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SC Court of Appeals

FINAL BRIEF OF APPEALING
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Circuit Court Judge

AppellateCase No. 2024-001914

J. Mereinda Fisher, Individually,
Member of Fisher and Reid. LLC,

V.
Cynthia J. Glenn, individually, and as
Member of Fisher and Reid. LLC, and
Carolina Birth Center, LLC d/b/a
- Carolina Water Birth, Defendants,

Respondent

Of which Cynthia J. Glenn, individually, and as
Member of Fisher and Reid, LLC is the Appellant

FINAL BRIEF OF APPEALING

Cynthia-J: Glenn TM Su Juris
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Appealing

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STATUTES

S.C. Code Ann. § 14-1-50 All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

S.C. Code Ann. § 16-17-640 Blackmail. Any person who verbally or by printing or writing or by electronic communications: (3) compels any person to do any act, or to refrain from doing any lawful act, against his will; with intent to extort money or any other thing of value from any person, or attempts or threatens to do any of such acts,...

OTHER AUTHORITIES

SCRCP RULE 5(b)(1) Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him ... Delivery of a copy within this rule means: handing it to the attorney or to the party

SCRCP RULE 52 ALL ORDERS MUST COMPLY WITH RULES ... Rule 52 -In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58;

SCRCP Rule 40(j)Case Stricken From Docket by Agreement.

SCRCP Rule 12(h)(3) (3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

South Carolina Alternative Dispute Resolution Rules (SCADR) Rule 3, Actions Subject to ADR (a) Mediation. All civil actions filed in the circuit court,.. are subject to court-ordered mediation under these rules.

SCADR Rule 5 (e) Motion to Defer or Exempt from ADR. A party may file a motion to defer an ADR conference or exempt a case from ADR for case specific reasons. (f) Deadline for the ADR Conference in Circuit Court. The ADR conference shall be held on or before three hundred (300) days from the date of the filing of the action. The case shall not be on the circuit court trial roster until a Proof of ADR is filed.Rule 10 Sanctions (a) Proof of ADR. If by the time required by these rules, no Proof of ADR has been filed with the Office of the Clerk of Court and the case has not been exempted or deferred from ADR by court order, the court may issue a Rule to Show Cause why sanctions should not be imposed, including the dismissal of an action without prejudice or the striking of a pleading.

The Supreme Court of South Carolina Order RE: Circuit Court Arbitration and Mediation and

Family Court Mediation Pilot Program dated November 12, 2015 and effective January 1, 2016. This Court adopted Court-Annexed Alternative Dispute Resolution (ADR) Rules which govern court-annexed ADR processes in South Carolina Circuit Courts in civil suits...

Title 5 U.S.C. §556(d) (d)Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.

28 U.S. Code § 1332 (a)The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(4)a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S. Code § 1603(a)A “foreign state”, ... (B)(3)which is neither a citizen of a State of the United States as defined in section 1332

28 USC Section 1602, et. seq., (j) Serving a Foreign, State, or Local Government. (1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

RULE 501 CODE OF JUDICIAL CONDUCT, PREAMBLE... The judge is an arbiter of facts and law for the resolution of disputes..... Rule 502.1, Judges's Oath... V. Rules Governing the Judiciary, CANON 1A... Canon 3(4)

THE FOURTH AMENDMENT to the United States Constitution protection from search and seizure

Title 5 U.S.C., Sec. 556 (d) "The proponent of the rule has the burden of proof."

POSTAL RULE / MAILBOX RULE / an offer is considered accepted at the time that the acceptance is communicated (whether by mail e-mail, etc).

Foreign Sovereign Immunity Act of 1976, Pub. L. 94-583 (FSIA)

United States International Organizations Immunities Act,

Public Law 79-291, 29 December 1945 (Public Law 291-79th Congress), Title I Section 2.

Public Law 79-291, 29 December 1945 (Public Law 291-79th Congress, Title I Section 9.

Also see 22 USC Section 611 - Foreign Relations and Intercourse, and, 22 USC Section 612,

Registration statement

STATEMENT OF ISSUES ON APPEAL

ISSUE ONE: THE TRIAL COURT ERRED BY NOT CONSIDERING THE CHALLENGE TO JURISDICTION PRIOR TO HEARING MOTIONS OR MAKING RULINGS AND BY NOT ALLOWING CYNTHIA TO PRESENT HER STATEMENT REGARDING JURISDICTION

ISSUE TWO: THE TRIAL COURT ERRED BY ACTING WITHOUT CAUSE BY MAKING RULINGS WITHOUT A MOTION TO REQUEST REINSTATEMENT OF THE CASE AFTER THE PLAINTIFF FAILED TO PROSECUTE

ISSUE THREE: THE TRIAL COURT FAILED TO RECOGNIZE OBJECTIONS TO SUBJECT MATTER AND PERSONAL JURISDICTION, VENUE, INSUFFICIENCY OF PROCESS, FAILURE TO SUFFICIENTLY STATE A CLAIM, FAILURE TO JOIN PARTIES AND THAT ANOTHER ACTION IS PENDING BETWEEN THE PARTIES.

