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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM YORK COUNTY

Court of Common Pleas

The Honorable Charles J. McCutchen

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Appellate Case No. 2025-000705

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James S. Patton,

Appellant,

v.

Kera R. Selzer and Dustin S. Selzer,

Respondent.

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**INITIAL BRIEF OF APPELLANT**

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**STATEMENT OF ISSUE ON APPEAL**

1. DID THE CIRCUIT COURT ERR IN AFFIRMING THE MAGISTRATE JUDGE'S RULING TO ISSUE A RESTRAINING ORDER BY FINDING THE RESPONDENTS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT APPELLANT ENGAGED IN HARASSMENT, FIRST DEGREE?

## STATEMENT OF THE CASE

On September 30, 2024, Respondents Dustin Selzer and Kera Selzer filed a Complaint and Motion for Restraining Order against Appellant James Patton in York County Magistrate Court. (2024-OR-46-10500025) (R.\*).

On November 5, 2024, the parties appeared before the Honorable Douglas W. Sexton (“Magistrate Judge”) for a hearing on the motion for a restraining order. (Hearing Tr. p. 1 – 119). Leland Greeley represented Appellant, and Creighton Hayes represented the Respondents. After hearing the testimony and reviewing the evidence, the Magistrate Judge granted Respondent’s motion and issued a Restraining Order. (Hearing Tr. p. 115 – 118); (R.\*).

On November 25, 2024, Appellant filed a Notice of Intent to Appeal. (R.\*). The Magistrate Judge filed its Return on January 17, 2025, and Respondents filed a Memorandum in Support of the Magistrate’s Return and in Opposition to the Appeal on February 19, 2025. (R.\*\*).

On February 25, 2025, the parties appeared before the Honorable Charles J. McCutchen (“Circuit Court”) for appellate review of the Magistrate Judge’s issuance of a Restraining Order. (2024-CP-46-04598) (Appeal Tr. 1 – 15). Leland Greeley represented Appellant, and Creighton Hayes represented the Respondents. The Circuit Court subsequently issued an Order affirming the Restraining Order on March 12, 2025. (R.\*).

On April 11, 2025, Appellant filed a Notice of Appeal before this Court. (R.\*). This appeal follows.

## STATEMENT OF THE FACTS

### *Motion for Restraining Order*

On September 30, 2024, Respondents filed a Complaint and Motion for Restraining Order, alleging that Appellant's conduct constituted Harassment, First Degree:

[On] September 22, 2024, at 6 O'clock P.M., at [ ] Windswept Cove, which is in York County, the conduct complained of occurred when the [Appellant]: Trespassing on my property and refusing to leave – Police called and told him not to come back[.]

On September 28, 2024, at 9 O'clock, A.M., at [ ] Windswept Cove, which is in York County, the conduct complained of occurred when the [Appellant]: Trespassed on property, refusing to leave, taking photos of me and screaming at me. Recorded on 911 call.

On September 30, 2024, at 12 O'clock, P.M., at [ ] Windswept Cove, which is in York County, the conduct complained of occurred when the [Appellant]: Videoing me and my kids from his yard – No contact order in place from judge.

(R.\*).

### *Hearing in Magistrate Court*

On November 5, 2024, the parties appeared before the Magistrate Judge for a hearing on the motion for a restraining order. (Hearing Tr. p. 1 – 119). Respondents Dustin Selzer and Kera Selzer testified at the hearing. (Hearing Tr. p. 6 – 68). The following exhibits were admitted into evidence by the Respondents: (1) One photograph of Appellant's truck; (2) Four photographs taken from surveillance recordings; (3) Four photographs; (4) Five photographs; and (5) Four photographs. (Hearing Tr. pp. 10, 15, 25, 27, 58).

Eddie Broom, Code Enforcement Officer for York County, and Appellant testified as witnesses in his defense. (Hearing Tr. p. 69 – 109). The following exhibits were admitted into evidence by the Appellant: (A)(1) Seven aerial photographs from York County GIS indicating the property lines for Appellant's and Respondent's properties, (A)(2) York County Property Report

for Respondent's property, and (A)(3) Plat and Survey; (B) York County Code Enforcement – Notice of Violation to Respondents; (C) Three photographs showing the lake shoreline dated January 20, 2024; (D) Notice from Duke Energy and photographs showing the lake shoreline; (E) One photograph showing the beach, lake, and dock; (F) Eight photographs showing the shoreline, lake, and Respondent's property; and (G) Two photographs showing the shoreline, lake, and Respondent's property, and Appellant's property. (Hearing Tr. pp. 70, 72, 87, 90, 91, 96, 97). (R.\*\*\*\*\*).

