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**Feb 10 2023**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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APPEAL FROM GREENVILLE COUNTY  
Master in Equity

Charles B. Simmons., Circuit Court Judge

Common Pleas Case No. 2020-CP-23-02623

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Appellate Case No. 2021-000532

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SHERRY A. LEE,

*Respondent,*

v.

LIGHT RX GREENVILLE,

*Appellant.*

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**PETITION FOR REHEARING**

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Devon Marc Puriefoy (#102097)  
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## INTRODUCTION

This Court issued its Opinion on or about February 1, 2023, affirming the master in equity's imposition of sanctions against Appellant. The Court found that Appellant failed to raise the question of whether the master improperly imposed criminal, rather than civil, sanctions with the lower court, and was therefore procedurally barred from challenging the same for the first time on appeal.

Appellant petitions the Court for rehearing on the question of whether the master's imposition of criminal sanctions is a challenge to subject matter jurisdiction.

## ARGUMENT

### **A. The lower Court's Order for criminal sanctions raises a question of subject matter jurisdiction which can be raised for the first time on appeal.**

On or about February 1, 2023 this Court issued an unpublished Opinion finding that Appellant's appeal was procedurally barred pursuant to Rule 220(b), SCACR, due to the Court's determination that Appellant challenged the master's imposition of criminal, rather than civil, sanctions for the first time on appeal. [Feb. 1, 2023 Opinion].

It is well settled that unlike other challenges to a lower court's findings and rulings, "lack of subject matter jurisdiction may be raised at any time and may be raised for the first time on appeal." *Gantt v. Selph*, 423 S.C. 333, 338, 814 S.E.2d 523, 526 (2018).

The jurisdiction of the master is conveyed upon it by reference from the circuit court. S.C. Code Ann. § 14-11-10 *et seq.* "The jurisdiction of the Court of Common Pleas is defined in Section 15 of Article IV of the Constitution as follows: "The Court of Common Pleas shall have exclusive jurisdiction in all civil cases..." *Burge v. Willis*, 5 S.C. 212, 213 (1874).

Unlike civil contempt which must be shown by clear and convincing evidence, criminal contempt in this state must be shown beyond a reasonable doubt. *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment may be triggered in criminal contempt proceedings. A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration may be imposed. *Curlee v. Howle*, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982). Although the contempt power is inherent and essential to the preservation of orderly proceedings, it is not unbounded; the power of contempt is checked by the sacrosanct right to be tried by a jury of one's peers. Article III, Section 2, of the United States Constitution provides: "The trial of all Crimes, except in Cases of Impeachment, shall be by Jury...." The right to a jury trial is amplified by the Sixth Amendment, which reads, in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...." *State v. Passmore*, 363 S.C. 568, 572, 611 S.E.2d 273, 275 (Ct. App. 2005).

While the underlying matter was in fact civil, the master's imposition of a criminal sanction, which entitled Appellant to a criminal jury trial, falls beyond the subject matter jurisdiction of the master, as was therefore improper.

### **Conclusion**

This Court should vacate the sanction below for violation of Appellant's constitutional rights and remand with an instruction for Respondent to name the appropriate defendant.

Dated this 10<sup>th</sup> day of February, 2023.

\*\*\*Signature on following page\*\*\*

LIGHT RX GREENVILLE

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**CERTIFICATE OF SERVICE**

I, Devon M. Puriefoy, certify on this date, February 10, 2023 a copy of Appellant's Petition for Rehearing, was served on the Sherry A. Lee, Respondent, via U.S. Postal Service mail, addresses as follows:

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