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Dec 28 2022

SC Court of Appeals

The State of South Carolina

In The Court of Appeals

Appeal From Florence County- Motion to Dismiss

Court of Common Pleas Judge Haigh Porter

Civil Action Number: 2021-CP-21-00966

Dominion Energy South Carolina Respondent

Inc. Condemnor

V

Gail Kathy Andrews Appellant Landowner

And

Bank of America, NA, National Banking Association,

Other Condemnee.

Motion to Dismiss

Gail Kathy Andrews
December 28, 2022

Statement of the Case

Landowner/Appellant Pro Se Kathy Andrews filed a Motion to Dismiss Dominion's Condemnation on grounds that she was never adequately served by certified mail and neither was she personally served with Dominion's condemnation notice. Discovery of forgeries on the face of Exhibits submitted to the court, as detailed in the motion and herein, stripped the lower court of subject matter jurisdiction. Use of forgery is not a constitutionally sufficient method of notice and service. Appellant's Motion to Dismiss was denied by the lower court. This appeal followed.

INTRODUCTION

Appellant believes that the Court of Appeals should investigate and explain anomalies in the lower court's procedures, orders and opinions (refusal to let appellant/landowner access docket, acceptance of green card forgeries, acceptance of unfiled pleadings, failure to provide briefing schedules, lack of written judicial signatures on pleadings).

I. Whether constitutional violations and other fatal defects in service of notice of condemnation divested the court of subject matter jurisdiction?

Answer: Yes

II. Whether Dominion's' attorneys swore falsely as to service of process?

Answer: Yes.

III. Was the trial court in this case required to examine the evidence on which the Defendant relied to determine if Dominion created forgeries and was guilty of false swearing instead of executing legitimate and constitutionally sufficient service?

Answer: Yes.

- i. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 7 Wall. 506, 514 (1869). "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it." Great Southern Fire Proof Hotel Co. v. Jones, *supra*, at 453. The requirement that jurisdiction be established as a threshold matter "spring[s] from the nature and limits of the judicial power of the United States" and is "inflexible and without exception." Mansfield, C. & L. M. R. Co. v. Swan, 111 U. S. 379, 382 (1884)."

A court lacking subject matter jurisdiction has no power to issue substantive rulings and commands. Notice of Condemnor's action against Defendant Pro Se Andrews was not constitutionally sufficient to convey subject matter jurisdiction upon the court. The law offices of Rogers Lewis certified and swore that their Condemnation Notice and Tender of Payment was UN-FILED with the Court, as of April 1, 2021. Based on this failure alone, Defendant Andrews has a right to challenge the court's jurisdiction over the subject matter of Contemnor Dominion's cause of action. Defendant's constitutional right to self defense and her meaningful opportunity to be heard was grossly violated and she was denied her First Amendment right of access to the court. Plaintiff Dominion's attorneys are doing nothing but wasting more time by focusing on the question of personal jurisdiction. Without subject matter jurisdiction, the Court as a matter of law

cannot exercise personal jurisdiction over a defendant. Defendant's challenge is to the SUBJECT MATTER jurisdiction of the court.

The Supreme Court of the United States has held that an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their claims and objections. See Mullane v. Hanover. Forgeries on sham documents never served on a defendant do not satisfy this constitutional standard.

Objection to the constitutional sufficiency of process has been made with great specificity by the Defendant Pro Se. A forgery by contemnor on a green card submitted to the court without a true certificate of service, i.e., Form 3800, is a taking without due process of law, as federally guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States. Pleadings cannot be SERVED unless they are first FILED with the Court. FILING WITH THE COURT is a procedure which certifies the filer's swearing as to the validity of the pleadings. Dominion admits in its response to the Defendant's motion to dismiss on jurisdictional grounds that its Condemnation Notice was UNFILED. This giant flaw in traditional legal procedure does not begin to comport with due process of law. It is also grossly false to say that "the green card" is a proof or confirmation of service by CERTIFIED mail. It is the certificate of service, Form 3800, not "the green card," which confirms service by certified mail and scanning of signature. Certified Mail service provides a receipt, electronic verification of delivery and a record of delivery (including the recipient's signature) that is retained by the Post Office. The green card is issued only as a courtesy; it is the post office agent, the MAILMAN or WOMAN who DELIVERS the piece of certified mail, who must obtain and scan a valid signature, written and then printed, and post the certificate online. Exhibit A refers again to UNFILED pleadings.