### **Respondent Dustin Selzer**

At the hearing, Respondent Dustin Selzer testified that he is thirty-nine (39) years old and lives with his wife, Kera Selzer, and their two children (a 7-year-old daughter and a 9-year-old son) at [ ] Windswept Cove. (Hearing Tr. p. 7). Mr. Selzer explained that they closed on their home on June 6, 2024, and moved in after completing renovations on August 30, 2024. (Hearing Tr. p. 7). Appellant lives next door at [ ] Windswept Cove. (Hearing Tr. p. 7).

Mr. Selzer testified that, prior to moving into their home, he first met Appellant when he asked Appellant to move a truck that was parked in the right-of-way on the Selzer's property. (Hearing Tr. p. 8 – 9). Mr. Selzer noted that the initial conversation with Appellant "wasn't bad". (Hearing Tr. p. 10, lines 7-8). Mr. Selzer claimed that Appellant told him and his wife that he was the reason they were able to purchase the home "because he had ran the old elderly couple [who previously owned the home] off." (Hearing Tr. p. 10, line 21 – 11, line 3).

Mr. Selzer testified that on September 7, 2024, Appellant came into their yard uninvited with cake and ice cream while his wife's parents were visiting. (Hearing Tr. p. 11, line 16 – 12, line 17). Mr. Selzer noted this interaction with Appellant was also cordial. (Hearing Tr. p. 11, lines 25).

Mr. Selzer maintained that on September 8, his children ran inside stating Appellant is in their front yard waving at them. (Hearing Tr. p. 12, lines 18-23). Mr. Selzer explained that he looked outside and saw Appellant “standing out of my front yard again” and “was like waving at us, telling the kids to come out.” (Hearing Tr. p. 12, lines 22-24). Mr. Selzer testified that he then told Appellant to leave their yard and claimed that Appellant’s behavior made them uncomfortable. (Hearing Tr. p. 13, lines 17-23). Mr. Selzer identified photographs taken from their security cameras facing the lake. (Hearing Tr. p. 14, lines 18 – 15, lines 23).

Mr. Selzer testified that he informed Appellant about building a privacy fence and then received a text from Appellant about the fence violating “some laws”. (Hearing Tr. p. 16). Mr. Selzer stated that he received a call from Duke Energy (“Duke”) about the fence and subsequently confronted Appellant about whether Appellant submitted a complaint to Duke. (Hearing Tr. p. 17). Mr. Selzer claimed that Appellant ultimately acknowledged contacting Duke about their fence. (Hearing Tr. p. 17). Mr. Selzer further testified that Appellant also submitted a complaint about the fence to York County. (Hearing Tr. p. 18).

Mr. Selzer testified that on September 22, 2024, Appellant was “in just swimming trunks sitting on my sea wall.” (Hearing Tr. p. 18, line 21 – 19, line 4; p. 20; p. 25). Mr. Selzer also testified that he asked Appellant to leave, and Appellant refused, stating that he had the “right to be here”. (Hearing Tr. p. 19, lines 3-9). Mr. Selzer further testified that his friends who were visiting the Respondents called 911, and that Appellant then went “knee deep” into the water until the police arrived. (Hearing Tr. p. 19, lines 12-17). Mr. Selzer claimed that the police formally trespassed Appellant after telling him to leave the Respondents’ property. (Hearing Tr. p. 21, line 19 – 22, line 3). Ms. Selzer further claimed that he felt terrible, his wife was upset, and his kids were scared. (Hearing Tr. p. 22, lines 20-24).

