

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Magistrate Court

SC Court of Appeals

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

Case No.: 2024-001566

Emily Major,
Appellant,

vs.

James Major,
Respondent.

BRIEF OF AMICI CURIAE PROFESSOR LISA MARTIN AND MARIE MANESS OF THE UNIVERSITY OF SOUTH CAROLINA JOSEPH F. RICE SCHOOL OF LAW DOMESTIC VIOLENCE CLINIC, THE SOUTH CAROLINA VICTIM ASSISTANCE NETWORK, SISTERCARE, AND PROJECT R.E.S.T. IN SUPPORT OF APPELLANT, EMILY MAJOR.

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INTERESTS OF AMICI CURIAE

Professor Lisa Martin and third-year law students enrolled in the University of South Carolina Joseph F. Rice School of Law's Domestic Violence Clinic, along with staff attorney Marie Maness, represent individuals seeking civil legal protection from domestic violence, sexual assault, and stalking through Orders of Protection and Restraining Orders. Professor Martin's research examines the accessibility and operation of Orders of Protection and Restraining Orders in South Carolina and nationally. Professor Martin and Ms. Maness, along with a research team from the University of South Carolina, recently published reports on Orders of Protection and Restraining Orders in South Carolina based upon an analysis of 3,451 Order of Protection cases and 2,212 Harassment and Stalking Restraining Order cases filed in Family and Magistrate Courts throughout South Carolina in 2019. The views expressed in this brief are those of Professor Martin and Marie Maness alone and not necessarily those of the University.

South Carolina Victim Assistance Network (SCVAN) is a non-profit organization that provides resource, referral, and advocacy services, including direct legal representation, to crime victims and victim service providers. SCVAN coordinates and delivers outreach and training to crime victims, victim service providers, and the general public to create awareness around victim rights, available resources, and the impact of crime and related issues.

Sistercare is a non-profit organization that seeks to provide trauma informed comprehensive services for victims of intimate partner violence, to advocate on behalf of these survivors, and to help prevent intimate partner violence through community awareness and education. Sistercare is the only organization that offers specialized shelter and support services for survivors of intimate partner violence in Fairfield, Kershaw, Lexington, Newberry, and Richland counties.

Project R.E.S.T. is a private, 501(c)(3) non-profit organization providing support services to victims of domestic violence in Spartanburg, Cherokee, and Union counties. Project R.E.S.T. also provides support services to victims of sexual assault in Spartanburg and Cherokee counties. Those support services include providing emergency shelter to victims fleeing from domestic abuse, a 24/7 crisis hotline, individual and group therapy, case management, victim advocacy, and legal advocacy. The legal advocacy includes providing court representation for victims seeking an Order of Protection in Family Court or a Restraining Order in Magistrate Court. Project R.E.S.T. has been an anchor for victims of domestic violence and sexual violence in Spartanburg, Cherokee, and Union counties for nearly 30 years.

This Court's decision may profoundly impact the availability of civil legal protection for victims of stalking and harassment who share a household member relationship, including a spousal relationship, with the offender. Amici curae possess practice-based and research-based expertise that can assist the Court in analyzing and contextualizing the issues presented in this case, including in working with victims of stalking and harassment, applying the governing legal doctrines to individual circumstances, analyzing patterns in the use and operation of civil legal remedies, and navigating the Restraining Order and Order of Protection processes in Magistrate and Family Courts.

The authors extend their deep appreciation to Alexandria Tetreault, Lila Holland, and LauraKate Roland of the University of South Carolina Joseph F. Rice School of Law for their assistance with this brief.

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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 THE CASE?

FACTUAL BACKGROUND

Emily and James Major were married on June 31, 2019. (R. p. 85) They have a son, J.M., who is currently three years old. (*Id.*) Today, Emily Major and James Major are living separately from one another, but they remain legally married. (*Id.*)

Ms. Major filed a Complaint and Motion for a Restraining Order against Mr. Major in the Dutch Fork Magistrates office on May 5, 2023. (R. pp. 54-55). Ms. Major described that Mr. Major was sending her numerous emails, letters, and unwanted gifts on a daily basis. (*Id.*) Ms. Major explained that Mr. Major had been barred from the premises of Ms. Major's apartment building after he had violently attacked a neighbor. (*Id.*) Ms. Major reported that Mr. Major had been trespassing on the property in violation of this prohibition. (*Id.*) Ms. Major expressed fear for her safety as well as the safety of her son. (*Id.*)

The Court held a hearing in this matter on June 15, 2023, with Magistrate Judge Benjamin F. Byrd presiding. (R. pp. 24-26). Judge Byrd dismissed Ms. Major's Complaint and Motion without taking testimony or evidence and directed Ms. Major to file for an Order of Protection in Family Court. (*Id.*)

Ms. Major filed a Notice of Appeal on July 18, 2023, with the Court of Common Pleas. (R. p. 33). On June 14, 2024, this appeal was heard in the Court of Common Pleas by Judge Kristi F. Curtis. By this time, Mr. Major had pending criminal charges for stalking and harassment. (Transcript 2:21-23). Judge Curtis found the Magistrate Court correctly determined that Family Court has exclusive jurisdiction over this matter under the Protection from Domestic abuse Act and affirmed the disposition of the Magistrates Court. (R. pp.7-9)