ISSUE FOUR: THE TRIAL COURT'S FINDINGS DO NOT SUPPORT THE FACTS OR CONCLUSIONS OF LAW.

STATEMENT OF THE CASE

Cynthia-Jane:Glenn “Cynthia” is not a US Citizen or a Resident of SOUTH CAROLINA. Cynthia originally believed that the name in the caption, Cynthia J. Glenn, individually, referred to herself but has since been informed by attorney for Respondent that the case is confidential and he will not discuss it with Cynthia. Such errors of title and conflicts have caused unnecessary chaos and inhibited Cynthia’s equal protections and due process.

On October 10, 2024, Motions were before the Greenville Court of Common Pleas on a complaint that had expired and been abandoned. Cynthia files a petition to strike the recent Lis Pendens filed against Carolina Birth Center, LLC d/b/a Carolina Water Birth based upon the expired case and disputing the jurisdiction of the court to hear three Motions filed by Respondent. Lis Pendens could adversely affect Cynthia’s true organization which operates under a similar name.

The complaint had been filed on April 6, 2021, but was abandoned and had been deemed void as of the deadline of Nov 1, 2023 by memo from Judge Mogan (ROA pg 394). No motion for reinstatement has been filed.

Cynthia filed several un rebutted affidavits in objection to jurisdiction (ROA 146-153, 180-186) as well as notices of appearances which were not contested (ROA 267, 316). At the hearing, she was not allowed to adequately present her statement regarding her objections to jurisdiction.

The court’s preliminary ruling stated that Cynthia J. Glenn, individually, was not present at the hearing (ROA 323-332) but the final order stated that she was there only on the matter of Lis Pendens and did not clarify that Cynthia had contested the jurisdiction of all matters before the court (ROA 335).

FACTS

Respondent and Cynthia purchased a building together in June 2021, each owning 50 % OF THE BUILDING. Respondent was the authorized agent for FISHER AND REID LLC which was organized to manage the building shared by Cynthia and Respondent. Carolina Birth Center signed

a lease with FISHER AND REID for the terms of 6/2021 until 6/2027. The lease is in good standing. FISHER AND REID LLC is the landlord for Carolina Birth Center. In June 2021, FISHER AND REID, LLC began improvements on the Property in preparation for use by the new tenant.

Cynthia and Respondent also each owned separately managed organizations. Respondent provided professional services at numerous locations under the corporation SHIPHRAH AND PUAH LLC. Cynthia operated CYNTHIA GLENN, LLC for her professional services. CYNTHIA GLENN LLC was the authorized agent for Carolina Birth Center LLC, a management group for a DHEC Licensed Facility named Carolina Birth Center.

Respondent was contracted with Carolina Birth Center LLC from 2005 until it dissolved in May of 2021 and maintained admitting privileges for her occasional professional services at the facility. Cynthia was also contracted with Carolina Birth Center LLC which was her primary place of service for professional services.

Carolina WaterBirth is the DBA that Cynthia created to advertise many types of natural services both at the licensed facility and elsewhere within the community. A similar but different name is listed in the caption to which Cynthia is unfamiliar.

Carolina Birth Center was in the process of relocating to the shared property owned by Cynthia and Respondent from its established location in Simpsonville for 17 years. Carolina Birth Center, LLC and Carolina Birth Center ceased to function in May of 2021 while waiting for the Department of Health to approve operations at the new location. This cessation was prior to any new enterprises between Cynthia, Carolina Birth Center PMA, J. Mereinda Fisher or FISHER AND REID LLC.

On December 22, 2021 the facility license was approved at the new location. Carolina Birth Center resumed operations as a Licensed Facility, this time operating as a Private Membership Association (PMA) and Carolina Birth Center LLC as well as CYNTHIA GLENN LLC, being non-functional, were dissolved. Cynthia-J:Glenn is the primary member in charge of operations for the PMA, a Foreign tax-exempt organization.

March 2022, Respondent resigns as a contractor at Carolina Birth Center PMA almost immediately after the facility received its updated license at the new location. Respondent cited a traumatic event which had occurred while offering her professional services along with physical limitations as her reasons for quitting.

Carolina Birth Center PMA had been negotiating a lease update with FISHER AND REID LLC when **Respondent offers to sell** her portion of the property to Cynthia at cost. **Cynthia accepts the offer.**

Respondent abandons all ownership responsibilities since March 2022, leaving Cynthia to shoulder the entire burden including all Ownership Association fees, all taxes, maintenance, insurance, repairs, POA Board meeting attendance and the remainder of the build-out not yet completed. Cynthia has exercised dominion and remains in possession of the Property without the assistance of Respondent.