Mr. Selzer testified that on September 28, 2024, he received a call from his wife claiming that Appellant was “was on our property, in our front yard again,” taking pictures of her. (Hearing Tr. p. 23, lines 2-9). Mr. Selzer also testified that he called the police and that Appellant was arrested for trespassing. (Hearing Tr. p. 23, lines, 15-17). Mr. Selzer further claimed that Appellant continued to harass them from his own property by taking pictures over the privacy fence, shining lights/lasers through the fence at night, and calling the police on their dog. (Hearing Tr. p. 23, line 21 – 24, line 19).

On cross-examination, Mr. Selzer claimed that his property line in relation to the lake shore is “[m]y riprap all the way - - my sea wall is basically my property line.” (Hearing Tr. p. 30, lines, 21-24). Mr. Selzer conceded that he does not own the lake shore, beach, and water. (Hearing Tr. p. 31, lines, 11-20). Mr. Selzer also admitted that he found out that, if a fence is seven feet tall, then it is considered a structure and must have a building permit. (Hearing Tr. p. 32, lines 4-7). Mr. Selzer further acknowledged that he did not have a building permit. (Hearing Tr. p. 32, lines, 11-12).

Counsel for Respondent objected, arguing whether “the fence is in violation or whether it has been cited, is not the issue today.” (Hearing Tr. p. 33, lines, 2-6). Counsel for Appellant replied, “*I’m offering this, Your Honor, to show that my client had a legitimate purpose for each time that he was on the property of Duke Power, not Mr. Selzer’s property, and we’re going to show that.*” (Hearing Tr. p. 33, lines, 8-11) (emphasis added). The Magistrate Judge ruled, “I will allow that. . . . I’ll overrule the objection.” (Hearing Tr. p. 33, lines, 12-17).

Mr. Selzer admitted that he received a notice of violation from York County but claimed that he was “on the good side of Duke and York County for my fence right now[.]” (Hearing Tr. p. 33, lines, 19 – 34, line 7). Mr. Selzer also admitted that he was “aggressive” when confronting

Appellant on September 8th, stating, “What the fuck he was doing on your property[.]” (Hearing Tr. p. 37, lines, 12-17). Mr. Selzer further conceded that he had no contact with Appellant until September 22, when he maintained that Appellant was sitting on the wall, and that Appellant did not say anything aggressive. (Hearing Tr. p. 39, lines, 2-10). Mr. Selzer acknowledged that he was not initially home during the alleged videotaping incident with his wife and Appellant, and that he has not seen any videos from Appellant. (Hearing Tr. p. 42 – 44).

On re-direct examination, Mr. Selzer testified that he told Appellant not come back on his property and to stop contact with his family on September 11, 2024. (Hearing Tr. p. 45, lines, 11-17). Mr. Selzer admitted that Appellant had the right to submit a complaint with Duke about the fence. (Hearing Tr. p. 45, lines, 15-18).

On re-cross-examination, Mr. Selzer acknowledged that he received a text message from Appellant, stating,

Hi Dustin, as we discussed yesterday, please verify with the deed restrictions, your county building codes and your property survey lines, that the privacy fence on both sides is not encroaching on Duke Power lake bed property, or restricting or obstructing public use of the shoreline lake water or repair zones. I understand that you are new to lake life, lakefront property ownership, but it appears that the privacy fence may not be constructed properly on your property. We've agreed to talk about any concerns, so I just wanted to let you know.

(Hearing Tr. p. 46, lines, 5-17).

### **Respondent Kera Selzer**

At the hearing, Kera Selzer testified that she is a nurse practitioner and confirmed the date they purchased the home, the date they move into the home, and family background details the same as provided by Mr. Selzer. (Hearing Tr. p. 47 – 48). Mrs. Selzer claimed that, prior to moving in their home, she saw Appellant standing on his dock yelling and screaming at boats for

about 10 hours. (Hearing Tr. p. 48, lines 8-10). Mrs. Selzer claimed that Appellant “at one point that day” came over that day and said, “I’m sorry if I scared your children.” (Hearing Tr. p. 48, lines 10-11).

Mrs. Selzer testified that, although she was alarmed, they had a cordial interaction and thanked Appellant for bringing cake and ice cream: “We said, ‘That’s great. Thank you for the cake and ice cream.’” (Hearing Tr. p. 49, lines 7-8).

Mrs. Selzer testified that their kids came running in the home claiming that Appellant was waving for them to come outside on September 8 and that Mr. Selzer went outside to tell Appellant to leave. (Hearing Tr. p. 50). Mrs. Selzer also maintained that she was scared because she is a mother who was trying to protect her children. (Hearing Tr. p. 51).

