

Landowners' Motion to Reinstate Appeal of Order Dismissing Landowners' Jurisdictional Challenge
Unconstitutional and Illegal Exercise of Power Over Notice of Condemnation; Landowner
Was Denied Constitutionally Sufficient Notice of Condemnation, and Denied Constitutionally
Guaranteed Opportunity To Be Heard And To Defend Against Taking of Property by Condemnor
Without Due Process of Law

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JAN 11 2023

SC Court of Appeals

1. A challenge to lack of subject matter jurisdiction can be made at any time. See *Mansfield, Coldwater & Lake Michigan Railway Co. v. Swan*, 111 US 379 (1884). And see *Grupo Dataflux v. Atlas Global Group*, 541 US 567 (2004). It is settled law that a jurisdictional challenge to a trial court order can be immediately appealed: "This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. The Court has long given this provision of the statute this practical rather than a technical construction. *Bank of Columbia v. Sweeny*, 1 Pet. 567, 569; *United States v. River Rouge Co.*, 269 U.S. 411, 414; *Cobbledick v. United States*, 309 U.S. 323, 328. *Cohen v. Beneficial Industrial Loan Corp.*, 337 US 541, --- - Supreme Court 1949.

"The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. *Fielden v. Fielden*, 274 S.C. 219, 262 S.E.2d 43 (1980); *Harden v. South Carolina State Highway Dept.*, 266 S.C. 119, 221 S.E.2d 851 (1976); *State v. Gorie*, 256 S.C. 539, 183 S.E.2d 334 (1971). " *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897, ___ (1989).

The Court has improperly tried to rely on *McLendon* for the proposition that a jurisdictional challenge to an order is not immediately appealable. *McLendon* does not assert this doctrine. The excerpt from *McLendon* is first of all not quoted with any accuracy: "The denial of such a motion [i.e., a motion to dismiss that DOES NOT present a question of subject matter jurisdiction] is not immediately appealable under SC CodeAnn.&14-3-330 . . ." *McLendon* stands for nothing more than the proposition that a statute of limitations challenge cannot be immediately appealed. Appellant in *McLendon* never raised a challenge to subject matter jurisdiction. This is the only case cited by the Court of Appeals. *McLendon* cannot and does not support the proposition that a challenge to subject matter jurisdiction is not immediately appealable. "Lack of subject matter jurisdiction cannot be waived and should be taken

notice of by this Court on its own motion. *Harden v. S.C.H.D.*, 266 S.C. 119, 221 S.E.2d 851 (1976); *McCullough v. McCullough*, 242 S.C. 108, 130 S.E.2d 77 (1963)." Fielden v. Fielden.

There has been no satisfaction of the subject-matter jurisdiction requirement, because both notice and service of process were deliberately forged and submitted in bad faith to the court by the condemnor; service of process was constitutionally inadequate and thus fatally defective.

The trial court accepted documents first forged and then submitted to the court as exhibits by the forger. The trial court judge then refused to review the facts establishing the forgeries. This conduct by the lower court judge is fatally offensive to the Due Process Clause of the US Constitution. See Brief in Support of Notice of Appeal, incorporated herein by reference.

S.C.Code Ann. § 28-2-420(A) (1991). The Act is the exclusive procedure for condemnation by a governmental entity. S.C.Code Ann. § 28-2-60 (1991) ("The provisions of this chapter shall constitute the exclusive procedure whereby condemnation may be undertaken in this State."); see *Godwin v. Carrigan*, 227 S.C. 216, 225, 87 S.E.2d 471, 475 (1955) (holding the provision for exclusivity "contemplates that the exclusiveness shall only apply to those cases or situations which are embraced within the machinery of the condemnation statutes."). Because the sufficiency of a condemnation notice is controlled by a specialized statute, S.C.Code Ann. & 14-3-330 DOES NOT determine whether a party may immediately appeal an order issued before trial in a condemnation case.

The condemnor exhibited bad faith and engaged in fraud by forging signatures on green cards and behaved fraudulently by denying its failures to serve Appellant, and further engaged in fraud and obstruction of justice by submitting its exhibits which displayed forgeries on their face to the court. Appellant was denied her First Amendment right of access to the court, and denied her right to defense of an unconstitutional seizure of property. These offenses against due process stripped the court of subject matter jurisdiction. The Court of Appeals has cited the wrong statute and the wrong case law to support its denial of an immediate appeal when a court's lack of subject matter jurisdiction is directly challenged.

The lower court judge failed to examine the evidence of forgery recognized by appellant and submitted to the court by Dominion in the form of multiple exhibits put together by the forgers. Appellant briefed in great detail the evidence of forgery found on the face of Dominion's exhibits, and incorporates herein by reference her detailed brief on these subjects in support of her notice of appeal.

Landowner was denied access to the docket that should have existed and been open to public inspection in the lower court; numerous pleadings and orders do not

bear the signature of a judge or the seal of the court; no notice was provided as to landowner's right to appeal the lower court's orders; the court of appeals never provided a briefing schedule; appellee Dominion tried to effect service after a hearing had already taken place. These statutory and constitutional violations of landowner's First Amendment right of access to the court must be dealt with by the Court of Appeals in its supervisory capacity.

Subject matter jurisdiction cannot be vested in the trial court, guilty of serious constitutional violations and the deliberate acceptance of forged documents, by the summary actions of an appellate court, by virtue of separation of powers doctrine.

