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**Nov 18 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Magistrate Court

The Honorable Benjamin F. Byrd, Magistrate Court Judge  
The Honorable Kristi F. Curtis, Circuit Court Judge

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Case No. 2024-001566

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Emily Major,

Appellant,

v.

James Major,

Respondent.

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**INITIAL BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT ERR IN FINDING THE FAMILY COURT, RATHER THAN THE MAGISTRATE COURT, HAD SUBJECT MATTER JURISDICTION OVER THIS CASE?

## STATEMENT OF THE CASE

Appellant Emily Major and Respondent James Major are husband and wife, having been married on June 31, 2019 in Lexington County. They have one child in common, J.M., who is three years old. The parties separated in March of 2021, and they have lived separate and apart without cohabitation since that time.

On or about May 5, 2023, Appellant filed a Complaint and Motion for a Restraining Order (Harassment and Stalking) in the Magistrate Court for Richland County pursuant to S.C. Code Ann. § 16-3-1750 (1995, as amended). In that Complaint and Motion, Appellant alleged that she was receiving emails, letters, and unwanted gifts every day from the Respondent, and she stated she was in fear for her safety and her son's safety. (Complaint and Motion). A hearing was scheduled for May 15, 2023 via WebEx, but was continued at the request of the Attorney for Respondent James Major over the objection of Appellant's Attorney. The hearing was rescheduled for June 1, 2023 at which time the Honorable Benjamin F. Boyd dismissed the case finding it was a "Family Court matter." (Order of the Magistrate). As the parties were leaving the hearing in the Magistrate Court, Respondent was arrested on charges of Harassment, 2nd degree, and Stalking, and those charges are still pending in Richland County.<sup>1</sup>

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<sup>1</sup> Respondent has been criminally charged with stalking and harassment in the second degree. *See State of South Carolina v. James Jackson Major*, Case # 2023A4011200305, Richland County General Sessions, Arrest Date: June 15, 2023 (Charge: 2nd degree harassment); *State of South Carolina v. James Jackson Major*, Case # 2023A4011200306, Richland County General Sessions, Arrest Date: June 15, 2023 (Charge: Stalking).

Appellant filed a timely Notice of Appeal to the Circuit Court. (Notice of Appeal). A hearing was held before the Honorable Kristi F. Curtis, after which she denied the appeal, finding in a Form 4 Order that the family court has exclusive jurisdiction over the matter under the Protection from Domestic Abuse Act, § 20-4-10, *et. seq.* (1984, as amended) (Form 4 Order). Specifically, Judge Curtis ruled that S.C. Code Ann. § 20-4-20(b) defined a “household member” as a spouse or former spouse and gave the family court exclusive jurisdiction over the proceedings except in narrow circumstances, which were not at issue in this case. (Form 4 Order). Thus, Judge Curtis concluded that the Protection from Domestic Abuse Act showed “clear legislative intent to give the Family Court exclusive jurisdiction over the subject matter.” (Form 4 Order). On July 8, 2024, Appellant filed a Petition for Rehearing. (Petition for Rehearing). By Order dated September 4, 2024, Judge Curtis denied the Petition for Rehearing.<sup>2</sup> (Order Denying Plaintiff’s Motion to Reconsider). This appeal followed.

### STANDARD OF REVIEW

The question of whether a Court has subject matter jurisdiction over a particular matter is a question of law for the Court. *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 353 (2022) (citations omitted). An appellate court reviews questions of law *de novo*. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (citations omitted). Thus, this court “is free to decide questions of law with no particular deference to the trial court.” *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012) (citations omitted).

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<sup>2</sup> Although Appellant filed a “Petition for Rehearing” pursuant to Rule 221, SCACR, Judge Curtis issued an “Order Denying Plaintiff’s Motion to Reconsider” pursuant to Rule 59(e), SCRPC. Judge Curtis, and not Appellant, prepared this Order.

## ARGUMENTS

### I. THE PLAIN LANGUAGE OF THE RESTRAINING ORDER STATUTE, S.C. CODE ANN. § 16-3-1750, ET. SEQ. (1995, AS AMENDED) GIVES THE MAGISTRATE COURT SUBJECT MATTER JURISDICTION OVER RESTRAINING ORDERS FOR STALKING AND HARASSMENT, REGARDLESS OF THE VICTIM'S MARITAL STATUS.