Mrs. Selzer testified that she was not initially present on September 22 when Appellant was sitting on the sea wall but that she locked her kids in the “bathroom or bedroom” upon her arrival. (Hearing Tr. p. 53). Mrs. Selzer claimed that Appellant was trying to intimidate them. (Hearing Tr. p. 53). Mrs. Selzer maintained that the police told Appellant to leave:

They’ve had to ask him several times to leave, and they said at this point, ‘Sir, I’m telling you to leave. *I don’t care if it’s your right to be here or not.* I’m asking you to leave.’

(Hearing Tr. p. 54, lines 21-24) (emphasis added).

Mrs. Selzer testified that, when her husband was at the store on September 28, she saw Appellant “taking pictures and videos of my house”, she called 911, and claimed Appellant yelled at her prior to being arrested. (Hearing Tr. p. 55 – 57). Mrs. Selzer also maintained that Appellant subsequently recorded her driving in her car in an intimidating manner, and that she and her children were crying. (Hearing Tr. p. 59 – 60). Mrs. Selzer further claimed that she has sought medical treatment for anxiety and put extra locks on their doors because she’s afraid of Appellant.

(Hearing Tr. p. 61 – 62).

On cross-examination, Mrs. Selzer acknowledged that she had not seen Appellant assault anyone or be unkind to her children, and that her actions have been based on her perception of the worst-case possibilities. (Hearing Tr. p. 64 – 66). Mrs. Selzer also acknowledged that they added the fence that extended into the water. (Hearing Tr. p. 67 – 68).

### **Code Enforcement Officer Eddie Broom**

At the hearing, Appellant called Eddie Broom as his first witness. Mr. Broom testified that he is a Code Enforcement Officer for York County with 14 years of experience, enforcing zoning ordinances along Lake Wylie. (Hearing Tr. p. 69 – 70). Officer Broom also testified that he received a complaint regarding the Respondent’s property located at [ ] Windswept Cove on October 8th. (Hearing Tr. p. 70). Officer Broom further identified a property report and several photographs from the York County GIS website, and a survey and plat from 1985 that were admitted into evidence without objection as Exhibit A. (Hearing Tr. p. 70 – 71; R.\* Exhibit A).

Officer Broom also identified the notice of violation that he sent to Mr. Selzer following his inspection of Respondents’ property that was admitted into evidence without objection as Exhibit B. (Hearing Tr. p. 72; R.\* Exhibit B). The notice of violation included two violations: (1) Use of riparian buffer and (2) International Building Codes. (Hearing Tr. p. 73). Officer Broom testified that Respondent’s property does not go to the shoreline because “[t]here’s a 50 foot buffer, and that’s mainly enforced by Duke”. (Hearing Tr. p. 74, line 16-18). Officer Broom clarified that the 50 foot buffer is referred to as the “Riparian buffer” and that Duke has an easement for the riparian buffer. (Hearing Tr. p. 74 – 75).

On cross-examination, Mr. Broom testified that Appellant submitted the complaint and York County does the investigation to address compliance with the zoning regulations. (Hearing

Tr. p. 77).

**Appellant James Patton**

At the hearing, Appellant testified that he is an entrepreneur with two businesses, has lived at [ ] Windswept Cove permanently since June 2021, and his family has owned the property since 1985. (Hearing Tr. p. 78 – 79). Appellant also testified that he has an particular interest in the lake’s rules and regulations. Notably, Appellant testified that he believes the riparian buffer is public access and that the sea wall and sandbox in front of the Respondents’ house are on Duke property. (Hearing Tr. pp. 85, 86, 95, 96, 104).

Appellant identified three pictures taken on January 20, 2024, months prior to the Respondents purchasing their home because he has an interest in the water level due to its affect on his dock, the seawall, and riparian buffer (which was entered into evidence without objection as Exhibit C). (Hearing Tr. p. 86 – 89; R.\* Exhibit C). Appellant also identified a document from Duke’s “website that tracks water level at specific date and time” and entered into evidence without objection as Exhibit D. (Hearing Tr. p. 89 – 90; R.\* Exhibit D). Appellant further identified a photograph taken on June 2, 2024, sitting on the stone wall facing the lake that was entered into evidence without objection as Exhibit E. (Hearing Tr. p. 90 – 91; R.\* Exhibit E).

