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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Magistrate Court

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

Case No. 2024-001566

James Major,

Respondent,

v.

Emily Major,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT ERR IN FINDING THE FAMILY COURT HAD SUBJECT MATTER JURISDICTION IN THIS CASE?

STATEMENT OF THE CASE

Appellant, Emily Major, filed a Complaint and Motion for a Restraining Order on May 5, 2023, in Richland County Magistrate Court.¹ The restraining order was filed pursuant to S.C. Code Ann. § 16-3-1750.² In the Motion for a Restraining Order the Appellant alleged that she was receiving “unwanted letters, emails, and gifts,” as well as “rape threats,” and that she was “in fear for her safety and son’s safety.”³ On June 15, 2023, the case was heard by the Honorable Benjamin F. Byrd, and on June 16, 2023, he filed a Return outlining his ruling which dismissed this case and concluded that this was a “Family Court matter.”⁴ The matter was appealed to the Circuit Court and heard by the Honorable Kristi F. Curtis. Judge Curtis affirmed the magistrate’s decision and held that S.C. Code Ann. § 20-4-10 et seq. gave the family court exclusive jurisdiction over the matter.⁵ The Appellant filed a Motion to Reconsider, and Judge Curtis denied the motion.⁶ The case is now before this court.

STANDARD OF REVIEW

¹ Compl. and Mot. For Restraining Order, Emily Major v. James Major (2023) (No. 2023OR4010500079).

² *Id.*

³ *Id.* at 1.

⁴ Judicial Return at 1, Emily Major v. James Major (2023) (No. 2023OR40105500079).

⁵ Judgment in a Civil Case at 1, Emily Major v. James Major (2024) (No. 2023CP4003612).

⁶ Order Denying Motion to Reconsider, Emily Major v. James Major (2024) (No. 2023CP4003612).

The question of subject matter jurisdiction and whether a court has the power to hear a particular case is a question of law.⁷ “Questions of law involving subject matter jurisdiction and statutory interpretation are reviewed de novo, without deference to the lower courts.”⁸

FACTS

The Appellant, Emily Major, and Respondent, James Major, are currently married. They were married on June 31, 2019. They have one three-year-old child in common. The parties have been living separate and apart since March of 2021. On or about April 12, 2023, the Appellant, Emily Major, filed for Divorce in the Lexington County Family Court, case number 2023DR3200706.⁹ On or about, May 12, 2023, prior to being served, Respondent, James Major filed for divorce in Lexington County Family Court, case number 2023DR3200952.¹⁰ These cases were combined with the Appellant’s case taking priority since it was filed first. Neither party filed for an expedited or emergency hearing to seek a restraining order. The Appellant did not file for an Order of Protection.

Prior to going to the first temporary hearing in the Lexington County Family Court, the Appellant filed a Complaint and Motion for a Restraining Order on May 5, 2023, in Richland County Magistrate Court.¹¹ The restraining order was filed pursuant to S.C. Code Ann. § 16-3-1750.¹² In the Motion for a Restraining Order the Appellant alleged that she was receiving “unwanted letters, emails, and gifts,” as well as “rape threats,” and that she was “in fear for her

⁷ *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 353 (2022).

⁸ *Id.*

⁹ Summons and Complaint, Emily Major v. James Major (2023) (No. 2023DR3200706).

¹⁰ Summons and Complaint, James Major v. Emily Major (2023) (No. 2023DR3200952).

¹¹ Compl. and Mot. For Restraining Order, Emily Major v. James Major (2023) (No. 2023OR4010500079).

¹² *Id.*

safety and son's safety."¹³ This case was dismissed by Richland County Magistrate Judge Byrd.

A Temporary Hearing was held on August 24, 2023, by the Honorable W. Greg Seigler. The Appellant and Respondent plead several issues including the issue of restraining orders against the Respondent. The temporary order addressed temporary child custody, visitation, and child support; the Court did not issue any restraining order against the Respondent.¹⁴ The Temporary Order was clocked on September 8, 2024, no motion was filed by the Appellant to reconsider the issue of the restraining orders in the Family Court.¹⁵

Eventually, the Family Court case was dismissed on May 15, 2024, pursuant to the 365 Rule.¹⁶ The Appellant made a Motion to Vacate that order, but then withdrew the motion prior to hearing. Respondent still pays child support, goes to visitations, and is trying to maintain a relationship with his son.

At the conclusion of the restraining order hearing on or about, June 15, 2024, the Respondent was arrested, by the Richland County Sheriff's Office, for stalking and harassing charges based upon the allegations made by the Appellant in this Appeal. However, those charges are still pending, and no trial has been scheduled. Subsequently, this Appeal followed.

¹³ *Id.* at 1.

¹⁴ Temporary Order, Emily Major v. James Major (2023) (No. 2023DR3200706).

