardless of their purpose, and the Equitable Distribution Statute, Section 20‑7‑472, gives Family Court judges sufficient latitude in dividing the marital estate to make adjustments for personal injury awards that represent compensation for injuries uniquely personal to one spouse. Marsh v. Marsh (S.C.App. 1992) 308 S.C. 304, 417 S.E.2d 638, rehearing denied, certiorari granted, affirmed 313 S.C. 42, 437 S.E.2d 34.

The family court did not have subject matter jurisdiction to determine a wife’s interest in the property of her marriage where the wife only sought to have the court adjudicate her rights and property and did not seek to have the court alter or terminate her marital status. The fact that her motivation for bringing the suit arose out of marital tensions did not transform her cause of action from nonmarital litigation to marital litigation. When distinguishing marital litigation from nonmarital litigation, it is the nature of the cause of action, not the reason for bringing it which controls. Brown v. Brown (S.C.App. 1988) 295 S.C. 354, 368 S.E.2d 475, certiorari granted 297 S.C. 73, 374 S.E.2d 897.

Family Court judges are given broad jurisdiction in equitable distribution of marital property, may use any reasonable means to divide estate equitably, and court’s judgment will not be disturbed absent abuse of discretion; factors judge should consider are relative incomes of parties, their material contributions and debts, and facts and circumstances of particular case. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259.

The Family Court has no jurisdiction to distribute nonmarital property, although it can consider such property when apportioning the marital property. Skipper v. Skipper (S.C. 1986) 290 S.C. 412, 351 S.E.2d 153. Divorce 687; Divorce 726

22. Forum

Although a husband claimed that South Carolina was the appropriate forum for equitable apportionment of the parties’ marital property because of the wife’s “contacts” with South Carolina, Connecticut was the most convenient forum for litigation of the property issues where, except for a car and some clothing, all of the parties’ real and personal property was in Connecticut. Mansour v. Mansour (S.C. 1988) 296 S.C. 215, 371 S.E.2d 537.

23. Pleadings

Issue of division of marital debt was properly before trial court in action for divorce, where complaint for divorce presented issue to the court and pretrial order indicated that parties were required to exchange list of marital debts before trial. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 85; Divorce 875

Wife’s plea for equitable apportionment of property in her complaint for divorce was sufficient to present issue of division of marital debt to the trial court. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 875

Wife’s plea for equitable division of the marital property in her complaint for divorce was sufficient to bring issue of equitable apportionment of personal property before trial court. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 875

24. Pretrial proceedings

Issue of division of wife’s retirement account was not before trial court, in proceedings on wife’s complaint for divorce, where husband informed court by pretrial brief and affidavit that personal property had been agreed upon and divided between parties, pretrial order did not list equitable division of personal property as issue for trial, both parties represented to court before trial that all marital personal property had already been divided to parties’ mutual satisfaction, and husband did not take formal action to bring issue of division of wife’s retirement account back before trial court, but merely introduced evidence of such accounts which was relevant to other contested issues. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 870

25. Presumptions and burden of proof

Although an appellate court has the authority to make findings of fact in accordance with its own view of the preponderance of the evidence, it nonetheless should approach an equitable division award with a presumption that the family court acted within its broad discretion, and the family court’s award should be reversed only when the appellant demonstrates an abuse of discretion. Stoney v. Stoney (S.C.App. 2016) 417 S.C. 345, 790 S.E.2d 31, rehearing denied. Appeal And Error 946

Wife failed to carry her burden, in proceedings on her complaint for divorce, of establishing that debts incurred prior to her filing of complaint were non‑marital, where only evidence wife put forth to prove the debts were non‑marital was limited to her own brief testimony pleading ignorance to nature of debts at issue. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 876.5(8)

Wife challenging apportionment of marital debt in action for divorce had burden of proving debts were not incurred for joint benefit of the parties, where husband showed proof of existence of debts that accrued before wife filed lawsuit seeking divorce. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 876.2(8)

There is a rebuttable presumption that a debt of either spouse incurred prior to the beginning of marital litigation is marital and must be factored in the totality of equitable apportionment; therefore, when a debt is proven to have accrued before the commencement of marital litigation, the burden of proving the debt is non‑marital rests on the party who makes such an assertion. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 876.2(8)

While there is certainly no recognized presumption in favor of a fifty‑fifty division of the marital estate, the court approves equal division as an appropriate starting point for a family court judge attempting to divide an estate of a long‑term marriage. Crossland v. Crossland (S.C.App. 2012) 397 S.C. 406, 725 S.E.2d 509, rehearing denied, certiorari granted, reversed 408 S.C. 443, 759 S.E.2d 419. Divorce 728; Divorce 876.2(5)

Because the majority of the credit card debt was acquired prior to marital litigation, wife was required to rebut the statutory presumption that those debts were marital in nature. Kennedy v. Kennedy (S.C.App. 2010) 389 S.C. 494, 699 S.E.2d 184. Divorce 876.2(8)

When a debt is incurred after marital litigation begins, the burden of proving the debt is marital rests upon the party who makes such an assertion. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 831; Divorce 876.5(8)

When a debt is incurred before marital litigation begins, the burden of proving a debt is nonmarital rests upon the party who makes such an assertion. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 831; Divorce 876.5(8)

There is a rebuttable presumption that a debt of either spouse incurred prior to the beginning of marital litigation is a marital debt and must be factored in the totality of equitable apportionment. Wooten v. Wooten (S.C. 2005) 364 S.C. 532, 615 S.E.2d 98. Divorce 726; Divorce 831

Statute dealing with apportionment of property upon dissolution creates rebuttable presumption that debt of either spouse incurred prior to marital litigation is marital debt and must be factored into totality of equitable apportionment. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 831

The burden of proving a spouse’s debt as nonmarital rests upon the party who makes such an assertion. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

Section 20‑7‑472 creates a presumption that a debt of either spouse incurred prior to marital litigation is a marital debt and must be factored into the totality of equitable apportionment; however, this presumption is rebuttable. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321. Divorce 748; Divorce 831

Section 20‑7‑472 creates a presumption that the debt of either spouse incurred prior to marital litigation is a marital debt and must be factored in the totality of equitable apportionment, and the burden of proving a spouse’s debt as non‑marital rests on the party making such assertion. Hardy v. Hardy (S.C.App. 1993) 311 S.C. 433, 429 S.E.2d 811. Divorce 748; Divorce 831

Settlement proceeds from a chose in action which arose during a marriage, but which the parties were not aware of until after the divorce, are presumed to be marital property since the unliquidated claim accrued before the date of valuation, and thus the burden will be on the party who wants this amount excluded from equitable distribution to show the proper proportion. Mears v. Mears (S.C.App. 1991) 305 S.C. 150, 406 S.E.2d 376, affirmed 308 S.C. 196, 417 S.E.2d 574.

26. Admissibility of evidence

The trial court in a marital litigation action erred in sustaining a husband’s objection to the introduction by the wife of evidence pertaining to the trial of the husband’s malpractice claim, the verdict, and the squandering of a large portion of the funds received, where the claim accrued prior to the institution of the divorce proceedings but litigation did not commence until afterwards; a chose in action which accrues during coverture is marital property. Covington v. Covington (S.C.App. 1991) 306 S.C. 473, 412 S.E.2d 455.

27. Findings

Family court failed to make requisite findings in apportioning marital estate in action for divorce; family court did not identify all marital property, but instead selectively divided certain real and personal property without determining fair market value of all property, including husband’s business, which constituted a considerable debt of the marriage, family court failed to determine direct and indirect contributions of the parties to acquisition of marital property, and counsel for both parties conceded that family court never placed value on husband’s business or entire marital estate. Buist v. Buist (S.C.App. 2012) 399 S.C. 110, 730 S.E.2d 879, rehearing denied, certiorari granted, affirmed as modified 410 S.C. 569, 766 S.E.2d 381. Divorce 879

Trial court apportionment of marital debt was not an abuse of discretion, in divorce proceeding; the court considered the incomes of the parties, the absence of alimony to wife, the sale of the marital residence, and the child custody arrangements. Pirayesh v. Pirayesh (S.C.App. 2004) 359 S.C. 284, 596 S.E.2d 505. Divorce 843

A trial judge erred in dividing marital property under Section 20‑7‑472 where he failed to make appropriate findings on any of the factors set forth in the statute, he randomly divided the property and failed to place values on some of it, and he placed no ultimate value on the direct and indirect contributions of each party. Rowland v. Rowland (S.C.App. 1988) 295 S.C. 131, 367 S.E.2d 434. Divorce 741; Divorce 742; Divorce 881

28. Harmless error

Even if the family court errs in distributing marital property, such error will be deemed harmless if the overall distribution is fair. Fitzwater v. Fitzwater (S.C.App. 2011) 396 S.C. 361, 721 S.E.2d 7. Divorce 1300

The trial court erred in an action for divorce in finding that the husband was the equitable owner of the house in which he was living where the title to the house was in the name of the husband’s sister and she was not a party to the action; however this was not reversible error where the record showed that the division of the marital property was equitable. Seawright v. Seawright (S.C.App. 1991) 305 S.C. 167, 406 S.E.2d 386. Divorce 691

29. Review—In general

On appeal in divorce proceedings, an appellate court looks to the overall fairness of the apportionment of marital property, and it is irrelevant that the appellate court might have weighed specific factors differently than the family court. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 749

Wife did not forfeit her ability to challenge trial court’s valuation of spouses’ lighting business on appeal under acceptance of benefits doctrine, under which a party’s voluntary acceptance of benefits provided under a decree acts as a waiver of the right to challenge the benefit on appeal, even though wife desired to retain ownership of business, given that appellate courts routinely address such valuation challenges. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 1263(2)

Appellant in a divorce action bears the burden of providing a record on appeal sufficient for intelligent review and from which an appellate court can determine whether the trial court erred. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 183

The preponderance of the evidence reasonably supported a 55% division of the entire marital estate in favor of husband, with 45% to wife, in action for divorce brought by wife; the bulk of the marital estate was tied up in the marital home and husband made most of the marital contributions to the acquisition of the marital estate. Curry v. Curry (S.C.App. 2013) 402 S.C. 488, 741 S.E.2d 558. Divorce 742

On review of a family court’s apportionment of marital property, the Court of Appeals looks to the fairness of the overall apportionment, and, if the end result is equitable, the fact that the Court of Appeals might have weighed specific factors differently than the family court is irrelevant. Sanders v. Sanders (S.C.App. 2011) 396 S.C. 410, 722 S.E.2d 15. Divorce 1290(1)

The family court has wide discretion in determining how marital property is to be distributed; it may use any reasonable means to divide the property equitably. Fitzwater v. Fitzwater (S.C.App. 2011) 396 S.C. 361, 721 S.E.2d 7. Divorce 653; Divorce 820

On appeal of the family court’s distribution of marital property, the Court of Appeals looks to the overall fairness of the apportionment, and it is irrelevant that it might have weighed specific factors differently than the family court. Fitzwater v. Fitzwater (S.C.App. 2011) 396 S.C. 361, 721 S.E.2d 7. Divorce 1290(1)

In reviewing the division of marital property, the Court of Appeals looks to the overall fairness of the apportionment, and it is irrelevant that the Court of Appeals might have weighed specific factors differently than the family court. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 1261(4); Divorce 1290(1)

In reviewing the family court’s equitable apportionment of marital property, an appellate court’s role is to examine the fairness of the apportionment as a whole; appellate court will affirm the family court if it can be determined that the judge addressed the factors under marital property statute sufficiently for appellate court to conclude judge was cognizant of the statutory factors. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 1261(1); Divorce 1323(4)

On appeal of division of marital property, even if appellate court might have weighed specific factors differently, it will affirm the family court’s apportionment so long as it is fair overall. Avery v. Avery (S.C.App. 2006) 370 S.C. 304, 634 S.E.2d 668. Divorce 1290(1)

Appellate court will affirm the family court judge if it can be determined that the judge addressed the factors under statute governing equitable apportionment of marital property in divorce proceeding sufficiently for appellate court to conclude he was cognizant of the statutory factors. Roberson v. Roberson (S.C.App. 2004) 359 S.C. 384, 597 S.E.2d 840, rehearing denied, certiorari granted. Divorce 1290(1)

There are many factors which the family court may consider in the apportionment of marital property; on review, the appellate court looks to the fairness of the overall apportionment, and if the end result is equitable, the fact that the appellate court may have weighed specific factors differently than the family court is irrelevant. Pirayesh v. Pirayesh (S.C.App. 2004) 359 S.C. 284, 596 S.E.2d 505. Divorce 727; Divorce 1261(4); Divorce 1290(1)

Appellate court looks to the overall fairness of the apportionment of marital property upon divorce and it is irrelevant that the appellate court might have weighed specific factors differently than the family court. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 1261(4); Divorce 1290(1)

Apportionment of marital property will not be disturbed on appeal absent an abuse of discretion. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 1283(1)

Appellate court will affirm the trial court if it can be determined that trial judge addressed factors under statute governing equitable apportionment of marital property sufficiently for appellate court to conclude that trial judge was cognizant of statutory factors. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 1290(1)

On review, appellate court looks to the overall fairness of the equitable apportionment of the marital estate, and if the end result is equitable, that appellate court might have weighed specific factors differently than the family court is irrelevant. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 1261(4); Divorce 1290(1)

On review of equitable apportionment of marital property, appellate court looks to fairness of overall apportionment, and if end result is equitable, it is irrelevant that appellate court might have weighed specific factors differently than trial court. Doe v. Doe (S.C.App. 1996) 324 S.C. 492, 478 S.E.2d 854, rehearing denied. Divorce 1261(4); Divorce 1290(1)

Reviewing court will affirm family court judge’s apportionment of marital property if it can be determined that judge addressed factors under statute governing apportionment with sufficiency for reviewing court to conclude that judge was cognizant of statutory factors. Doe v. Doe (S.C.App. 1996) 324 S.C. 492, 478 S.E.2d 854, rehearing denied. Divorce 1290(1)

In reviewing the trial court’s apportionment of marital property arising from a marital dissolution, the Court of Appeals looks to the fairness of the overall apportionment. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 1261(4)

On review of a division of marital property, the Court of Appeals looks to the fairness of the overall apportionment. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

A temporary family court order requiring a husband to make weekly payments to the wife was not automatically stayed pending appeal since the payments constituted temporary alimony, rather than a distribution of marital assets, where the payments were to be made for an indefinite, though temporary, period of time and for an indefinite total sum. Bochette v. Bochette (S.C.App. 1989) 300 S.C. 109, 386 S.E.2d 475. Divorce 884; Divorce 1233

Even if a trial judge fails to specifically address each of the factors set forth in Section 20‑7‑472 in apportioning marital property, the award will be affirmed if it can be determined that the judge addressed the factors with sufficiency for the court to conclude that he was cognizant of the required factors for the particular case. Walker v. Walker (S.C.App. 1988) 295 S.C. 286, 368 S.E.2d 89.

Questions regarding equitable distribution of marital property rests within the sound discretion of the family court whose conclusions will not be disturbed on appeal absent a showing of abuse. Phillips v. Phillips (S.C.App. 1986) 290 S.C. 455, 351 S.E.2d 178. Divorce 653; Divorce 1283(1)

30. —— Preservation of issues for review

Husband failed to preserve for appellate review argument that family court erred in distributing marital property by failing to include wife’s earned annual leave and by excluding husband’s post‑separation financial contributions toward the mortgage and pre‑separation physical improvements to marital home, in dissolution of marriage proceedings; husband did not raise to family court any error in court’s failure to include those matters in apportioning marital property, husband’s motion to alter or amend family court’s divorce order was not included in record on appeal, and family court did not rule on matters in husband’s motion. Ricigliano v. Ricigliano (S.C.App. 2015) 413 S.C. 319, 775 S.E.2d 701. Divorce 1216; Divorce 1217; Divorce 1237

Wife waived for appellate review her claim that family court failed to consider relevant tax consequences in fashioning equitable‑distribution award in divorce action, where wife did not raise claim in family court. Srivastava v. Srivastava (S.C.App. 2015) 411 S.C. 481, 769 S.E.2d 442. Divorce 1216

Former wife could not complain on appeal of ruling on husband’s share of her individual retirement account (IRA), which was lesser than amount evidenced in exhibit, where ruling did not prejudice wife. Jenkins v. Jenkins (S.C.App. 2004) 357 S.C. 354, 592 S.E.2d 637. Divorce 1263(1)

Husband was precluded from arguing, on appeal from divorce judgment, alleged error in award to wife of portion of his monthly retirement benefits, by his inclusion of monthly pay‑out in his proposed equitable division, which was adopted by court, despite wife’s desire to avoid monthly pay‑out. Bowman v. Bowman (S.C.App. 2004) 357 S.C. 146, 591 S.E.2d 654. Divorce 1263(2)

The wife’s exception to the trial court’s award of the marital estate was too general to permit appellate review of the award on either “equal partnership” or “foregone career opportunities” theories where she merely alleged that “such award [was] an abuse of discretion in that it [was] wholly inadequate and contrary to statutory and case law guidelines.” Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604. Divorce 1250

A wife in a divorce action could not assert error by the trial court for failing to identify or value the marital property where the wife offered no evidence of the identity or value of the property at trial. Perry v. Perry (S.C.App. 1990) 301 S.C. 147, 390 S.E.2d 480.

Where a trial judge held that the entire marital estate should be apportioned equally and left it up to the parties to petition the court for a determination of the division scheme of certain assets, the wife, who failed to do this, could not complain of any alleged omission in the equitable division. Gambrell v. Gambrell (S.C.App. 1988) 295 S.C. 457, 369 S.E.2d 662. Divorce 1216

31. —— Remand

Remand for reconsideration of attorney fee award to wife was warranted, in proceedings on wife’s complaint for divorce, where wife obtained partial beneficial results on appeal. Schultze v. Schultze (S.C.App. 2013) 403 S.C. 1, 741 S.E.2d 593. Divorce 1324

Family court effectively gave husband full benefit of credit intended to benefit wife, and thus remand for redistribution of property was required, where property had equitable value of $50,500, $20,000 of equity was attributable to wife’s contribution of premarital funds as down payment, family court assigned property value of $30,500 for purposes of equitable distribution, and family court awarded property to husband with value of $30,500, giving wife option of retaining property by paying husband $30,500 within 30 days of final order. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 1323(4)

The Family Court’s division of marital property would be reversed and the issue remanded for redetermination where (1) the court erroneously determined that the couple acquired no joint property during the marriage, and (2) the court failed to determine the indirect contributions of the parties to the acquisition of the marital property, merely stating that neither party made any meaningful “monetary” contribution to the acquisition of property by the other. Mobley v. Mobley (S.C.App. 1992) 309 S.C. 134, 420 S.E.2d 506.