Appellant testified that his truck was legally parked in the road right-of-way and that he moved it the same day Mr. Selzer made the request. (Hearing Tr. p. 81 – 82). Appellant also testified that he brought Respondents cake and ice cream as a welcome gift on Labor Day, was then invited to sit down with their family, stayed for about 30-45 minutes, and “[s]omebody took a picture of all of us together.” (Hearing Tr. p. 83 – 84).

Appellant testified that his concern over the Respondents’ fence was that its height violated zoning, it obstructed his view, and it was a violation of the riparian buffer. (Hearing Tr. p. 91).

Appellant also explained that the metal portion of the fence extended into the shoreline, which he believed involved the Department of Natural Resources obstructs the water and public's right to access the beach and fish. (Hearing Tr. p. 91). Appellant further testified that he sent Mr. Selzer a text message on September 9th to warn him before they finished construction on the fence, suggesting they verify that the fence was not encroaching on Duke's property or obstructing public use of the shoreline. (Hearing Tr. p. 97, 98, 103). Appellant acknowledged that he sent a complaint to Duke on September 11th because he is a Duke stockholder and the fence affects his ability to use the shoreline. (Hearing Tr. p. 98, 102, 103).

Appellant testified that he was sitting on the retaining wall (which he believes is Duke property) in his bathing suit for "personal enjoyment and exercise down the shoreline". (Hearing Tr. p. 84, 98, 104). Appellant denied that his intent was to bother the Respondents but admitted that he did not leave until the police asked him to go. (Hearing Tr. p. 89, 91, 104, 105).

Appellant testified that he took pictures on September 28th to "document the water land line" after Hurricane Helene because the water level was greatly elevated, near the full pond contour. (Hearing Tr. p. 92 – 96). Appellant also testified that he wanted to take the pictures when the Respondents' were not home, hoping to avoid confrontation because he saw no vehicles in the driveway. (Hearing Tr. p. 92 – 93). Notably, Appellant denied his intent was to harass the Respondents and those pictures were admitted into evidence as Exhibit F. (Hearing Tr. pp. 92, 93, 95, 96; R.\* Exhibit F).

Appellant admitted to filming Respondents from his own property because he needed to document Ms. Selzer recording him on his property. (Hearing Tr. p. 96, 97, 107). Specifically, Appellant testified,

The first photo, I call this the sandbox. This is a picture of me after I turned back around on December 28th and I'm going back, going

to walk down between the wall and the water back to our property.

...

I believe it's Duke Energy property. And I was on the sand -- what I call the sandbox. It was about this time, if I remember that, that Kera came out. I can't remember exactly when she came out, but she had come out, and I had not taken any pictures or videos of the house at all to that point when she came out and started telling me to leave. I addressed her at that point, and I did video. I do have one video of that interaction. And then the second picture is, as I'm moving to get I'm getting ready to step off the sandbox and walk down the rocks, riprap between the trees. I can't go over here. I have to go between the trees. This is our pier.

(Hearing Tr. p. 96 – 97). These pictures were admitted into evidence without objection as Exhibit G. (R.\* Exhibit G).

Appellant testified that his conduct was motivated by a legitimate purpose to monitor the riparian buffer and the violations of Respondents' fence and to enjoy the public access area on the lake shoreline. (Hearing Tr. p. 89, 91, 98, 104).

### ***Magistrate Judge Findings***

The Magistrate Judge ruled that he was issuing a Restraining Order. (Hearing Tr. p. 116). The Magistrate Judge found Appellant intended to cause Respondents' emotional distress and that Respondents suffered emotional distress. (Hearing Tr. p. 116). The Magistrate Judge also found that Appellant trespassed on the Respondents' property. (Hearing Tr. p. 116). The Magistrate Judge further found that Appellant walked onto Respondents' property, used a cell phone to record Respondents, and pointed a cell phone at Respondents while they were on their property. (Hearing Tr. p. 116 – 117).