“Subject matter jurisdiction refers to the court’s power to hear and determine cases of the general class to which the proceedings in question belong.” *Bardoon Props. v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372-73 (1997). “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, 525-26 (2018).

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citations omitted). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Id.* (citations omitted). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.* (citations omitted). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” *Id.* (citations omitted).

S.C. Code Ann. § 16-3-1750 (1995, as amended), is entitled, “Action seeking a restraining order against a person engaged in harassment or stalking; jurisdiction and venue; forms; enforceability” and provides:

- (A) Pursuant to this article, the magistrates court has jurisdiction over an action seeking a restraining order ***against a person engaged in harassment in the first or second degree or stalking.***

(B) [venue provision]

(C) A complaint and motion for a restraining order may be filed by *any person*. . . .

(Emphasis added).

S.C. Code Ann. § 16-3-1830 (1995, as amended) is entitled, “Availability of other civil and criminal remedies” and provides that, “[a] proceeding commenced pursuant to this article is *in addition to other civil and criminal remedies*.” (emphasis added).

In this case, the magistrate judge implicitly found that the family court, rather than the magistrate court, had jurisdiction over this matter when he dismissed the case with an Order dismissing the case stating it was a “Family Court matter.” Despite the fact that the Appellant neither sought protections under the Protection from Domestic Abuse Act (the “Domestic Abuse Act”), S.C Code Ann. § 20-4-10, *et. seq.* (1984, as amended) nor alleged “abuse” as defined by the Domestic Abuse Act, the circuit court judge affirmed, finding the family court had exclusive jurisdiction over this case pursuant to the Domestic Abuse Act. The sole basis for this determination was because the parties are married and happen to qualify as “household members” as defined by the Domestic Abuse Act.

However, the plain and unambiguous meaning of S.C. Code Ann. § 16-3-1750 (the “Stalking/Harassment Statute”) is that *any person* that is a victim of stalking and harassment can file for and receive a Restraining Order from the magistrate court, regardless of marital status. The Stalking/Harassment Statute grants jurisdiction to the magistrate court over actions for restraining orders against “a person” engaged in harassment and stalking. The Stalking/Harassment Statute does not require any particular relationship between the parties to establish jurisdiction. The fact

that this person may happen to be in a household member relationship with the victim is not relevant to the court's exercise of jurisdiction. Further, the magistrate court's jurisdiction and authority over Stalking/Harassment Restraining Orders does not conflict with the family court's exclusive jurisdiction to hear matters set forth in S.C. Code Ann. § 63-3-530 (2008, as amended) (the statute setting forth matters over which the family court has exclusive jurisdiction), nor does it conflict with the family's court jurisdiction under the Domestic Abuse Act, because stalking and harassment behaviors are not included in the definition of "abuse" prohibited by the Domestic Abuse Act. To read otherwise would violate the rules of statutory interpretation. *See Hodges, supra*. Nothing in the Stalking/Harassment Statute sets forth a jurisdictional requirement that the parties to the action be unmarried or in a non-household member status to qualify for the Restraining Order.

The irrelevancy of the parties' relationship to the establishment of the magistrate court's jurisdiction under the Stalking/Harassment Statute is confirmed by the fact that the SC Judicial Department, Form SCCA 749 (Complaint and Motion for Restraining Order (Harassment and Stalking)) does not require the Complainant to plead any information regarding the relationship between the parties. (SCCA 749). Confirmation that household members are entitled to seek protections under the Stalking/Harassment Statute can be found in the SC Judicial Department's Form Order granting the Restraining Order, Form SCCA 751, which allows the Court to make a finding that the parties are in an intimate partner relationship, including "current or former spouse of the victim." (SCCA 751). If a married victim or other household member could not file for a Stalking/Harassment Restraining Order, that finding would be wholly unnecessary in the Order.