A green card *never signed by Kathy Andrews* was filed with the Court; the green card alone is not proof of service; **furthermore, the green card bears a forgery; it was neither initialed nor ever signed by Andrews.** The Post Office never delivered on Andrews a certificate of service, Form 3800, with return receipt, which Andrews signed and which was scanned by the postal agent. The initials on the green card are FORGED. No certificate of service with return receipt was ever delivered on Andrews by the US Postal Service; nor was a return receipt ever filed with the Court. Nor is there any US postal tracking information confirming that certified mail was ever served on Andrews BY THE POST OFFICE. The blank tracking form means nothing and proves nothing. *Roche* is not to the contrary. It concerns perfected service on the agent of a corporation. It has nothing to do with forgeries on the face of a document submitted to the court.

Exhibit C shows off another forged green card. There is no certified receipt displayed which bears the signature of Kathy Andrews. There is only another forgery, on a green card, which is brazenly displayed by Dominion. A tracking document which represents that a package was delivered to a postal agent does not prove that the agent ever effected valid certified service on Andrews. Once again, no return receipt bearing Andrews signature was EVER scanned by a US postal agent, posted online, and then filed with the Court. The numerical code on the sticker pasted on the piece of certified mail MUST MATCH with the code on the Certified Mail Receipt.

No one disputes that Dominion was in possession of Andrews' proper residential address at Myrtle Beach. That Dominion was in possession of her address is of course not proof that Dominion ever properly served her. Dwelling on the fact that Dominion knew Defendant's address is a worthless diversion from the reality of Dominion's forgeries.

There is no proof in Exhibit C that Dominion ever served Andrews by certified US mail, Form 3800, or that Dominion ever filed the return receipt with the Court. Filing a green card with a forgery on its face is

Findings of the Court

After having heard from counsel for DESC and having reviewed the filed Motion, filed DESC Response, additional letters and written responses from Andrews, exhibits, and all supporting documents, exhibits, and caselaw presented to me during the hearing and in the court file, I find as follows:

1. Andrews had proper notice and was properly served with the notice of hearing on her Motion to Dismiss. I base this finding upon the documentation presented to me and in the court file evidencing the multiple methods counsel for DESC undertook to provide such notice to Andrews, specifically the Affidavit of personal service on Andrews.
2. DESC met the test and fulfilled its burden by sufficiently showing it complied with the applicable rules for service of process of both the unfiled and filed condemnation pleadings. As such, there is a presumption of proper service. Although Andrews alleges she did not sign the filed green cards and was not properly served with the condemnation pleadings, South Carolina caselaw requires more than mere allegations and raised concerns as to adequacy of service. Upon a showing by a plaintiff of compliance with the rules for service of process, the burden then rests with a defendant to prove service was insufficient and that the receipt was signed by an unauthorized person. Andrews did not meet that burden, and as such, her Motion to Dismiss fails. I find the South Carolina caselaw on this point cited in DESC's filed Response to the Motion to Dismiss particularly instructive, specifically Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995) which, akin to this matter, originates from Florence County. Based upon all of the foregoing,

not proof of certified service by mail and return receipt filed with the court. It is instead proof that a fraud has been perpetrated on the court.

- ii. The trial court in this case was required to examine the green cards which the Defendant found displayed as Dominion's Exhibits to determine if a fact issue existed regarding forgeries and faking of service.

The Court never examined the actual evidence on which the Defendant relied to establish that forgery of documents and misrepresentations by Dominion had taken place. The court instead has made its "findings" based on unspecified "documentation." The only document that is specified by the court is "the Affidavit of personal service on Andrews." (Findings, No. 1) There is no such affidavit attached to Dominion's response to the motion to dismiss. An Affidavit swearing as to personal service would have to be written and signed BY THE PROFESSIONAL SERVER. An attorney cannot be the server; nor can an attorney swear as to validity of personal service. An attorney is not a witness to the service. There has been no affidavit sworn to and signed by a professional server (who is a WITNESS to service) ever filed with the court. No such document exists because Defendant Andrews was never personally served. Nor is there a certificate of service, return receipt requested, which has ever been filed with the court to indicate delivery of certified mail, and scanning of signature, by a US postal employee. The court had a duty to examine these facts, and it failed to examine the factual evidence of forgery and unconstitutional sham service.

Dominion failed to raise any genuine issue of material fact to overcome the challenge to the trial court's subject matter jurisdiction. The trial court disregarded all of Defendant's evidence supporting her challenge to subject matter jurisdiction.