**SECTION 20‑3‑630.** Marital property; nonmarital property.

(A) The term “marital property” as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in Section 20‑3‑620 regardless of how legal title is held, except the following, which constitute nonmarital property:

(1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;

(2) property acquired by either party before the marriage and property acquired after the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) property acquired by either party in exchange for property described in items (1) and (2) of this section;

(4) property excluded by written contract of the parties. “Written contract” includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;

(5) any increase in value in nonmarital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

(B) The court does not have jurisdiction or authority to apportion nonmarital property.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑473.

CROSS REFERENCES

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1. In general

Upon divorce, the family court is required to make a final equitable apportionment of the marital estate, and in making the apportionment the court is required to consider 15 statutory factors. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 726; Divorce 727

For the family court to properly include property within the marital estate, two factors must coincide: (1) the property must be acquired during the marriage; and (2) the property must be owned on the date of filing or commencement of marital litigation. Shorb v. Shorb (S.C.App. 2007) 372 S.C. 623, 643 S.E.2d 124. Divorce 681; Divorce 682

Annuity in which wife invested during marriage was part of marital estate, and was subject to equitable distribution in divorce action. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 700

Marital property was properly determined as of date wife commenced divorce action that brought about equitable division, rather than as of date wife instituted prior divorce action that was ultimately dismissed for failure to prosecute. Chanko v. Chanko (S.C.App. 1997) 327 S.C. 636, 490 S.E.2d 630, rehearing denied. Divorce 682

Marital property does not exist until date when marital litigation is filed or commenced. Chanko v. Chanko (S.C.App. 1997) 327 S.C. 636, 490 S.E.2d 630, rehearing denied. Divorce 681

Section 20‑7‑473 is the vehicle that creates “marital property” to be equitably divided by the Family Court; while a litigant’s ownership right in marital property is acquired during the marriage, “marital property” as such does not exist until the date when marital litigation is filed or commenced. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

The “ownership right” in “marital property” is acquired during marriage. “Marital property” as such does not exist until the date when marital litigation is filed or commenced. The “ownership right” in “marital property,” therefore, cannot attach until that property is created by the filing of marital litigation. Thus, a wife’s “ownership right” did not attach until the date she filed the divorce petition and a bank’s judgment lien which attached when it was recorded 3 years earlier had priority. Prosser v. Pee Dee State Bank (S.C. 1988) 295 S.C. 212, 367 S.E.2d 698. Divorce 681; Marriage And Cohabitation 425

2. Nonmarital property, generally

Property that is nonmarital when acquired may be transmuted into marital property if it becomes so commingled with marital property that it is no longer traceable, is titled jointly, or is used by the parties in support of the marriage or in some other way that establishes the parties’ intent to make it marital property. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 683

The $190,000 wife requested, pursuant to term within the prenuptial agreement stating that husband would pay wife ten thousand for each full year they were married, was nonmarital property according to the terms of the parties’ prenuptial agreement, and, thus, family court did not have jurisdiction over that particular issue, pursuant to parties’ prenuptial agreement stating that family court shall not have jurisdiction over any pre‑marital property of either party and over property acquired after the marriage, unless same be titled in joint names; in fact, prenuptial agreement removed family court’s jurisdiction from the other issues that wife raised at trial, with the exception of the divorce and child custody and support. Meehan v. Meehan (S.C.App. 2014) 407 S.C. 471, 756 S.E.2d 398. Marriage And Cohabitation 186

Property excluded by written contract or antenuptial agreement of the parties is excluded from marital property and is considered nonmarital property. Meehan v. Meehan (S.C.App. 2014) 407 S.C. 471, 756 S.E.2d 398. Divorce 921; Marriage And Cohabitation 182(3)

Family court does not have authority to apportion nonmarital property. Meehan v. Meehan (S.C.App. 2014) 407 S.C. 471, 756 S.E.2d 398. Divorce 652

Wife’s testimony that funds in disputed accounts were nonmarital property because they were inherited, gifted, or acquired before the marriage was sufficient to establish the source of the funds in the accounts, although she did not present any documentary evidence, where husband did not present evidence to the contrary. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 876.5(4)

The Family Court’s act of awarding wife a vehicle, her diamond engagement ring, and her fur coat was not an abuse of discretion, in divorce proceeding; the assets were not easily divisible, and husband testified that he bought all of the items for wife. Myers v. Myers (S.C.App. 2011) 391 S.C. 308, 705 S.E.2d 86. Divorce 785; Divorce 786; Divorce 821

Bonds and residence acquired during marriage but titled in husband’s name were nonmarital property not subject to equitable division in divorce action, where husband’s mother gave husband the funds to purchase the bonds and residence from her personal savings account, and money in savings account was nonmarital property. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Divorce 693; Divorce 705

Nonmarital property of bonds and residence titled in husband’s name were not transmuted into marital property so as to be subject to equitable division in divorce action, where bonds and residence were titled in husband’s name for the purpose of protecting assets from his mother’s relatives and future nursing home expenses, and, while husband and wife claimed they owned the bonds and residence on their tax returns, they only did so in accordance with the advice of an accountant and financial planner. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Divorce 693; Divorce 705

Family court did not abuse its discretion in divorce action by declaring the property in wife’s possession, including the home she purchased prior to her marriage, to be nonmarital property; wife testified she owned her home and its furnishings prior to her marriage, wife testified no marital property was acquired during the marriage, and husband did not challenge wife’s testimony. Thomson v. Thomson (S.C.App. 2008) 377 S.C. 613, 661 S.E.2d 130. Divorce 691; Divorce 694

Payments on mortgage of nonmarital vacation home with marital earnings were marital property to be included in marital estate for purposes of equitable distribution. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 691

In a divorce action, the trial court did not err in finding that several collectibles were nonmarital property belonging to the couple’s children where there was testimony that each of the collectibles had been given to the children by third parties. Crawford v. Crawford (S.C.App. 1996) 321 S.C. 511, 469 S.E.2d 622.

In a divorce action, the trial court erred in finding a gas pack valued at $1500 was nonmarital property where the father testified that he purchased the gas pack with marital funds; marital property is that real and personal property acquired by the spouses during the marriage which is owned by them at the date of filing of marital litigation. Crawford v. Crawford (S.C.App. 1996) 321 S.C. 511, 469 S.E.2d 622.

Property acquired by either party to a marriage before the marriage, and property acquired during the marriage in exchange for property acquired by either party before the marriage, are not marital property. Corbett v. Corbett (S.C.App. 1993) 313 S.C. 184, 437 S.E.2d 136. Divorce 680; Divorce 684

The wife’s wedding ring was non‑marital property where the wife testified that the ring had been given to her as an engagement present 6 months before the wedding. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied. Divorce 694

The trial judge erred in finding that real property was non‑marital based on its title being held in the husband’s name since Section 20‑7‑473 provides that real property acquired during the marriage is marital property “regardless of how legal title is held” and the trial judge did not address the issue of whether the property fell under one of the exceptions listed in the statute. Jamar v. Jamar (S.C.App. 1992) 308 S.C. 265, 417 S.E.2d 615.

The fact that a wife used a sterling silver service set for family purposes on special occasions and holidays did not prove that she intended the silver to become marital property, such that it was transmuted into marital property, since, by its very nature, a silver service is something that will be used by the whole family rather than one person. Using the silver in its normal fashion was not in itself evidence of an intent to make it marital property. Similarly, the fact that the silver was insured on the husband’s insurance policy along with other personal property of the marriage did not show an intent to transmute since it was quite natural that the silver would be insured under the same policy as other household personal property; it was hardly extraordinary that items that the parties brought into the marriage would be listed with marital property on a schedule of insured household personal property. Pappas v. Pappas (S.C.App. 1989) 300 S.C. 62, 386 S.E.2d 301.

3. Transmutation

As a general rule, transmutation of nonmarital property into marital property is a matter of intent to be gleaned from the facts of each case. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 683

Remand was warranted for trial court to determine value of corporation that operated marina on wife’s nonmarital property alone in divorce proceedings; trial court, after incorrectly finding that property transmuted into marital property, had ordered corporation, property, and improvements built on property to be listed for sale for $800,000. Taylor‑Cracraft v. Cracraft (S.C.App. 2016) 417 S.C. 570, 790 S.E.2d 423, rehearing denied. Divorce 760

Remand was warranted for trial court to reapportion marital property in divorce proceedings; while court had awarded 61 percent of property to wife and 39 percent to husband, it had incorrectly found that wife’s nonmarital property had transmuted into marital property. Taylor‑Cracraft v. Cracraft (S.C.App. 2016) 417 S.C. 570, 790 S.E.2d 423, rehearing denied. Divorce 650

Remand was warranted for trial court to revisit issue of attorney fees in divorce proceedings; court had incorrectly found that wife’s nonmarital property transmuted into marital property. Taylor‑Cracraft v. Cracraft (S.C.App. 2016) 417 S.C. 570, 790 S.E.2d 423, rehearing denied. Divorce 1138

Evidence was insufficient to support finding that company which husband formed prior to marriage was transmuted into marital property subject to equitable distribution in divorce proceeding, even though wife testified she used a company car, phone, and gas card; husband never placed business in wife’s name, no marital funds were contributed to business, wife did not make any business decisions, wife was paid for her work for company, and husband did not own the entire company but rather was a 50‑50 partner. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 876.2(2)

Even if property is nonmarital, it may be transmuted into marital property during the marriage. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 683

Transmutation of nonmarital property into marital property occurs if the property is utilized in support of the marriage or in such a manner as to evidence an intent to make it marital property; transmutation is a matter of intent to be gleaned from the facts of each case. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 683

The mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation into marital property. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 876.5(4)

Property that is nonmarital when acquired may be transmuted into marital property if it becomes so commingled with marital property that it is no longer traceable, is titled jointly, or is used by the parties in support of the marriage or in some other way that establishes the parties’ intent to make it marital property, and transmutation is a matter of intent to be gleaned from the facts of each case. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Divorce 683

Evidence of intent to transmute nonmarital property may include using the property exclusively for marital purposes or using marital funds to build equity in the property. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Divorce 683

Mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation of nonmarital property into marital property. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Divorce 683

Property acquired prior to the marriage is generally considered “nonmarital,” for purposes of equitable distribution in a divorce. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 682

Property that is nonmarital when acquired may be transmuted into marital property and subject to equitable distribution in a divorce if it becomes so commingled with marital property that it is no longer traceable, is titled jointly, or is used by the parties in support of the marriage or in some other way that establishes the parties’ intent to make it marital property. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 683

Husband was not entitled to special equity in his surveying business that was transmuted from nonmarital property to marital property subject to equitable distribution in divorce; once business was determined to have been transmuted, full value of business became part of marital estate. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 703; Divorce 826

Wife’s premarital contributions to husband’s surveying business were not permissible consideration in determination whether business was transmuted to marital property during marriage, for purposes of equitable distribution. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 703

In terms of evidence tending to establish transmutation of nonmarital property to marital property subject to equitable distribution in a divorce, the use of property in support of a marriage is relevant; however, the mere use of income from nonmarital assets does not transmute those assets into marital property. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 683

Evidence supported finding that husband and wife intended to treat husband’s surveying business as common property of marriage, and, thus, business was transmuted from husband’s nonmarital property to marital property subject to equitable distribution in divorce; after parties married, wife, with husband’s consent, reduced hours she worked as nurse to work full‑time for business, wife was paid higher salary for her services with expectation that this would benefit both parties in retirement together, wife was listed as secretary of business, all business decisions were made jointly, wife’s personal credit was used in support of business, and marital funds were expended to discharge business debt. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 703

The spouse claiming transmutation of nonmarital property to marital property subject to equitable distribution in a divorce must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 683; Divorce 876.4

As a general rule, transmutation of nonmarital property to marital property subject equitable distribution in a divorce is a matter of intent to be gleaned from the facts of each case. Pittman v. Pittman (S.C. 2014) 407 S.C. 141, 754 S.E.2d 501, rehearing denied. Divorce 683

Property that is nonmarital when acquired may be transmuted into marital property if it becomes so commingled with marital property that it is no longer traceable, is titled jointly, or is used by the parties in support of the marriage or in some other way that establishes the parties’ intent to make it marital property. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 683

Nonmarital property can be transmuted into marital property and become subject to equitable division if the property: (1) becomes so commingled with marital property as to be untraceable; (2) is utilized by the parties in support of the marriage; or (3) is titled jointly or otherwise utilized in such a manner as to evidence an intent by the parties to make the property marital property. Fitzwater v. Fitzwater (S.C.App. 2011) 396 S.C. 361, 721 S.E.2d 7. Divorce 683

The spouse claiming transmutation of non‑marital property must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage; such evidence may include using the property exclusively for marital purposes, using marital funds to build equity in the property, or exchanging the property for marital property. Nestberg v. Nestberg (S.C.App. 2011) 394 S.C. 618, 716 S.E.2d 310. Divorce 683

Husband and wife regarded non‑marital property purchased by husband prior to marriage as common property of the marriage, and thus, the property was transmuted to marital property, and remained marital property, even after husband transferred 14 of 15 lots to a development company; husband and wife lived on the property for the duration of the marriage, wife had a primary role in paying mortgage on property after husband lost his job, and joint checking account that contained funds from wife’s salary was used to build equity in property by paying the mortgage. Nestberg v. Nestberg (S.C.App. 2011) 394 S.C. 618, 716 S.E.2d 310. Divorce 693

The spouse claiming transmutation of nonmarital property into marital property must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Divorce 876.2(4); Divorce 876.4

Transmutation of nonmarital property into marital property is a matter of intent to be gleaned from the facts of each case. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Divorce 683

Property that is nonmarital at the time of its acquisition retains its separate identity unless it becomes transmuted into marital property. Smith v. Smith (S.C.App. 2009) 386 S.C. 251, 687 S.E.2d 720. Divorce 680

Property which is nonmarital at the time of its acquisition may be transmuted into marital property (1) if it becomes so commingled with marital property as to be untraceable; (2) if it is titled jointly; or (3) if it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. Thomson v. Thomson (S.C.App. 2008) 377 S.C. 613, 661 S.E.2d 130. Divorce 683

Nonmarital property may be transmuted into marital property if: (1) it becomes so commingled with marital property as to be untraceable; (2) it is jointly titled; or (3) it is utilized by the parties in support of the marriage so as to evidence an intent by the parties to make it marital property. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 683

Whether transmutation of separate property into marital property has occurred is a matter of intent to be gleaned from the facts of each case. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 683

Generally, property acquired by either party prior to the marriage is nonmarital property, but in certain circumstances, nonmarital property may be transmuted into marital property if: (1) it becomes so commingled with marital property as to be untraceable, (2) it is jointly titled, or (3) it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 683

Transmutation of non‑marital property to marital property is a matter of intent to be gleaned from the facts of each case, and the spouse claiming transmutation bears the burden of producing objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 683

Transmutation of nonmarital property into marital property is a matter of intent to be gleaned from the facts of each case, and the spouse claiming transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 683; Divorce 876.2(4); Divorce 876.4

In determining the division of property arising from marital dissolution, the spouse claiming transmutation must produce objective evidence showing that during the marriage, the parties themselves regarded the property as the common property of the marriage; the mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 683; Divorce 876.4

In determining whether nonmarital property has been transmuted into marital property, transmutation is a matter of intent to be gleaned from the facts of each case. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 683

Nonmarital property may be transmuted into marital property if (1) it becomes so commingled with marital property as to be untraceable, (2) it is jointly titled, or (3) it is utilized by the parties so as to make it marital property. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 683

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the trial court properly determined that mortgages payable to the husband in monthly installments, in connection with his sale of nonmarital property, were not thereby transmuted into marital property. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied.

Under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), nonmarital property may be transmuted into marital property if it becomes so commingled with marital property as to be untraceable, if it is titled jointly, or if it is used by the parties in support of the marriage or in some manner as to evidence an intent by the parties to make it marital property. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 683

A husband’s argument that his separate property was not transmuted into marital property was meritless where it was based entirely on his contention that there was no marriage, and the court held that a common‑law marriage existed between the parties. Bochette v. Bochette (S.C.App. 1989) 300 S.C. 109, 386 S.E.2d 475.

Property which is nonmarital at the time of its acquisition may be transmuted into marital property if (1) it becomes so commingled with marital property as to be untraceable; (2) it is titled jointly; or (3) it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. McDowell v. McDowell (S.C.App. 1989) 300 S.C. 96, 386 S.E.2d 468. Divorce 683

Transmutation of nonmarital property into marital property is a matter of intent to be determined from the facts of each case. Property, nonmarital at the time of its acquisition, may be transmuted if it is utilized by the parties in support of the marriage so as to evidence an intent by the parties to make it marital property. The burden of proving transmutation is on the party asserting it. Pappas v. Pappas (S.C.App. 1989) 300 S.C. 62, 386 S.E.2d 301.

The doctrine of transmutation was properly applied to items of personal property where most of the personal property consisted of furniture and utensils used during the marriage. Roof v. Roof (S.C. 1989) 298 S.C. 58, 378 S.E.2d 251. Divorce 694

In certain circumstances, nonmarital property may be transmuted into marital property during the marriage. Property, nonmarital at the time of its acquisition, may be transmuted (1) if it becomes so commingled with marital property as to be untraceable, (2) if it is titled jointly, or (3) if it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. As a general rule, transmutation is a matter of intent to be gleaned from the facts of each case. The spouse claiming transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Such evidence may include placing the property in joint names, transferring the property to the other spouse as a gift, using the property exclusively for marital purposes, commingling the property with marital property, using marital funds to build equity in the property, or exchanging the property for marital property. The mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

Section 20‑7‑473 does not negate state case law pertaining to transmutation of non‑marital property. Kendall v. Kendall (S.C.App. 1988) 295 S.C. 136, 367 S.E.2d 437.