ARGUMENT

Stalking and harassment is serious, lethal, and prevalent conduct in South Carolina, including between spouses, commonly causing long-lasting harm to victims' physical and mental well-being. Yet, some individuals who share spousal relationships with those stalking or harassing them (relationships that would qualify them to seek Orders of Protection in Family Court if they suffered other types of abuse) are left without a civil legal remedy. Often, these individuals are ping-ponged between Magistrates Courts and Family Courts, with each court telling them they do not qualify for relief, directing them to seek protection in the other, and ultimately denying them access to any civil legal protections, sometimes with deadly consequences. This practice not only leaves numerous South Carolinians at risk and alienated from the courts they hoped would protect them; it also contravenes the plain language and legislative purpose of the Restraining Order statute. The legislature created Restraining Orders as a remedy for "any person" facing stalking and harassment, including those suffering from the conduct of a current or former spouse. Magistrate Courts' jurisdiction over spouses for this purpose is not only reconcilable with the limited jurisdiction of Family Courts, but critical to ensure the safety and well-being of South Carolinians subjected to stalking and harassment.

I. STALKING AND HARASSMENT IS SERIOUS, LETHAL CONDUCT THAT CAN AND OFTEN DOES OCCUR BETWEEN CURRENT AND FORMER SPOUSES.

Stalking and harassment is serious, sometimes lethal conduct that is prevalent in South Carolina, including between current and former spouses.

a. STALKING AND HARASSMENT IS SERIOUS, LETHAL, CONDUCT THAT INFLECTS LONG-TERM HARM ON VICTIMS.

The experience of being stalked is common, especially among women. The Centers for Disease Control ("CDC") estimates that 31.2% of women experience stalking in their lifetime.

Sharon G. Smith et al., *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Stalking-Updated Release*, CTRS. FOR DISEASE CONTROL & PREVENTION, 3 (2022)(hereinafter “*Report on Stalking*”). In South Carolina that number is 34.6%. Sharon G. Smith et al., *The National Intimate Partner & Sexual Violence Survey: 2016/2017 State Report*, CTRS. FOR DISEASE CONTROL & PREVENTION, 58 (2022). The experience of being stalked seriously harms victims' health and well-being. T.K. Logan & Robert Walker, Stalking: A Multidimensional Framework for Assessment and Safety Planning, 18 *Trauma, Violence & Abuse* 200, 200–22 (2017). Victims of stalking may experience not only immediate fear, worry, and anxiety, but also long-term psychological distress, post-traumatic stress disorder (PTSD) symptoms, and suicidality, as well as higher rates of chronic pain and disease. Smith, *Report on Stalking* at 10. PTSD symptoms can include hypervigilance, anxiety, depression, and intrusive thoughts, all of which can severely impact victims' daily lives and long-term well-being. C.M. Dardis, et al., Intimate Partner Stalking: Contributions to PTSD Symptomatology Among a National Sample of Women Veterans, 9 *Psychol. Trauma: Theory, Res., Prac. & Pol'y* S67, S67–73 (2017).

Stalking is not only psychologically damaging, but often a precursor to physical acts of violence, including homicide. In many cases, victims who experience stalking are also physically harmed or threatened with weapons. Stalking Prevention, Awareness, & Resource Center, *Stalking & Intimate Partner Violence* (2018). As a group, women most often experience stalking by current or former intimate partners. Smith, *Report on Stalking* at 6. Intimate partners engage in stalking to maintain power and control and make their partners fear for their safety through intimidation, surveillance, sabotage, and threats. See T.K. Logan & Walker, 18 *Trauma, Violence & Abuse* at 200. Former intimate-partner stalkers are the most violent stalkers and are more likely than non-intimate partners to carry out their threats. T.K. Logan, *Research on Partner Stalking: Putting the Pieces*

Together 7 (Oct. 2010) (supported by the Nat'l Inst. of Justice). In fact, 85% of attempted and 76% of completed intimate partner femicides are preceded by stalking in the year before the attack. Judith McFarlane et al., *Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety*, 20 *Behav. Sci. & L.* 51 (2002). Additionally, intimate partners who stalk are more likely to verbally degrade, threaten, sexually assault, physically injure, or use a weapon to attack their victims than other abusive partners. T.K. Logan et al., *Stalking Victimization in the Context of Intimate Partner Violence*, *Violence and Victims* (December 2007). Court intervention early in stalking and harassing behavior through Restraining Order issuance can provide victims with essential protections, such as stay away and no contact orders, that restrict harmful conduct and allow for mandated arrests upon violation, before the defendant's actions become violent or even deadly.

b. STALKING AND HARASSMENT CAN AND OFTEN DOES OCCUR BETWEEN CURRENT AND FORMER SPOUSES IN SOUTH CAROLINA.

Stalking and harassment often occurs between current and former spouses in South Carolina. In 2023, the South Carolina Law Enforcement Division reported that 19.5% of victims of intimidation (stalking and harassment crimes) were spouses, and 7% were former spouses. South Carolina Law Enforcement Division, *Crime in South Carolina Annual Report*, 232 (2024); *see also* South Carolina Incident Based Reporting System (SCIBRS) Training Manual '19 (2014)(for definition of intimidation).