¹⁵ *Id.*

¹⁶ Order of Dismissal, Emily Major v. James Major (2023) (No. 2023DR3200706).

ARGUMENTS

- I. UNDER THE PLAIN LANGUAGE OF S.C. CODE ANN. § 16-3-1700 ET SEQ., A SPOUSE CANNOT BE CHARGED OR CONVICTED OF STALKING OR HARASSING A CURRENT SPOUSE. MOREOVER, A RESTRAINING ORDER UNDER THIS STATUTE CANNOT BE ISSUED BETWEEN CURRENT SPOUSES.

Under S.C. Code Ann. § 16-3-1700(A) “Harassment in the first degree means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress.”¹⁷ Under S.C. Code Ann. § 16-3-1700(B) “Harassment in the second degree means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress.”¹⁸ Under S.C. Code Ann. § 16-3-1700(C) “Stalking means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear.”¹⁹

Without orders from the family court, either ordering terms of separation, or a final divorce decree, spouses cannot stalk or harass the other spouse. Generally, when two people are still married one cannot intrude into the “private life” of another spouse. When there is no order dividing property, child custody, splitting assets, or resolving other issues, then the spouses are still considered married and as such share property, assets, child custody etc.... Therefore, between

¹⁷ S.C. Code Ann. § 16-3-1700(A) (1995 as amended).

¹⁸ S.C. Code Ann. § 16-3-1700(B) (1995 as amended).

¹⁹ S.C. Code Ann. § 16-3-1700(C) (1995 as amended).

spouses there is not much of a “private life” to intrude upon. Furthermore, in this case most of the communication directed at the Appellant has served a “legitimate purpose.” The Respondent intended to check on the wellbeing of his son as well as ask if anything is needed. The Respondent is also concerned about the wellbeing of Appellant, and has been encouraging her to seek help, especially since she is the primary caregiver of his child.

Generally, spouses share many aspects of life, and it would be hard to prove that a spouse was intruding on the “private life” of another spouse. Furthermore, most communication between spouses serves a “legitimate purpose.” Therefore, under the plain language of the S.C. Code Ann. § 16-3-1700 et seq., a spouse cannot by definition stalk or harass another current spouse, absent clear or final orders from family court allowing the parties to live separate and apart, restraining the parties during the course of litigation, or a final order of divorce.

II. THE FAMILY COURT HAS EXCLUSIVE JURISDICTION OVER THIS CASE UNDER S.C. CODE ANN. § 63-3-530(A)(35), S.C. CODE ANN. 20-4-30(A), AND OR IN THE ALTERNATIVE S.C. CODE ANN. § 63-3-530(A)(18-19).

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.”²⁰ “In other words, subject-matter jurisdiction refers to a court's constitutional or statutory power to adjudicate a case.”²¹ “The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction.”²² The South Carolina Supreme Court has continuously found that the jurisdictional authority of the family court is set forth by the Children’s Code.²³ S.C. Code Ann. § 63-3-530(A) states that the family court has exclusive

²⁰ *Seels v. Smalls*, 437 S.C. 167, 171, 877 S.E.2d 351, 353 (2022).

²¹ *Kosciusko v. Parham*, 428 S.C. 481, 492, 836 S.E.2d 362, 368 (Ct. App. 2019).

²² *Id.*

²³ *Id.* at 493. *See also*, S.C. Code Ann. § 63-3-530(A)(35) (2008, as amended).

jurisdiction over a list specified matters.²⁴ More Specifically, S.C. Code Ann. § 63-3-530(A)(18) grants the family court exclusive jurisdiction “to make an order for support of a husband or wife and children by his or her spouse, even though he or she may have left the home, in cases where the spouse's conduct or condition or his or her cruel or inhuman behavior made it unsafe or improper for the deserting spouse to continue to live with him or her. Such orders may require either spouse or any other party to the proceeding: (a) **to stay away from the home or from the other or either spouse or children**; (b) to permit either spouse to visit the children at stated periods; (c) to **abstain from offensive conduct against the other spouse or either of them**, or against the children; (d) to give proper attention to the care of the home; (e) to **refrain from acts of commission or omission that tend to make the home not a proper place for the other**, or either spouse, or the children.”²⁵ Also, S.C. Code Ann. § 63-3-530(A)(35) gives the family court exclusive jurisdiction “to hear and determine actions for protection from domestic abuse.”²⁶ Furthermore, the Protection from Domestic Abuse Act provides the family court with jurisdiction “over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate.”²⁷

In this case, the Appellant filed a Motion for a Restraining Order against her spouse, Respondent, on May 5, 2023, in Richland County Magistrate Court. As stated, the family court has exclusive jurisdiction over “domestic matters” including orders to stay away from the home or from the other or either spouse or children and actions for protection from domestic abuse.²⁸ The Appellant

²⁴ See, S.C. Code Ann. § 63-3-530(A).