Although the selling of the building was the Respondents' idea, she was unhappy with the offered “at cost” price. Being disgruntled, Respondent begins to harass Cynthia and members of Carolina Birth Center, PMA. Cynthia is forced to put Respondent on Trespass Notice for all functions other than her landlord duties.

Respondent filed a complaint in Greenville County Common Pleas on April 6, 2022.(ROA pg 3)

On October 05, 2022, **Via electronic email, Respondent again offers to sell** Cynthia the building at a set amount and to voluntarily withdraw the lawsuit with prejudice (ROA 156, 157). **Cynthia accepts** the offer by return email, thus securing the contract¹. This agreement remained in effect and was undisputed. For more than a year, Cynthia attempts to secure a closing date for the purchase of the building (ROA pg 200, 204-6).

Cynthia also secures a loan for the purchase but Respondent does not agree upon a closing date and the loan approval expires.

¹ POSTAL RULE / MAILBOX RULE / DEPOSITED ACCEPTANCE an offer is considered accepted at the time that the acceptance is communicated (whether by mail e-mail, etc). It is an exception to the general rule of contract law in common law districts that acceptance of an offer takes place when communicated.

Cynthia secures funds again on Oct 6, 2023 and provides proof of funds as requested on October 23, 2023 (ROA pg. 260-1). Respondent again does not settle on a closing date and does not honor her agreement.

Despite a clear and simple agreement between Cynthia and Respondent, Respondent would not choose a closing date or fulfill her contract with Cynthia. Instead she attempted to extort Cynthia to sign an unrelated contract which would relieve her of any responsibility related to her 'traumatic event.' The conditions of this contract were also unrelated to the Plaintiff's complaint and stated that neither party knew of potential malpractice claims which was incorrect and would be considered perjury.

Counsel hired by Cynthia to mediate the purchase of the building had led Cynthia to believe that she would be held in default if she did not file an Answer to the Complaint and was given a two day deadline. Being simultaneously pressured to sign a no-fault perjurious contract by Respondent and the supposed looming deadline of filing a statement, Cynthia filed an Answer and Counterclaim in error and under duress. With better understanding and a theoretical property closure pending, she would later redact all signatures making the answer and any counterclaims moot. Cynthia had no desire to make any claims in the case as the matter had been settled.

October 12 and 19, 2023 In a Memo to Cynthia and Respondent, Judge Morgan states that the case can not be rescheduled and gives until Nov 1st to file settlement documents or to file for a Rule 40(j) if a trial date is not chosen. Additionally he clarifies that cases must have been mediated within 300 days of filing (ROA pg 349). Respondent fails to file settlement documents. Mediation has not occurred and the time limits for the case lapse leaving the case abandoned and no Rule 40(j) is filed.

December 18, 2023 Respondent denies that Cynthia-J: Glenn is a party to this case while she is attempting to finalize the sale of the building as previously agreed upon (ROA pg 164). The Attorney for Respondent tells Cynthia that the settlement arrangements were confidential and accuses her of practicing law without a license and then discontinues almost all communication with Cynthia. Respondent continued to attempt to send mail to Cynthia's office with full knowledge that none of the parties were associated with that address and service could not be

completed since they were confidential as her attorney has attested. Cynthia was unable to accept service under the new conditions set forth by Respondent. With the new knowledge that the case was confidential, as a matter of record, Cynthia redacts all signatures and previous filings on February 11, 2024.

February 12, 2024 Cynthia sends Respondent **Conditional Acceptance and Property Closing** via Registered Mail return receipt to J. Mereinda Fisher (ROA pg 180). The contract is accepted and the return receipt is signed by J. Mereinda Fisher in black ink (ROA pg 187). On the same day, per the agreement between Glenn and Fisher and the contract created by this registered signature, a **payment in full is sent to Cogdill Law Firm (as the agreed upon closing attorney) for the purchase of the building from Respondent**, thus satisfying Cynthia's obligation to Respondent. Although the funds were retained by Cogdill Law Firm, Respondent did not fulfill her obligations to Cynthia. She did not sign over her portion of the building nor did she withdraw her complaint.

February 19, 2024 Cynthia sends Notice of Resolution to the court after realizing that Respondent has failed to file settlement documents (ROA 122).

February 22, 2024 Via email, **Respondent requests discovery** (ROA 125). Because the case is in default, Cynthia informs the attorney for Respondent that discovery is outside of their authority and also informs them that she can no longer accept electronic service (ROA 124).

April 22, 2024 Cynthia receives **email from the court docket** with a motion hearing date. She informed The Court three times with **notices of lack of jurisdiction** on Feb 12, 2024, April 24, 2024, May 3, 2024 and June 21, 2024.

August 5, 2024 Respondent files a Lis Pendens upon Cynthia J. Glenn and Carolina Birth Center LLC in Greenville County Common Pleas under the case number 2024LP2300640 (ROA pg. 265).