A recent study by University of South Carolina researchers found that one out of every four (817 out of 3451) petitioners seeking Orders of Protection throughout South Carolina during one full calendar year (2019) reported being stalked or harassed. Lisa Martin et al., *Orders of Protection in South Carolina*, University of South Carolina, 7 (2024). Likewise, nearly one out of every four such petitioners seeking Orders of Protection against their spouses (23%, 319 petitioners) and more than one out of every three seeking protection against former spouses (38%, 66 petitioners) reported

stalking or harassment.¹ In some counties, Petitioners reported stalking and harassment at even higher rates. *Id.* at 43-143. In Richland County, for example, where the instant case was filed, more than one out of every three petitioners (37%, 130 petitioners) reported being stalked or harassed. *Id.* at 121.

Statewide, reported conduct included calling and making threats to or repeatedly popping up at the petitioner's place of employment; putting a tracking device on or disabling the petitioner's car; monitoring and sending pictures of the petitioner's location; calling the petitioner hundreds of times a day; threatening to leave illicit drugs on the petitioner's property; cutting off the petitioner's power; threatening to kill petitioner's children or family; harming petitioner's pets; kicking petitioner's door in; and threatening or attempting to set the petitioner's house on fire. *Id.* at 17.² One petitioner wrote: "[he] messaged me that day that I can't hide forever, I should be scared, and the end is near. He has continued to harass me by text, phone, email and showing up at my house uninvited."³ Another described: "he has put trackers on my car and followed me around. Broken into the home and left a note under my pillow saying 'he loves me and always will' and taken guns from the home that through his bond he is not supposed to have."⁴ Yet another wrote that the respondent "came to my job and tried to kill himself and make me watch. My job then suspended me and told me to get an Order of Protection to return to work. I still get text and phone calls from him."⁵ Because neither stalking nor harassment qualifies for an Order of Protection, and allegations of abuse within Petitions are made through open-ended narrative, the true frequency with which petitioners experience stalking and harassment is likely even higher. *Cf. id.* at 17.

¹ Data on file with study authors.

² Additional data on file with study authors.

³ Petition on file with study authors.

⁴ Petition on file with study authors.

⁵ Petition on file with study authors.

Individuals subjected to stalking and harassing behavior describe feeling continuously in peril and forced to upend their lives to keep themselves safe. One plaintiff in a Restraining Order case stated that the experience of being stalked “has forever changed who I am, how I can look at others with blind trust, and how I can ever feel fully secure in my personal and home.”⁶ A petitioner in an Order of Protection case shared that she “not only moved out of the county to get away from [the respondent], but also had to purchase a new car and get an out of area phone number so I could not be tracked like a hunting dog.”⁷

Despite the frequency with which people experience stalking and harassment by current and former spouses across the state, spouses are often unable to access Restraining Orders – South Carolina’s civil remedy to protect against stalking and harassment – to protect themselves against this conduct. S.C. Code Ann. §16-3-1750. Indeed, the University of South Carolina study identified only 45 cases in which individuals were able to file Restraining Order cases against current or former spouses statewide during the calendar year studied.⁸ South Carolina Access to Justice, *Statewide Restraining Order Snapshot Per 2019 Restraining Order Data*, University of South Carolina, 1 (2025) (hereinafter “*Restraining Order Snapshot*”). The scarcity of such cases, in contrast to the prevalence of the problem, may stem from the exclusionary practices at issue in this case.

II. PING-PONGING BETWEEN FAMILY AND MAGISTRATE COURTS IS A SYSTEMATIC, STATE-WIDE PROBLEM THAT PUTS STALKING VICTIMS AT FURTHER RISK.

Spouses seeking civil legal protection from stalking and harassment are frequently turned away from South Carolina courts. Worse, they are ping-ponged between courts, directed to and turned away from courts that each deem them unqualified for relief, ultimately leaving them

⁶ Motion on file with study authors.

⁷ Petition on file with study authors.

⁸ These 45 cases comprise only 4% of the total cases in which the parties’ relationship could be identified (out of 1,224). Additional data on file with study authors.

unprotected and frustrated by the system's lack of concern for their safety. Sara Coello, *S.C. Laws Protecting Domestic Violence Survivors a Complex System*, THE POST & COURIER (May 31, 2020). Family Courts often deny such individuals Orders of Protection because stalking does not meet the definition of abuse under the Protection from Domestic Abuse Act.⁹ S.C. Code Ann. § 20-4-20. Magistrate Court Clerks Offices turn such individuals away and deny them the opportunity to file cases altogether on the grounds that their relationships make them ineligible to pursue the Restraining Order remedy. James Paul, *Counties' Responses to Restraining Order Filing Requests*, THE POST & COURIER (July 31, 2024)(documenting that magistrate courts in nearly half (14/30) of counties surveyed directed caller asking "How would someone go about getting a restraining order against a former spouse?" to another court). This misinformation has also appeared on some Magistrate Court websites, in signs displayed in some Magistrate Courts, and in information sheets given by some Magistrate Courts to individuals seeking to file Restraining Order cases. *South Carolina Restraining Order Information According to Magistrate County Webpages*, South Carolina Victims Assistance Network (July 2023)(documenting five county Magistrate Court websites that direct those with "family" or "spouse" relationships to Family Courts to seek Orders of Protection and/or state that such persons may not seek Restraining Orders in Magistrate Courts).¹⁰

These practices not only contradict the law but also leave no record of these individuals' efforts to seek protection. S.C. Code Ann. § 17-27-40; *Barnes v. State*, 433 S.C. 399, 401, 402 (2021)(citing *Miller v. State*, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008)(clerks lack the authority to refuse her duty in taking filings because the clerk believes the court lacks jurisdiction)). Even

⁹In 2019, there were at least 13 cases statewide in which researchers found evidence that the Family Court dismissed an Order of Protection case prior to a hearing because the conduct alleged in the Petition or Motion and Affidavit for Emergency Hearing did not fall within the definition of abuse but where stalking or harassing behavior was alleged. Seven of these cases involved current or former spouses, and, in one of these cases, the Family Court referred the petitioner spouse to the Magistrate Court to file for a Restraining Order. Data on file with study authors.

