

RECEIVED

Feb 10 2025

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
—————

Emily Major,

Appellant,

v.

James Major,

Respondent.

REPLY BRIEF OF APPELLANT

Brett L. Stevens
1520 Senate Street
Columbia, South Carolina 29208
T: (803) 576-6058
E: Stevensbl@sc.edu
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities 3

Additional Facts..... 4

Reply Arguments:

- 1 At the time Appellant sought the Restraining Order against Respondent, she had been living a separate and private life from Respondent for over two years, and Respondent’s communication served no legitimate purpose except to harass and stalk Appellant..... 5
- 2 Respondent’s reliance on S.C. Code Ann. § 63-3-530(A)(18) is misplaced because: (1) there is no martial home at issue in this case; (2) the collateral restraints cannot be issued separate from the issuance of support; and (3) the collateral restraints are enforceable only by the contempt powers of the Court..... 7
- 3 A Restraining Order issued by the Magistrate’s Court would not affect Respondent’s rights to marital property, child custody, parental rights, or visitation..... 9
- 4 An Order of Protection under the Protection from Domestic Abuse Act is not an available remedy for Appellant..... 10

Conclusion..... 11

TABLE OF AUTHORITIES

CASES

State v. Graham, 340 S.C. 352, 532 S.E.2d 262 (2000)..... 8

STATUTES

S.C. Code Ann. § 16-3-1700 (1995, as amended)..... 5-6

S.C. Code Ann. § 20-4-20 (1984, as amended)..... 10

S.C. Code Ann. § 63-3-530 (2008, as amended)..... 6-8

ADDITIONAL FACTS

In his Statement of Facts, Respondent indicates that the underlying Family Court Case between the parties (2023-DR-32-00706) was dismissed on May 15, 2024, due to the 365-day Rule. That dismissal was not related to any fault of Appellant, and Appellant's Attorney refiled the case on October 10, 2024. The current case (2024-DR-32-01930) is pending.¹

Additionally, in his Brief on page 10, Respondent asserts that Appellant failed to file for emergency or expedited relief in the Family Court in the underlying Divorce action and, "[i]n 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." At the time of the Temporary Hearing on August 24, 2023, Respondent was under a bond restriction for the stalking and harassment charges that prohibited him from having any contact with Appellant. In her Temporary Hearing Packet, Appellant did not request restraining orders due to the bond restriction; thus, the Family Court did not deny Appellant's request for a restraining order.² However, at the same Temporary Hearing, Appellant requested day-time supervised visitation between Respondent and the parties' minor son due to Respondent's conduct, and that request was granted. (R.pp.74-77).

¹ See <https://portal.fccms.dss.sc.gov/#/PublicAccessPersonSearchResults> (last accessed December 27, 2024).

² As has been noted by Appellant in her Brief, a Family Court Restraining Order is enforced by the Contempt Powers of the Court and is, thus, worthless as a protective remedy due to the amount of time it takes to obtain a hearing on a Contempt Petition.

REPLY ARGUMENTS

- I. AT THE TIME APPELLANT SOUGHT THE RESTRAINING ORDER AGAINST RESPONDENT, SHE HAD BEEN LIVING A SEPARATE AND PRIVATE LIFE FROM RESPONDENT FOR OVER TWO YEARS, AND RESPONDENT'S COMMUNICATION SERVED NO LEGITIMATE PURPOSE EXCEPT TO HARASS AND STALK APPELLANT.** (Respondent's Argument I).

Respondent asserts that pursuant to the language of S.C. Code Ann. § 16-3-1700, *et. seq.*, spouses cannot intrude into the private life of another spouse.³ The basis of Respondent's argument is that a married couple without a family court order dividing property, assets, and child custody, has no "private life to intrude upon." Based on the circumstances of the parties when Appellant filed for the Restraining Order, Respondent's argument is wholly without merit.

At the time Appellant filed for the Restraining Order, she had been separated from Respondent for over two years and was not living in the marital residence. (R.p.85). Appellant separated from Respondent in March of 2021, at which time she moved into her own apartment. Appellant represents that prior to April of 2023, the parties were somewhat amicably separated, but in April of 2023, Respondent began acting very strange, showed up at her apartment complex and was issued a no trespass order after assaulting one of her neighbors, began sending her strange packages, copious emails, to include an email in which he indicated he planned to commit suicide, and Venmo messages. After reporting his strange behavior to the police on several occasions, she sought the Restraining Order out of fear for her safety. Thus, in this case, Appellant was estranged from Respondent and living a very private

³ No language in the statute expressly prohibits spouses from requesting a Restraining Order in the Magistrate's Court.

life separate from Respondent when she sought the Restraining Order.