Additionally, the Stalking/Harassment Statute makes clear that relief under Article 17,

“Harassment and Stalking,” is *in addition to other civil and criminal remedies*. S.C. Code Ann. § 16-3-1830 (1995, as amended). The legislature was aware of the Domestic Abuse Act, which was passed in 1984, eleven years before Article 17 addressing Harassment and Stalking was enacted. If the legislature wanted to exclude actions filed by married persons in the Stalking/Harassment Statute, it could have easily done so. The legislature could have also simultaneously amended the Domestic Abuse Act to include harassment and stalking as forms of abuse between household members prohibited by the Domestic Abuse Act, but it did not choose to do so. Instead, the legislature included language in the Stalking/Harassment Statute that provides that a victim of harassment and stalking *by any other person* may seek this remedy in addition to other remedies, which may be available to the victim. Thus, the plain language of the Stalking/Harassment Statute demonstrates that the legislature did not intend to exclude “household members” or spouses from the protections of a civil Stalking/Harassment Restraining Order. *See Hodges, supra*.

**II. THE CIRCUIT COURT ERRED IN FINDING THE FAMILY COURT HAS EXCLUSIVE JURISDICTION OVER THIS CASE UNDER THE PROTECTION FROM DOMESTIC ABUSE ACT, S.C. CODE ANN. § 20-4-20, ET SEQ. (1984, AS AMENDED).**

The family court has exclusive jurisdiction over actions arising under the Domestic Abuse Act except that a movant may file with a magistrate during nonbusiness hours or when the court is not in session. S.C. Code Ann. § 20-4-30 (1984, as amended) and S.C. Code Ann. § 63-3-530(35) (2008, as amended). Under the Domestic Abuse Act, a “household member” may petition for an Order of Protection, and in the petition, the “household member” must allege a specific instance of “abuse.” S.C. Code Ann. § 20-4-40 (1984, as amended). A “household member” means a spouse,

a former spouse, persons who have a child in common, or a male and female<sup>3</sup> who are cohabitating or formerly have cohabited. S.C. Code Ann. § 20-4-20(b) (1984, as amended). Abuse is specifically defined as “physical harm, bodily injury, assault, or the threat of physical harm” and “sexual criminal offenses.” S.C. Code Ann. § 20-4-20(1) (1984, as amended).

Although Appellant and Respondent in this case happen to be “household members” as defined by the Domestic Abuse Act because they are spouses, the acts complained of do not qualify as “abuse” and the Appellant did not seek any remedies or protections under the Domestic Abuse Act or any other remedies exclusively under the jurisdiction of the family court. Specifically, in her Complaint, Appellant alleged that she was receiving emails, letters, and unwanted gifts every day from the Respondent, and she stated she was in fear for her safety and her son’s safety. Nowhere in her Complaint did she allege “physical harm, bodily injury, assault, or the threat of physical harm” or “sexual criminal offenses.” Although Appellant may fear that “abuse” will occur in the future, because that “abuse” has not yet occurred, she does not qualify for an Order of Protection. However, Respondent has criminal charges pending for Stalking and Harassment, 2nd degree, offenses which place Appellant’s case directly within the jurisdictional purview of the magistrate court under the Stalking/Harassment Statute.

Under the lower court’s ruling – that a “household member” cannot file for a Restraining Order in the Magistrate Court – no spouse, no former spouse, no persons who have a child in common, and no persons who are cohabitating or formerly have cohabited would be entitled to a Stalking/Harassment Restraining Order. This interpretation of the statute severely limits the people who qualify for a Restraining Order. Instead of providing a necessary protective remedy, the

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<sup>3</sup> See *Jane Doe v. State of South Carolina*, 421 S.C. 490, 808 S.E.2d 807 (2017)(confirming the that the statute protects cohabitating and formerly cohabitating persons of the same sex).

remedy is being strictly circumscribed. It is difficult to believe that the legislature intended to exclude these victims of stalking and harassment from the protections of the Stalking/Harassment Restraining Order.

Further, there is no statutory support for a ruling that the family court has exclusive jurisdiction over actions to obtain a Restraining Order from stalking and harassment. The terms stalking and harassment are not mentioned in the Domestic Abuse Act and, as previously noted, were not included by the legislature as acts constituting “abuse.” Thus, Appellant asks this Court to reverse the lower court and remand for a hearing on her Complaint and Motion for a Restraining Order.