¹⁰ Data on file with study authors further documents these practices.

when Magistrate Courts permit spouses to file Complaints, they sometimes dismiss their cases (as in this case) and direct them to Family Courts, depriving spouses of access to the Restraining Order remedy.

Ping-ponging practices pose such an entrenched obstacle to protection, in part, because most individuals seek Restraining Orders and Orders of Protection without legal representation and therefore rely on information provided by court personnel to navigate court processes. The recent University of South Carolina study found evidence of plaintiff representation by counsel in only 64 Restraining Order cases out of the 2,212 cases studied¹¹ and petitioner representation by counsel in only 19% of the 3,451 Order of Protection cases studied. Martin, *supra*, at 20; *Restraining Order Snapshot, supra*, at 2. Access to legal representation in Order of Protection cases varied widely at the county level, ranging from 0 – 90%, with 40% of all represented petitioners filing their cases in four counties. Martin, *supra*, at 39.

Ping-ponging practices leave stalking and harassment victims unprotected and unsupported by the courts during times of great danger. The case of Taylor McFadden, a 29-year-old Florence resident and mother of two, provides one horrific example. Tonya Brown, *Florence Man Receives Life Sentence for Murder of Well-Known Real Estate Agent*, abcnews4 (updated November 19, 2024). Ms. McFadden was murdered by her husband, Mr. Duncan Robinson Jr., after being denied an Order of Protection in Family Court and turned away from filing a Restraining Order in Magistrates Court. Tonya Brown, *Court transcripts released of Florence woman denied Order of Protection against Husband* abcnews4 (updated March 10, 2022)(citing Transcript of Record, *Robinson v. Robinson*, 21-DR-21-246 at 15-16 (March 24, 2021)). Ms. McFadden testified that her husband had refused to leave her home, followed her on the highway, kicked in her door multiple

¹¹ Observed inconsistencies in Magistrate Court file-keeping practices, including varied practices in documentation of attorney representation, suggest that this number is likely an undercount of the actual plaintiff representation rate.

times, and attempted to hit her with his car multiple times. Tonya Brown, *SC Woman Denied Order of Protection for Failure to Prove Alleged Abuse, Court Records Show*, abcnews15 (Updated January 27, 2022). Ms. McFadden further testified that she had tried to seek a Restraining Order and was told that she must seek an Order of Protection instead because she was married to the person stalking and harassing her. Tonya Brown, *Court transcripts released of Florence woman denied Order of Protection against Husband* abcnews4 (Updated March 10, 2022)(citing Transcript of Record, *Robinson v. Robinson*, 21-DR-21-246 at 15-16 (March 24, 2021)). The Family Court held that Ms. McFadden failed to allege conduct that met the standard for abuse under the Protection from Domestic Abuse Act and advised Ms. McFadden to again attempt to seek a Restraining Order. *Id.* On January 23, 2022, Mr. Robinson broke into Ms. McFadden's home and fatally shot her in the head. Tonya Brown, *SC Woman Denied Order of Protection for Failure to Prove Alleged Abuse, Court Records Show*, abcnews15 (Updated January 27, 2022). The final divorce proceeding had been scheduled for February 7, 2022. *Id.*

A clarification from this Court that the Restraining Order statute's language providing "a complaint and motion for a restraining order may be filed by any person," means *any person*, including a current or former spouse, will finally stop the ping-pong effect that routinely leaves victims of stalking and harassment victims unprotected throughout this state.

III. MAGISTRATE COURTS CAN EXERCISE JURISDICTION TO REMEDY STALKING AND HARASSMENT BETWEEN SPOUSES WITHOUT INFRINGING ON THE JURISDICTION OF THE FAMILY COURTS

South Carolina Magistrate Courts can exercise their exclusive jurisdiction to issue Restraining Orders to protect spouses against stalking and harassment without infringing upon the exclusive jurisdiction of the Family Courts to address other matters between spouses.

- a. FAMILY COURT JURISDICTION OVER SPOUSES IS LIMITED, NOT EXCLUSIVE, AND DOES NOT ENCOMPASS REMEDIES FOR STALKING AND HARASSMENT BETWEEN SPOUSES.**

South Carolina Family Courts' jurisdiction over spouses is limited. Family Courts neither have exclusive jurisdiction over spouses, nor exclusive authority to issue injunctions protecting one spouse from the other. Critically, Family Courts' limited jurisdiction does not encompass statutory remedies for stalking and harassment between married parties.

i. The Family Court's jurisdiction is limited, and it does not have exclusive jurisdiction over married parties.

Subject matter jurisdiction is “[a] court’s power to hear and determine cases of the general class to which the proceedings in question belong.” *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). For a South Carolina court to exercise jurisdiction over an individual, the court must properly have personal jurisdiction and subject matter jurisdiction over that individual. *Id.* In South Carolina, circuit courts are “vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. Art. V, §11. In these instances, a court may have exclusive jurisdiction over an action, meaning it has the power to adjudicate specific kinds of actions to the exclusion of all other courts. In determining whether the legislature has given another entity exclusive jurisdiction over a case, the court must look to the relevant statute. *Dema v. Tenet Physician Servs.-Hilton Head Inc.* 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009) (citing *Unisys Corp. V. South Carolina Budget and Control Bd. Div. Of Gen. Servs. Info. Mgmt. Office*, 346 S.C. 158, 175, 551 S.E.2d 263, 273 (2001)).

