

Office of the Attorney General  
State of North Dakota

Opinion No. 81-131

Date Issued: December 15, 1981

Requested by: Representative Aloha Eagles

--QUESTIONS PRESENTED--

I.

Whether the provisions of Section 14-02.1-03.1 of the North Dakota Century Code requiring parental consent or judicial authorization to perform an abortion on an unmarried minor apply when the minor is not a North Dakota resident, but is seeking to have the abortion performed in North Dakota.

II.

Whether Section 14-02.1-03.1, N.D.C.C., prohibits access to North Dakota juvenile courts to unmarried minors residing outside of North Dakota but seeking an abortion in North Dakota.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that the provisions of Section 14-02.1-03.1, N.D.C.C., requiring parental consent or judicial authorization to perform an abortion on an unmarried minor apply when the minor is not a North Dakota resident but is seeking to have the abortion performed in North Dakota.

II.

It is my further opinion that Section 14-02.1-03.1, N.D.C.C., does not prohibit access to North Dakota juvenile courts to unmarried minors residing outside of North Dakota but seeking an abortion in North Dakota.

--ANALYSIS--

I.

Section 14-02.1-03.1(1), N.D.C.C., provides:

1. No person shall knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:
  - a. The attending physician has secured the written consent of the minor woman and both parents, if living, or the surviving parent if one parent is deceased, or the custodial parent if the parents are separated or divorced, or the legal guardian or guardians if the minor is subject to guardianship;
  - b. The minor woman is married and the attending physician has secured her informed written consent; or
  - c. The abortion has been authorized by the juvenile court in accordance with the provisions of this section.

The clear language of the statute prohibits an abortion from being performed in North Dakota on a minor unless one of three exceptions apply. Nonresidency of the minor is not one of the exceptions.

## II.

Section 14-02.1-03.1(2), N.D.C.C., provides in part:

2. Any pregnant woman under the age of eighteen or next friend shall be entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. Proceedings on such application shall be conducted in the juvenile court of the county of the minor's residence . . .

Pursuant to this statute, the jurisdiction of the juvenile court is expanded to encompass a new cause of action. Language providing for an application to be heard 'in the juvenile court of the minor's residence' constitutes legislative direction as to proper venue if the applicant is a North Dakota resident.

In *Bellotti v. Baird*, 443 U.S. 622 (1979), the U.S. Supreme Court reviewed a Massachusetts statute providing for a judicial authorization procedure for minors to obtain an abortion in the absence of parental consent. The court stated that, ' . . . the constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court.' 443 U.S. 622, 648. A review of the legislative history of Section 14-02.1-03.1, N.D.C.C., indicates a legislative awareness of the *Bellotti* decision. The House Judiciary Committee minutes of February 9, 1981, reflect the following comment by Representative Tom Kuchera, one of the bill's sponsors, ' . . . the purpose is to follow the advice of the Supreme Court where they seem to do to some length saying that one statute did not pass muster and try to tell us what statute would. This is an attempt to follow what we think are their guidelines.'

Section 27-20-02(9), N.D.C.C., provides that, "juvenile court' means the district court of this state.' The district courts have subject matter jurisdiction over causes generally conferred upon them by Article VI, Section 8 of the North Dakota Constitution and by Section 27-05-06, N.D.C.C. The Legislature must clearly and affirmatively act to limit general subject matter jurisdiction granted under these sections. North Dakota's divorce law contains an example of the Legislature specifically dictating a limitation on the court's power to grant relief based on residency. Section 14-05-17, N.D.C.C., states:

RESIDENCE REQUIREMENTS. A divorce must not be granted unless the plaintiff in good faith has been a resident of the state for twelve months next preceding the commencement of the action.

Section 14-02.1-03.1(2), N.D.C.C., states that 'any pregnant woman . . . shall be entitled to apply . . .' (emphasis supplied). No jurisdictional residency limitation may be inferred from the additional venue language contained in the statute.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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