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Jul 14 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2022-000577

Gregory Hopkins and Amy Hopkins,

Respondents,

v.

Jaime Hood-Hopkins,

Appellant,

APPELLANT'S RETURN TO MOTION TO DISMISS

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Counsel for Appellant hereby replies to Respondent's Motion to be Dismissed as follows:

1. Appellant seeks that Respondent's filed Background of Case with Exhibits 1-30 be stricken. The exhibits are outside of the scope of this appeal and irrelevant to the issue on appeal. The exhibits include documents that were not filed in the underlying Magistrate's Court or Circuit Court cases. Further, any issues that may have been raised by said documents have not been preserved for appeal. Questions presented for appellate review must be fairly and properly raised in the lower court and passed upon by that court. *Langley v. Boyter*, 284 S.C. 162, 325 S.E.2d 550 (Ct. App. 1984). The parties to an appeal from Magistrate's Court are restricted to the arguments raised in the Magistrate's Court. *Indigo Assocs. V. Ryan Inv. Co.*, 314 S.C. 519, 431 S.E.2d 271 (Ct. App. 1993).

2. Respondent's Exhibits and Table of Contents should be stricken from the record as they contain the child's name. Children's names should not be used in court filings. *See In re revised Ord. Concerning Pers. Identifying Info. & Other Sensitive Info. in App. Ct. Filings*, 407 S.C. 607, 607-608, 757 S.E.2d 421 (2014).

3. Respondent's motion focuses on their opposition to the Magistrate issuing the restraining order for the minor child, and the authority of the Magistrate to do so is the very issue that is on appeal and which this court is being asked to determine.

4. The Magistrate Court properly exercised subject matter jurisdiction when it issued a restraining order to Appellant and her minor child. S.C. Code §16-3-1770 provides, in part, that a temporary restraining order may "include temporarily enjoining the defendant from (1) abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff's family."

“Family” is defined to include a “spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.” S.C. Code §16-3-1700(E). Respondents rely upon S.C. Dep’t of Mental Health v. State, 301 S.C. 75, 390 S.E.2d 185 (1990), which found that jurisdiction is limited that expressly or by necessary implication conferred by statute. Under this case, the above cited statutes give Magistrate’s Court jurisdiction to issue restraining orders to minors.

5. Family Court and Magistrate’s Court have concurrent jurisdiction over restraining orders for minors. Exclusive jurisdiction of the Family Court is enumerated in S.C. Code 63-3-510 and S.C. Code 63-3-530. Neither of these sections grants Family Court exclusive jurisdiction over restraining orders for minor children. Further, the issue upon appeal in this case relates to a temporary restraining order for a minor child that originated in Magistrate’s Court and is not a custody or visitation case, which would fall within the jurisdiction of the Family Court. Respondents erroneously rely on S.C. 63-3-530(A)(2) to claim that Family Court has exclusive jurisdiction over restraining orders for minors, because that statute “gives the family court exclusive jurisdiction to hear and determine actions concerning marital litigation”. This case does not involve marital litigation.

Frye v. Frye, 323 S.C. 72, 76, 448 S.E.2d 586, 588 (Ct App. 1994) and Grantham v. Weatherford, 425 S.C. 111, 819 S.E.2d 765 (Ct. App. 2018) are distinguishable from this case because those cases involved visitation cases within Family Court. Again, those cases are distinguishable from this restraining order case. Respondents do not have an existing visitation order for the minor child, despite previously seeking one within Family Court.

6. The Magistrate Court acted appropriately by not appointing a guardian ad litem in a restraining order case. Family Court alone has the jurisdiction to appoint a guardian ad litem

and that authority extends to a private action before the family court for custody or visitation. S.C. Code §63-3-810(A). A guardian ad litem may be appropriate in a custody or visitation case. Again, the underlying case in this matter did not involve custody or visitation.

7. Respondents allege that the Magistrate Court modified their visitation by issuing the restraining order. This is incorrect. Respondents do not have visitation rights with the minor child. Further, the restraining order does not restrict the contact between the minor child and her father, rather it restricts the conduct of the Respondents. Respondents do not automatically have derivative visitation rights with their grandchild based on their son having visitation with his child.

8. Respondents do not challenge the restraining order that was issued to Appellant. It is noteworthy that there has been no dispute about the appropriateness of that order. The stalking and harassment of Appellant by Respondents has contributed to the need for the restraining order to be extended to the minor child, who has been subject to harmful commentary by Respondents directed towards Appellant. *See Affidavit Of Appellant In Support Of The Granting Of A Writ Of Supersedeas*. The trial court was best suited to determine whether the restraining order should be issued for the minor child, as that court had the opportunity to observe and hear directly from the parties firsthand. The appellate court is not required to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses. *Pinckney v. Warren*, 544 S.E.2d 620, 344 S.C. 382 (S.C. 2001) (citing *Dorchester County Dep't of Soc. Servs. V. Miller*, 324 S.C. 445, 477 S.E.2d 476 (Ct. App. 1996)).

9. Appellant's appeal was filed in good faith and with supporting legal bases.

10. Respondents have repeatedly referenced a contempt action that was filed against

Appellant, but have repeatedly failed to provide any supporting evidence of the same. Further, even if there was a contempt filing, said matter is independent and unrelated to the issue herein on appeal.

11. Appellant incorporates into this Return, Appellant's Initial Brief, which was filed on June 23, 2022 and Appellant's Petition for Supersedeas, which was filed on July 8, 2022.

For the foregoing reasons, Appellant seeks that Respondent's Motion to Dismiss be denied.

Respectfully submitted:

s/ Tamika D. Cannon
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Jaime Hood-Hopkins, Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Return to Motion to Dismiss by emailing a copy of it on July 14, 2022, to the South Carolina Court of Appeals at ctappfilings@sccourts.org and to and by mailing a copy of it by U.S. Mail with sufficient first class postage on July 14, 2022, to Respondents Gregory Hopkins and Amy Hopkins at 108 Fairway Drive, Laurens, SC 29360.



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