Additionally, the Magistrate Judge found that Appellant did not have a "legitimate purpose" for his conduct and that it was done with the intention of causing emotional distress. (Hearing Tr. p. 117 – 118). The Magistrate Court further found that there was sufficient evidence

presented at the hearing to issue a restraining order, and prohibited Appellant from entering Respondents' property and from communicating with Respondents or their children. (Hearing Tr. p. 118).

### ***Restraining Order***

On November 5, 2024, the Magistrate Judge issued a Restraining Order against Appellant and found:

The Plaintiff [Respondent] resides in York County, South Carolina.

The Defendant [Appellant] lives at [ ] Windswept Cove which is in York County, South Carolina.

The Defendant is a neighbor of the victim.

The Harassment or Stalking, as described herein, occurred in York, South Carolina.

The [Appellant] has committed the following acts which constitute Harassment in the 1st or 2nd Degree or Stalking: Using a cell phone to record audio and/or video of Petitioners while they are on private property; trespassing on Petitioner's property on multiple occasions.

(R.\*).

### ***Notice of Intent to Appeal***

On November 25, 2024, Appellant filed a Notice of Intent to Appeal and raised the following three issues:

(1) The Court erred in granting the restraining order for such was an abuse of the court's discretion in finding that the requirements for the Court to issue the order had been met.

(2) The Court erred in finding that there was sufficient evidence to satisfy the burden of proof by clear and convincing evidence, or any lesser burden, that Appellant had harassed the Respondents as defined in the statute.

(3) The Court erred in finding that the Appellant, by clear and convincing evidence, or any lesser burden, had trespassed upon

property of the Respondents.

(R.\*).

### ***Magistrate's Return***

On January 17, 2025, the Magistrate Judge filed its Return identifying the witnesses and exhibits, summarizing the testimony, and findings of the court. (R.\*). The Return included copies of the exhibits admitted during the hearing and noted that a copy of the audio recording would be submitted with the Return. (R.\*). The Magistrate Judge found that Appellant “had engaged in conduct rising to the level of Harassment as defined by Section 16-3-1700(A) of the South Carolina Code of Laws.” (R.\*). The Magistrate Judge also found that Appellant’s “actions served no legitimate purpose and were intended to cause Respondents emotional distress. (R.\*). The Magistrate Judge further found that, “even if Appellant was not trespassing upon Respondents’ property, it was not necessary for him to walk, stand, or sit directly in front of Respondents’ home to monitor or document lake levels.” (R.\*).

The Magistrate Judge found that Appellant’s “use of his cell phone to repeatedly photograph and/or video record Respondents and their children while they were outside their own home served no legitimate purpose and caused Respondents emotional distress.” (R.\*). The Magistrate Judge also found that “a reasonable person in their position would also find Appellant’s conduct offense.” (R.\*).

### ***Respondents Memorandum***

On February 19, 2025, Respondents filed a Memorandum in Support of the Magistrate’s Return and in Opposition to the Appeal. Respondents argued that the Magistrate Judge “made the necessary findings of fact required to issue a Restraining Order”, and that “the Respondents had met their burden of proof by a preponderance of the evidence.” (R.\*). Respondents maintained

that “the Magistrate Court did not abuse its discretion in finding that the requirements for a restraining order had been met.” (R. \*). Respondents further claimed, “The testimony and evidence submitted by the Respondents at the hearing support the Magistrate Court’s finding that the Appellant had engaged in a pattern of intentional, substantial, and unreasonable intrusion into the private life of the Respondents which served no legitimate purpose, caused Respondents emotional distress, and would cause a reasonable person in the Respondents’ position emotional distress. (R. \*).

### *Appeal in Circuit Court*

On February 25, 2025, the parties appeared before the Circuit Court to address the issues raised on appeal. (Appeal Tr. p. 1 – 15). Appellant provided the following background for the Circuit Court:

What this is about is that the Selzers, who had moved in, built a privacy wall -- fence -- wall --actually, a fence on both sides of their property that went down to the shore. They then extended that fence into the lake.

Now, what this ended up doing was it ended up blocking the public area to where people can walk along the shoreline on Lake Wylie. It's a piece of land that's owned by Duke Power, and my client, before they had moved in, had walked along the shore of Lake Wylie quite often, and he knew very much about the riparian buffer, which is the buffer of public access along the Lakeshore.