Further, the language of the stalking statute appears to contemplate the use of the protective remedy for household members, regardless of the marital status of the victim.

Specifically, S.C. Code Ann. § 16-3-1700(C) defines “stalking” as:

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:

- (1) death of the person or a member of his family;
- (2) assault upon the person or a member of his family;
- (3) bodily injury to the person or a member of his family;
- (4) criminal sexual contact on the person or a member of his family;
- (5) kidnapping of the person or a member of his family; or
- (6) damage to the property of the person or a member of his family.

The statute defines “family” as the person seeking the restraining order or a member of the person’s family, *including a child*, residing in the same household. S.C. Code Ann. § 16-3-1700(E). Thus, the plain language of the Restraining Order Statute contemplates the use of a Restraining Order to protect both a victim and a child of the victim, regardless of whether the stalker is married to the victim.

Finally, the question of whether the harassing and stalking behavior in this case constituted legitimate communication is a question for a judge to determine when deciding whether to issue the Restraining Order. However, it is very unlikely that a Judge would find that sending strange packages that did not contain anything for the parties’ child, sending emails threatening suicide, sending messages stating, “One day soon your life will come crashing down,” and sending over 100 emails or Venmo messages in a nine-day-time period, very few of which even mentioned the parties’ child, would constitute “legitimate

communication.” Thus, Respondent’s arguments are without merit.

II. RESPONDENT’S RELIANCE ON S.C. CODE ANN. § 63-3-530(A)(18) IS MISPLACED BECAUSE: (1) THERE IS NO MARTIAL HOME AT ISSUE IN THIS CASE; (2) THE COLLATERAL RESTRAINTS CANNOT BE ORDERED INDEPENDENT OF AN ACTION FOR SEPARATE SUPPORT AND MAINTENANCE OR DIVORCE; AND (3) THE COLLATERAL RESTRAINTS ARE ENFORCEABLE ONLY BY THE CONTEMPT POWERS OF THE COURT. (Respondent’s Argument II).

Respondent asserts that S.C. Code Ann. § 63-3-530(A)(18) grants the family court exclusive jurisdiction over the issuance of a protective order in this case. S.C. Code Ann. § 63-3-530(A)(18) provides that the family court has exclusive jurisdiction to make *an order for support* of a spouse and children even where the spouse may have deserted the residence where the other spouse’s conduct caused the desertion. The statute goes on to state that, in such cases, the Court “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.

S.C. Code Ann. § 63-3-530(A)(18), first and foremost, addresses the award of the marital home as a means of support to a spouse who has vacated the marital home due to the actions of the other spouse. As is noted in Argument I, possession of the marital residence is not at issue in this case. Appellant left the martial home in March of 2021 and has lived in her own apartment since that time. (R.p.85). Thus, the section is not applicable to the case at issue.

Respondent encourages this Court to read subsections (a), (c), and (e) out of context and enlarge the family court’s jurisdiction to issue restraints absent an order of support. However, as is clear from the statutory scheme (S.C. Code Ann. 63-3-530(A)(14-18), all addressing orders of support), subsection (a), (c), and (e) do not exist as independent causes of action and must be sought in actions for Separate Support and Maintenance or Divorce. Thus, a litigant cannot file a petition in Family Court seeking relief only under S.C. Code Ann. § 63-3-530(A)(18)(a), (c), and (e).

Finally, the collateral provisions are enforceable only through the Contempt Powers of the Court, a method of enforcement that will likely take months through which to obtain a remedy. Thus, even if a Family Court could issue restraints independent of any other cause of action, there is nothing in the statutory scheme to suggest that these collateral provisions can be enforced by law enforcement. Thus, to the extent that a family court may order these standard restraints, the statute cannot be read to expressly or by necessary implication subsume the Restraining Order statute. *See State v. Graham*, 340 S.C. 352, 354, 532 S.E.2d 262, 263 (2000) (“The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute.”).⁴

⁴ Respondent additionally argues the Family Court has exclusive jurisdiction under S.C. Code Ann. § 63-3-530(A)(35) which states that the Family Court has exclusive jurisdiction to hear and determine actions for protection from domestic abuse. As has been thoroughly argued in Appellant’s Brief and in Section V, below, the Protection from Domestic Abuse Act does not apply to this case because Appellant has not alleged physical harm, bodily injury, assault, or the threat of physical harm. Respondent concedes on Page 14 of his Brief that Respondent has not been violent toward Appellant and contends that she “is merely alleging unwanted emails, texts, letters, and unsubstantiated threats.”