²⁵ S.C. Code Ann. § 63-3-530(A)(18).

²⁶ S.C. Code Ann. § 63-3-530(A)(35).

²⁷ S.C. Code Ann. § 20-4-30(A) (1984, as amended).

²⁸ S.C. Code Ann. § 63-3-530(A) (18-19,35). See also, S.C. Code Ann. § 20-4-30(A).

argues that because the actions complained about in the Motion for a Restraining Order do not allege “abuse” relief was not sought under The Protection from Domestic Abuse Act. The Protection from Domestic Abuse Act defines abuse as “physical harm, bodily injury, assault, or the threat of physical harm.”²⁹ Considering the Respondent and Appellant are spouses, and the Appellant is claiming that she has received “rape threats” and “is in fear for her safety and her son’s safety,” the matter clearly falls within the purview of S.C. Code Ann. § 63-3-530(A)(35) and S.C. Code Ann. § 20-4-30(A), which grants the family court exclusive jurisdiction over the matter.³⁰

Furthermore, even if the Appellant is not alleging “abuse” the protections sought after still fall within the exclusive jurisdiction of the family court under S.C. Code Ann. § 63-3-530(A) (18-19), which grant the family court exclusive jurisdiction to make orders “(a) to stay away from the home or from the other or either spouse or children; (b) to permit either spouse to visit the children at stated periods; (c) to abstain from offensive conduct against the other spouse or either of them, or against the children; (d) to give proper attention to the care of the home; (e) to refrain from acts of commission or omission that tend to make the home not a proper place for the other, or either spouse, or the children.”³¹ Clearly, the Appellant is requesting the court to order the Respondent to stay away from the home or Appellant, and refrain from certain conduct, which again falls within the jurisdiction of the family court not the magistrate court.

The Appellant could have appropriately filed for a temporary order of protection in magistrate court, but only during non-business hours of the family court.³² On May 5, 2023, around three o’clock

²⁹ S.C. Code Ann, § 20-4-20(a) (1984 as amended).

³⁰ *See*, Compl. and Mot. For Restraining Order at 1, Emily Major v. James Major (2023) (No. 2023OR4010500079). *See also*, S.C. Code Ann. § 20-4-30(A).

³¹ S.C. Code Ann. § 63-3-530(A)(18).

³² S.C. Code Ann. § 20-4-30(A).

p.m., when the Appellant filed the Motion for a Restraining Order, there were several family court judges holding court including but not limited to; Judge Crouch, Judge Frierson-Smith, Judge Hurley, Judge Jones, Judge Kimmons, Judge Newton, and Judge Pincus.³³ Clearly, the family court was operating and open for the Appellant to file for an order of protection. Furthermore, the Appellant could have filed an order of protection in family court any time after the dismissals of Judge Boyd or Judge Curtis, but the appellant failed to follow up with the case in family court. The Appellant did not file for emergency or expedited relief in the family court. In fact, when this matter came before the court for a temporary hearing on August 24, 2023, the Family Court did not issue any restraining orders. The Appellant did not file any motion to reconsider the Court's denial of the request for restraining orders in the Family Court.

The Appellant argues that the lower courts decision precludes any "household member" from filing for a restraining order under S.C. Code Ann. § 16-3-1750. When the statutes are read in harmony, that is not the case. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. The plain language of a statute is the best evidence of the legislature's intent. It is also a long-standing principle of statutory analysis that the implied repeal of statutes is not favored. Rather, statutes touching upon the same subject matter must be read in harmony to give effect to each whenever possible, as it is presumed that the legislature is familiar with prior legislation and, if it intended to repeal an existing law, it would expressly do so. The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded."³⁴ When the statutes are read together and with legislative purpose in mind it is clear that

³³ See, South Carolina Family Court Calendar.

³⁴ *Seels v. Smalls*, 437 S.C. 167, 176-177, 877 S.E.2d 351, 356 (2022).

“household members” may still file for restraining orders under S.C. Code Ann. § 16-3-1750 as long as it does not interfere with the jurisdiction of the family court. For example, if the ex-spouses had a temporary order in place requiring one spouse to stay away from the other, or were divorced, and one ex-spouse was stalking or harassing the other beyond the communication required by family court orders, then the magistrate court could issue a restraining order with the family court orders in mind.