4. Contribution

Wife’s contributions to the management of timber tract and the use of proceeds from the property in support of the marriage were not sufficient to establish transmutation of the tract to nonmarital property, although wife testified that she devoted considerable expenditure of time and labor on the tract; expenditure of time and labor alone was not enough to establish intent. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 691

The trial court did not abuse its discretion in awarding 60 percent of the marital property to the husband and 40 percent to the wife where the husband made the greater direct contribution to the property and the husband and wife contributed equally in terms of the indirect contributions. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 741; Divorce 742

Upon dissolution of a marriage, property acquired during the marriage should be divided and distributed in a manner which fairly reflects each spouse’s contribution to its acquisition, regardless of which spouse holds legal title. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 741; Divorce 780

A wife was entitled to an interest in a business started by the husband, even though she made no direct financial contribution to the business, where the wife worked in the business and performed bookkeeper services. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

One spouse’s contributions to the other spouse’s business may create a special equity in his or her favor. It is not error to consider the assets of a spouse’s business in the division of marital property given evidence that the other spouse materially contributed through personal services to that business. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741. Divorce 703

A wife’s contributions entitled her to an interest in her husband’s dental practice and, therefore, the value of the dental practice was properly included in the marital estate where household expenses and money for family support were provided by the wife during the 4 years the husband attended dental school and thereafter until the opening of his dental practice, the parties lived with the wife’s family for 5 months after the husband’s graduation from dental school before moving into their own home, the wife co‑signed several loans, offering personal property as security, in order to fund the dental practice, and she assisted the husband in preparing for the opening of the practice by selecting furniture and business cards and designing a business sign. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

A spouse has an equitable interest in improvements to property to which he or she has contributed, even if the property is nonmarital. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 689; Divorce 876.2(2)

A tract of land acquired by the wife prior to the marriage became marital property, despite the fact that the wife did not intend such result, where the husband contributed to the mortgage payments on the property, and the parties had placed a mobile home upon the land which served as a marital residence. Barrett v. Barrett (S.C.App. 1986) 290 S.C. 453, 351 S.E.2d 177. Divorce 691

5. Property purchased with marital funds

Evidence was insufficient to support finding that wife’s jewelry was entirely nonmarital property and thus not subject to equitable distribution in divorce action, where husband testified he bought some of the jewelry, and wife’s testimony referenced husband having paid for engagement ring. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 876.2(4)

Although nonmarital property is not subject to equitable distribution as such, if one spouse uses marital funds to purchase property after the commencement of marital litigation, the family court may properly award the other spouse a special equity in the property. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 680

Wife’s share of marital estate had to be reduced by $2,000 to account for expenditure of marital funds to pay earnest money deposits on non‑marital properties. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 774

Property which was purchased during marriage with marital funds was properly included in marital estate for purposes of equitable distribution. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 680

Exercise equipment purchased by the husband for his fitness business was marital property where, even though the business itself was separate property, the equipment was purchased with marital funds. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820.

In a divorce action, the trial court did not err in awarding the wife a 15 percent special equity interest in real property purchased by the husband after the filing of the divorce petition where the husband purchased the property with marital funds. Cannon v. Cannon (S.C.App. 1996) 321 S.C. 44, 467 S.E.2d 132, rehearing denied, certiorari denied.

6. Inherited property

The nonmarital character of inherited property may be lost if the property becomes so comingled as to be untraceable; is utilized by the parties in support of the marriage; or is titled jointly or otherwise utilized in such manner as to evidence an intent by the parties to make it marital property. Sanders v. Sanders (S.C.App. 2011) 396 S.C. 410, 722 S.E.2d 15. Divorce 683; Divorce 718

7. Gifts

Gifts of money totalling between $25,000 and $30,000, made during the marriage by the husband to his mother over the course of 20 years, did not constitute marital property, even though the wife knew nothing about the gifts and did not consent to them, because the money no longer belonged to either the husband or the wife at the time the divorce action was filed and there was no evidence that the husband gave his mother money in contemplation of divorce or with intent to deprive the wife of her right to equitable distribution; in the absence of fraudulent intent, it is not unlawful for spouses to make outright gifts to others during the marriage. Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376. Divorce 718; Divorce 1015

Since antenuptial gifts are acquired before the marriage, they are not marital property within the meaning of Section 20‑7‑473. However, an antenuptial gift may be either a joint gift given to both parties or a separate gift given to one party. If it is a joint gift, then the parties hold joint title and the property is presumably transmuted into marital property upon marriage. If it is a separate gift, the property is not subject to equitable apportionment unless it, too, is transmuted. The question of whether a gift is joint or separate is resolved by ascertaining the intent of the donor. Pappas v. Pappas (S.C.App. 1989) 300 S.C. 62, 386 S.E.2d 301.

Trial court’s finding that 3,000 shares of stock, purchased with $13,000 given to husband by mother, and 1,000 shares of stock, given to husband by employer, were marital property was not error; while gifts made to one spouse alone and property acquired in exchange therefore do not ordinarily constitute marital property, evidence offered by wife that husband’s mother gave money used to buy 3,000 shares of stock to both her and husband supported finding that these shares constituted marital property; as to 1,000 shares given by employer, husband admitted that transfer of these shares to him by employer was in consideration for his remaining as employee and that transfer was reported as income; thus, transfer of these shares was clearly not gift. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

Gifts to one spouse and property inherited by one spouse remain separate property of that spouse unless they have been transmuted into marital property; husband’s interest in 2 tracts of land and his vested interest in trust and stocks acquired through gift and inheritance were his separate property; merely using income derived from these items in support of marriage does not transmute them into marital property. Certain farm acreage, farmhouse, its contents, and farm equipment had been transmuted into marital property, because husband’s life estate in farm acreage lost its nonmarital character and became subject to equitable distribution when it was utilized in support of marriage, where farm itself, and not merely income farm produced, was used in support of marriage. Peterkin v. Peterkin (S.C. 1987) 293 S.C. 311, 360 S.E.2d 311.

8. Stocks

Proceeds from husband’s stock options would be considered marital only if wife introduced clear and convincing evidence to establish fraud in relation to husband’s sale of the options, and, because wife presented no corroborating evidence, appellate court could not presume that husband acted in a fraudulent manner. Shorb v. Shorb (S.C.App. 2007) 372 S.C. 623, 643 S.E.2d 124. Divorce 702; Divorce 711; Divorce 744(2); Divorce 876.4; Divorce 876.5(2); Divorce 1273

Stocks given to a husband by his parents, both before and during the husband’s marriage were not transmuted into marital property, even though funds derived from the sale of the stocks were occasionally used for marital purposes, where they were kept in a separate bank account through which the husband bought and sold, good records were kept showing deposits and disbursements, and no marital funds were used to acquire any of such stock. Wannamaker v. Wannamaker (S.C.App. 1991) 305 S.C. 36, 406 S.E.2d 180. Divorce 705; Divorce 718

9. Inheritance

Evidence established that wife’s inheritance was marital property; although wife testified that her inheritance was deposited into her “separate account” and was titled jointly only for “emergency” purposes, family court found wife’s testimony was not credible, husband testified the parties deposited wife’s inheritance into a joint account with the intention that the money would be the parties’ nest egg, and because it was their nest egg, husband stated the parties agreed to only use that account when they needed additional money to pay household bills, account was titled in both parties’ names, and parties’ use of wife’s inheritance to pay household bills and family expenses demonstrated these funds were used in support of the marriage, and parties had used entirety of husband’s inheritance to build their marital home. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Divorce 876.5(4)

The Family Court erred when it classified husband’s truck as a marital asset, in divorce proceeding; husband testified that he purchased the truck with an inheritance from his father, and evidence established that husband deposited a $64,000 check from his father’s estate and then wrote a check for the truck less than 24 hours later. Myers v. Myers (S.C.App. 2011) 391 S.C. 308, 705 S.E.2d 86. Divorce 695; Divorce 718

Commingling of husband’s inheritance funds with marital funds, so as render funds untraceable, and general use of funds from account to support marriage, transmuted inheritance funds into marital property, even though account was listed in husband’s name only, and husband included account in financial declaration and financial statement provided to banks, where no testimony indicated that stocks in question came from inheritance, paper trails were woefully inadequate to support assertion, funds from account were used to pay down equity line on one of parties’ homes, to pay off loans on parties’ inns, purchase more stock in inns from other investors, for improvements to one home, and to pay on parties’ personal credit card. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 718

While property acquired by either party by inheritance from a party other than the spouse is generally considered nonmarital property, nonmarital property may be transmuted into marital property if: (1) it becomes so commingled with marital property as to be untraceable, (2) it is jointly titled, or (3) it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 718

10. Real property

Mobile homes purchased by husband prior to marriage were nonmarital property, despite wife’s contention in divorce proceedings that she paid off debt associated with the mobile homes; wife did not present any evidence specifically proving she paid off husband’s credit card debt associated with the mobile homes and did not prove the parties regarded the mobile homes as common properties of the marriage. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 876.5(4)

Evidence supported finding that two investment properties were marital property in divorce proceedings, even though wife asserted that she bought and sold all properties sold during the marriage with money she received from her family and money repaid to her by husband and that she initially purchased one property and used proceeds from prior sales to purchase second property; husband testified that he and wife jointly invested in real estate for their mutual benefit, husband’s name was on lease of one of the properties, and e‑mails were introduced showing that husband persistently inquired as to location of money from home equity line of credit, suggesting that this money was husband’s investment into the properties rather than repayment for a loan as wife claimed. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 876.5(2); Divorce 876.5(4)

Evidence was sufficient to support a finding in divorce action that two properties owned by husband prior to the marriage were transmuted into marital property; there was testimony that while husband owned the properties prior to the marriage, the properties were refinanced multiple times during the marriage to support the marriage, and that marital funds were used to extinguish the premarital debt on the properties. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 876.5(4)

Evidence was sufficient to support a finding in divorce action that a historical house located in Greece was transmuted into marital property; while husband owned an option to purchase the historical house prior to the marriage, the terms of the sale required payments over eight years, of which the last several occurred during the marriage, and the parties used rental income from the property in support of the marriage. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 691

Evidence was sufficient to support a finding in divorce action that a four‑story building located in Greece was transmuted into marital property; wife testified while husband owned bare land in Greece at the time of the marriage, after the marriage the parties built a retail and office building on the property, and added on to it during the marriage, and that her father managed the construction project without remuneration, and the court found that numerous loans were taken on the property that were fully paid by money earned during the marriage. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 876.5(4)

Wife’s nonmarital property was not transmuted into marital property; property was titled in wife’s name, and although husband assisted with the managing and maintenance of the property, there was no indication that wife ever regarded property as the common property of the marriage, nor was there indication that the parties used the property exclusively for marital purposes, that they commingled the property with marital property, or that they used marital funds to build equity in the property. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 691

Rental property purchased by husband during marriage with downpayment of nonmarital funds was nevertheless marital property, where remainder of the property was acquired through mortgage incurred during the marriage, and rental income from the property was used to benefit both parties. Teeter v. Teeter (S.C.App. 2014) 408 S.C. 485, 759 S.E.2d 144, rehearing denied, certiorari dismissed. Divorce 691

Although husband was entitled to recognition of his nonmarital downpayment on property purchased during marriage to wife, he was not entitled to a “refund” of his down payment contribution, rather that contribution was to be a factor in the overall equitable distribution; family court acknowledged husband had made a larger direct financial contribution to acquisition of marital assets and this was reflected in an equitable distribution of 55% of marital assets to husband and 45% to wife. Teeter v. Teeter (S.C.App. 2014) 408 S.C. 485, 759 S.E.2d 144, rehearing denied, certiorari dismissed. Divorce 857

Rental properties husband owned prior to the parties’ marriage were not transmuted into marital property, in divorce proceeding; the rental properties were never placed in wife’s name or transferred the properties to wife as a gift, the assistance wife provided to husband in managing the properties did not establish an intent to treat the properties as marital, as wife only assisted with the properties very early in the marriage, and there was no evidence that husband comingled the rental properties with marital property or that he used marital funds to pay the mortgages for the rental properties. Smallwood v. Smallwood (S.C.App. 2011) 392 S.C. 574, 709 S.E.2d 543. Divorce 691

Husband was not entitled to any credit for amount of rental income from wife’s non‑marital property that was received and disposed of after date on which marital litigation was commenced, given that no evidence indicated that husband directly or indirectly contributed to acquisition of rental income. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 697

Properties were not marital, even though wife used $2,000 in marital funds to pay earnest money deposits prior to date of filing, given that legal title to properties did not vest until after date that marital litigation was commenced. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 691

Amount that wife borrowed from father for down payment on property was wife’s separate property for purposes of divorce, and thus full equitable value of property could not be included in valuation of marital estate for equitable distribution. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 691

Family court properly reduced wife’s share in marital estate by one‑half of amount of post‑filing rental income derived from parties’ marital property. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 788

Trial court did not err in including appraised value of land owned by son in husband’s allocation of marital estate, where son had promised to pay his parents appraised value of land should he decide to sell land, and son no longer had any meaningful relationship with wife. Dixon v. Dixon (S.C.App. 1999) 334 S.C. 222, 512 S.E.2d 539, rehearing denied, certiorari denied. Divorce 783

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the wife failed to prove that the home and rental properties, which were nonmarital at the time the husband acquired them, were transmuted into marital property during the marriage where (1) the husband paid for all properties prior to the marriage and the wife failed to show that any appreciable amount of marital funds was expended on improvement of the properties, and (2) the record indicated that the wife’s contributions of labor and time to improvement and maintenance of the properties were largely routine duties such as cleaning and painting. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 691; Divorce 693

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the fact that income from rental units, which were nonmarital when the husband acquired them, was put into the parties’ joint bank account did not show the parties’ intent to change nonmarital property to marital property. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 691

11. Trusts

Right to receive trust distributions underwent transmutation into marital property, where trust was created with the intent to provide for husband and wife for the remainder of their lives, distributions were deposited into an account, the funds in which were used in support of the marriage, and husband was clearly aware that the distributions were being used in support of the marriage because he attended yearly meetings discussing the performance of that account and the parties’ anticipated future needs, and, thus, the parties intended, from the time the trust was created, to treat the right to receive distributions as marital property. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 700

While the trust corpus is not the property of either spouse and, thus, cannot be marital property, trust distributions can be marital property, depending on how and when the interest was acquired or if the interest has undergone transmutation. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 700

12. Bank accounts

Evidence supported finding that bank account was marital property and was subject to equitable division, in divorce proceeding; the bank account was titled in both husband and wife’s names, the money in the account was acquired during the parties’ marriage, and there was evidence that both parties treated the account as marital property. Smallwood v. Smallwood (S.C.App. 2011) 392 S.C. 574, 709 S.E.2d 543. Divorce 699

A thrift savings plan joined by a wife through her employer was marital property subject to distribution where the funds in the savings plan were acquired during the marriage, even though the wife set the funds aside from her paycheck without her husband’s knowledge and the funds were not immediately available to her. Buckler v. Buckler (S.C.App. 1989) 298 S.C. 526, 381 S.E.2d 910.

13. Business

Business formed during marriage was nonmarital property and thus not subject to equitable distribution in divorce proceeding, where business was acquired in exchange for nonmarital funds from company which was husband’s separate property, and business did not receive contributions from marital funds. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 876.2(2)

Real estate owned by business which was formed during marriage was nonmarital property and thus not subject to equitable distribution in divorce proceeding; business itself was nonmarital property since it was formed entirely with funds from husband’s separate business, and there was no evidence that marital funds were used to purchase the real estate. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 703

Evidence was sufficient to support finding that businesses created during marriage were marital property and thus subject to equitable distribution in divorce proceeding, despite minimal percentage of marital funds, in comparison to amount of nonmarital funds, contributed to businesses, where neither husband nor wife disputed that some marital funds were contributed to businesses. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 703

Appreciation of spouses’ closely‑held lighting business after filing of divorce complaint was due to active appreciation attributable to wife, rather than passive appreciation, and thus date of initiation of divorce proceedings, rather than post‑filing date, was proper date for valuing business for distribution as marital asset; continued growth of business was not result of mere market forces or existence of Internet but was primarily attributable to wife’s active and continuing managerial effort in selecting and arranging product on website, in continuing to revise and refine techniques used to make contents of business’s website appear particularly relevant to search engine algorithms, and in expanding techniques to include new brands on website. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 794

Wife was not entitled to lack‑of‑marketability discount, based on illiquidity of shares of closely held business, in valuation of spouses’ closely held lighting business for distribution as part of marital estate in divorce proceedings, where wife would retain ownership of business. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 794

Evidence in divorce action established that family farming business was marital property, and husband failed to carry his burden to show otherwise; during the marriage, husband farmed and received a nominal salary of $120 a week in exchange for an interest in the business, husband’s 50% interest in the business was payment for labor expended during the marriage, and, therefore, the family court properly concluded it was an asset of the marriage. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 692

Trial court should have included in the marital estate the value of husband’s business at time wife filed for divorce, even though business was liquidated during pendency of divorce proceedings, where decline of business was the result of husband’s efforts to destroy business solely for purpose of depriving wife of any interest in the company, as evidenced by unrebutted testimony of several witnesses that husband announced his intention to destroy his business in order to prevent wife from getting a share of it, testimony of witnesses who worked with husband that his business slowed down considerably after the initiation of divorce proceedings, and evidence that business started up by former employees of husband during same period hired many of husband’s employees and acquired many of husband’s customers. Dixon v. Dixon (S.C.App. 1999) 334 S.C. 222, 512 S.E.2d 539, rehearing denied, certiorari denied. Divorce 744(10)

Wife’s office furnishings purchased during marriage were marital property for purposes of equitable distribution in divorce action, even though wife did not make similar claim against husband for office assets. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 694

Goodwill in a professional practice cannot be included in the marital estate subject to equitable distribution because of the intangible nature of goodwill which inevitably results in a speculative valuation. Thus, where an expert testified that the only value of a husband’s dental practice was its goodwill, the wife was not entitled to any money from the practice. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

Goodwill in a business based upon the owner’s future earnings is too speculative for inclusion in the marital estate. Wood v. Wood (S.C.App. 1989) 298 S.C. 30, 378 S.E.2d 59.