III. A RESTRAINING ORDER ISSUED BY THE MAGISTRATE WOULD NOT AFFECT RESPONDENT’S RIGHTS TO MARITAL PROPERTY, CHILD CUSTODY, PARENTAL RIGHTS, OR VISITATION (Respondent’s Arguments II & III).

In both Respondent’s Arguments II & III, Respondent contends that if the Magistrate Court is allowed to issue the Restraining Order, Respondent’s rights regarding marital property division, child custody, parental rights, or visitation will be affected. Respondent’s argument fails to acknowledge that Family Courts are regularly required to issue Orders of equitable division, child custody, parental rights, and/or visitation when one party has obtained an Order of Protection in the Family Court or, as in this case⁵, one party is subject to a bond restriction (much like a Restraining Order) issued by the Criminal Court. In cases where restraints have already been ordered between the parties, the Family Court Judges routinely assign third parties to facilitate visitation and exchange children so there is no contact between the parties. No other issues are implicated by the restraints. Thus, Respondent’s argument is wholly without merit.

Respondent further argues that the Magistrate Court “must give deference to any family court orders” and “must submit to the family court’s jurisdiction in this particular case to protect the rights of the parties involved.” There is absolutely no statutory support for requiring Magistrate’s Courts to give deference to Family Court Orders except where a Family Court Order has been issued *prior to* the Magistrate’s Court Order. Certainly, where other Orders already exist involving the same parties, *any* Court must determine if a new Order will conflict with another Order. However, this is true for any pre-existing Order of any Court. If

⁵ See Additional Fact Section, above.

the Magistrate had issued the Restraining Order in this case, the Family Court would have to give deference to that Order when determining how the parties would communicate and exchange their child for visitation. However, there is no statutory support for requiring the Magistrate Court to wait on the Family Court before issuing a ruling.

IV. AN ORDER OF PROTECTION IS NOT AN AVAILABLE REMEDY TO APPELLANT (Respondent’s Argument IV).

Respondent admits on page 14 of his Brief that Respondent has not been violent towards Appellant and contends that Appellant “is merely alleging unwanted emails, texts, letters, and unsubstantiated threats.” Unfortunately, the Protection from Domestic Abuse Act does not protect victims from stalking and harassment. The Protection from Domestic Abuse Act does not protect victims who receive over 100 emails and Venmo messages in a nine-day period from an estranged spouse. The Protection from Domestic Abuse Act does not protect victims who receive strange packages from an estranged spouse. The Protection from Domestic Abuse Act does not protect victims who receive suicide emails from an estranged spouse. Rather, the Protection from Domestic Abuse Act only protects victims of physical harm, bodily injury, assault, or the threat of physical harm to the victim. *See* S.C. Code Ann. § 20-4-20 (1984, as amended). In my experience, Family Court Judges strictly construe these terms, and harassment and stalking behavior that does not meet the standard of an immediate threat of physical harm is dismissed under the Act. Thus, if a Restraining Order is not available to Appellant in this case, she is left without a necessary remedy to protect against Respondent’s behavior.

This case is a perfect example of the deadly ping-pong effect that is created by the

interplay of statutes at issue. Either Appellant is entitled to a Restraining Order in the Magistrate's Court for stalking and harassment regardless of her marital status, or she is precluded from that remedy, which is not available to her in the Family Court, because of her marital status, which constitutes an Equal Protection violation.

CONCLUSION

For the reasons stated herein, this Court should issue an Opinion in this case clarifying the rights available in each Court to Appellant and other victims of stalking and harassment.

Respectfully submitted,

February 9, 2025

/s/ Brett L. Stevens
Brett L. Stevens, S.C. Bar No. 73830
1520 Senate Street
Columbia, South Carolina 29208
T: (803) 576-6058
E: Stevensbl@sc.edu
Attorney for Appellant