The so-called Certificate of Service signed by Dominion's paralegal is not proof that anything was served by certified mail, return receipt requested, by the US Mail on Andrews. No certificate of service

with signature was ever filed with the Court. The paralegal did not serve Andrews personally nor was she a witness to any such personal service. Her "Certificate of Service" does NOT prove that Andrews was served by certified US mail, by an agent of the US Postal Service, return receipt requested. It is a fact that the paralegal did not WITNESS the scanning of Andrews' signature by an officer of the US Post Office, because no service on Andrews by certified mail ever took place. The paralegal is not a witness to constitutionally sufficient service on Andrews, either in person or by certified mail.

There is no affidavit ever filed with the court by a professional server witnessing to personal service on Andrews. There is no witness to personal service on Andrews because Andrews was never personally served. A professional process server must effect personal service. An attorney in the employ of Dominion cannot be a process server. Nor did a paralegal in the employ of Dominion ever personally serve Andrews. THERE IS NO "AFFIDAVIT" EVER FILED WITH THE COURT WHICH IS SWORN TO BY A WITNESS TO PERSONAL SERVICE OF ANDREWS.

There is no presumption of sufficient notice when a forgery on the face of a document submitted to the court has been brazenly displayed by Plaintiff Dominion. Forgery is not a constitutionally sufficient method of notice. It is instead proof of a taking without due process of law. Defendant Andrews never signed the green card presented to the court; nor did she ever initial that document. Signature is required for proof of service. No signature from Andrews was ever obtained by service of certified mail. The court has a duty not to accept a forgery as though it were a valid signature. This judicial failure is offensive to the concept of due process, and is a constitutional failure which strips the court of subject matter jurisdiction. It is Dominion which had the burden of executing adequate service on Andrews. It is Dominion which is swearing that the initials on the green card were put there by Andrews, and that the initials suffice when neither her signature nor her printed name was ever written on the card. No signature belonging to Andrews was ever scanned by a postal agent delivering a certified piece of mail.

No postal agent would accept initials instead of a signature and printed name. It is not Andrews' burden to prove that obtaining a signature by forgery is offensive to due process

The Certificate of Electronic Notification is dated September 23, 2022, and it displays a forged green card with no signature or printed name; it bears forged initials. No Certificate of Service, Form 3800, was ever filed with the court on this date. A green card must be filed with a valid certificate of service to prove delivery by the postal service on any given date. The green card is dated May 17, 2021, not September 23, 2022. Even this forged submission states that Defendant "must be served by traditional means."

There has been no "showing" by Dominion of compliance with the rules, state and federal, for constitutionally adequate service of process. Dominion is the party on whom this burden rests; the burden of proof does NOT rest on the party who has been subjected to shameless forgeries and sham service. A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists. See Malik v. Meissner, 82 F.3d 560, 562 (2d Cir.1996). It is Dominion who is asserting that subject matter jurisdiction exists. Andrews has pled that her signature and printed name are not on any of the green cards submitted as exhibits by Dominion. She has also pled that no return receipt proving service on her by certified mail (i.e., scanned signature) has ever been filed with the court. This satisfies her evidentiary burden. The burden of proving constitutionally adequate service, as held in Makarova and Malik, rests with Dominion. It cannot be transferred to Andrews by the court. When a court evaluates a motion to dismiss for lack of subject-matter jurisdiction, all ambiguities must be resolved and inferences drawn in favor of the plaintiff. Aurecchione v. Schoolman Transp. Sys., Inc., 426 F.3d 635, 638 (2d Cir. 2005) (citing Makarova, 201 F.3d at 113).

There is no “presumption of proper service” when the blatant forgery of a signature has been discovered on the face of exhibits submitted to the court by the party responsible for making valid service of its documents on Defendant. The court has erred by failing to consider the evidence of Dominion’s forgeries and its perpetration of fraud on the court.

In summary, there is no proof that the notice of condemnation was ever delivered by certified mail on Andrews by the US postal service with return receipt and signature scanned, and filed with the court. The notice was neither served on Andrews by the US mail nor ever filed with the court. Any statement to the contrary is a gross falsehood. It is also grossly false for Dominion to represent that Andrews was personally served by a process server. There was and is no affidavit sworn to by a process server as to personal service on Andrews; nothing signed by a process server and dated was ever submitted to the court. The court has admitted that the forged green cards were submitted to the court as Exhibits. The court had a duty to assess this evidence and had a duty to state truthfully that no proof of service by certified US mail was ever filed with the court. In these circumstances, there is no presumption of constitutionally adequate service.