The jurisdiction of South Carolina’s Family Courts is statutorily limited, encompassing only those actions designated in the Children’s Code. S.C. Code Ann. §§ 63-3-10; 63-3-510-530. Family Courts have exclusive jurisdiction over forty-six separate domestic matters, including protection from domestic abuse. S.C. Code Ann. § 63-3-530; S.C. Code Ann. § 20-4-30. Importantly, Family Courts do not have exclusive jurisdiction, or exclusive original jurisdiction, over spouses. S.C. Code Ann. §§ 63-3-10 to 63-3-690. Cases between spouses involving civil and criminal matters not

enumerated in § 63-3-530 are heard by the courts with jurisdiction over those matters – those where that type of matter would ordinarily be heard if the parties were never married.

The South Carolina Supreme Court repeatedly has affirmed that “[i]t is the public policy of our State to provide married persons with the same legal rights and remedies possessed by unmarried persons.” *Boone v. Boone* 345 S.C. 8, 14–15, 546 S.E.2d 191, 194 (2001)(citing *Bryant v. Smith*, 187 S.C. 453, 198 S.E. 20 (1938)(“recognizing purpose of predecessor to § 15–5–170 is to give married women all rights and remedies possessed by unmarried women”); *see also* S.C. Code Ann. §15-5-170 (married women “may sue, and be sued alone,” and if the action “is between herself and her husband,” she may also “be sued and sue alone”); *Prosser v. Prosser* 114 S.C. 45, 102 S.E. 787 (1920)(abolishing interspousal immunity). Indeed, in a tort suit for personal injury, the Court declared, “We find it contrary to “natural justice,” ... to hold that because of their marital status, Wife is precluded from maintaining this action against Husband.” *Boone*, 345 S.C. at 14, 546 S.E.2d at 194 (citing *Rauton v. Pullman Co.*, 183 S.C. 495, 508, 191 S.E. 416, 422 (1937).

Although many claims between spouses naturally fall within the Family Courts’ jurisdiction, not all do. Other South Carolina courts regularly hear civil and criminal cases between spouses that fall beyond Family Court jurisdiction. *See, e.g., Prosser v. Prosser*, 114 S.C. 451, 102 S.E. 787 (1920) (finding that a wife could bring a tort claim against her husband in Circuit Court after he beat her, thus abolishing interspousal immunity); *Boone v. Boone*, 345 S.C. 8, 546 S.E.2d 191 (2001) (finding that a wife could bring a tort claim against her husband in Circuit Court for an auto accident that he caused, thus abolishing interspousal immunity even when tortious injury occurs in states that continue to recognize the doctrine); *Pardue v. Pardue*, 167 S.C. 129, 166 S.E. 101 (1932) (finding that wife could sue her husband in Circuit Court for negligent action resulting in her physical injury); *Algie v. Algie*, 115 S.C. 68, 104 S.E. 321 (1920)(finding that a wife could sue her husband in Circuit

Court for injury caused by her husband); *Fowler v. Fowler*, 242 S.C. 252, 130 S.E.2d 568 (1963)(finding that the administrator of wife’s estate could sue husband in Circuit Court for wrongful death); *State v. Prince*, 335 S.C. 466, 517 S.E.2d 229 (1999)(in which Defendant (husband) was convicted of aggravated stalking and malicious injury to personal property when he repeatedly threatened his wife and caused damage to her vehicle); *State v. Brandenburg*, 419 S.C. 346, 798 S.E.2d 49 (2017)(finding that the harassment is a lesser degree of stalking and upholding the conviction for such when the defendant repeatedly showed up at his wife’s home after she had moved out of the marital residence).

ii. The Family Court does not have exclusive jurisdiction to issue injunctions between spouses.

The Family Court is not the only court empowered to issue injunctions between spouses in South Carolina: both Circuit and Magistrate Courts share this authority. Indeed, beyond Orders of Protection and Restraining Orders, South Carolina has two additional statutorily-created injunctions protecting victims of certain crimes (including domestic violence, sexual assault, and stalking and harassment). Magistrate Courts have jurisdiction to issue Emergency Restraining Orders and the Courts of Common Pleas and General Sessions share jurisdiction to issue Permanent Restraining Orders. S.C. Code Ann. §§16-3-1910(A); 16-3-1920(A). The Emergency and Permanent Restraining Order Statutes also permit “a victim of a criminal offense” who qualifies to file, regardless of their relationship to the person from whom they seek protection. S.C. Code Ann. §§16-3-1910(C)(1); 16-3-1920(C)(1). Both of these statutes empower courts to issue injunctions between qualifying spouses. *Id.* Moreover, General Sessions and Magistrates Courts routinely issue bond conditions prohibiting contact between spouses while criminal charges are pending against one

spouse for an offense against the other,¹² including in the instant case. S.C. Code Ann. §§16-3-1525; 22-5-510 (granting Magistrate Courts the authority to conduct bond hearings in non-capital and non-life cases); 17-15-10 (granting Magistrate, County, and Circuit courts the authority to impose bond conditions restricting the “travel, association, or place of abode of the person during the period of release”); Appellant’s Reply Br. at 4, *Major v. Major*, No. 001566 (S.C. 2024).