August 13, 2024 Cynthia filed a motion objecting to the Lis Pendens for jurisdictional errors under case number 2024LP2300640 (POA 141, 299). The motion was accepted by the court under the associated case number for the original complaint. Cynthia was informed that she would have 15 minutes to defend her Petition.

On September 4, 2024, Cynthia filed separate Notices of Appearance for Cynthia-J: Glenn (POA pg. 267) and for Carolina Birth Center, LLC (POA pg. 316). These notices were not contested.

October 10, 2024 Cynthia's Motion (ROA pg. 269) and three other motions from the Respondent (ROA pg. 138, 139, 262) were scheduled before Judge Alex Kinlaw and NOT Judge Morgan, the original judge who had set the case deadline. In court, Cynthia was not allowed to finish her statement regarding the court's lack of jurisdiction (ROA Transcript 358-363) and Judge Kinlaw stated that if she was not the Cynthia J. Glenn of caption, she was not allowed to speak, even though the court had repeatedly informed her of the hearing using her email address and she had filed a Motion in the form of a Petition to Dismiss as well as undisputed Notices of Appearance.

The judge ruled on the other motions without first verifying jurisdiction and placed orders on entities with names similar to Cynthia and Carolina Birth Center, without clarifying the responsible parties.

ARGUMENTS

1. **CONSIDERING THE CHALLENGE TO JURISDICTION PRIOR TO HEARING MOTIONS** Standard of Review: This Court reviews the trial court's plain error in law as a de novo standard.

Proof of jurisdiction is paramount in all areas to include Common Law, Constitutional, STATE and tribunal. Cynthia's right to speak and defend herself against orders that could be used against her is an inalienable right not lawfully extinguished by the South Carolina Court of Common Pleas. Challenges to jurisdiction were submitted to the court in writing² and Cynthia also began her verbal explanation of the challenge in the courtroom (pg 352-354

² Notice of Lack of Jurisdiction filed on April 24, 2024. (ROA pg 141)
Notice of Lack of Jurisdiction filed on May 3, 2024.(ROA pg 173)
Notice of Error on June 24, 2024. (ROA pg 227)

Transcript). The Court did not properly address the issue and they did not require the Plaintiff to present proof of either Subject Matter or Personal jurisdiction; therefore, Cynthia's was denied due process and the proceedings were a nullity.

- a. "Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided" *Basso v. Utah Power & Light Co.*, 495 F2d 906, 910. "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal" *Hill Top Developers v. Holiday Pines Service Corp.*, 478 So. 2d. 368 (Fla 2nd DCA 1985).
- b. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio" In *Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846.
- c. "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York* 37 F Supp. 150
- d. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F2d 739.
- e. "Where there is absence of jurisdiction, all administrative and judicial proceedings are a nullity and confer no right, offer no protection, and afford no justification, and may be rejected upon direct collateral attack." -- *Thompson v. Tolmie*, 2 Pet. 157, 7 L.Ed. 381; *Griffith v. Frazier*, 8 Cr. 9, 3L. Ed. 471.
- f. "There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In *Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 1188 "A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." *Norwood v. Renfield*, 34 C 329; *Ex parte Gianibonini*, 49 P. 732 "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In *Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846 10 "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court

has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S.* 505 F 2d 1026 11 "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners* 94 Ca 2d 751. 211 P2d 389. "Jurisdiction, once challenged, cannot be assumed and must be decided." *Maine v Thiboutot* 100 S. Ct. 250. 12

- g. In a court of limited jurisdiction, whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. *Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. *Loos v American Energy Savers, Inc.*, 168 Ill.App.3d 558, 522 N.E.2d 841(1988)("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff. ").
- h. "[i]f the record does not show upon its face the facts necessary to give jurisdiction, they will be presumed not to have existed." *Norman v. Zieber*, 3 Or at 202-03

2. CONSIDERING NOT ALLOWING CYNTHIA TO **PRESENT HER STATEMENT**

REGARDING JURISDICTION Standard of Review. It was a clear error of the Court to not allow argument on the matter of jurisdiction.

- a. Three separate Challenges to Jurisdiction had been noticed to the court informing them of their errors. These challenges should have been fully resolved prior to any other Motion hearing or action by the court. Although The Court did show an intent to resolve whether Cynthia was a party to the case which can be seen in transcript, The Court did not allow a full explanation of the facts surrounding the errors. (Notice of Lack of Jurisdiction filed on April 24, 2024. (ROA pg 141), Notice of Lack of Jurisdiction filed on May 3, 2024.(ROA pg 173), Notice of Error on June 24, 2024.