False swearing and forgery is definitely prejudicial to Defendant/Appellant Pro Se. Dominion has attempted to effect a taking without due process of law. It is Dominion which has submitted forgeries on the face of a green card to the court. There is no green card signed by Andrews dated April 5, 2021. Andrews was never served by certified mail and her signature scanned by a US postal agent on that date. No proof of service, return receipt requested, was ever filed with the court by Dominion. Exhibit A proves the forgery, not the service by certified mail. There is no certificate of service filed with the green card; service cannot be proved by the green card without attachment of the proper certificate of service. It is obvious that the green card does not bear the signature and printed name of recipient. Exhibit A proves a forgery. No US postal agent ever served a certified piece of mail on Andrews, and scanned her signature. Exhibit C is yet another display proving that no certified mail, return receipt

requested, was ever served on Andrews by an agent of the US Post Office, who could not serve her without obtaining and scanning her signature. The green card bears a forged set of initials, not a signature, and does not prove service if not submitted to the court with a valid CERTIFICATE OF SERVICE. No certificate of service or scanned signature was ever submitted to the court. Exhibits A and C prove forgeries, not constitutionally adequate service on Andrews. The tracking form found in Exhibit C does not state that any postal agent delivered anything on May 10, 2021; it only proves that some piece of uncertified mail was scheduled for delivery. It does not prove that delivery took place. It is a postal agent who must serve a recipient by certified mail, return receipt requested, and who must obtain and scan a signature; Dominion's lawyers are not employees of the US Postal Service and cannot serve under the rules by simply forging a green card.

Dominion never properly served Andrews, either personally or by certified mail. Of course, after months of communication, they knew her address. This proves nothing of any relevance.

The Affidavit of Counsel on page 1 of the Summons states merely that Condemnor demands a trial; Counsel is not and cannot swear to service on Andrews by certified mail or by personal service. Counsel is not a witness to service by certified mail; nor is she a witness to personal service on Andrews. The paralegal was not a witness to service on Andrews of certified mail, return receipt requested; nor was she a witness to service on Andrews of regular US mail. Her "Certificate of Service" of Dec. 2, 2022, does not prove that service was perfected.

Andrews was never personally served by a process server. There is no Exhibit attached to Dominion's response which proves this to be true. The process server must swear to the fact that Andrews was served by him or her on a date certain. Since no personal service ever took place, there is no witness (i.e., professional server, NOT an attorney or paralegal) who can swear that he or she perfected personal service on Andrews. The US Post Office has not supported Dominion in its representation that filing of a

green card and nothing more proves that service by certified MAIL took place. This federal agency has not participated in state court misrepresentations as to notice and service.

REMEDY

The motion to dismiss should be granted for lack of service. The lower court should be investigated for allowing Dominion Energy to forge documents of service. Dominion Attorneys in this case should be prosecuted for forgery. In addition, Dominion Energy should not be allowed to condemn property when Dominion is the subject of a lawsuit for the 401 water permit with South Carolina DHEC. The lower court's apparent bias and relationship with Dominion Energy should be investigated. The Master of Equity appeared to praise the Dominion Energy appraiser for the his ability to redline and condemn property of African American heirs property offering heirs \$100.00 for the taking of their land. The forgery, close relationship of the lower court with Dominion Energy attorneys, and the lack of service should be just cause for the dismissal.

Gail Kathy Andrews

Dec 28, 2022

GAIL KATHY ANDREWS

The State of South Carolina
In The Court of Appeals

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APPEAL FROM Florence County

Court of Common Pleas Judge Haigh Porter

Civil Action Number: 2021-CP-21-00966

Dominion Energy South Carolina,
Inc., Condemnor

Respondent,

v.

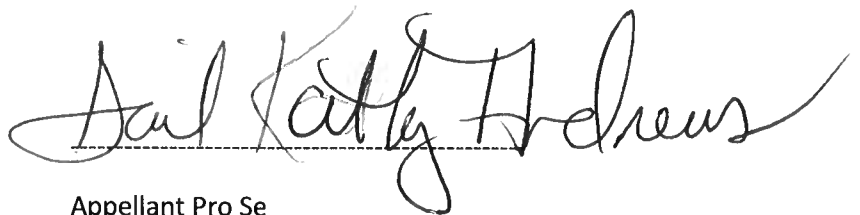
Gail Kathy Andrews

Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Dominion Energy by depositing a copy of it in the US Mail, certified and postage prepaid, on December 28, 2022 addressed to their attorney of record Jessica Crowson at 1901 Main Street Columbia, SC 29201-2436 PO Box 11803 Columbia, SC 29211

December 28 2022



Appellant Pro Se

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