

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, Master in Equity

Civil Action No. 2007-CP-07-3212
Appellate Case No. 2013-00647

H. Marshall Hoyler Appellant,

v.

The State of South Carolina and Merry Land Properties, LLC, . . Defendants/ Respondents,

And, Nancy Deering Carey, Trustee, etc and Spanish Point
Personal Residence, LLC, etc.Intervenors/ Respondents.

**REPLY OF STATE TO
APPELLANT'S RETURN TO MOTIONS TO DISMISS APPEAL**

Appellant contends that he did not previously raise lack of subject matter jurisdiction, that lack of subject matter jurisdiction may be raised at any time, and that, as a result, this appeal and his previous appeal are not the same. Appellant raised the same substantive issues in his earlier appeal regarding the limitations he believes are imposed by S.C. Code Ann. §48-39-220, but now seeks, on appeal, to argue that the limitations deprive the Court of subject matter jurisdiction.

Appellant misses the point of the State's Motion to Dismiss and this Court's previous orders. The Order denying the Motion to Reconsider which is the subject of

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the instant appeal is essentially the same as the 2011 Order that this Court previously determined could not be immediately appealed. His raising lack of subject matter jurisdiction on appeal does not change the nature of order being appealed. Although lack of subject matter jurisdiction may be raised at any time, it does not, itself, make an order immediately appealable. *Deskins v. Boltin*, 319 S.C. 356, 357, 461 S.E.2d 395, 396 (1995) (“the denial of a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable.”) Accordingly, Appellant’s raising lack of subject matter jurisdiction now, does not make the Order at issue immediately appealable including that part of the Order granting the Motion to Intervene.

This appeal is not permissible, and it should be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General

J. EMORY SMITH, JR.
Deputy Solicitor General

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By: 
ATTORNEYS FOR THE STATE OF SOUTH
CAROLINA

June 13, 2013

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Personal Residence, LLC, etc. Intervenor/ Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the State's Reply to Return to Motion to Dismiss by
mailing copies to counsel for the other parties at the addresses below via the United States

Mail this June 13, 2013:

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June 13, 2013
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A handwritten signature in black ink, appearing to be "J. Emory Smith, Jr.", written over a horizontal line.

J. Emory Smith, Jr.
Deputy Solicitor General



ALAN WILSON
ATTORNEY GENERAL

June 13, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
HAND DELIVERY

Re: Hoyler v. State of SC, et al et al 2013-000647
Motion to Dismiss Appeal

Dear Ms. Kitchings:

Enclosed for filing with your Office are the original and six copies of the State of South Carolina's Reply to Return to Motion to Dismiss Appeal together with a certificate of service. Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for the State

cc: Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
Mary D. Shahid, Esquire

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