The Family Court’s authority to issue Orders of Protection under the Protection from Domestic Abuse Act does not limit or supersede the authority of other courts to issue injunctions between spouses. The statutes establishing the Order of Protection and Restraining Order remedies both include provisions clarifying that each remedy is “in addition to” (not a substitute for, replacement for, or precluded by) “other civil and criminal remedies.” S.C. Code Ann. §§ 16-3-1830; 20-4-130; *see also Wolt v. Wolt*, 2010 ND 33, ¶ 11, 778 N.W.2d 802, 807 (2010)(relying in part on statutory language that each remedy is “in addition to other civil and criminal remedies and holding spouses eligible to seek both a restraining order against stalking and harassment and a protection order against domestic abuse). The statutes establishing the Emergency and Permanent

¹² In 2016, in a highly publicized case, Aiken County representative Chris Corley was arrested for committing domestic violence against his wife in the presence of his children. Maayan Schechter, *Prosecutor: Chris Corley took wife’s cellphone, bit her nose*, Aiken Standard (updated December 28, 2022). During the proceedings against him, Corley was granted a \$50,000 surety bond with conditions that include that Corley have “[no] contact with Victim and three minor children until there is a Family Court order addressing such visitation...” *See State of South Carolina v. Christopher Aaron Corley*, Case # 2017GS0200085, Aiken County General Sessions, Arrest Date: January 4, 2017 (Charge: Domestic Violence, 1st Degree). This practice was also showcased in the York County case against Paul Patrick Johnson, Sr. in late 2019. After being arrested and charged with Domestic Violence of a High and Aggravated Nature for strangling his wife and hitting her with a belt, a Magistrate Court released Johnson on a \$15,000 bond with the conditions that he have no contact with his wife. Andrew Dys and Cailyn Derickson, *York County man who killed wife, son then himself was out on bond for domestic violence*, The Herald (Updated May 17, 2020). Johnson’s bond was revoked after Johnson returned to his wife’s house a few hours after his release. *Id.* Almost two weeks later, a Circuit Court judge released Johnson on bond again, under the same conditions that he have no contact with his wife. *Id.* Unfortunately, Johnson later killed his wife and son while released on bond. *Id.*

Restraining Order remedies likewise provide that these two remedies are “in addition to other civil and criminal remedies.” S.C. Code Ann. §§16-3-1910(Q); 16-3-1920(P).

iii. The Family Court’s jurisdiction to hear matters involving domestic abuse does not encompass stalking and harassment.

Section 63-3-530 of the South Carolina Code grants the Family Court exclusive jurisdiction to hear and determine actions under the Protection from Domestic Abuse Act. S.C. Code Ann. §63-3-530. South Carolina’s Protection from Domestic Abuse Act, passed in 1984, created the Order of Protection remedy to protect petitioners from the abuse of another household member, and granted the Family Court jurisdiction over such orders. S.C. Code Ann. §§20-4-10 to 20-4-160. Under the Act, the definition of abuse is limited, encompassing “physical harm, bodily injury, assault or the threat of physical harm; sexual criminal offenses, as otherwise defined by the statute, committed against a family or household member by a family or household member.” S.C. Code Ann. §20-4-20. If the legislature intended the Family Court to have exclusive jurisdiction over married parties’ claims for protection from stalking and harassment, it would have explicitly included these acts in the Protection from Domestic Abuse Act alongside the other qualifying conduct for an Order of Protection. S.C. Code Ann. §20-4-20. Instead, the legislature created a remedy for stalking and harassment through the Magistrates Court for all parties, regardless of their marital status. S.C. Code Ann. §16-3-1750(C).

b. MAGISTRATE COURTS HAVE JURISDICTION OVER ALL PERSONS, INCLUDING SPOUSES, SEEKING RESTRAINING ORDERS AGAINST STALKING AND HARASSMENT.

Magistrate Courts are the only courts granted jurisdiction to issue Restraining Orders against stalking and harassment under S.C. Code Ann. 16-3-1750(A). They enjoy this power regardless of the relationship, if any, between the parties to a case.

South Carolina law defines harassment and stalking without regard to the relationship between the actor and the target of their conduct. Harassment is defined as “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.” S.C. Code Ann. § 16-3-1700(A),(B). This behavior can include following, monitoring, contacting repeatedly, and vandalism, among others. *Id.* South Carolina law 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;
- (6) Kidnapping of the person or a member of his family; or
- (7) Damage to the person or a member of his family.

S.C. Code Ann. § 16-3-1700(C).