The deadline for submission of the motion to reinstate the appeal is January 15; the lower court judge has scheduled a trial on compensation issues for January 17, 2023. This is a violation of statutory authority. Unless the court of appeals deals with the motion to reinstate before it is even submitted to the court, it does not allow sufficient time to make its appellate ruling before the trial is to take place. According to statutory authority, trial must be stayed until all appellate issues are resolved. In South Carolina, the eminent domain proceeding is automatically stayed until resolution of the right-to-take challenge:

2012 South Carolina Code of Laws

Title 28 - Eminent Domain

Chapter 2 - THE EMINENT DOMAIN PROCEDURE ACT

Section 28-2-470 - Proceedings to challenge condemnor's right to condemn.

Universal Citation: SC Code § 28-2-470 (2012)

An action challenging a condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located. The action must be commenced within thirty days after service of the Condemnation Notice upon the landowner. **All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise.** No issues involving the condemnor's right to condemn may be heard in the trial upon the issue of just compensation.

HISTORY: 1987 Act No. 173, Section 1. (Emphasis supplied).

Landowner STOPPED the eminent domain action by initiating a separate legal proceeding establishing the lower court's lack of subject matter jurisdiction. The landowner is entitled by statute to an automatic stay of all proceedings involving compensation issues until landowner's challenge to the right to condemn is fully resolved. Right-to-take actions must be kept separate from compensation issues;

the condemnation action trying compensation issues is thus stayed until the right-to-take issue is fully resolved. See SC Code, 28-2-470.

[When the lower federal court] lack[s] jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." United States v. Corrick, 298 U. S. 435, 440 (1936) (footnotes omitted)

And see Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) ("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 remaining function to the court is that of announcing the fact and dismissing the cause." (citing Ex parte McCordle, 7 Wall. 506, 74 U.S. 506, 514, 19 L.Ed. 264 (1869))); United States v. Corrick, 298 U.S. 435, 440, 56 S.Ct. 829, 80 L.Ed. 1263 (1936) (when the lower court lacks jurisdiction, "we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.").

And See Mansfield C. & L. M. R. Co. v. Swan, 111 U. S. 379, 382 (1884):

"[T]he rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise 547*547 of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. 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." Accord, Chicago, B. & Q. R. Co. v. Willard, 220 U. S. 413, 419 (1911); Kentucky v. Powers, 201 U. S. 1, 35-36 (1906); Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 449, 453 (1900). See Thomson v. Gaskill, 315 U. S. 442, 446 (1942).

The Court of Appeals must examine the existence or lack thereof of subject matter jurisdiction in the trial court, and then determine for itself its own foundation for subject matter jurisdiction, if indeed it does exist. The appellate court has a duty to correct the error of the trial court in entertaining Dominion's Notice of Condemnation. The Court of Appeals does not have the right to entertain jurisdiction over the merits, but does have the duty to end the lower court's unconstitutional and illegal exercise of powers with which it has never been vested by the legislature.

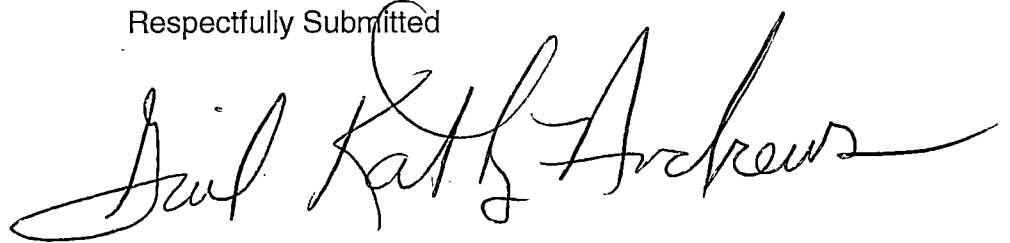
For the appellate court to do nothing more than to state summarily that the trial court order dismissing a landowner's challenge to subject matter jurisdiction is not immediately appealable is to ignore existing precedent on this question, without explanation, and to beg the question as to whether this order is the last order in a right-to-take challenge. Appeal would then be taken from a final order.

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Furthermore, landowner's Motion in Support of her Notice of Appeal was sent to the Court on December 23, 2022. The Court claims that this motion was not received until December 28, and that its order dismissing the appeal was written on December 20, 2022, two days before the appeal was timely briefed and submitted to the Court. The Court had a duty to receive the brief in support before it went forward with dismissing the appeal.

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*. Objections to the constitutional sufficiency of process have been made with great specificity by the Landowner. A forgery by condemnor 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.

Respectfully Submitted

A handwritten signature in black ink that reads "Paul Kathy Andrews". The signature is written in a cursive, flowing style with a large initial "P" and "A".

CERTIFIED MAIL



7022 2410 0000 2923 9326

FROM: *Carl Kathy Andrews*
mailing address: *307 Byrd Ave South*
Northville Beach, SC 29582
Property: 2398 Willow Gate Rd
Pamplico, SC 29583

POSTAGE PAID
MAIL PERMIT NO. 23
NORTHVILLE BEACH, SC
\$8.93
RZ0000380001-3
RZ00 38
RZ00 38
RZ00 38

TO: *South Carolina Court of Appeals*
1220 Senate Street
P.O. Box 811639
Columbia, SC 29211

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Utility Mailer
10 1/2" x 16"

Ready Post

January 9, 2023

Dominion Energy South Carolina Respondent

v

Kathy Andrews g/k/a Gail K. Andrews Appellant

And

Bank of America, NA, National Banking Association, Other Condemnee.

Case 2022-001767

I Kathy Andrews g/k/a Gail K Andrews certify that I have served the Notice of Appel on Dominion Energy by depositing a copy of it in the US Mail, certified and postage prepaid, on January 9, 2023 addressed to their attorney of record Jessica Crowson at Rogers Lewis Jackson Mann & Quinn, LLC, PO Box 11803, Columbia, SC 29211-1803

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