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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

W. Haigh Porter, Master in Equity

Case No. 2021-CP-210-00966

Dominion Energy South Carolina Inc. — Respondent,

v.

Gail Kathy Andrews — Appellant Pro Se

BRIEF OF APPELLANT PRO SE

Gail Kathy Andrews appeals from the orders of W. Haigh Porter dated December 1, 2021 and April 6, 2023.

Dated: 2023

s/ Gail Kathy Andrews

307 32nd Avenue South
North Myrtle Beach, SC 29582

Gail Kathy Andrews May 8, 2023

Statement of the Case

Landowner/Appellant Pro Se Kathy Andrews filed a Motion to Dismiss in her challenge to Dominion's right-to-take 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 in the right-to-take action. Use of forgery is not a constitutionally sufficient method of notice and service. Appellant's Motion to Dismiss in her challenge to Dominion's right-to-take was denied by the lower court. An appeal followed. The Court of Appeals ruled that there could be no immediate or interlocutory appeal of the denial of the motion to dismiss. The trial court judge then wrote an order ending the right-to-take action and scheduling a trial of compensation issues. This appeal has followed the trial court's final order ending the right-to-take challenge.

INTRODUCTION

Appellant believes that the Court of Appeals should investigate and explain anomalies in its own and 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 announce appealable events, 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.

IV. Did the trial court err and violate South Carolina's Eminent Domain Procedure Act, Section 28-2-470, by attempting to merge the right-to-take challenge with condemnation proceedings?

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. This is also a challenge to Dominion's right-to-take her property.

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.

II. 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 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.

III. 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, <u>because no service on Andrews by certified mail ever took place</u>. 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 cared 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 ccondemnation 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.

IV. The Court of Appeals stated in its Order that no immediate appeal could be taken from the underlying trial court order. The SC State Supreme Court has very ambiguously held that a challenge to a court's subject matter jurisdiction should not be immediately presented. In so holding, it overruled *Botany Bay Marina v. Townsend* 296 SC 330 (1988); Simms v. *Phillips*, 46 S.C. 149 (1896); *Carter v. Florentine Corp.*, 310 S.C. 228 (1992). And in so doing, the Supreme Court created a very murky area of the law, because in *Woodard (*1995), they did not decide whether the appeal in question actually involved a question of subject matter jurisdiction. However, they did decide that the issue raised by the motion can be raised again at a later stage

of the proceedings. In *Duncan v. Provident Mutual Life Insurance Co.*, _____SC_____(1993), the Court reversed the denial of a motion to dismiss for lack of subject matter jurisdiction, without discussing the issue of immediate appealability. Given this background, Landowner argues that the challenge to subject matter jurisdiction is now properly before the Court of Appeals. See *McLendon v. South Carolina Dep't of Highways and Pub. Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994) (". . like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue can be raised again at a later stage of the proceedings.") Furthermore, lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. *Ex parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993); *Hallums v. Bowens*, ___ S.C. ___, 428 S.E.2d 894 (Ct.App.1993).

Because the appeal has been characterized as interlocutory, it can still be presented after the final order in the right-to-take action has been written. According to the laws of South Carolina, SC Eminent Domain Procedure Act, SC Code Ann. &28-2-470, right-to-take issues must be kept separate from compensation issues. The condemnation action is stayed until the right-to-take issue is resolved unless both parties agree otherwise. For purposes of appellate review, the right-to-take action has yet to be resolved. Landowner is guaranteed an appeal as of right on the merits, and has the right to file it after the final order in the right- to- take action has been written by the trial court judge.

After the order of April 6, 2023, was written, no notice was ever given to landowner that an appealable event had taken place, and no briefing schedule has been given to landowner by the Court of Appeals. These are rights guaranteed to her by the Due Process Clause of the U.S. Constitution. A final order has been written by the trial court judge, who is attempting to merge the right-to-take action with

the condemnation trial. This is a gross violation of the SC Eminent Domain Procedure Act. It should not be countenanced by this Court.

For all of these reasons, the trial court orders of December 1, 2022, and April 6, 2023, should be reversed.

The order of April 6, 2023, which states that jurisdiction was returned to him by the Court of Appeals and ending the right- to- take action by scheduling the commencement of a compensation action is a final order in the right- to- take action and as such it can be appealed.

Respectfully Submitted,

Gail Kathy Andrews, Appellant Pro Se

Dated: May 8, 2023

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Dominion Energy South Carolina, Inc Respondent,

v.

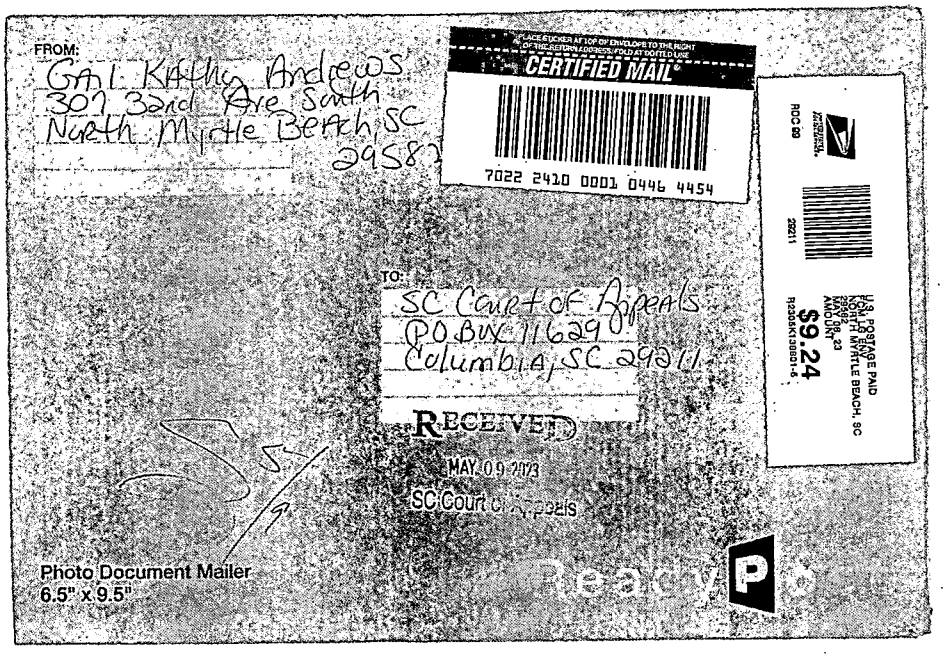
Gail Kathy Andrews Appellant. Pro Se

PROOF OF SERVICE

I certify that I have served the Brief of Appellant Pro Se on Dominion Energy by depositing a certified copy of it in the United States Mail, postage prepaid, on May _____, 2023, addressed to Dominion's attorneyof record, Jessica Clancy Crowson, 1901 Main Street, Suite 1200, Columbia, SC 29211, Attorney for Condemnor.

s/_____
Gail Kathy Andrews
Appellant Pro Se
621 6th Avenue South Unit 4455
North Myrtle Beach SC 29597

Gail Kathy Andrews
May 8, 2023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