(ROA pg 227))

- b. Cynthia-Jane:Glenn had a Right to Intervene - on behalf of Cynthia J. Glenn, individually, CYNTHIA GLENN, ens legis and CAROLINA BIRTH CENTER, LLC. Since there is a potential for Cynthia, Carolina Birth Center or Carolina Birth Center, PMA to be bound by the outcome of this case; Cynthia has an intervention of right. Additionally, Cynthia-Jane:Glenn, a living non-citizen, is the Executor for the legal entity ESTATE or ens legis titled, CYNTHIA JANE GLENN. CYNTHIA GLENN was the former agent for CYNTHIA GLENN, LLC. CYNTHIA GLENN LLC was the former agent for Carolina Birth Center, LLC.³
- c. Cynthia presented affidavits disputing jurisdiction and requesting dismissal. At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction, but when a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Graham v. Lloyd's of London*, 296 S.C. 249, 251 n. 1, 371 S.E.2d 801, 802 n. 1 (Ct. App. 1988).
- d. "Where the question of jurisdiction in the court of the person, the subject matter, or the place where the crime was committed can be raised, in any stage of a criminal proceeding; it is never presumed, but must always be proved; and it is never waived by the respondent." *U.S. v. Rogers*, District Court Ark., 23 Fed 658 1855. "It is basic in our law that an administrative agency may act only within the area of jurisdiction marked out for it by law. If an individual does not come within the coverage of the

³ **SCRCP Rule 12(h)(3)** "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Title 5 U.S.C. §556(d) "(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."

28 U.S. Code § 1332 (a) This code outlines the original jurisdiction of district courts in civil actions where the matter in controversy exceeds \$75,000 and is between a foreign state (as plaintiff) and citizens of a state or different states.

28 USC Section 1602, et. seq., (j) Serving a Foreign, State, or Local Government. (1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

Foreign Sovereign Immunity Act of 1976, Pub. L. 94-583 (FSIA): This Act is specifically mentioned as relevant to complaints and suits against ens legis entities.

particular agency's enabling legislation the agency is without power to take any action which affects him." *Endicott v. Perkins*, 317 US 501.

- e. "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest*, 127 P2d 934, 937.
- f. "...where any state proceeds against a private individual in a judicial forum it is well settled that the state, county, municipality, etc. waives any immunity to counters, cross claims and complaints, by direct or collateral means regarding the matters involved." -- *Luckenback v. The Thekla*, 295 F 1020, 226 U.S. 328; *Lyders v. Lund*, 32 F2d 308; *Dexter v. Kunglig J.*, 43 F2d 705, 282 US 896; *U.S. v. N.C.B.N.Y.*, 83 F2d 236, 106 ALR 1235.

3. CONSIDERING THE TRIAL COURT **ACTING WITHOUT CAUSE BY MAKING RULINGS WITHOUT A MOTION TO REQUEST REINSTATEMENT OF THE CASE AFTER THE PLAINTIFF FAILED TO PROSECUTE**. Standard of Review. It was a clear error for the trial court to proceed without requiring the Plaintiff to present evidence of jurisdiction

The Court added this case to the docket and allowed motions on a case that was abandoned for Plaintiff's failure to prosecute or to follow court orders. Required Alternative Dispute Resolution has not occurred and the case had been removed from the docket for failures to prosecute. Neither was a Motion for Reinstatement filed (ROA pg 394). By allowing the Respondent's motions and the Lis Pendens, the court acted without cause and violated equal rights and protections of Cynthia.

- a. The Supreme Court of South Carolina Order effective January 1, 2016 requires ADR in such civil cases and SCADR Rule 5 (f) requires that the ADR conference shall be held on or before three hundred (300) days from the date of the filing of the action. The case shall not be on the circuit court trial roster until a Proof of ADR is filed. No motion to defer or exempt was entered. Under SCADR Rule 10, not only is this failure a violation towards

- Cynthia but sanctions can result. Dismissal is allowed under both SCADR Rule 10 and Rules of Civil Procedure 41(b) For failure of the plaintiff to prosecute or to comply.
- b. The Court acted without Cause. Rules do not allow the courts to entertain motions on closed cases or until all jurisdiction has been determined and Cynthia has a reasonable expectation of privacy. Since the complaint had been resolved and abandoned it is unreasonable to expect her to produce private documents or be required to attend hearings. The Fourth Amendment of the Constitution protects citizens from unreasonable searches and seizures and secures a fundamental right to privacy by giving “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures...” An order for discovery, as well as the hearing itself, violates this privacy.
 - c. Even if The Court had some jurisdiction over the case it still lacked the power to grant relief as the offer and acceptance of the property has been fulfilled. Actions by The Court are a void judgement and a legal error. *Ellis v. Ellis*, 190 N.C. 418, 130 S.E. 7 ““If a judgment is void, it must be from one or more of the following causes: (1) Want of jurisdiction over the subject-matter; (2) want of jurisdiction over the parties to the action, or some of them; or (3) want of power to grant the relief contained in the judgment. In pronouncing judgments of the first and second classes, the court acts without jurisdiction, while in those of the third class it acts in excess of jurisdiction.”
 - d. It was a clear error for the trial court to proceed without requiring the Plaintiff to present any evidence of jurisdiction. The judge acted alone. “Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter.” See *McNutt v. GMAC*, 298 US 178. The origins of this doctrine of law may be found in *Maxfield's Lessee v. Levy*, 4 US 308. "The law provides that once State and Federal jurisdiction has been challenged, it must be proven." -- *Main v. Thiboutot*, 100 S. Ct. 2502 (1980). "Once jurisdiction is challenged, it must be proven." -- *Hagens v. Lavine*, 415 U.S. 533.
 - e. “A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court” *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH*, 204 U. S. 8, 27 S. Ct. 236 (1907).
 - f. "No sanctions can be imposed absent proof of jurisdiction." -- *Standard v. Olsen*, 74 S. Ct.