A business which was acquired by the husband after separation but before the divorce action was commenced should have been included in the marital estate. Polis v. Polis (S.C.App. 1988) 295 S.C. 184, 367 S.E.2d 465. Divorce 703

Good will in husband’s fireworks business did not constitute marital property subject to equitable distribution, where good will was dependent upon owner’s future earnings, and was therefore too speculative for inclusion in marital estate; moreover, these future earnings were accounted for in award of alimony. Casey v. Casey (S.C. 1987) 293 S.C. 503, 362 S.E.2d 6. Divorce 706

13.5. Goodwill

Where goodwill is a marketable business asset distinct from the personal reputation of a particular individual, as is usually the case with many commercial enterprises, that enterprise goodwill has an immediately discernible value as an asset of the business and may be identified as an amount reflected in a sale or transfer of a business; however, if the goodwill depends on the continued presence of a particular individual, such personal goodwill, by definition, is not a marketable asset distinct from the individual. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Good Will 4.1

If goodwill is attributable to the individual, it is not a divisible asset in divorce proceedings and is properly considered only as future earning capacity that may affect the relative property division. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 706; Divorce 738

Before including the goodwill of a business or professional practice in a marital estate, a court must determine that the goodwill is attributable to the business as opposed to the owner as an individual. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 706

Evidence supported trial court’s finding that 20% of goodwill value of closely‑held lighting business was attributable to wife’s personal goodwill and, thus was not divisible asset in divorce proceedings, although 80% of sales were driven through website; wife’s valuation expert opined that at least 20‑25% of business’s goodwill was personal to wife based on factors including wife’s total responsibility for day‑to‑day management of business and ongoing product selection, her direct dealings with manufacturers and vendors, and her continued website monitoring, revision, and presentation, husband’s valuation expert acknowledged that some personal goodwill existed, and evidence was presented that wife was solely responsible for website content. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 876.5(2)

14. Installment notes

Evidence was sufficient to support a finding in divorce action that a note payable to husband’s brother was not marital debt subject to equitable apportionment; while husband listed a $235,000 note payable to his brother on his list of marital debts, and testified at trial that when he and his brother opened a restaurant, husband was short of cash and brother put some extra money on the equipment for the restaurant, attorney who prepared the note testified to the terms of the note, but admitted that he never witnessed any money change hands, and did not remember if brother was present at the execution of the note. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 876.5(8)

Husband’s interest in installment note was not marital property subject to equitable distribution in divorce action, where note was payable to corporation owned in part by husband and not to husband individually, and husband did not own note receivable, but rather, was entitled to share of monthly payments as corporate distribution. Ellerbe v. Ellerbe (S.C.App. 1996) 323 S.C. 283, 473 S.E.2d 881, rehearing denied. Divorce 689

15. Lawsuit proceeds

Settlement proceeds from a chose in action which arose during a marriage, but which the parties were not aware of until after the divorce, was marital property pursuant to Section 20‑7‑473 to the extent that the purpose of the compensation was for injuries suffered or property lost prior to the commencement of marital litigation. Mears v. Mears (S.C.App. 1991) 305 S.C. 150, 406 S.E.2d 376, affirmed 308 S.C. 196, 417 S.E.2d 574.

Unallocated proceeds paid over to both the husband and wife in settlement of wife’s claim for personal injuries sustained in an automobile accident were properly found to be marital property subject to equitable distribution in wife’s action for legal separation. Phillips v. Phillips (S.C.App. 1986) 290 S.C. 455, 351 S.E.2d 178.

16. Professional license or degree

Equitable distribution of a professional degree or license is improper since such a degree or license is not classified as marital property. Heath v. Heath (S.C.App. 1988) 295 S.C. 312, 368 S.E.2d 222. Divorce 696

16.5. Art

Art pieces were not a marital asset subject to equitable apportionment since wife owned two of the pieces prior to the marriage and the third piece was a gift from the gallery owner to the parties’ son and husband did not contradict her testimony. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 876.5(2)

17. Valuation, generally

Family court’s valuation of marital property, in divorce proceeding, within the range of values presented at trial was proper; notwithstanding husband’s contention that real estate market had declined. Teeter v. Teeter (S.C.App. 2014) 408 S.C. 485, 759 S.E.2d 144, rehearing denied, certiorari dismissed. Divorce 783

Family court did not err in accepting wife’s expert real estate appraiser’s valuation of marital residence; the appraiser provided detailed evidence supporting his methodology and selection of comparable properties, and wife additionally introduced the appraiser’s comprehensive report into evidence without objection, whereas husband offered only cursory valuation evidence. Lewis v. Lewis (S.C. 2011) 392 S.C. 381, 709 S.E.2d 650. Divorce 765; Evidence 571(7)

Former husband failed to prove he made material contributions to appreciation of cemetery, as was required for him to be entitled to special equity interest in increase in value of this non‑marital property; while husband testified regarding use of his landscaping designs and his physical labor at cemetery, there was no testimony concerning any actual appreciation in value, and former wife testified husband was paid for work at cemetery and that his work amounted to very little time actually spent. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Divorce 703

Generally, any increase in value of nonmarital property is also nonmarital property; however, a non‑owner spouse has a special equity interest in any increase in value of non‑marital property resulting from that spouse’s material contribution. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Divorce 684

Accepting value of certain marital property, based on values established by former wife’s appraiser, was not error in divorce proceeding; appraiser valued lots four months prior to trial, whereas former husband based his valuation on county tax appraisals that were conducted prior to wife filing her divorce complaint, and husband did not present any evidence that value of lots stayed the same from the time of filing to the time of the final hearing. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Divorce 783; Evidence 571(7); Evidence 574

Evidence supported valuation of former husband’s family business, which he sold to his father prior to initiation of former wife’s action seeking equitable distribution; although shareholders retained right to retake their shares in event former husband sold, pledged, transferred, or alienated his shares in company, provision of agreement did not foreclose his ability to sell his interest in company to third party, and expert witness took into account discount for unsecured debt owed to exiting shareholders. Wynn v. Wynn (S.C.App. 2004) 360 S.C. 117, 600 S.E.2d 71, rehearing denied, certiorari denied. Divorce 794

Remand for reconsideration of value of share of stock in limited partnership interest that husband purchased with funds from inheritance was required, where husband purchased share for $30,000, but claimed increased value of $122,821, which would represent one‑half of $245,644 value of limited partnership interest, which had only two shares of stock remaining, it was impossible to discern whether experts valued share after 21 shares were reduced to two shares or before, and no evidence indicated whether experts took total number of limited partnership shares outstanding into consideration in valuing share. Widman v. Widman (S.C.App. 2001) 348 S.C. 97, 557 S.E.2d 693, rehearing denied, certiorari denied. Divorce 1323(2); Divorce 1323(7)

Entire value of husband’s business at time wife filed for divorce would be assessed against husband’s share of marital estate, where husband purposely set out to destroy business after initiation of divorce proceedings to prevent wife from getting a share of business. Dixon v. Dixon (S.C.App. 1999) 334 S.C. 222, 512 S.E.2d 539, rehearing denied, certiorari denied. Divorce 744(10)

Wife was not entitled, as part of equitable distribution of marital assets, to increase in value of parties’ nonmarital vacation home during marriage, where she did nothing to improve property, and majority of increase in value was due to inflation. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 691

When valuating investment property during equitable distribution, trial court did not abuse its discretion in using tax value of property, rather than appraised value, and in evaluating husband’s interest in property based on one‑third interest he held at time divorce action was filed rather than one‑half interest husband held at time of judgment. Smith v. Smith (S.C.App. 1997) 327 S.C. 448, 486 S.E.2d 516, rehearing denied. Divorce 691; Divorce 783

There was no abuse of discretion in trial court’s valuation of husband’s insurance agency business at time of hearing, rather than at higher value at time of filing of action, which would have been grossly unfair; trial court reasoned that business represented “propriety equity” in policies owned by insurance company, that while value was assigned to business, it could not be realized by sale, and that value of business had declined through no fault of either party. Matter of Them (S.C. 1996) 322 S.C. 563, 473 S.E.2d 804.

The litigation that brings about the equitable division of marital property is not only the triggering mechanism for purposes of the identification and valuation of marital assets pursuant to Section 20‑7‑473, but also the triggering mechanism for any pendent lite order which operates to exclude assets from the definition of marital property under subsection (2) of Section 20‑7‑473. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

In an action for divorce, the trial court should have reduced the value of the marital home, awarded to the wife, by the $15,000 the wife had borrowed from the husband for the down payment where the court had required the wife to repay the husband. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 850

In an action for divorce, the wife was not prejudiced by the trial court’s valuing of her company’s stock at $15,000, notwithstanding the negative value of the company, where the wife’s appraiser had determined that the stock was a corporate liability in valuing the company and decreased the net value of the company by the $15,000 book value assigned to it. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 1300

The increase in the value of the husband’s company was marital property subject to equitable distribution where (1) the wife was with the husband at the company’s inception, (2) she worked side by side with him building it to its present state, (3) she held the position of comptroller general and ran the administrative aspects of the business, (4) she continued to work for the business after opening her own business, (5) she entertained clients in a social and home setting, and (6) she performed the majority of the homemaking duties throughout the marriage. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied.

The Family Court properly valued a couple’s country club membership at $12,000, despite the husband’s contention that it was worth nothing since it was non‑transferable, where the wife testified that the current initiation fee was $12,000, and that if one of the parties dropped the membership and then wanted it back, it would cost $12,000 to rejoin. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied.

The Family Court properly accepted the valuation placed on stock of the husband’s company by the wife’s expert where the only testimony presented by the husband’s expert consisted of his critique of the wife’s expert’s valuation, an he failed to present any alternative valuation. McClerin v. McClerin (S.C.App. 1992) 310 S.C. 99, 425 S.E.2d 476, rehearing denied.

18. Date for valuation

Marital property subject to equitable distribution is presumptively valued at the date of the divorce filing. Taylor‑Cracraft v. Cracraft (S.C.App. 2016) 417 S.C. 570, 790 S.E.2d 423, rehearing denied. Divorce 794

In determining equitable distribution of marital property, appropriate time to value husband’s investment company was at time of divorce filing, as opposed to time of final divorce hearing; at time of filing company balance sheet was at a negative value, and if not for husband’s “active appreciation” in providing expertise to his clients to take advantage of changes in stock market, the positive affect to the business would not have been realized as reflected in balance sheet at time of hearing. Teeter v. Teeter (S.C.App. 2014) 408 S.C. 485, 759 S.E.2d 144, rehearing denied, certiorari dismissed. Divorce 761

Appropriate date for valuation of husband’s interest in real estate development project that was structured as a limited liability company (LLC), for purposes of equitable distribution to parties upon their divorce, was date of filing for divorce, not subsequent date on which husband sold his interest in LLC, which was while divorce was pending, as default valuation date was set by statute as date of divorce filing, and wife, who sought deviation from this date, and, thus, had burden to show husband’s acquisition of lease for development project was passive, failed to sufficiently develop the record to make this showing. Burch v. Burch (S.C. 2011) 395 S.C. 318, 717 S.E.2d 757, rehearing denied. Divorce 761; Divorce 794

Appropriate date for valuation of husband’s interest in real estate development project that was structured as a limited liability company (LLC), for purposes of equitable distribution to parties upon their divorce, was date husband sold his interest in LLC, which occurred after parties separated, but before their final divorce, not date of filing for divorce, as the appreciation in value of the LLC that occurred post‑filing did not cross the threshold from passive to active, in that husband’s post‑filing contribution to LLC was minimal, if any, as evidenced by testimony of husband’s business partner that it was he, not husband, who was responsible for appreciation of property. Burch v. Burch (S.C. 2011) 395 S.C. 318, 717 S.E.2d 757, rehearing denied. Divorce 761; Divorce 794

For purposes of equitable division, marital property should be valued as of the date the marital litigation was filed; when there are two filing dates, the court must use the date of the filing of the litigation which lead to the equitable division. Nestberg v. Nestberg (S.C.App. 2011) 394 S.C. 618, 716 S.E.2d 310. Divorce 761

Marital property should have been valued as of the date wife brought action seeking equitable division of marital assets, rather than the date husband originally filed for divorce, where the action brought by wife was the litigation that brought about the equitable division of marital property. Nestberg v. Nestberg (S.C.App. 2011) 394 S.C. 618, 716 S.E.2d 310. Divorce 761

Marital property is to be identified and valued as of the date the marital litigation is filed or commenced. Hatfield v. Van Epps (S.C.App. 2004) 358 S.C. 185, 594 S.E.2d 526, rehearing denied, certiorari denied. Divorce 761

Husband’s retirement plan was properly valuated as of date divorce proceeding was filed, rather than date of trial; husband’s proposed marital property division relied on earlier valuation date, reduced value of asset at time of trial was solely attributable to husband’s voluntary expenditure of retirement funds, and husband acknowledged his continuing ability to work at trial. Bowman v. Bowman (S.C.App. 2004) 357 S.C. 146, 591 S.E.2d 654. Divorce 803

Determination by wife’s expert witness that value of husband’s business at time she filed for divorce was $339,306 was proper valuation, where it was based on fair market value of business’ fixed assets in existence on date of filing, financial statements and other information provided by husband or his accountant, adjusted for company’s liabilities. Dixon v. Dixon (S.C.App. 1999) 334 S.C. 222, 512 S.E.2d 539, rehearing denied, certiorari denied. Evidence 555.6(1)

Husband’s retirement plan had to be valued as of date divorce action began, rather than as of date family court identified as parties’ separation date, particularly as parties had not lived together for some time before date identified as separation date. Nemeth v. Nemeth (S.C.App. 1997) 325 S.C. 480, 481 S.E.2d 181, rehearing denied. Divorce 803

The Family Court did not err in using the filing date of the second divorce action as the operative date for identifying and valuing the marital estate where an earlier divorce action had been filed but dismissed because it had not been brought to trial within 270 days from the date of filing; the propriety of using the second filing date was not altered by the fact that a pendent lite order was signed in the earlier action in which the husband was ordered to pay the wife $400, nor by the fact that certain property increased in value after the filing of the first action. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

It was error for the trial court to value the marital estate as of the date of the parties’ separation, in spite of the wife’s argument that Section 20‑7‑473 was complied with because marital litigation began with the entering of a Rule Nisi order and the court valued the property as of the date of the Nisi order. The kind of marital litigation required to trigger the statute must be the same litigation which brings about the equitable division. It is not enough that the parties in the past engaged in some litigation if that litigation did not serve as the vehicle for the equitable division. Shannon v. Shannon (S.C.App. 1990) 301 S.C. 107, 390 S.E.2d 380.

Section 20‑7‑473 embodies the legislature’s decision that the marital estate must be identified as of a fixed date. Given the vicissitudes of life, the parties’ fortunes will change over the years of a marriage. Often the marital estate may have enjoyed a greater value in the past then it does at the dissolution of the marriage. It may be affected by changes in the incomes and earning capacities of the spouses, their spending habits, their savings and investments, and a host of other factors. By requiring the estate to be identified as of the date that marital litigation is filed, the legislature has elected to foreclose the spouses from litigating every expenditure or transfer of property during the marriage. One spouse or the other may have spent marital funds foolishly or selfishly or may have invested them unprofitably. The statute wisely prevents the other spouse from resurrecting these transactions at the end of the marriage to gain an advantage in the equitable distribution. Were it to do otherwise, human greed and vindictiveness would transform the courts into “auditing agencies for every marriage that falters.” Panhorst v. Panhorst (S.C.App. 1990) 301 S.C. 100, 390 S.E.2d 376.

Proper date for valuation of marital property is time marital litigation is filed or commenced, since that is time property must be owned to come within meaning of term “marital property.” Both parties are entitled to appreciation in marital assets that occurs after parties separate and before parties are divorced. Smith v. Smith (S.C.App. 1987) 294 S.C. 194, 363 S.E.2d 404.