**III. IF A MARRIED PERSON CANNOT SEEK A RESTRAINING ORDER UNDER THE STALKING/HARASSMENT STATUTE DUE TO HIS/HER MARITAL OR “HOUSEHOLD MEMBER” STATUS, THE STATUTE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.**

The Equal Protection Clause of the United States Constitution provides that no State shall make any laws which deny to any person within its jurisdiction the equal protection of the laws. The Equal Protection Clause denies states “the power to legislate that different treatment be accorded to persons placed by statute into different classes based on criteria wholly unrelated to the objective of the statute.” *Eisenstadt v. Baird*, 405 U.S. 438, 446 (1972). “A classification ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the objection of the legislation, so that all persons similarly circumstanced shall be treated alike.’ *Id.* (citations omitted).

If the Stalking/Harassment Statute is interpreted to allow only unmarried persons or non-household members to file for Restraining Orders for stalking and harassment, and the family court

does not provide the same remedy for married persons or persons who qualify as “household members,” then the Stalking/Harassment Statute violates the Equal Protection Clause because there is no reasonable explanation for excluding married victims from obtaining protection for stalking and harassment. The result of such an interpretation is absurd and denies married victims and “household members” equal protection of the law. Accordingly, Appellant asks the Court to reverse the lower court and remand for a hearing on her Complaint and Motion for a Restraining Order.

**IV. IF THE COURT AFFIRMS THE LOWER COURTS’ RULINGS, APPELLANT IS LEFT WITHOUT A REMEDY**

The jurisdictional conundrum created by the statutory interpretation in this case – that the family court, rather than magistrate court, has exclusive jurisdiction to issue Restraining Orders in cases of stalking and harassment involving married couples – creates a dangerous and sometimes deadly ping-pong effect between the two courts and deprives victims of protective remedies. This ping-pong effect between the family court and the magistrate court was at issue in the case of Taylor McFadden Robinson who was killed by her husband after being denied both a Restraining Order and an Order of Protection. See <https://wpde.com/news/local/court-transcripts-released-florence-woman-denied-order-protection-taylor-mcfadden-robinson-realtor-march-9-2022>

(last visited November 10, 2024). The full transcript from Robinson’s Order of Protection Hearing is attached to and referenced in the article, in which she states,

The -- the only -- the only reason that I’m asking maybe for an order of protection -- I was trying to do a restraining order. They said whenever you’re married, or, you know, it’s like a spouse or something, you have to do an -- you know, the order of protection. The only reason I’m doing that is because that’s the second time he’s followed me. My door has gotten damaged twice. He does not

repair my doors. He tries to kick my door in anytime that he feels like. . . .

To which Family Court Judge responded,

I understand that , ma'am, but I don't see where it has risen to this Court to issue an order of protection. You can certainly get your lawyer to file the appropriate paperwork to ask for a restraining order against him, but at this point in time I am not going to issue an order of protection.

*(McFadden-Robinson v. Robinson, Jr., 2021-DR-21-246, trans.p.15, line 21-p.16, line 18).*

Similarly in this case, Appellant would likely not be granted an Order of Protection. In fact, based on the narrow interpretation that most Family Court judges give to the Domestic Abuse Act, it is unlikely that an attorney would advise Appellant to seek such relief. However, Respondent has been charged with Harassment (2nd degree) and Stalking, both offenses which clearly entitle Appellant to a Restraining Order under the Stalking/Harassment Statute. However, due to the result of this case, Appellant is left without that remedy. It is clear that the Bench and Bar need clarification on the jurisdictional authority of the magistrate court to issue Restraining Orders for stalking and harassment to married victims and "household members." If married victims and "household members" are not entitled to the protections afforded by the magistrate court, additional advocacy must ensue to modify the definition of "abuse" under the Domestic Abuse Act to include stalking and harassment.

### **CONCLUSION**

For the reasons stated, this Court should reverse the lower court and remand for a hearing on Appellant's Complaint and Motion for a Restraining Order.

November 17, 2024

Respectfully submitted,

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