768; Title 5 U.S.C., Sec. 556 and 558 (b). "The proponent of the rule has the burden of proof." --Title 5 U.S.C., Sec. 556 (d).

- g. A court "generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in the suit (subject-matter jurisdiction)" "The burden shifts to the court to prove jurisdiction" Rosemond v. Lambert, 469 F2d 416. "The proponent of the rule has the burden of proof."

4. CONSIDERING THE TRIAL COURT FAILURE TO RECOGNIZE OBJECTIONS TO

(a) lack of jurisdiction over the person (Transcript ROA pg 363), (b) improper venue (ROA 144, 177, 264, 306, 227, 299, 318-320), (c) insufficiency of process⁴ (d)insufficiency of service of process⁵, (e) failure to state facts sufficient to constitute a cause of action,⁶ (f) failure to join a party under Rule 19,⁷ (g) another action is pending between the same parties for the same claim (ROA pg 317 point 3).

a. LACK OF JURISDICTION OVER THE PERSON

- i. Attorney for Plaintiff disclosed that Cynthia is not the party in caption and refused to discuss the case with her stating that the case is "confidential," thus creating an impossible scenario for communication or conclusion. If Cynthia did not have access to the settlement details because they were confidential, she could not be the same Cynthia that was listed in the caption of the complaint. Specifically, "Cynthia J. Glenn, Individually" and Cynthia-Jane: Glenn, the living woman are not the same.
- ii. Cynthia is not a US Citizen or a Resident of SOUTH CAROLINA. She would be identified as a non-resident which falls within the District Court's original jurisdiction. The lower court failed to obtain personal jurisdiction and therefore

⁴ ROA= pg 81 point 3, pg 100 point 5, pg 320, pg 227

⁵ ROA= pg 81 point 4, pg 82 point 5, pg 99, pg 100 point 3, pg 101 point 3, pg 101 point 4, 143, 318, 316, 229)

⁶ ROA= pg 100 point 8, pg 102 point 10, pg 103, pg 318, pg 320 point 9

⁷ ROA= pg 80 point 1a & 1b, pg 142-144, pg 227, 229, 316, 318)

all orders are void for violating due process.⁸ This court, pursuant to the Federal Rules of Civil Procedure (FRCP) Rule 4 (j), is, in fact and at law, a Foreign State as defined in 28 USC Section 1602, et. seq., the Foreign Sovereign Immunity Act of 1976, Pub. L.94-583

- iii. Cynthia-Jane:Glenn, living woman and a native of the state⁹ of South Carolina, presented a record of facts and has a right to challenge the court's claim of personal jurisdiction. If the South Carolina Court of Common Pleas were a territory with metes and bounds and not a corporation, then Cynthia would be bound to it only as much as the court is bound directly to the state constitution without further rules. Being a non-resident without any registration to the state, Cynthia is considered foreign to The Court and any judgement against her would be bound only to the property and not to the personam or woman. Yet it has been established that all issues of property have been resolved with an existing offer and acceptance as well as fulfillment of responsibilities of that acceptance by Cynthia.
- iv. 28 U.S. Code § 1332 (a)The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(4)a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.
- v. 28 U.S. Code § 1603(a)A “foreign state”, ... (B)(3)which is neither a citizen of a State of the United States as defined in section 1332
- vi. 28 USC Section 1602, et. seq., (j) Serving a Foreign, State, or Local

⁸ "Where a party is within a territory, he may justly be subjected to its process, and bound personally by the judgment pronounced on such process against him. Where he is not within such territory, and is not personally subject to its laws, if, on account of his supposed or actual property being within the territory, process by the local laws may, by attachment, go to compel his appearance, and for his default to appear judgment may be pronounced against him, such a judgment must, upon general principles, be deemed only to bind him to the extent of such property, and cannot have the effect of a conclusive judgment in personam, for the plain reason, that, except so far as the property is concerned, it is a judgment coram non judice." **Pennoyer v. Neff, 95 US 714 - Supreme Court 1878**