19. Marital home

Line of credit obtained by wife on marital home was nonmarital debt and thus not subject to equitable distribution in divorce action, where wife took line of credit after the parties’ separation and commencement of divorce litigation, and wife testified she needed the money to live on. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 876.5(8)

Wife was entitled to special equity in marital home in the amount of $60,000 because she used nonmarital assets in the form of a cashed‑out insurance policy or her retirement account to make a down payment on the home; wife’s premarital contribution should be taken into account in determining the percentage of the marital estate to which each party was equitably entitled upon distribution. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 693; Divorce 857

In determining equitable distribution of marital property, husband was not entitled to credit for value of wife’s use and possession of the marital residence; husband had substantially more income‑generating assets than wife, and thus, would be entitled to larger equity in proceeds from sale of residence, and wife was responsible for paying utilities and making any improvements or changes recommended by real estate agent to assist in selling the residence. Teeter v. Teeter (S.C.App. 2014) 408 S.C. 485, 759 S.E.2d 144, rehearing denied, certiorari dismissed. Divorce 857

Family’s court’s apportionment of marital property, including an award of marital home to husband with the requirement that he pay wife $500,000 at the earlier of sale of home or 30 days after entry of final order, did not deprive husband of $60,958 in nonmarital equity in home; parties agreed, and court found, that husband paid down the mortgage balance on home by $60,958 during the action, and, thus, accepting the only evidence presented, the family court must have concluded the value of the home was $573,772 at the time of trial. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 863

Residence in which husband and wife lived during their marriage was transmuted into marital property; although evidence showed husband acquired the land by gift from his father during the marriage, the parties, using funds earned during the marriage, built the marital home, and together they cleared the land where the house was built. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 693

Husband’s home and property remained separate property, even though during marriage parties lived in home and operated horse business and farm on surrounding property, where husband deliberately kept premarital property separate and distinct from marital property, husband maintained joint account with wife and separate accounts funded with separate property, used money from separate accounts to maintain home and pay homeowner’s insurance premiums, and subsidized horse business and farm with money from separate accounts. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 692; Divorce 693

Wife was not entitled to special equity in marital home and surrounding 17 acres greater than 10 percent as representative of wife’s indirect contributions to improvement of property, where family court specifically found that husband was more credible witness than wife. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 691; Divorce 693

Ordering wife to buy out husband’s share of equity in marital home or, alternatively, ordering husband and wife to sell marital home, rather than awarding wife exclusive use of marital home as incident of support, was warranted, in action for divorce, in light of increased award of alimony to wife, award of child support, and wife’s increased earning potential upon completion of her landscape architecture degree program. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 863

Some, but not all, of the compelling interests the court may consider in determining whether an award of exclusive possession of marital is compelled, in action for divorce, are: (1) adequate shelter for minors; (2) the inability of the occupying spouse to otherwise obtain adequate housing; (3) the size of the non‑occupying spouse’s equity in the home relative to his other assets or income; (4) the size of the home relative to the expected use and the cost of maintaining the home in comparison to the benefits received; and (5) the potential duration of the exclusive possession. Morris v. Morris (S.C.App. 1999) 335 S.C. 525, 517 S.E.2d 720. Divorce 853

The court properly determined that the marital home, although titled in the name of the husband’s mother, was actually marital property under Section 20‑7‑473, based on (1) testimony that the husband paid for house through his mother and in cash in order to avoid the attention of the Internal Revenue Service, (2) evidence that the husband reported no earnings during the relevant time period, that the husband and wife insured the home, referred to it as their own, and paid no rent, and (3) expert testimony that the husband’s parents could not have paid for the house from their own earnings or savings. Hough v. Hough (S.C.App. 1994) 312 S.C. 344, 440 S.E.2d 387. Divorce 693; Evidence 571(1)

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), the fact that the parties lived in the marital home for the duration of the marriage (17 years) did not mean that the home, which was nonmarital property when the husband acquired it, was transmuted into marital property; the mere use of nonmarital property to support the marriage, without additional evidence of intent to treat it as marital property, is insufficient to establish transmutation. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied.

In a proceeding under the Equitable Apportionment of Marital Property Act (Sections 20‑7‑471 et seq.), evidence showed that the husband considered the marital residence and rental property, which were nonmarital when he acquired them and were still titled in his name alone, to be his separate property after the marriage where (1) his will provided that on his death all of his real property was to be liquidated, with 1⁄3 of the proceeds to go to his wife and 2⁄3 of the proceeds to go to his children, and (2) the will provided that the wife would remain in the marital home only until the estate was settled. Murray v. Murray (S.C.App. 1993) 312 S.C. 154, 439 S.E.2d 312, rehearing denied, certiorari denied. Divorce 683; Divorce 691; Divorce 876.5(9)

The marital home, owned by the wife prior to the marriage, was transmuted into marital property where both parties signed a promissory note securing a mortgage on the house, and therefore both parties were liable for the discharge of the debt. Frank v. Frank (S.C.App. 1993) 311 S.C. 454, 429 S.E.2d 823.

A condominium owned by the husband prior to the marriage was not transmuted into marital property by the fact that the couple lived there for part of the marriage where no improvements had been made to the property aside from ordinary maintenance, it was being leased for less than the monthly mortgage payment, and there was little equity in it. Carroll v. Carroll (S.C.App. 1992) 309 S.C. 22, 419 S.E.2d 801.

A swimming pool which was installed at the marital home and purchased with funds from the wife’s inheritance, was transmuted into marital property where the pool was installed for the purpose of treatment for the parties’ son following hip surgery, and the cost of the pool was submitted as a medical deduction for state and federal income tax. Strickland v. Strickland (S.C. 1989) 297 S.C. 248, 376 S.E.2d 268. Divorce 693

A wife failed to show transmutation of the marital home into marital property where, although the parties lived in the house for 9 years and performed substantial remodeling, the remodeling was performed when the house was owned by the husband’s stepmother and the husband subsequently acquired title to the house as a gift from his stepmother. Matter of Warlick (S.C. 1988) 296 S.C. 350, 372 S.E.2d 910.

Even if the down payment on the parties’ marital residence was traceable to money the wife received from the sale of her nonmarital property, the residence clearly became marital property where it was being used in support of the marriage, both parties had contributed substantially to the equity, and joint funds were used to pay the entire indebtedness on the property. Bryan v. Bryan (S.C.App. 1988) 296 S.C. 305, 372 S.E.2d 116.

Property did not lose characterization as marital property and revert back to being separate property of wife following parties move to new home, where rent collected on mobile home after parties moved out was placed in joint account and used in support of marriage. Wyatt v. Wyatt (S.C.App. 1987) 293 S.C. 495, 361 S.E.2d 777. Divorce 693

Finding that mobile home and lot were nonmarital property was error where, although wife acquired legal title to mobile home prior to marriage, she paid off only one‑half of mortgage, remainder of debt being discharged through joint efforts of husband and wife, husband made substantial improvements to both mobile home and realty, and residence was occupied by parties for 10 of their 16 years of marriage; clearly this property was used in support of marriage and transmuted into marital property. Wyatt v. Wyatt (S.C.App. 1987) 293 S.C. 495, 361 S.E.2d 777. Divorce 693

20. Insurance

Wife’s defined benefit plan was properly excluded from marital estate in divorce proceeding, and thus husband was not prejudiced by denial of his motion to set aside such portion of divorce judgment; postjudgment evidence demonstrating funding sources for plan that predated marital litigation merely bolstered parties’ stipulation at trial that plan, which was created after commencement of litigation, “was substantially funded at its inception,” as life insurance policies that funded plan were corporate assets, over which wife had no control. Bowman v. Bowman (S.C.App. 2004) 357 S.C. 146, 591 S.E.2d 654. Divorce 712

A husband was barred from changing the beneficiary of insurance policies on his life from his wife to his children where, in open court during a temporary relief hearing for separate maintenance and support, the husband and wife agreed that he would maintain his insurance in the status quo; thus, the husband had contracted away his right to change beneficiaries. Lane v. Williamson (S.C.App. 1992) 307 S.C. 230, 414 S.E.2d 177.

Under Section 20‑7‑473, the cash value of life insurance policies acquired after the date the action was instituted cannot be included in the marital estate. Thus, the equitable distribution is limited to the cash value of life insurance policies as of the date the action was instituted. Hardin v. Hardin (S.C.App. 1987) 294 S.C. 402, 365 S.E.2d 34. Divorce 710

Cash value of life insurance policies should be included in marital estate; proceeds from sale of husband’s inherited property lost their nonmarital character when husband used them to purchase marital property, which was titled jointly in both husband and wife’s names and was used as primary source of support for marriage; correct way to treat separate inheritance of husband received prior to marriage but used in purchasing marital residence is as contribution by husband to acquisition of marital property, which contribution should be taken into account and determining percentage of marital estate to which husband is equitably entitled upon distribution. Toler v. Toler (S.C.App. 1987) 292 S.C. 374, 356 S.E.2d 429. Divorce 718

21. Retirement benefits

Evidence was sufficient to support finding that businesses created during marriage were marital property and thus subject to equitable distribution in divorce proceeding, despite minimal percentage of marital funds, in comparison to amount of nonmarital funds, contributed to businesses, where neither husband nor wife disputed that some marital funds were contributed to businesses. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 703

Evidence was insufficient to support finding that husband did not have any nonmarital interest in his retirement account, where husband’s financial declaration stated that nonmarital portion of his retirement account had $75,000 value, expert testified husband reported a $75,000 nonmarital value of his retirement account, and wife did not testify about account or dispute the $75,000 figure. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 712

Both vested and nonvested retirement benefits are marital property if the benefits are acquired during the marriage. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 876.5(2); Evidence 571(7)

A retirement benefit is marital property because spouses contribute to one another’s careers and both spouses defer assets they otherwise would have received during the marriage in exchange for the benefit. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 712

Husband’s federal annuity payments were a retirement benefit, rather than a disability benefit, and, thus, were marital property, although he began receiving the benefit when he became disabled following a stroke, where benefit was and always had been a retirement benefit, wife testified that she understood the benefit to be a pension and that husband was able to access the money earlier than the normal retirement date because of his disability, records produced by administrator of annuity indicated that it was an annuity, and benefit came from husband’s participation in the Civil Service Retirement System. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 712; Divorce 714

Although retirement benefits do not need to be vested in order to be subject to equitable division, they are not marital property unless they are earned during the marriage. Mullarkey v. Mullarkey (S.C.App. 2012) 397 S.C. 182, 723 S.E.2d 249, rehearing denied. Divorce 712; Divorce 803

Family court was without authority to equitably divide military retirement benefits yet to be earned by husband at the time of divorce, even if, at the time of the divorce, any compensation wife was entitled to was deferred by husband’s decision to remain in the military. Mullarkey v. Mullarkey (S.C.App. 2012) 397 S.C. 182, 723 S.E.2d 249, rehearing denied. Divorce 804

Husband’s failure to appeal original support order did not preclude him from seeking a supplemental order to clarify that wife was entitled to only an equitable share of husband’s military retirement benefits earned up to the date of the original order, where the family court ruled in its original order that husband’s retirement benefits were part of the parties’ property division, and, in its subsequent order on husband’s motion for reconsideration, stated husband’s military retirement pay, whether vested or nonvested, was essentially compensation for past services. Mullarkey v. Mullarkey (S.C.App. 2012) 397 S.C. 182, 723 S.E.2d 249, rehearing denied. Divorce 891

Former husband was entitled to half of marital property in former wife’s individual retirement account (IRA); funds contributed during marriage were marital property to which husband was partially entitled. Jenkins v. Jenkins (S.C.App. 2004) 357 S.C. 354, 592 S.E.2d 637. Divorce 712; Divorce 803

Husband’s retirement plan, which was awarded to husband one year prior to commencement of divorce proceeding as early retirement benefit in conjunction with severance pay when husband was laid off, was properly included in marital estate, as retirement payments were compensation for services performed during the course of the marriage. Bowman v. Bowman (S.C.App. 2004) 357 S.C. 146, 591 S.E.2d 654. Divorce 712

The mere fact that technical ownership of a retirement plan or employment benefit is delayed until after the commencement of marital litigation does not mandate its exclusion from the marital estate; where lack of ownership status as of the date of marital litigation is attributable to any purposeful act or omission by the spouse, the property shall be deemed “owned” within the meaning of the statute governing inclusion of property within marital estate. Bowman v. Bowman (S.C.App. 2004) 357 S.C. 146, 591 S.E.2d 654. Divorce 712

Although wife acquired her individual retirement account (I.R.A.) prior to her marriage, husband was entitled to equitable interest in wife’s I.R.A. since wife had contributed to I.R.A. for three years after her marriage and wife had paid annuity premiums from time of marriage. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 712

Refusal to include husband’s partnership retirement plan in marital estate, for purposes of equitable distribution, was not abuse of discretion; wife offered no evidence of value of plan at time of marriage and time of filing, and her own expert could not discern value of retirement plan and coverture portion of that value. Calhoun v. Calhoun (S.C.App. 1998) 331 S.C. 157, 501 S.E.2d 735, certiorari granted, affirmed in part, reversed in part 339 S.C. 96, 529 S.E.2d 14. Divorce 712

Retirement benefits are marital assets subject to equitable division. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820.

In a divorce action, the Family Court properly considered the parties’ respective retirement plans as marital property subject to equitable apportionment. Hickum v. Hickum (S.C.App. 1995) 320 S.C. 97, 463 S.E.2d 321.

Vested retirement funds are considered marital property under the Equitable Apportionment of Marital Property Act, Sections 20‑7‑471 et seq.; however, the portion of a pension attributable to the period of time that a spouse is employed before the marriage is non‑marital property unless it is transmuted into marital property during the marriage. Murphy v. Murphy (S.C. 1995) 319 S.C. 324, 461 S.E.2d 39, rehearing denied. Divorce 712

Earlier decision of the court of appeals holding that vested military retirement benefits were subject to equitable distribution was applicable to a divorce action although the earlier decision had not been affirmed by the Supreme Court. Hamby v. Hamby (S.C.App. 1994) 315 S.C. 518, 445 S.E.2d 656. Courts 91(2)

A nonvested military pension plain is marital property; thus, it is within the discretion of the family court to determine from the facts of each case what portion of the benefits, if any, the spouse is entitled to receive. Ball v. Ball (S.C. 1994) 314 S.C. 445, 445 S.E.2d 449.

A wife was not entitled to share in either the husband’s medical partnership or the retirement fund accumulated by the husband after starting the practice where the parties separated in 1977 after the wife refused to give up her relationship with another man, the medical partnership was entered into in 1985, and the wife contributed nothing to either the acquisition or the appreciation of the value of the partnership. Wannamaker v. Wannamaker (S.C.App. 1991) 305 S.C. 36, 406 S.E.2d 180.

Vested military retirement benefits constitute an earned property right which, if accrued during the marriage, is subject to equitable distribution. (Overruling Brown v Brown, 279 SC 116, 302 SE2d 860 (1983)). Tiffault v. Tiffault (S.C. 1991) 303 S.C. 391, 401 S.E.2d 157. Divorce 713

Where an employer makes a contribution to a retirement fund as an employment benefit or as a form of additional compensation, as opposed to an outright gift to the employee, the contribution is marital property and is subject to equitable division. Hardwick v. Hardwick (S.C.App. 1990) 303 S.C. 256, 399 S.E.2d 791. Divorce 712

A husband’s retirement benefits, consisting of a pension plan whereby he would be entitled to receive specified monthly payments depending on when he elected to retire, should have been included in the marital estate. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

The portion of a husband’s civil service retirement pension which was attributable to the time period during which the husband was employed before the marriage was nonmarital property. Noll v. Noll (S.C.App. 1988) 297 S.C. 190, 375 S.E.2d 338. Divorce 712

Vested military retirement benefits constitute marital property under Section 20‑7‑473 because they are not excluded. Martin v. Martin (S.C.App. 1988) 296 S.C. 436, 373 S.E.2d 706. Divorce 712

A husband’s civil service retirement fund was property acquired during the marriage and, therefore, was part of the marital estate subject to equitable apportionment even though the retirement account was not vested and the husband could not begin receiving his retirement funds immediately. Kneece v. Kneece (S.C.App. 1988) 296 S.C. 28, 370 S.E.2d 288.

Neither trial court nor Court of Appeals has authority to pre‑empt annuity rights vested in wife by Central Intelligence Agency Spouses Retirement Equity Act, and annuity of former wife is property right vested in her by federal statute and not alimony. Gregory v. Gregory (S.C.App. 1987) 292 S.C. 587, 358 S.E.2d 144. Divorce 577; States 18.28

Since the question as to whether the husband’s pension and profit sharing plans should be included in the marital estate could not be determined on the appeal record, the issue would be remanded to enable the family court to make specific findings of fact based upon the factors enumerated in Watson v Watson (1986, App) 291 SC 13, 351 SE2d 883. Josey v. Josey (S.C.App. 1986) 291 S.C. 26, 351 S.E.2d 891.

In determining whether a spouse’s retirement plan is marital property subject to equitable distribution, a family court judge should consider: (1) whether the pension plan is mandatory for all employees of the spouse’s employer; (2) whether the spouse has control over the amounts of funds placed in the plan; (3) whether funds in the plans are vested; (4) whether the funds are readily accessible to the spouse; (5) whether the spouse has control over the plan’s investments; (6) whether the spouse has personally dealt with the plan; (7) whether a third party makes independent judgments regarding a spouse’s dealings with the plan on such matters as loans from the plan or the use of its property; (8) whether the spouse uses assets of the plan without adequate compensation for their use; and (9) whether the plan meets the requirements of a qualified plan under provisions of the Federal Internal Revenue Code. Watson v. Watson (S.C.App. 1986) 291 S.C. 13, 351 S.E.2d 883. Divorce 712

Military retirement benefits are not treated as marital property subject to division in equitable distribution, but rather are treated as income in setting alimony. Eichor v. Eichor (S.C.App. 1986) 290 S.C. 484, 351 S.E.2d 353.

22. Income

Disability benefits are treated as income rather than marital property. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 714

Use of income from timber tract in support of the marriage did not establish transmutation of the tract to nonmarital property. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 691

A husband’s end‑of‑the‑year performance and retention bonuses received from his employer constituted marital property even though the husband did not physically receive them until after the date of the filing of the parties’ divorce action. Lineberger v. Lineberger (S.C.App. 1990) 303 S.C. 248, 399 S.E.2d 786. Divorce 697

Convenience stores acquired during the course of the party’s marriage constituted marital property, in spite of the husband’s argument that they were acquired based upon his good credit reputation and income generated from a leased service station that the husband was operating at the time of the parties’ marriage, since the husband’s good credit reputation could not be considered real or personal property, any income received by the husband from the leased service station after the parties’ marriage constituted marital property, and the husband failed to establish what, if any, premarital assets were utilized in financing the convenience stores. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

An income tax refund, which is nothing more than a return of income, is marital property and a wife, in her action for legal separation, should have been awarded her equitable portion thereof. Phillips v. Phillips (S.C.App. 1986) 290 S.C. 455, 351 S.E.2d 178.