South Carolina Code Section 16-3-1750, which governs Restraining Orders, plainly states, “[A] complaint and motion for a restraining order may be filed by any person.” S.C. Code Ann. 16-3-1750(C). The phrase “any person” is used many times in the South Carolina Code but no definition is ever provided, except when a statute excludes particular persons from a remedy. Section 16-3-1750(C) does not include any exceptions excluding any particular persons from seeking a Restraining Order against stalking and harassment. Consequently, when interpreting “any person” in the Restraining Order statute, the Court must give the words their plain and ordinary meaning and “not resort to forced construction that would limit or expand the statute.” *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011). The language of the statute must be read in such a

way that “harmonizes its subject matter and accords with the statute’s general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

Additionally, because the statute is remedial, that is, “enacted for the benefit of injured persons,” “it should be liberally construed in order to accomplish the object sought.” *Gunnels v. Am. Liberty Ins. Co.*, 251 S.C. 242, 246, 161 S.E.2d 822, 824 (1968); *see also Auto Owners Ins. Co. v. Rollinson*, 378 S.C.600, 609, 660 S.E.2d 484, 489 (2008)(citing *Inabinet v. Royal Exch. Assur. of London*, 165 S.C. 33, 162 S.E. 599, 600 (1932); *see also Coburn v. Coburn*, 342 Md. 244, 256, 674 A.2d 951, 957 (1996)(applying the principle of liberal construction to a protection order statute). Stated another way, remedial statutes should be interpreted broadly to fulfill their spirit and purpose. 3 Norman J. Singer & Shambie Singer, *Sutherland Statutory Construction* § 60:1 (8th ed. Nov. 2024 update)(“A “liberal” interpretation in this context means generally that where a statute's language is ambiguous, courts “bring within the scope of the law every case which comes clearly within its spirit and policy”)(internal citation omitted). As the statute establishing Restraining Orders was enacted as one component of an Act that also revamped the crimes of harassment and stalking, the object of the statute can be understood to be protecting against stalking and harassment. *See* H.R. 3459, 111th Gen. Assemb., Reg. Sess. (S.C. 1995). An interpretation of “any person” to mean all persons subjected to stalking and harassment (rather than only persons never married to the person stalking and harassing them) best aligns with the plain meaning of the terms and better fulfills the statute’s purpose than a more limited reading of the text.

It is evident that the legislature believed spouses could pursue Restraining Orders for several reasons. First, the Restraining Order statute explicitly provides: “A restraining order issued pursuant to this article conspicuously must bear the following language ... (2) Pursuant to Section 16-25-125, it is unlawful for a person who is subject to a restraining order, to enter or remain upon the

grounds or structure of a domestic violence shelter in which the person's household member resides ...” S.C. Code §16-3-1770(C)(2). This warning and the attendant description of the penalties such a person would face for violating this provision only applies to those who share a household member relationship (including a spousal relationship) with the person protected by a Restraining Order. S.C. Code §§ 16-25-10; 20-4-20. Had the legislature believed that spouses and other household members were ineligible to seek Restraining Orders, the inclusion of this language would not have been necessary.

Second, if the legislature intended to exclude spouses from the Restraining Order remedy it could have done so, just as it excluded persons who do not share “family” or “household member” relationships from the Order of Protection remedy. S.C. Code Ann. § 20-4-20. Indeed, courts in other states that have distinct protection/restraining order remedies for domestic abuse and stalking/harassment have concluded that spouses are entitled to pursue both remedies. *See, e.g., Porter v. Schlenz*, No. 51478, 2024 WL 4664183, 1 (Idaho Ct. App. Nov. 4, 2024)(granting a stalking protection order to protect against a former spouse); Idaho Code Ann. § 18-7907; Idaho Code Ann. § 39-6301; *Wilson v. Wilson*, 11 N.W.3d 331 (Minn. Ct. App. 2024)(former spouse could seek anti-harassment restraining order against former spouse in district (non-family) court); Minn. Stat. §§ 518B.01; 609.748; *Rosberg v. Rosberg*, 25 Neb. App. 856, 864-6, 916 N.W.2d 62, 63 (2018)(adjudicating husband's claim for a harassment protection order against his wife); Neb. Rev. St. §28-311.09; Neb. Rev. St. §42-924; *Wolt v. Wolt*, 2010 ND 33, ¶ 11, 778 N.W.2d 802, 807 (2010)(finding a wife eligible to seek both a protection order against domestic abuse and a restraining order against stalking against her husband, in part, because the remedies are “in addition” to others); N.D. Cent. Code § 12.1-17-07.1; N.D. Cent. Code § 14-07.1-02. The legislature's failure to exclude

spouses from “any person” in §16-3-1750(C) suggests that it intended all persons, married or not, to be able to seek protection from stalking and harassment through Restraining Orders.

Third, the legislature’s intention to permit spouses (and other household members) to seek Restraining Orders is further illustrated by its directive that courts must consider issuing Restraining Orders to protect victim-spouses when a defendant spouse is charged with certain violent offenses and released on bond. S.C. Code Ann. § 16-25-120. Specifically, a court must consider whether to issue a Restraining Order or Order of Protection against a defendant released on bond in cases where: (1) the defendant is charged with a violent offense, (2) the victim of the offense is a household member of the defendant (as defined in S.C. Code Section 16-25-10, which mirrors the definition in the Protection from Domestic Abuse Act, Section 20-4-20), and (3) the defendant is either subject to a Restraining Order or Order of Protection or has previously been convicted of violating a Restraining Order or Order of Protection. S.C. Code Ann. §§ 16-25-120; 16-25-10; 20-4-20. If the court “determines in its discretion that a restraining order or order of protection is required, it should issue the order or forward the matter to the appropriate court.” S.C. Code Ann. § 16-25-120(C). In this statute, the legislature both presumes that household members (including spouses) can obtain Restraining Orders and directs bond courts (often Magistrate Courts) to issue Restraining Orders to protect household members (including spouses) in designated cases. S.C. Code Ann. §§16-3-1525; 22-5-510 (granting Magistrate Courts the authority to conduct bond hearings in non-capital and non-life cases); 17-15-10 (granting Magistrate, County, and Circuit courts the authority to impose bond conditions restricting the “travel, association, or place of abode of the person during the period of release”).