⁹ "In the Constitution the term **state** most frequently expresses the combined idea just noticed, of people, territory, and government. A **state**, in the ordinary sense of the Constitution, is a **political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed.**" **Texas v. White, 74 US 700 - Supreme Court 1869**

Government. (1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

b. IMPROPER VENUE

- i. Cynthia is not a US Citizen nor a resident of SOUTH CAROLINA. Since Cynthia and Respondent were in the process of negotiating a purchase agreement prior to Respondent retaining counsel or filing the complaint and soon settled upon an agreement without much debate, there had been no need to previously object to the caption.

c. INSUFFICIENCY OF PROCESS

- i. The Court of Common Pleas did not have jurisdiction over the case affiliated with the Lis Pendens. Among other deficiencies, the time limits had expired and the parties had been notified of the deadlines thereby making the Lis Pendens invalid.
- ii. Lis Pendens does not protect the community or any potential buyers because Cynthia herself is the contracted purchaser of the property in question. Instead the Lis Pendens only harms Carolina Birth Center, PMA and Cynthia by hindering their ability to gain credit or expand their enterprises.
- iii. The associated case was out of time limitations on April 6, 2023 and deemed abandoned on November 1, 2023 by the deadline noticed by Judge Morgan. The court erred in allowing continued motions after deadlines and the filing of Lis Pendens.

d. INSUFFICIENCY OF SERVICE OF PROCESS

- i. There is no Proper Service for this case. Service has not been established for a legal person or corporate entity known as “Cynthia J Glenn, individually”, for Carolina Birth Center LLC d/b/a Carolina Water Birth, Fisher and Reid LLC or for the living woman Cynthia-Jane: Glenn. Since Respondent is the responsible agent for FISHER AND REID LLC, she would have to accept service on their behalf. Respondent feigned service with errors of title with full knowledge that service can not be accepted under incorrect names or fictitious entities. Attorney for Respondent eventually began telling Cynthia that the case

was confidential and that she was not going to be allowed access to finalize the sale. If the case is confidential and Cynthia is not allowed access then she can not be the party of caption and therefore can not accept service as captioned. Respondent created an impossible scenario for Cynthia in order to create a prejudiced case in court.

- ii. Rights of American citizens in foreign states. Whereas the right of expatriation is a natural and inherent right of all people and this court is in fact foreign to Cynthia, pursuant to the Federal Rules of Civil Procedure (FRCP) Rule 4 (j), and a Foreign State as defined in 28 USC Section 1602, et. seq., the Foreign Sovereign Immunity Act of 1976, Pub. L. 94-583. All complaints and suits against ens legis CYNTHIA GLENN fall under the aforementioned FSIA (Foreign Sovereign Immunity Act of 1976, Pub. L. 94-583) and service of process must be made by the clerk of the court, under section 1608(a)(4) of title 28, United States Code, 63 Stat. 111, as amended (22 U.S.C. 2658) [42 FR 6367, Feb. 2, 1977, as amended at 63 FR 16687, Apr. 6, 1998], to the Director of the Office of Special Consular Services in the Bureau of Consular Affairs, Department of State, in Washington, D.C., exclusively, pursuant to 22 CFR Sections 93.1 and 93.2. A copy of the FSIA must be filed with the complaint along with “a certified copy of the diplomatic note of transmittal;” and, “the certification shall state the date and place the documents were delivered.” The foregoing must be served upon the Chief Executive Officer and upon the Registered Agent of the designated Corporation or Foreign State.

e. FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

- i. The underlying action does not involve a real property claim. Fisher has sold her portion of Property to Cynthia as is evidenced by her complete abandonment of the Property and all responsibilities as an owner and as also evidenced by Facts of the Case of Unrebutted Affidavit of Truth / Conditional Acceptance and Property Closing. Payment for the property in question has been fulfilled. Although Respondent has not yet relinquished property title, any actions on that matter would

be a private action or a matter for a different court of proper jurisdiction.¹⁰

- ii. Cynthia presented a record of facts showing the respondent failed to prove standing and therefore the Plaintiff has a right to challenge the court's claim of personal jurisdiction. It is an adjudicated fact *Lujan v. Defenders of Wildlife*, 504 US 555 - Supreme Court 1992 that the respondent (plaintiff in the lower court) must have suffered and injury in fact, but she did not introduce any evidence showing the undersigned has caused her an injury in fact, and therefore the lower court failed to obtain personal jurisdiction and therefore all orders are void for violating due process.
- iii. Whereas Respondent voluntarily withdrew her agreement to provide services at Carolina Birth Center and voluntarily offered the sale of her portion of the building to Cynthia, there can be no injury, claim or interest in the property or organizational activity. Respondent never presented any evidence of an injury and proceeded toward the selling of the property which is a complete remedy of the claim.