23. Debts

In divorce proceedings, marital debt, like marital property, must be specifically identified and apportioned in equitable distribution. Barrow v. Barrow (S.C.App. 2011) 394 S.C. 603, 716 S.E.2d 302. Divorce 833; Divorce 881

For purposes of equitable distribution upon divorce, “marital debt” is debt incurred for the joint benefit of the parties regardless of whether the parties are legally jointly liable for the debt or whether one party is legally individually liable. Barrow v. Barrow (S.C.App. 2011) 394 S.C. 603, 716 S.E.2d 302. Divorce 831

Evidence supported family court’s decision to hold husband responsible for the repayment of the credit card debt which was accrued during the parties’ marriage; husband’s son, not wife, was responsible for the charges on husband’s credit card, son’s testimony demonstrated that the majority of his purchases benefited neither husband nor wife, as was required for debt to be equitably apportioned, and husband admitted that approximately half of the debt on the credit card was a result of his post‑incarceration expenditures, specifically husband’s food, liquor, and hotel room, which were not expenditures that benefited the marriage. Kennedy v. Kennedy (S.C.App. 2010) 389 S.C. 494, 699 S.E.2d 184. Divorce 835

Credit card charges of $3,526 incurred by former wife prior to date parties separated qualified as marital property subject to equitable apportionment; former husband’s financial declaration filed with family court included entry for credit card listing precise balance as $3,526, former wife admitted in her testimony that she used credit card for business and personal purchases during marriage, credit card statement listed both former husband and former wife as cardholders, and former husband submitted several credit card receipts for charges incurred prior to litigation which bore former wife’s signature. Wynn v. Wynn (S.C.App. 2004) 360 S.C. 117, 600 S.E.2d 71, rehearing denied, certiorari denied. Divorce 835

During equitable distribution, court was not required to deduct total marital debt from gross value of marital estate, but could specifically identify individual items of debt and apportion them in equitable distribution without involving unrelated marital assets. Smith v. Smith (S.C.App. 1997) 327 S.C. 448, 486 S.E.2d 516, rehearing denied. Divorce 843

In an action for divorce, the trial court properly ordered the wife to repay the husband $5,5000 which she had withdrawn from his account to pay for her attorney and investigator fees where she had withdrawn the money on the day that she filed her complaint seeking a divorce. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 744(8)

In an action for divorce, the trial court erred in awarding the wife a $15,000 debt owed by the couple’s partner in a business venture as a separate item of marital property where the amount of the debt had been used by the wife’s appraiser as an account receivable in calculating the negative value of the business, and the wife had been awarded the business. Roe v. Roe (S.C.App. 1993) 311 S.C. 471, 429 S.E.2d 830. Divorce 843

A husband was properly held solely responsible for debts which arose when he borrowed money in both his name and in the name of his corporation where the husband personally endorsed the notes and put the borrowed funds into a company account, even though he gave money to his wife out of this account to pay household expenses. Buckler v. Buckler (S.C.App. 1989) 298 S.C. 526, 381 S.E.2d 910.

24. Justiciability

Wife of dentist who was convicted of illegally writing prescriptions for controlled substances resulting in forfeiture action against dentist’s property, had no standing to challenge forfeiture action based on assertion of ownership right in marital property because marital property would not exist until marital litigation had been commenced, which was not the case here. U.S. v. Schifferli (C.A.4 (S.C.) 1990) 895 F.2d 987.

25. Agreements

Prenuptial agreement providing that both husband and wife waived “any and all interest” in property “now owned, or hereafter acquired” of the other party “by reason of this marriage,” and providing that each party waived any interest in “any asset in the name of the other party,” was not unconscionable as to equitable distribution; agreement’s terms were not so one‑sided or oppressive that no reasonable person would make them and no fair and honest person would accept them. Hudson v. Hudson (S.C.App. 2014) 408 S.C. 76, 757 S.E.2d 727, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 352, 778 S.E.2d 482. Marriage And Cohabitation 175

Wife’s allegation that she was under high pressure due to impending wedding, and parties’ unequal bargaining power, when she signed prenuptial agreement did not render the agreement unconscionable, although concern existed regarding husband’s referral of wife to attorney who was allegedly husband’s close friend and colleague; wife willingly used attorney and knew of his failure to advise her when she signed the agreement, wife admitted attorney did not discuss details of agreement and merely told her that husband was a good guy, wife would have signed agreement regardless of its fairness as long as it was not fraudulent, and psychologist testified that wife was capable at the time she signed the agreement. Hudson v. Hudson (S.C.App. 2014) 408 S.C. 76, 757 S.E.2d 727, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 352, 778 S.E.2d 482. Marriage And Cohabitation 170

Wife’s circumstances had not changed since time she signed prenuptial agreement, and thus enforcement of agreement was not unfair or unreasonable in subsequent divorce proceedings, although at the time of the separation she had a debt of $16,783 from a loss incurred due to the sale of her own business; wife entered into marriage with insignificant assets and was unemployed, and at the time of the separation she was employed and had substantially the same assets as when she entered the marriage. Hudson v. Hudson (S.C.App. 2014) 408 S.C. 76, 757 S.E.2d 727, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 352, 778 S.E.2d 482. Marriage And Cohabitation 176

Husband’s failure to disclose his interest in flea market and franchise fee agreement in his financial declaration at the time the parties executed their prenuptial agreement did not render agreement unconscionable; failure to disclose those assets was not substantially significant. Hudson v. Hudson (S.C.App. 2014) 408 S.C. 76, 757 S.E.2d 727, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 352, 778 S.E.2d 482. Marriage And Cohabitation 170

Inclusion of properties on marital property addendum of financial declaration was not stipulation that properties were marital, even though wife used $2,000 in marital funds to pay earnest money deposits, where wife explained that inclusion was simply to disclose existence of properties to court, wife’s position throughout testimony was that properties were separate property, and wife did not acquire ownership interest in properties until after divorce petition was filed. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 691

Federal Survivor Benefit Plan (SBP) legislation establishing method for former wife to receive benefits preempted field; thus husband’s agreement in divorce decree to designate former wife as beneficiary was of no effect where husband failed to complete necessary paperwork to effect designation and former wife failed to obtain court order to be deemed beneficiary. Silva v. Silva (S.C.App. 1998) 333 S.C. 387, 509 S.E.2d 483. Divorce 904; Divorce 925; States 18.28

The Family Court properly deemed the funds received by the husband pursuant to a voluntary separation incentive agreement marital property even though the agreement was entered into after the judicial approval of the parties’ separation agreement where any rights the husband had to receive the incentive payments were due to the time he spent in the military and accrued during his marriage to his wife, not after the separation agreement was approved. Fisher v. Fisher (S.C.App. 1995) 319 S.C. 500, 462 S.E.2d 303, rehearing denied.

The wife was not entitled to any property titled in the husband’s name at the time of the divorce, nor was he required to obtain her consent before disposing of property, where the parties’ separation agreement, incorporated in the final order of divorce, provided that all property owned by either of them separately would remain separate property, and that no further grant, release, or quitclaim would be necessary. Cox v. Cox (S.C.App. 1992) 310 S.C. 127, 425 S.E.2d 761, rehearing denied, certiorari denied. Divorce 920

If a support and property settlement agreement is executory as to support and a continuance of the separation, while it is executed as to property rights, reconciliation and resumption of cohabitation may terminate the executory support provision while having no effect on the executed property provisions. Thus, a property settlement agreement and reconciliation agreement precluded reapportionment of the property covered by them except to the extent that such property had increased in value due to the joint effort of the parties, where the reconciliation agreement indicated that the parties agreed that they had complied with the provisions of the property settlement agreement. However, the reconciliation of the parties nullified the provisions of the separation and reconciliation agreements regarding the parties’ agreements not to be liable for the support of each other, and therefore the husband’s argument that the trial court should not have awarded alimony to the wife was without merit. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

A reconciliation agreement which provided that “neither party shall have any interest of any kind or nature whatsoever in or to any property of the other party to this agreement, whether now owned by such party or hereafter acquired...,” did not preclude the division of property which was either jointly acquired, transmuted, or increased in value due to the joint efforts of the parties; the provision in the agreement was merely an incorporation of the terms of Section 20‑7‑473(5), which provides for the division of the increase in value of separate property where such increase is attributable to the efforts of the non‑title party, and does not preclude the transmutation of separately titled property. Crawford v. Crawford (S.C.App. 1990) 301 S.C. 476, 392 S.E.2d 675.

25.1. Third parties

When property is alleged to be marital property, but is owned by a third party, the family court has the authority to join all persons with a possible interest in the property as parties to the action and to determine if the property constitutes marital property; if the property is found to be marital property, the family court has the authority to apportion it among the parties. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 652; Divorce 874

Family court had the equitable authority to enforce divorce decree, even if it lacked the subject matter jurisdiction to modify the property provisions in the final decree of divorce, and, therefore, even if the final decree mistakenly declared the subject properties to be titled in husband’s name, it was the duty of the family court to interpret the intent of the property divisions and effectuate the division of marital property as written in the final decree, regardless of how legal title was held; because husband and son’s limited liability company (LLC) was joined as a party to the divorce action and the family court determined the subject properties were marital property, it had the authority to award full ownership in the subject property to wife. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 1001; Divorce 1042

Husband’s argument that he could not comply with the final divorce decree’s property provisions because the subject properties were titled in the name of limited liability company (LLC) was barred by the doctrine of res judicata and the law of the case, and, thus, the issue of ownership of the subject properties could not be relitigated at contempt hearing; in a prior appeal, the Court of Appeals explicitly found the property awarded to wife was individually owned by husband and was not the property of the LLC, and the Supreme Court implicitly approved the ownership determinations by denying husband’s petition for certiorari. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 1323(4)

25.5. Estoppel

Evidence was insufficient to show that wife sought to intentionally mislead the family court and, thus, wife was not judicially estopped from demanding a cash sum award or that the husband and son’s limited liability company (LLC) transfer to wife real estate awarded in divorce decree; in a prior appeal, the Court of Appeals found that wife’s expert had a difficult time determining what property had been acquired and sold by husband due to the lack of income or expense records maintained by husband or son, and that husband had effectively stonewalled wife’s expert’s efforts to identify husband’s property holdings. Simpson v. Simpson (S.C.App. 2013) 404 S.C. 563, 746 S.E.2d 54, certiorari denied. Divorce 1007; Estoppel 68(2)

26. Jurisdiction

Husband and wife were properly in family court at the time husband’s brother brought action seeking a declaratory judgment and constructive trust regarding property he allegedly owned 50‑50 with husband, and therefore the family court maintained jurisdiction over the property for purposes of equitable distribution in the divorce action. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 871

When property is alleged to be marital property, but is owned by a third party, the Family Court has the subject matter jurisdiction to join all persons with a possible interest in the property as parties to the action and to determine if the property constitutes marital property; if it is determined that the property is marital property, then the Family Court has the authority to determine the parties’ equitable rights therein. Williams v. Williams ex rel. Anderson (S.C.App. 2007) 374 S.C. 149, 647 S.E.2d 256. Divorce 689; Divorce 871; Divorce 874

Family court lacked subject matter jurisdiction to divide ex‑husband’s social security benefits in equitable property distribution award, though divorce decree purported to divide such benefits pursuant to parties’ settlement agreement; provision of Social Security Act prohibiting transfer or assignment of future benefits preempted state law, making social security nonmarital in property divisions. Simmons v. Simmons (S.C.App. 2006) 370 S.C. 109, 634 S.E.2d 1, rehearing denied, certiorari denied. Divorce 712; Divorce 871; States 18.28

Family court lacked subject matter jurisdiction to determine property rights of former husband and former wife in any way, and thus, court could not award wife the cost of storing husband’s belongs after he moved out of former marital home following post‑divorce cohabitation with wife, where parties resumed cohabitation without the benefit of marriage or remarriage. Tipton v. Tipton (S.C.App. 2002) 351 S.C. 456, 570 S.E.2d 195. Divorce 871

After husband and wife were divorced pursuant to a decree which incorporated separation agreement, family court lacked jurisdiction to award husband any interest in the former marital home that was previously awarded to wife in decree, even though husband and wife resumed cohabitation and husband apparently contributed to the mortgage following divorce; court’s authority was limited to enforcing provisions of its prior order. Tipton v. Tipton (S.C.App. 2002) 351 S.C. 456, 570 S.E.2d 195. Divorce 1001

The family court was not limited to awarding alimony payments solely from marital assets and, thus, court had jurisdiction to order payment of alimony with nonmarital assets. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 574

Property excluded, by written contract or antenuptial agreement, from marital estate is nonmarital property over which the family court has no jurisdiction. Bailey v. Bailey (S.C.App. 1998) 330 S.C. 326, 498 S.E.2d 891. Divorce 920; Divorce 965; Marriage And Cohabitation 182(3)

Circuit court had jurisdiction to enforce postnuptial agreement regarding nonmarital property. Bailey v. Bailey (S.C.App. 1998) 330 S.C. 326, 498 S.E.2d 891. Marriage And Cohabitation 646

Family court lacked jurisdiction to apportion the marital home that was nonmarital property according to post‑nuptial agreement, and, therefore, former wife was not required to bring her claim for enforcement of agreement as a counterclaim in action for divorce. Bailey v. Bailey (S.C.App. 1998) 330 S.C. 326, 498 S.E.2d 891. Divorce 963; Divorce 965; Marriage And Cohabitation 168

Once family court determined, pursuant to enforceable antenuptial agreement, that real estate at issue was nonmarital, it had no jurisdiction to address real estate’s ownership or to deal with real estate in any way. Bowen v. Bowen (S.C.App. 1997) 327 S.C. 561, 490 S.E.2d 271, rehearing denied. Marriage And Cohabitation 182(3)

Family Court lacked jurisdiction over husband’s action against wife for order of separate maintenance requiring parties to live separate and apart, equitable distribution of personal property, and attorney fees, where prenuptial agreement provided that neither party could claim alimony or separate maintenance, and that property acquired by parties during marriage or owned at time of marriage would not be the subject of any claims for equitable apportionment. Gilley v. Gilley (S.C. 1997) 327 S.C. 8, 488 S.E.2d 310, rehearing denied. Marriage And Cohabitation 186

Proceeds of a personal injury settlement acquired during the marriage are marital property subject to the family court’s jurisdiction. Marsh v. Marsh (S.C. 1993) 313 S.C. 42, 437 S.E.2d 34. Divorce 717

The proceeds of the husband’s suit for personal injuries which occurred during the marriage was marital property subject to equitable distribution, even though the proceeds represented personal losses of pain and suffering rather than economic losses to the marital partnership, since in jurisdictions having equitable distribution statutes such awards are generally considered marital property regardless of their purpose, and the Equitable Distribution Statute, Section 20‑7‑472, gives Family Court judges sufficient latitude in dividing the marital estate to make adjustments for personal injury awards that represent compensation for injuries uniquely personal to one spouse. Marsh v. Marsh (S.C.App. 1992) 308 S.C. 304, 417 S.E.2d 638, rehearing denied, certiorari granted, affirmed 313 S.C. 42, 437 S.E.2d 34.

When property is alleged to be marital property but is owned by a third party, the family court has the subject matter jurisdiction to join all persons with a possible interest in the property as parties to the action and to determine if the property constitutes marital property as defined in Section 20‑7‑473. If it is determined that the property is marital property, then the family court has the authority to determine the parties’ equitable rights therein. Appeal of Sexton (S.C. 1989) 298 S.C. 359, 380 S.E.2d 832. Divorce 70

Under Section 20‑7‑420(2)(1976) Family Court has jurisdiction to apportion property of marriage, and marital property includes personal injury and workers’ compensation awards, as marital property includes all real and personal property which has been acquired during marriage, with certain exceptions. Orszula v. Orszula (S.C. 1987) 292 S.C. 264, 356 S.E.2d 114. Divorce 714; Divorce 717

The Family Court has no jurisdiction to distribute nonmarital property, although it can consider such property when apportioning the marital property. Skipper v. Skipper (S.C. 1986) 290 S.C. 412, 351 S.E.2d 153. Divorce 687; Divorce 726

Family Court had jurisdiction to distribute nonmarital personal property inherited by the husband or received by him as a gift, where the parties had freely and voluntarily entered into a separation agreement under which the husband had agreed to allow such distribution. Skipper v. Skipper (S.C. 1986) 290 S.C. 412, 351 S.E.2d 153. Divorce 965

27. Pleadings

Husband adequately alleged that residential property to which wife’s daughters held legal title was subject to equitable division, in his complaint alleging that he was tricked into conveying the property to wife, and that wife subsequently transferred it to the daughters, under statute providing for the possibility that marital property could be titled in a third party; the conveyance of the property from husband to wife during the parties’ marriage would have been sufficient reason to classify it as marital property, but for wife’s purported conveyance to her daughters. Williams v. Williams ex rel. Anderson (S.C.App. 2007) 374 S.C. 149, 647 S.E.2d 256. Divorce 875

A party seeking equitable division of an asset need only set forth allegations to support a finding that the asset is marital property in order to have the Family Court make this threshold determination. Williams v. Williams ex rel. Anderson (S.C.App. 2007) 374 S.C. 149, 647 S.E.2d 256. Divorce 875

28. Parties

Wife’s daughters who held legal title to residence were properly joined as parties to husband’s action seeking equitable division, where husband alleged that the residence was marital property. Williams v. Williams ex rel. Anderson (S.C.App. 2007) 374 S.C. 149, 647 S.E.2d 256. Divorce 874

To join a third party in an action for equitable distribution, a litigant needs only to make allegations to support a contention that property titled in the third party’s name is actually marital property; if the requisite allegation is made, the party seeking equitable division is entitled at least to a determination by the Family Court as to whether the property in question is in fact a marital asset. Williams v. Williams ex rel. Anderson (S.C.App. 2007) 374 S.C. 149, 647 S.E.2d 256. Divorce 874

29. Presumptions and burden of proof

Spouse claiming transmutation of nonmarital property into marital property must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Miteva v. Robinson (S.C.App. 2016) 418 S.C. 447, 792 S.E.2d 920, No. 5450, rehearing denied. Divorce 683

The burden to show property is not subject to equitable distribution is upon the one claiming that property acquired during the marriage is not marital. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 703

A party claiming an equitable interest in property upon divorce bears the burden of proving the property is marital; if the party presents evidence to show the property is marital, the burden shifts to the other spouse to present evidence to establish the property’s nonmarital character. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 876.2(2)

If the opposing spouse can show that property was acquired before the marriage or falls within a statutory exception to general rule that property acquired by either spouse during marriage is marital property, this rebuts the prima facie case for the property’s inclusion in the marital estate. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 683