Finally, the very design of the Restraining Order form published by the South Carolina Judicial Department, SCCA 751, carries out the legislature’s intent to include spouses in the meaning

of “any person.” Form SCCA 751 includes the warning mandated by S.C. Code § 16-25-125 that “it is unlawful for a person who ... is subject to a Restraining Order to enter or upon the grounds or structure of a domestic violence shelter in which the person’s household member resides or the shelter’s administrative offices,” along with the description of the penalties for violation. SCCA 751. Moreover, form SCCA 751 includes check boxes the court may use to indicate whether the parties share particular relationships, including whether the Defendant is a “current or former spouse of the victim.” For all of these reasons, this Court should conclude that all persons can seek Restraining Orders in the Magistrate Courts to protect against stalking and harassment.

c. MAGISTRATE COURTS CAN ISSUE RESTRAINING ORDERS BETWEEN SPOUSES WITHOUT INFRINGING UPON THE EXCLUSIVE JURISDICTION OF THE FAMILY COURT.

Magistrate Courts can exercise jurisdiction over spouses for the purpose of adjudicating Complaints and Motions for Restraining Orders without infringing upon the jurisdiction of the Family Courts. When issuing Restraining Orders, Magistrate Courts cannot and do not award relief that falls within the exclusive jurisdiction of the Family Court, including issues of child custody or the settlement of legal and equitable rights to real and personal marital property. S.C. Code §§ 63-3-510, 530.

Pursuant to S.C. Code Ann. § 20-4-60(C), when granting Orders of Protection, the Family Court is permitted to not only issue protective remedies enjoining the respondent from abusing or threatening to abuse, communicating with, personally contacting, or entering certain properties frequented by the petitioner (residence, place of work, place of education, place of worship, etc.), but also to temporarily issue additional remedies within the exclusive jurisdiction of the Family Courts, such as custody, visitation, child and spousal support, and temporary possession of real and personal property. Magistrate Courts are not granted the same additional authority and cannot make orders affecting property rights or custody in a way that would infringe upon Family Court

jurisdiction. Instead, when issuing Restraining Orders, Magistrate Courts only have the authority to issue protective remedies enjoining the defendant from abusing or threatening to abuse, entering or attempting to enter certain locations frequented by the plaintiff, or communicating or attempting to communicate with the plaintiff. S.C. Code Ann. § 16-3-1770(B).

Further, S.C. Code Ann. § 16-3-1770(B) does not require Magistrate Courts to issue all available remedies in granted Restraining Orders.¹³ A court, for example, may issue an order that is silent as to the marital home but enjoins the defendant from entering the plaintiff's separate residence, place of work, place of education, place of worship, or plaintiff's family member's residence. Similarly, the court may grant an order that is silent as to a shared child but restricts the defendant from the home that the child lives in with the plaintiff alone.

Such orders do not impede the Family Court's exclusive jurisdiction because the Magistrate Court is not assigning possession of property or custody to any party. Instead, the Magistrate Court is simply restricting contact for the protection of the plaintiff in the same way that Magistrate and Circuit Courts impose bond conditions protecting a victim from a criminal defendant, including a victim spouse from a defendant spouse. Moreover, judges issuing bond conditions can and do issue conditional orders requiring the defendant to stay away from the plaintiff-spouse or children until there is a Family Court order addressing the issues of marital property or custody.¹⁴ Magistrate Courts can take this same approach when issuing Restraining Orders to protect spouses.

CONCLUSION

¹³ The language of S.C. Code Ann. § 16-3-1770 requires that the terms of the restraining order protect the plaintiff, but states that the court "may" issue the specific protective remedies discussed above.

¹⁴ This type of order can be seen in the Chris Corley case, discussed *supra* n.12. In that case, the judge issued bond conditions that enjoined Corley from contacting his wife or children unless the Family Court ordered otherwise. Schechter, *supra* n.12.

For the foregoing reasons, this Court should hold that all persons are eligible to seek Restraining Orders in Magistrates Courts to protect against stalking and harassment, including current and former spouses, and that Magistrate Courts have jurisdiction over Complaints and Motions for Restraining Order filed by current and former spouses against current and former spouses.

Signature page to follow

Dated:

Respectfully submitted,

/s/ Lisa V. Martin

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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,

vs.

James Major,
Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on April 11, 2025, she served counsel of record with a copy of the Motion for Leave to File Brief and the conditionally filed Amici Curiae Brief of Professor Lisa Martin and Marie Maness of the University of South Carolina Domestic Violence Clinic, The South Carolina Victim Assistance Network, Sistercare, and Project R.E.S.T in support of Appellant, Emily Major by sending copies of the same by electronic mail to the following addresses:

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Mr. Michael V. Laubshire, Esq.
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Dated: April 11, 2025

/s/ Marie Maness
Marie Maness
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Major v. Major, 2024-001566: Motion for Leave to File and Attached Amicus Brief

From Maness, Marie <MANESSM@mailbox.sc.edu>

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■ 1 attachment (439 KB)

Major v. Major Motion for Leave to File and Amicus Brief.pdf;

Good afternoon, Attorneys Stevens and Laubshire,

Please see attached Motion for Leave to File Amicus Brief and attached Amicus Brief in support of Appellant, Emily Major for the above referenced case.

Best,
Marie Maness

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