Their relationship was okay for being new neighbors up until that fence was put in, and it was after the fence was put in that my client began to take pictures of the fence. He communicated with Duke Power. And within a two-week period or so, they ended up having him arrested and jailed for trespassing when he walked along the shore or when he sat on a retaining wall that was along the shore and was on Duke Power property.

After they had him arrested for that, they then petitioned for a Restraining Order against their next-door neighbor, and that's what we had the hearing about.

(Appeal Tr. p. 3, line 24 – 4, line 20). Counsel for Appellant argued that the Restraining Order was deficient based on the following reasons: (1) The Magistrate Judge did not provide a specific finding regarding whether Appellant’s conduct constituted harassment in the first or second degree, or stalking; (2) the Magistrate Judge found that Appellant was “videotaping the wife and the children; [when] there was never any videotape or evidence put in that [Appellant] had done that”; and (3) the Magistrate Court found that Appellant trespassed on Respondent’s property but noted that the issue of whether Appellant had trespassed on Respondent’s property was not a determining factor. (Appeal Tr. p. 5, lines 24 – 7, line 19).

Counsel for Appellant also argued that this case is about a property dispute and provided the following explanation for the legitimate purpose:

There is public access all along the shore of Lake Wylie. And that's the way that it is done. It's just like at a beach at the ocean. People walk down the beach all the time. But if you don't want somebody to walk in front of your house, you can't take a fence and put it all the way down into the Atlantic Ocean so that they can't walk in front of your house. And that's what this is all about.

(Appeal Tr. p. 7, line 20 – 8, line 1).

Counsel for Respondent maintained that “there’s plenty of evidence and testimony that was given during the hearing that allowed the magistrate to find, by a ponderance of the evidence, that the elements of harassment as defined by South Carolina Code Section 16-3-1700 had been proved by the respondents in the Petition for a Restraining Order.” (Appeal Tr. p. 12, lines 14-19).

After hearing arguments from Counsel, the Circuit Court stated, “Well, let me go back and look at everything and I will get you a decision.” (Appeal Tr. p. 13, lines 23-24).

### ***Circuit Court Order***

The Circuit Court issued an Order affirming the Restraining Order on March 12, 2025, “finding that the Respondents had met their burden of proof by a preponderance of the evidence

is supported by the evidence in the record.” (R. \*). The Circuit Court also found, “The Magistrate did not abuse his discretion in finding that the Appellant’s actions toward the Respondents constituted Harassment, as defined in Section 16-3-1700(A), South Carolina Code of Laws.” (R.\*).

*Notice of Appeal*

On April 11, 2025, Appellant filed a Notice of Appeal before this Court and listed the following issues:

1. The Court erred in finding that the Respondents had met their burden of proof by a preponderance of evidence.
2. The Appellate Court erred in finding that the Magistrate did not abuse his discretion in finding that the Appellant's actions toward the Respondents constituted Harassment in the First Degree, as defined in Section 16-3-1700(A), South Carolina Code of Laws.
3. The Court erred in finding that the Appellant had committed a "Pattern of Intentional, Substantial AND Unreasonable Intrusion into the Private Life of the Respondents that served no Legitimate Purpose." Appellant testified to an inherent right to use of Public Space and other Legitimate Purposes.
4. The Court erred in failing to apply established Open View (Open Fields) doctrine precedent in this case that provides No Reasonable Expectation of Privacy on Private property when easily and openly visible from Public Spaces. Absent a "Reasonable" expectation of Privacy, there is no "Unreasonable Intrusion into the Private Life of a targeted person" as required by the South Carolina Code of Laws for Harassment in the First Degree.

(R. \*).