However, in this case, the family court has not yet determined the issues of marital property division, child custody, or any other rights or obligations that could be affected by the issuance of a restraining order. It is paramount that the family court determines the issues involved before the Respondent is deprived of his rights to marital assets, marital property, child custody, visitation, etc.... by the issuance of a restraining order. Surely, the legislature did not intend to allow spouses to circumvent family court and be able to restrict a spouse from their home, their ability to communicate with their children, their ability to see their children, and so much more just by way of a restraining order issued by the magistrate court. Furthermore, it is logical to assume that a certain amount of communication and visitation is required between spouses or ex-spouses when children are involved. When spouses, ex-spouses, or other “household members” are involved the magistrate court may issue a restraining order under S.C. Code Ann. § 16-3-1750, but the court must give deference to any family court orders. In this case, the family court has not issued any specific orders or final decrees. Therefore, the magistrate court must submit to the family court’s jurisdiction in this particular case to protect the rights of the parties involved.

III. THE SOUTH CAROLINA STATUTES GRANTING THE FAMILY COURT JURISDICTION OVER THIS CASE DO NOT VIOLATE THE EQUAL PROTECTION CLAUSE BECAUSE THE CLASSIFICATION OF A MARRIED OR UNMARRIED

PERSON IS REASONABLY RELATED TO THE LEGISLATIVE PURPOSE.

“Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny.”³⁵ “If the classification does not implicate a suspect class or abridge a fundamental right, the rational basis test is used.”³⁶ “Under the rational basis test, the requirements of equal protection are satisfied when: (1) the classification bears a reasonable relation to the legislative purpose sought to be affected; (2) the members of the class are treated alike under similar circumstances and conditions; and, (3) the classification rests on some reasonable basis.”³⁷

The classification of married or unmarried is not a suspect or quasi-suspect class like race or gender. Law in general has made the distinction between married and unmarried people for centuries for the purposes of property rights, property division, child custody, alimony, etc....For example, under S.C. Code Ann. § 16-25-20 et seq., a spouse that harms another spouse is charged with domestic violence rather than assault and battery, which carries larger penalties.³⁸ Also, in *Mcleod v. Starnes* the divorced non-custodial parent was ordered to contribute to college expenses.³⁹ Moreover, the family court is divested with exclusive jurisdiction over “domestic matters” because it is more equipped to handling disputes between married people and all the factors involved in such disputes. In this case, the Appellant is asking for the Magistrate Court to issue a restraining order against her current spouse. The restraining order, if issued, would directly affect the Respondent’s rights to marital property, child custody and visitation, parental rights, etc.... The statutes giving the

³⁵ *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917 (2004).

³⁶ *Id.*

³⁷ *Id.*

³⁸ S.C. Code Ann. § 16-25-20 et seq. (2015).

³⁹ *Mcleod v. Starnes*, 396 S.C. 647, 723 S.E.2d 198 (2012).

family court exclusive jurisdiction over orders of protection do so to protect the rights of spouses and children. Thus, the classification of married people is reasonably related to the legislative purpose of protecting the rights of spouses and children and granting authority to the court best suited.

IV. THE APPELLANT HAS AN AVAILABLE REMEDY AND MAY FILE FOR AN ORDER OF PROTECTION IN SOUTH CAROLINA FAMILY COURT.

The Appellant is not left without remedy and may file for separate support and maintenance, a divorce, restraining orders, and request an order of protection in family court. The family court will be able to determine the parameters of the separation, and all of the issues involved in the divorce. The family court can order property division, child custody, visitation, and parenting agreements.⁴⁰ The family court can also issue orders that require one spouse to stay away from the home, or other spouse, or child, require a spouse to abstain from offensive conduct, and require a spouse to refrain from acts of commission or omission that make the home an improper place.⁴¹ The family court may also issue orders of protection if needed.⁴² There is no deadly “ping pong” effect between the magistrate court and family court in this matter. The matter is clearly a family court issue, and all the relief Appellant is seeking can be granted by a family court. It is Appellant’s responsibility to follow through with the family court case if that is what she wishes. It is not the duty of the magistrate court to impose jurisdiction when the Appellant has failed to fulfill that responsibility.

The case at hand is not comparable to the *McFadden-Robinson v. Robinson* case.⁴³ In that case, the spouse had attempted to run the other over with his car and kicked in the door.⁴⁴ Why those

⁴⁰ S.C. Code Ann. § 63-3-530(A).

⁴¹ S.C. Code Ann. § 63-3-530(A)(18).

⁴² S.C. Code Ann. § 20-4-30(A).

⁴³ *McFadden-Robinson v. Robinson, Jr.*, 2021-DR-21-246.

⁴⁴ *Id.*

actions towards Taylor Robinson did not constitute “assault” or a “threat of physical harm” is a question for the family court judge who denied the order of protection. In this case, the Respondent has not been violent towards the Appellant. The Appellant is merely alleging unwanted emails, texts, letters, and unsubstantiated threats. Orders of protection should be taken seriously by the family court, but we cannot simply ignore the jurisdictional requirements due to a supposed mistake by one family court judge.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the lower court.

Respectfully submitted,

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