f. FAILURE TO JOIN A PARTY

- i. There are no True Defendants in the case. Professional services between Cynthia and Respondent were conducted under the names of professional entities (CYNTHIA GLENN LLC AND SHIPHRAH AND PUAH LLC) which are not listed in Caption. Additionally, Carolina Birth Center restructured as a PMA when it reestablished in the new location, the property in question. No enterprise was conducted between J. Mereinda Fisher and Carolina Birth Center LLC during their brief joint venture. Carolina Water Birth is a fiction. Respondent is unaware of any such organization and it was not the d/b/a for

¹⁰ “Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, see *id.*, at 756; *Warth v. Seldin*, 422 U. S. 490, 508 (1975); *Sierra Club v. Morton*, 405 U. S. 727, 740-741, n. 16 (1972);[1] and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical,’ ” *Whitmore*, *supra*, at 155 (quoting *Los Angeles v. Lyons*, 461 U. S. 95, 102 (1983)). Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly. . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 41-42 (1976). Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”” *Id.*, at 38, 43. *Lujan v. Defenders of Wildlife*, 504 US 555 - Supreme Court 1992

Carolina Birth Center LLC; therefore, there was never an entity known as Carolina Birth Center LLC d/b/a Carolina Water Birth. By listing FISHER AND REID, LLC as both a Plaintiff and a Defendant Respondent created a disqualifying conflict of interest without the consent from all parties. Any true party related to the subject matter is not captioned as a party to the case causing Fatal Defects and Errors that limit the judiciary process and fair dealings.

- g. ANOTHER ACTION IS PENDING BETWEEN THE SAME PARTIES FOR THE SAME CLAIM
 - i. Even prior to the agreement for the sale of the building to Cynthia, a lease agreement existed between Carolina Birth Center and FISHER AND REID LLC that does not expire until January 2027. There has been no default of the lease contract as Cynthia pre-paid the lease in its entirety.
 - ii. A resolution between Cynthia and Respondent had been offered and accepted; therefore, no dispute exists to which the court would have jurisdiction.

5. CONSIDERING THE TRIAL COURT'S FINDINGS DO NOT SUPPORT THE FACTS OR CONCLUSIONS OF LAW. Standard on Review: It was a clear error for the trial court to produce incorrect orders and not acknowledge a challenge to jurisdiction.

Cynthia appeared in the courtroom and identified herself. Since there was a challenge to jurisdiction, that matter must be resolved prior to any other motions in the case. The Court appeared to acknowledge that Cynthia's motion must be addressed first. However in the electronic form order, The Court denied that Cynthia was available to defend her motion and in the final order The Court claimed that Cynthia had left the courtroom prior to her Motion Hearing without making attempts to defend it.

The findings of The Court do not support the facts as is apparent by transcript. Cynthia tried to defend her motion but was interrupted and not allowed to continue despite asking several times for the judge to allow her to present her statement succinctly and to be allowed to finish her challenge to jurisdiction.

Cynthia's Motion and Notices of Appearance were uncontested and the Respondent never made any attempt to prove jurisdiction. The Court acted of its own accord without authority and produced Orders with errors void of conclusions of law. THE MATTER OF JURISDICTION WAS NOT ADDRESSED BUT INSTEAD WAS IGNORED with the false claim that Cynthia was not present.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

"Jurisdiction, once challenged, cannot be assumed and must be decided" *Basso v. Utah Power & Light Co.*, 495 F2d 906, 910

"Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners* 94 Ca 2d 751. 211 P2d 389.

"Jurisdiction, once challenged, cannot be assumed and must be decided." *Maine v Thiboutot* 100 S. Ct. 250. 12

"[i]f the record does not show upon its face the facts necessary to give jurisdiction, they will be presumed not to have existed." *Norman v. Zieber*, 3 Or at 202-03

"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court" *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH*, 204 U. S. 8, 27 S. Ct. 236 (1907).

"No sanctions can be imposed absent proof of jurisdiction." --*Standard v. Olsen*, 74 S. Ct. 768; Title 5 U.S.C., Sec. 556 and 558 (b). "The proponent of the rule has the burden of proof." --Title 5 U.S.C., Sec. 556 (d).

A court "generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in the suit (subject-matter jurisdiction)" "The

burden shifts to the court to prove jurisdiction" Rosemond v. Lambert, 469 F2d 416. "The proponent of the rule has the burden of proof."

The Court orders did not address the conclusions of law regarding the many violations of due process and jurisdiction. Without such conclusions the orders are void.

CONCLUSION

Cynthia was denied due process and equal protection under the law. She was subjected to hearings and rulings without jurisdiction. The Court of Appeals should reverse the judgments of the lower court thus voiding the orders and removing the case for failure to prosecute or follow ADR Rules and Orders.

Respectfully submitted,

Cynthia-J: Glenn

without prejudice

Cynthia-J: Glenn™ Su Juris

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Appealing