The spouse claiming transmutation of nonmarital property into marital property must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage; such evidence may include placing the property in joint names, transferring the property to the other spouse as a gift, using the property exclusively for marital purposes, commingling the property with marital property, using marital funds to build equity in the property, or exchanging the property for marital property. McMillan v. McMillan (S.C.App. 2016) 417 S.C. 583, 790 S.E.2d 216. Divorce 683

Spouse claiming that goodwill should be included in the marital estate bears the burden of proving the goodwill at issue is enterprise goodwill and, thus, is properly considered marital property. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 876.2(2)

Spouse claiming an equitable interest in property upon dissolution of the marriage has the burden of proving the property is part of the marital estate, and, if a spouse carries this burden, a prima facie case is established that the property is marital property. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Divorce 876.2(2)

If the opposing spouse can show that the property was acquired before the marriage or falls within a statutory exception, this rebuts the prima facie case for its inclusion in the marital estate. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Divorce 876.2(2)

Once prima facie case is established that the property is marital property, if the opposing spouse wishes to claim that the property is not part of the marital estate, that spouse has the burden of presenting evidence to establish its nonmarital character. Simcox‑Adams v. Adams (S.C.App. 2014) 408 S.C. 252, 758 S.E.2d 206. Divorce 876.2(2)

Wife satisfied her burden of proving that account was marital, where she testified it was funded not only with stocks husband inherited, but also with stocks he purchased during the marriage, distributions from a charitable remainder trust, and funds from a joint checking account, and their financial advisor testified that, when he started working for the parties, the account was a longstanding account with his firm that contained between $0.25 million and $0.5 million dollars in assets, and he and wife collected the stock certificates from the lockbox and placed them in the account after husband’s stroke. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 876.5(4)

After wife satisfied her burden of proving that account was marital, husband did not carry his burden of establishing that it contained only his nonmarital property, although he asserted that the only assets placed in the account were stocks that he inherited, where he testified that account could have also contained stocks his mother gave to his wife, wife’s nonmarital stocks, and stocks he purchased using income from his employment during the marriage. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 876.5(4)

A party claiming an equitable interest in property upon divorce bears the burden of proving the property is marital. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 876.2(2)

If the party presents evidence to show the property is marital, the burden shifts to the other spouse to present evidence to establish the property’s nonmarital character. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 876.2(2)

Because of the general presumption that property acquired during the marriage is an asset of the marriage, the burden to show an exemption under statute governing marital property is upon the one claiming that property acquired during the marriage is not marital. Simpson v. Simpson (S.C.App. 2008) 377 S.C. 527, 660 S.E.2d 278, rehearing denied. Divorce 682; Divorce 876.2(2)

Because of the general presumption that property acquired during the marriage is an asset of the marriage, the burden to show an asset is nonmarital is upon the party claiming the nonmarital status. Fuller v. Fuller (S.C.App. 2006) 370 S.C. 538, 636 S.E.2d 636, rehearing denied. Divorce 682; Divorce 689; Divorce 876.2(2)

Husband failed to produce evidence to rebut presumption that company he started with cousin was a marital asset for purposes of equitable distribution, even though husband maintained no marital money was used to start or finance company and that money he used was gift from aunt; husband and cousin were only two stockholders, husband offered no proof by way of check or testimony that company was nonmarital, and husband’s financial declaration stated source of company was a “loan.” Fuller v. Fuller (S.C.App. 2006) 370 S.C. 538, 636 S.E.2d 636, rehearing denied. Divorce 682; Divorce 703; Divorce 876.2(4)

Under statutory provision governing equitable apportionment of marital property, there is a rebuttable presumption that a debt of either spouse incurred prior to marital litigation is a marital debt and must be factored in the totality of equitable apportionment. Wynn v. Wynn (S.C.App. 2004) 360 S.C. 117, 600 S.E.2d 71, rehearing denied, certiorari denied. Divorce 726; Divorce 831

Burden of showing exemption under statute defining marital property is upon party claiming that property acquired during marriage is nonmarital. Jenkins v. Jenkins (S.C.App. 2001) 345 S.C. 88, 545 S.E.2d 531, rehearing denied, certiorari denied. Divorce 682; Divorce 876.2(2)

Settlement proceeds from a chose in action which arose during a marriage, but which the parties were not aware of until after the divorce, are presumed to be marital property since the unliquidated claim accrued before the date of valuation, and thus the burden will be on the party who wants this amount excluded from equitable distribution to show the proper proportion. Mears v. Mears (S.C.App. 1991) 305 S.C. 150, 406 S.E.2d 376, affirmed 308 S.C. 196, 417 S.E.2d 574.

A husband failed to carry his burden of proving that a horse, which was owned by the wife before the marriage, was transmuted into marital property where there was no evidence that the horse was jointly titled, there was no evidence that it was used in support of the marriage, and the only evidence concerning the horse was that it was used for breeding purposes and its upkeep came from marital funds. McDowell v. McDowell (S.C.App. 1989) 300 S.C. 96, 386 S.E.2d 468.

In determining the character of disputed antenuptial gifts, the family court should first consider all of the evidence relevant to the donor’s intent. If the donor’s intent is apparent from the clear preponderance of the evidence, his or her intent controls. If, however, the evidence as a whole is inconclusive, then the court should apply the English rule, under which the source of the gift is considered; if money or gifts in kind come from the family or friends of one party, the gift is the separate property of that party. Under the English rule, the donor is presumed to have given the gift to the party to whom he or she is more closely related. The rule rests on an objective fact, easily and reliably proven without raising issues of witness credibility and, in most cases, the rule will carry out the actual intent of the donor. Pappas v. Pappas (S.C.App. 1989) 300 S.C. 62, 386 S.E.2d 301. Divorce 718

Where it was undisputed that certain property was acquired during the marriage and was held in the husband’s name when the parties’ divorce action was commenced, the burden was upon the husband to establish by the preponderance of the evidence that the property was a gift to him and therefore was not a part of the marital estate. Roberts v. Roberts (S.C. 1989) 299 S.C. 315, 384 S.E.2d 719. Divorce 691; Divorce 718; Divorce 876.2(4)

The spouse claiming an equitable interest in property upon dissolution of the marriage has the burden of proving that the property is part of the marital estate. If the spouse carries this burden, he or she establishes a prima facie case that the property is marital property. If the opposing spouse then wishes to claim that the property so identified is not part of the marital estate, he or she has the burden of presenting evidence to establish its nonmarital character. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

Under Section 20‑7‑473, the burden of proving that property acquired during the marriage was a gift to one of the parties is upon the party asserting a gift of property. Roberts v. Roberts (S.C.App. 1988) 296 S.C. 93, 370 S.E.2d 881, affirmed as modified 299 S.C. 315, 384 S.E.2d 719. Divorce 718; Divorce 876.5(4)

Trial court did not err in failing to award wife share in husband’s profit sharing plan where wife testified at trial that employer was sole contributor to plan but on appeal argued that plan was voluntary contributory savings plan and thus should have been divided as marital property; retirement plans are not subject to equitable distribution where employer is sole contributor, and wife has burden as petitioner seeking equitable distribution to come forward with evidence supporting her claim, and cannot sit back at trial without offering proof and then complain of insufficiency of evidence on appeal. Hudson v. Hudson (S.C.App. 1987) 294 S.C. 166, 363 S.E.2d 387. Divorce 1323(2)

30. Admissibility of evidence

Testimony from administrator of cemetery managed by former wife during marriage and owned by trust of which wife was beneficiary, concerning gross receipts of cemetery and former husband’s efforts in improving cemetery, was properly excluded, where husband had listed administrator as a witness who would testify about intra‑family relationships. Arnal v. Arnal (S.C.App. 2005) 363 S.C. 268, 609 S.E.2d 821, rehearing denied, certiorari granted, affirmed as modified 371 S.C. 10, 636 S.E.2d 864. Divorce 85

31. Review

Husband failed to preserve for appeal his argument that the family court erred in finding a family farm in Greece was marital property because the asset did not exist; at divorce trial, husband made no arguments as to the existence of a family farm or that wife “made up” the farm, and instead, the parties argued about its value and whether the property was three or 30 acres. Conits v. Conits (S.C.App. 2016) 417 S.C. 127, 789 S.E.2d 51, rehearing denied. Divorce 1216

Husband’s claim that he was entitled to a 50/50 split of the equity in properties was not preserved for appellate court’s review since he did not raise this issue in his motion seeking alteration and/or amendment of the final order. Fredrickson v. Schulze (S.C.App. 2016) 416 S.C. 141, 785 S.E.2d 392. Divorce 1217

Wife did not forfeit her ability to challenge trial court’s valuation of spouses’ lighting business on appeal under acceptance of benefits doctrine, under which a party’s voluntary acceptance of benefits provided under a decree acts as a waiver of the right to challenge the benefit on appeal, even though wife desired to retain ownership of business, given that appellate courts routinely address such valuation challenges. Moore v. Moore (S.C. 2015) 414 S.C. 490, 779 S.E.2d 533, rehearing denied. Divorce 1263(2)

Although family court erred in finding that wife agreed that the only issues to be decided were the divorce and child support, the family court ultimately determined the prenuptial agreement removed the family court’s jurisdiction over wife’s contested issues, and appellate court would affirm the family court on this issue because the error was minor and did not affect the substantive outcome. Meehan v. Meehan (S.C.App. 2014) 407 S.C. 471, 756 S.E.2d 398. Divorce 184(12)

On appeal, Supreme Court must review the fairness of the overall apportionment of the marital estate, and, if equitable, Court will uphold it regardless of whether it would have weighed specific factors differently. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 1290(1)

Family court’s apportionment of 55% of the marital property to husband and 45% to wife was not an abuse of discretion, although husband contributed the majority of the assets and had serious medical expenses, where it was a 30‑year marriage, during which wife spent many years contributing to the marriage as well as caring for husband and their children, and wife was not awarded alimony due to size and apportionment of the marital estate and husband’s disability, but otherwise would have been a candidate for permanent alimony. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 734; Divorce 736; Divorce 742

Husband waived argument on appeal that burden shifted to husband to prove the nonmarital character of the account because spendthrift provision of trust prohibited the allocation of distributions to wife and the marital property statute excluded from marital property any property excluded by written contract, where he did not present the argument to the family court. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 1216

When confronted with benefits that are not specifically addressed by the statute defining marital property, Supreme Court looks to their nature and purpose to determine if they are marital property. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 681

Family court’s apportionment of marital property will not be overturned on appeal absent an abuse of discretion. Wilburn v. Wilburn (S.C. 2013) 403 S.C. 372, 743 S.E.2d 734, rehearing denied, rehearing granted. Divorce 1283(1)

In appeals from the family court, appellate court has authority to find the facts in accordance with its own view of the preponderance of the evidence; this broad scope of review, however, does not require it to disregard the findings of the family court. Simmons v. Simmons (S.C.App. 2006) 370 S.C. 109, 634 S.E.2d 1, rehearing denied, certiorari denied. Courts 176.5

Remand of divorce action was required to determine full extent of former wife’s contributions, full amount of marital funds employed, and any increase in value of nonmarital property inherited by husband resulting directly from contributions of former wife; family court only considered monetary contributions from marital funds, and made no allowance for former wife’s contributions through her efforts or for any overall increase in value of nonmarital property. Craig v. Craig (S.C.App. 2004) 358 S.C. 548, 595 S.E.2d 837, rehearing denied, certification granted, affirmed 2005 WL 825188, withdrawn and superseded on rehearing 365 S.C. 285, 617 S.E.2d 359. Divorce 1323(2); Divorce 1323(7)

Husband was entitled to special equity in property that wife acquired by use of $8,000 from marital checking account to make down payment, and thus remand for reconsideration of valuation of property and checking account for proper division was required, even though checking account was in wife’s name, given that checking account was funded with income wife earned teaching during marriage, and it was unclear how husband and wife were credited with values. Greene v. Greene (S.C.App. 2002) 351 S.C. 329, 569 S.E.2d 393, rehearing denied, certiorari denied. Divorce 1323(2)

Whether nonmarital vacation home transmuted into marital property was not preserved for review, where wife limited her claim with respect to vacation home to one of special equity by requesting only a portion of the appreciation of the home. Calhoun v. Calhoun (S.C. 2000) 339 S.C. 96, 529 S.E.2d 14. Divorce 1216

In reviewing the trial court’s apportionment of marital property arising from a marital dissolution, the Court of Appeals looks to the fairness of the overall apportionment. Pool v. Pool (S.C.App. 1996) 321 S.C. 84, 467 S.E.2d 753, rehearing denied, certiorari granted, affirmed as modified 329 S.C. 324, 494 S.E.2d 820. Divorce 1261(4)

The Family Court’s division of marital property would be reversed and the issue remanded for redetermination where (1) the court erroneously determined that the couple acquired no joint property during the marriage, and (2) the court failed to determine the indirect contributions of the parties to the acquisition of the marital property, merely stating that neither party made any meaningful “monetary” contribution to the acquisition of property by the other. Mobley v. Mobley (S.C.App. 1992) 309 S.C. 134, 420 S.E.2d 506.

The Court of Appeals did not change the date for defining “marital property” from the date of commencement of marital litigation to the date of distribution, in contravention of Section 20‑7‑473, by its decision holding that a spouse’s right to share in the other spouse’s unliquidated employment claim would not be recognized when asserted for the first time after a court ordered the distribution of property in the absence of fraud, deception, or an effort to hide the claim, since the date of commencement was still the determinative date, and the distribution hearing was merely the point at which the Family Court would ascertain whether such a right existed. Mears v. Mears (S.C. 1992) 308 S.C. 196, 417 S.E.2d 574.

**SECTION 20‑3‑640.** Declining values of contributions.

In determining the value of contributions prior to making an equitable apportionment, the court:

(1) shall make findings of fact from credible evidence of the values of property and services, if any;

(2) is empowered to take judicial notice of official reports of the federal and state governments, including official bulletins, publications, and reports of general public interest where these reports are made and published by authority of law or have been adopted by state statute;

(3) has the authority to appoint experts as necessary for the purpose of valuation of property and contributions and to assess the cost against any or all parties to the action.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑474.

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NOTES OF DECISIONS

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1. In general

While it is appropriate for a family court judge to select a value for property that falls within the range of values testified to, it is inappropriate to simply average the values testified to by the parties to arrive at a value. Ferguson v. Ferguson (S.C.App. 1989) 300 S.C. 1, 386 S.E.2d 267.

In the absence of contrary evidence, the court should accept the value the parties assign to a marital asset. Noll v. Noll (S.C.App. 1988) 297 S.C. 190, 375 S.E.2d 338. Divorce 760

A spouse has an equitable interest in improvements to property to which he or she has contributed, even if the property is nonmarital. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445. Divorce 689; Divorce 876.2(2)

2. Marital estate, generally

Assigning equal value to each party’s contributions to the marital assets for purposes of distribution of marital assets was warranted; although husband made majority of direct contributions to marriage, wife made majority of indirect contributions, in beginning, both parties worked and contributed their salaries and income to marriage, when husband had opportunity for professional advancement, wife suspended her career and relocated, wife worked at each new location until children were born and both parties agreed she would not continue outside employment, she maintained household, enhanced value of their home, performed social roles that benefited husband’s business, and had primary responsibility for care of children. LaFrance v. LaFrance (S.C.App. 2006) 370 S.C. 622, 636 S.E.2d 3. Divorce 741

The family court has wide discretion in determining the contributions made by each spouse to the marital property; the weight to be accorded evidence of marital misconduct is for the court to determine in the exercise of its discretion. Ball v. Ball (S.C. 1994) 314 S.C. 445, 445 S.E.2d 449. Divorce 741; Divorce 743

An award of only 25 percent of the marital estate to the wife would not be disturbed based on the trial court’s erroneously finding that the “value of the wife’s remaining inherited property far exceed[ed] the value of the husband’s remaining inherited property” where there was no indication that the trial court relied on the disparity in the ownership of non‑marital property to justify the wife’s award. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604.

A trial judge did not abuse his discretion in apportioning the marital property 75 percent to the wife and 25 percent to the husband where the wife brought a fully furnished home into the marriage, she earned $107,332 during the course of the marriage while the husband earned $74,740, and the wife made substantial indirect contributions to the marriage through her services as a wife and mother. Buckler v. Buckler (S.C.App. 1989) 298 S.C. 526, 381 S.E.2d 910.

Equal apportionment of the marital estate between the parties was equitable even though most of the appreciation in the value of the assets was attributable to the husband’s earnings and income during the marriage where the wife faithfully performed her homemaker role during the marriage under the most trying of circumstances, and gave up her own career and dutifully contributed her labor to provide a good marital home for her husband. Additionally, since the husband’s earnings were property of the marriage, the contribution of those marital earnings to the appreciation in value of his nonmarital property represented nothing more than a change in form of the marital property ‑ that is, the marital property in the form of earnings simply became marital property in the form of appreciation in the value of the nonmarital estate. Johnson v. Johnson (S.C.App. 1988) 296 S.C. 289, 372 S.E.2d 107, certiorari denied 298 S.C. 117, 378 S.E.2d 445.

Where the family court recognized that a wife contributed her earnings (homemaker services and moral support) to the family but appeared to emphasize the husband’s financial input at her expense in dividing the marital estate, 59‑41 percent in the husband’s favor, the family court’s failure to consider fully the wife’s contributions was error, especially when perceived against the 41‑year duration of the marriage and the fact that the party’s accumulation of wealth resulted mainly from their real estate investments rather than active efforts by the husband. Polis v. Polis (S.C.App. 1988) 295 S.C. 184, 367 S.E.2d 465.

Husband married wife with full knowledge of her disability and could not complain of that disability at divorce; award to wife of 25 percent in equitable distribution was not error despite claim of husband this was excessive considering wife’s financial contribution to acquired property, where wife was disabled prior to marriage and was limited in her abilities; however, court stated that record revealed she had maximized her efforts in doing some work and engaging in active social life which had advanced her husband’s commercial business; also, even though she received domestic help, she contributed as homemaker and caretaker of children. Coxe v. Coxe (S.C.App. 1987) 294 S.C. 291, 363 S.E.2d 906, certiorari dismissed as improvidently granted 298 S.C. 72, 378 S.E.2d 259.

Family court did not abuse its discretion in determining equitable distribution of marital assets when it awarded wife 50 percent of marital home, and 50 percent of joint savings account; although it was true that husband made greater monetary contribution throughout marriage, wife did work at beginning of marriage and later during marriage as necessitated by husband’s indictment; also, wife contributed her services as homemaker and was therefore entitled to equitable interest in property acquired by wage‑earner husband; however, family court abused its discretion in granting wife exclusive possession of marital home for period of approximately 4 years, thus suspending husband’s equity in home, where wife conceded no special circumstances existed to warrant such award. Leatherwood v. Leatherwood (S.C.App. 1987) 293 S.C. 148, 359 S.E.2d 89.

In absence of contrary evidence, court should except value which parties have assigned to marital assets; cash value of life insurance policy should have been included in marital estate; where husband uses inheritance received prior to marriage for purchase of marital residence, inheritance should be treated as contributed by husband to acquisition of marital property, which contribution should be taken into account in determining percentage of marital estate to which husband is equitably entitled upon distribution; in valuing marital property court must determine proportionate shares of total estate to which parties were equitably entitled based upon their respective contributions to marriage and acquisition of marital property; in dividing personal property, court should value each party’s distributive share of personality in order to account for it in valuing total marital estate. Toler v. Toler (S.C.App. 1987) 292 S.C. 374, 356 S.E.2d 429.

3. Retirement benefits

Earlier decision of the court of appeals holding that vested military retirement benefits were subject to equitable distribution was applicable to a divorce action although the earlier decision had not been affirmed by the Supreme Court. Hamby v. Hamby (S.C.App. 1994) 315 S.C. 518, 445 S.E.2d 656. Courts 91(2)

The family court did not abuse its discretion in awarding the wife 24 percent of her husband’s pension, thus reflecting the ratio of the number of years the parties were married to the total number of years of the husband’s military service; although the husband alleged that his wife cashed bad checks at military facilities and falsely reported that he failed to honor financial responsibilities, the husband made no showing that such conduct actually harmed him. Ball v. Ball (S.C. 1994) 314 S.C. 445, 445 S.E.2d 449.

Although a nonvested pension plan is not valued, it may be included as marital property; since the distribution of the other assets is not affected by the award of the nonvested pension plan, the exact dollar value is not crucial, and the court must only determine the portion of the plan to which the spouse is entitled. Ball v. Ball (S.C. 1994) 314 S.C. 445, 445 S.E.2d 449. Divorce 803

The family court erred in determining the present liquidated value of a husband’s IRA by deducting from the IRA’s face value only the amount representing the penalty that would be imposed for an early withdrawal of all funds invested in the account; the IRA’s present liquidated value should have also reflected deductions for federal and state income taxes because they too would have to be paid if the account were to be immediately liquidated. Graham v. Graham (S.C.App. 1990) 301 S.C. 128, 390 S.E.2d 469. Divorce 792; Divorce 803

A family court’s approximately equal division of marital property was fair, even though the husband provided the bulk of the income, where the wife was a homemaker and also worked for approximately 12 years outside the home, and her income assisted in meeting the family’s needs. Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254. Divorce 738; Divorce 740

4. Business

The use of real estate appraisals in the valuation of business property was error where the court failed to consider other factors such as inventory, accounts payable and receivable, and other legitimate assets or liabilities, since the business should have been valued at its fair market value as a going business. Brandi v. Brandi (S.C.App. 1990) 302 S.C. 353, 396 S.E.2d 124.

In valuing a business interest for equitable distribution, the court should determine the fair market value of the corporate property as an established ongoing business by “considering the business’ net asset value, the fair market value for its stock, and earning or investment value.” Kirsch v. Kirsch (S.C.App. 1989) 299 S.C. 201, 383 S.E.2d 254.

A decree apportioning a business was defective where the decree failed to make adequate factual findings concerning the value of the wife’s contributions to the business, the decree contained merely a bald assertion of the “active part” that the wife played in support of the business, the decree contained no findings on what the wife’s contributions actually were, the value of those contributions or how that value was calculated, no findings existed on the number of hours the wife worked, and the record contained only scant references to the wife’s foregone income and retirement benefits from her former job which she allegedly quit in order to help her husband with his business, and was virtually silent on the value of those past wages and benefits. Roberson v. Roberson (S.C. 1988) 296 S.C. 56, 370 S.E.2d 612.

5. Personal property

A trial judge erred in valuing the parties’ household personal property contained in 3 modular homes at $3,000, where the trial judge apparently chose not to accept the only evidence available to him as an accurate value and placed a value of $1,000 on the furnishings in each unit without any evidence to support that value. Hyde v. Hyde (S.C.App. 1990) 302 S.C. 280, 395 S.E.2d 186.

A trial court did not abuse its discretion in valuing horses which were included in the marital estate where the values assigned by the trial court were either between the values assigned by the parties or coincided with the testimony of the husband, even though the wife asserted that the husband’s values were not reliable because of his lack of expertise. McDowell v. McDowell (S.C.App. 1989) 300 S.C. 96, 386 S.E.2d 468.

A trial judge did not abuse his discretion in valuing personal property items where each party assigned values to the personal property items which, in several cases, were very different, but in regard to the majority of items, were very similar, and in each case, the court assigned a value that fell somewhere between those cited by the parties. Strickland v. Strickland (S.C. 1989) 297 S.C. 248, 376 S.E.2d 268.

In performing an equitable division of a money market account, the court should have taken into account and appropriately offset the portion of the money market fund used to pay taxes, with the remainder being available for equitable distribution. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178.

6. Marital home

The court properly determined that the marital home, although titled in the name of the husband’s mother, was actually marital property under Section 20‑7‑473, based on (1) testimony that the husband paid for house through his mother and in cash in order to avoid the attention of the Internal Revenue Service, (2) evidence that the husband reported no earnings during the relevant time period, that the husband and wife insured the home, referred to it as their own, and paid no rent, and (3) expert testimony that the husband’s parents could not have paid for the house from their own earnings or savings. Hough v. Hough (S.C.App. 1994) 312 S.C. 344, 440 S.E.2d 387. Divorce 693; Evidence 571(1)

**SECTION 20‑3‑650.** Sequestration of property.

(A) At any stage of a proceeding under this article where it appears to the court that personal jurisdiction may not be obtained over an absent party or where a party refuses to comply with an order of the court, the court may, upon appropriate petition, order the sequestration of that party’s real and personal property which is within this State. The court may also appoint a sequestrator and, by injunction or otherwise, authorize the sequestrator to take the property into possession and control. In the case of an absent party, the court may appoint the party residing in this State as sequestator.

(B) The property sequestered and the income from it may be applied in whole or in part, at the direction of the court and as justice may require, so as to achieve an equitable apportionment of property as set forth in this article.

(C) Additionally, the court, in its discretion, if the property and income from it which may be sequestered is insufficient to pay what is required, may, upon terms and conditions as it considers in the interests of justice, direct the mortgaging of or the public or private sale of a sufficient amount of the sequestered property to pay what is required.

(D) The family court in which the action is filed has jurisdiction and venue to sequester property located within this State.

(E) The remedies in this section are cumulative to all other remedies which may be available to the parties.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑475.

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Equitable division of marital property. 39 S.C. L. Rev. 69, Autumn 1987.

NOTES OF DECISIONS

In general 1

1. In general

In a divorce action, the judge did not err in appointing a sequestrator sua sponte for an investment account where, even though the court had enjoined both parties from interfering with marital assets, the husband inappropriately sold some stock from the investment account and withdrew $47,915 from it; considering the husband’s conduct regarding the investment account, the judge had inherent power to appoint a sequestrator sua sponte to protect the interests of the parties. Murphy v. Murphy (S.C. 1995) 319 S.C. 324, 461 S.E.2d 39, rehearing denied.

Earlier decision of the court of appeals holding that vested military retirement benefits were subject to equitable distribution was applicable to a divorce action although the earlier decision had not been affirmed by the Supreme Court. Hamby v. Hamby (S.C.App. 1994) 315 S.C. 518, 445 S.E.2d 656. Courts 91(2)

The court properly determined that the marital home, although titled in the name of the husband’s mother, was actually marital property under Section 20‑7‑473, based on (1) testimony that the husband paid for house through his mother and in cash in order to avoid the attention of the Internal Revenue Service, (2) evidence that the husband reported no earnings during the relevant time period, that the husband and wife insured the home, referred to it as their own, and paid no rent, and (3) expert testimony that the husband’s parents could not have paid for the house from their own earnings or savings. Hough v. Hough (S.C.App. 1994) 312 S.C. 344, 440 S.E.2d 387. Divorce 693; Evidence 571(1)

Section 20‑7‑475 is for enforcement of equitable division awards and not for the enforcement of support orders. Lloyd v. Lloyd (S.C. 1988) 295 S.C. 55, 367 S.E.2d 153. Divorce 1036

**SECTION 20‑3‑660.** Court’s authority to achieve equitable apportionment.

(A) The court may direct a party to execute and deliver any deed, bill of sale, note, mortgage, or other document necessary to carry out its order of equitable apportionment. If a party so directed fails to comply, the court may direct the clerk of court in the county in which the property involved is situate to execute and deliver the document, and this performance by the clerk is as effective as the performance of the party would have been. The court in making an equitable apportionment may order the public or private sale of all or any portion of the marital property upon terms it determines.

(B) The court may utilize any other reasonable means to achieve equity between the parties, which means are subject to and may not be inconsistent with the other provisions of this article and may include making a monetary award to achieve an equitable apportionment. Any monetary award made does not constitute a payment which is treated as ordinary income to the recipient under either the provisions of Chapter 6, Title 12 or, to the extent lawful, under the United States Internal Revenue Code.

HISTORY: 2008 Act 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑476.

Federal Aspects

United States Internal Revenue Code, see U.S.C.A. Title 26.

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Westlaw Topic No. 134.

LAW REVIEW AND JOURNAL COMMENTARIES

Equitable division of marital property. 39 S.C. L. Rev. 69, Autumn 1987.

NOTES OF DECISIONS

In general 1

1. In general

Trial court’s award to husband of surveying business in its entirety as his portion of the marital estate should have included the value of laptop computer purchased by wife after the filing of divorce action with funds that belonged to surveying business, even though no testimony was offered as to laptop’s value; full equity between the parties could have been attained by awarding computer to husband. Pittman v. Pittman (S.C.App. 2011) 395 S.C. 209, 717 S.E.2d 88, rehearing denied, certiorari granted, affirmed as modified 407 S.C. 141, 754 S.E.2d 501. Divorce 794

Establishing the terms of sale of the family home was well within the family court’s statutory authority, and thus, family court did not err in clarifying divorce decree to require automatic reductions in the selling price of the marital home, where the clarification did not conflict with the minimum listing price of the home set in the divorce decree, complied with the goals set out in the parties’ subsequent agreement, and, in light of wife’s failed attempt to sell home, a lower initial selling price with small periodic reductions was a reasonable approach to severing the only remaining tie between the parties. Brown v. Brown (S.C.App. 2011) 392 S.C. 615, 709 S.E.2d 679. Divorce 864; Divorce 891; Divorce 919(3)

In a divorce action, the judge did not err in appointing a sequestrator sua sponte for an investment account where, even though the court had enjoined both parties from interfering with marital assets, the husband inappropriately sold some stock from the investment account and withdrew $47,915 from it; considering the husband’s conduct regarding the investment account, the judge had inherent power to appoint a sequestrator sua sponte to protect the interests of the parties. Murphy v. Murphy (S.C. 1995) 319 S.C. 324, 461 S.E.2d 39, rehearing denied.

The trial court did not abuse its discretion in ordering a subdivision of the marital home acreage, even though neither party requested the division and the court failed to specify the size of the lots to be created, where the appraisal report stipulated to by both parties concluded that the highest and best use of the property would be to subdivide the land. Peirson v. Calhoun (S.C.App. 1992) 308 S.C. 246, 417 S.E.2d 604. Divorce 863

Before requiring the sale of marital property and a division of the proceeds in order to effect an equitable apportionment, the family court should first attempt an “in‑kind” distribution of the assets. Donahue v. Donahue (S.C. 1989) 299 S.C. 353, 384 S.E.2d 741.

A $25,000 payment to the wife within 30 days of the decree was not a “reasonable means” of effectuating apportionment of a business where the record reflected that at the time of trial the husband owned only a business with no value, a used boat and a mortgaged mobile home. Roberson v. Roberson (S.C. 1988) 296 S.C. 56, 370 S.E.2d 612.

Although the family court may require a sale of marital property and a division of the proceeds to effect an equitable apportionment, the court should first attempt an in‑kind distribution of the marital assets. Stevenson v. Stevenson (S.C. 1988) 295 S.C. 412, 368 S.E.2d 901. Divorce 822

Ordering sale of all marital assets was improper, although there was insufficient evidence in record as to valuation of much of property, where husband claimed there was sufficient evidence in record to divide property in kind and that forced sale would result in unfavorable tax consequences for both parties. Wyatt v. Wyatt (S.C.App. 1987) 293 S.C. 495, 361 S.E.2d 777. Divorce 1323(4)

**SECTION 20‑3‑670.** Notice of pendency of action.

(A)(1) In a proceeding under this article, either party may record a notice of the pendency of proceedings in the manner provided in civil actions generally, which has the same effect as a notice in civil actions. The rights and interests of each spouse in the other’s property created by this article are not effective against third parties:

(a) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed as provided in Section 15‑11‑10 with the clerk of court of the county in which such parcel of real property is situated; and

(b) with regard to personal property, until the third party has received written notice from either spouse in a proceeding under this article that marital litigation has been filed.

(2) Prior rights and interests of third parties:

(a) in real property are not affected by filing a Notice of Pendency of Action; and

(b) in personal property are not affected by receipt of written notice of such a filing.

(B)(1) Upon entry of judgment against a party requiring payment of money or transfer of property, whether by interlocutory order or final decree, a party may apply to the court for issuance of a transcript of judgment in the form prescribed in Section 20‑3‑680. This transcript may be recorded in the office of the clerk of court of common pleas and indexed in the books of abstracts of judgments of any county of this State as provided by law.

(2) After the order or decree has been duly recorded and indexed in the office of the clerk of court of common pleas, the order or decree has all force and effect of judgments of the courts of common pleas as provided by law, the recording and indexing constituting record notice to all persons of the order or decree recorded and indexed.

(3) The recordation and filing of a transcript of judgment does not prevent the court from exercising any equitable or other presently existing power of enforcement of the order or decree which is within its jurisdiction.

(C) The statutory lien created by Section 20‑3‑145 is not effective as against third parties unless this section has been complied with.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1987 Act No. 14 Section 2; 1976 Code Section 20‑7‑477.

Library References

Divorce 1037.

Lis Pendens 3(2).

Westlaw Topic Nos. 134, 242.

C.J.S. Lis Pendens Sections 10 to 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 55, Tenancy by the Entirety and Community Property.

LAW REVIEW AND JOURNAL COMMENTARIES

Career Assets and the Equitable Apportionment of Marital Property. 38 S.C. L. Rev. 755.

Equitable division of marital property. 39 S.C. L. Rev. 69, Autumn 1987.

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

**SECTION 20‑3‑680.** Form of transcript of judgment.

A transcript of judgment may be substantially in the following form:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | STATE OF SOUTH CAROLINA | |  |
|  | COUNTY OF | | IN THE FAMILY COURT |
|  | , | |  |
|  |  | Petitioner, |  |
|  | vs. |  |  |
|  | , | | TRANSCRIPT OF JUDGMENT |
|  |  | Respondent. |  |

NOTICE IS HEREBY GIVEN that in the above‑captioned proceeding, (family court docket # of proceeding or domestic judgment #), filed in the family court of the State and county aforesaid, judgment was entered against \_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_ in the action, on the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, [in the amount of \_\_\_\_\_\_\_\_\_\_, as and by reason of (an award of attorney’s fees, equitable division of property, etc.)] OR (requiring conveyance to \_\_\_\_\_\_\_\_\_\_ of the real property described as following:) Attorneys of record are \_\_\_\_\_\_\_\_\_\_, representing the petitioner and \_\_\_\_\_\_\_\_\_\_, representing the respondent.

FURTHER NOTICE IS GIVEN that interest will accrue at the statutory rate from the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, together with costs in the amount of \_\_\_\_\_\_\_\_\_\_.

|  |  |
| --- | --- |
|  |  |
|  |  |
|  | Judge of the Family Court |
|  |  |
| place |  |
| date . |  |

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑478.

CROSS REFERENCES

Application by a party for issuance of a transcript of judgment, see Section 20‑3‑670.

Library References

Divorce 885.

Westlaw Topic No. 134.

LAW REVIEW AND JOURNAL COMMENTARIES

Career Assets and the Equitable Apportionment of Marital Property. 38 S.C. L. Rev. 755.

**SECTION 20‑3‑690.** Subject matter jurisdiction over contracts.

The family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those contracts.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

Editor’s Note

Prior laws. 1986 Act No. 522 Section 1; 1976 Code Section 20‑7‑479.

Library References

Divorce 871.

Westlaw Topic No. 134.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Divorce Section 56, Marital Assets Defined.

S.C. Jur. Divorce Section 57, Distinguished from Non‑Marital Assets.

S.C. Jur. Divorce Section 60, Effect of Antenuptial Agreements.

LAW REVIEW AND JOURNAL COMMENTARIES

Career Assets and the Equitable Apportionment of Marital Property. 38 S.C. L. Rev. 755.

Equitable division of marital property. 39 S.C. L. Rev. 69, Autumn 1987.

NOTES OF DECISIONS

In general 1

1. In general

Family court had exclusive jurisdiction over divorce settlement agreement pursuant to statutory provision that granted jurisdiction over all contracts relating to property involved in a divorce proceeding and over the construction and enforcement of those contracts, as well as statutory provision that granted exclusive jurisdiction to the family court to hear marital litigation, and to hear and determine any questions of support, custody, and separation. Hammer v. Hammer (S.C.App. 2012) 399 S.C. 100, 730 S.E.2d 874, rehearing denied. Divorce 917