## STANDARD OF REVIEW

“While the Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law... .” *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984), *aff'd as modified on other grounds*, 288 S.C. 398, 343 S.E.2d 27 (1985); S.C. Code § 18-7-170 (stating the standard of review to be applied by the circuit court when reviewing a magistrate's judgment). This court may reverse the circuit court if it was influenced by an error of law. *Id.*

## ARGUMENT

1. **THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE JUDGE'S RULING TO ISSUE A RESTRAINING ORDER BY FINDING THE RESPONDENTS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT APPELLANT ENGAGED IN HARASSMENT, FIRST DEGREE.**

### *Law*

Section 16-3-1750 of the South Carolina Code of Laws provides the requirements to seek a Restraining Order. Section 16-3-1700 of the South Carolina Code of Laws provides the definitions and elements for Harassment and Stalking:

- (A) "Harassment in the first degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:
  - (1) following the targeted person as he moves from location to location;
  - (2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;
  - (3) surveillance of or the maintenance of a presence near the targeted person's:
    - (a) residence;
    - (b) place of work;
    - (c) school; or
    - (d) another place regularly occupied or visited by the targeted person; and
  - (4) vandalism and property damage.
- (B) "Harassment in the second degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable

person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

- (C) “Stalking” means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person’s position to fear:
  - (1) death of the person or a member of his family;
  - (2) assault upon the person or a member of his family;
  - (3) bodily injury to the person or a member of his family;
  - (4) criminal sexual contact on the person or a member of his family;
  - (5) kidnapping of the person or a member of his family; or
  - (6) damage to the property of the person or a member of his family.
- (D) “Pattern” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.
- (E) “Family” means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.
- (F) “Electronic contact” means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
- (G) This section does not apply to words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator pursuant to Section 40-18-70.

S.C. Code of Laws § 16-3-1700.

## *Discussion*

In this case, the Circuit Court erred in affirming the Magistrate Judge's ruling to issue a restraining order by finding the Respondents proved by a preponderance of the evidence that Appellant engaged in harassment, first degree. *See* S.C. Code §§ 16-3-1700 and 1750. Based on the testimony and evidence presented at the hearing, the Magistrate Judge erroneously found that Appellant engaged in a pattern of intentional, substantial, and unreasonable intrusion into the private life of Respondent that served no legitimate purpose and caused Respondent and would cause a reasonable person in Respondent's position to suffer mental or emotional distress.

During the hearing, Appellant presented testimony from Code Enforcement Officer Eddie Broom and seven exhibits (labeled A through G) that demonstrated Appellant had a legitimate purpose for his conduct and presence near the Respondents' property. (Hearing Tr. p. 69 – 109; R.\* Exhibits A – G). Specifically, Appellant sought to prove that the Respondents did not own the riparian buffer, that he was on public access property owned by Duke Energy, and this all occurred over the property dispute due to him submitting a complaint about the Respondents fence that violated lake shoreline regulations.

Mr. Selzer admitted that the property lines of his property do not extend to the lake shoreline but are buffered by a fifty-foot riparian buffer. (Hearing Tr. p. 30, line 18 – 31, line 21; Exhibit A). Officer Broom testified that York County issued a notice of violation to Respondents for the fence built within the riparian buffer. (Hearing Tr. p. 71, line 24 – 73, line 20; Exhibit B). Appellant testified and presented evidence that he had a pre-existing legitimate practice of documenting the water level and property lines prior to the Respondents purchase of the property in June 2024. (Hearing Tr. p. 86, line 2 – 87, line 25; Exhibit C). Appellant presented evidence of tracking the water levels to support his concern for monitoring the water levels. (Hearing Tr.

p. 89, line 20 – 90, line 7; Exhibit D).

Appellant presented photographic evidence of him sitting on the seawall on June 2, 2024, to establish that he previously used that area for personal enjoyment that predated the harassment allegations. (Hearing Tr. p. 90, line 9 – 91, line 2; Exhibit E). Appellant also presented photographic evidence to support that he was documenting the water line and fence's location in the riparian buffer after Hurricane Helene on September 28<sup>th</sup> due to the elevated water levels. (Hearing Tr. p. 92, lines 4-21; Exhibit F). Appellant further presented photographic evidence to establish that he was not on the Respondents' property and to justify why he recorded Ms. Selzer as a defensive measure *after* she confronted him. (Hearing Tr. p. 96, line 3 – 97, line 3; Exhibit G).

Based on the testimony and evidence presented at the hearing, Appellant established the legitimate purpose of his property/boundary concerns (e.g., public access to the riparian buffer, York County issuing a notice of violation regarding Respondent's fence and monitoring the lake levels). Appellant presented objective evidence that his complaints were not baseless and served a legitimate purpose due to being as a long-time lake resident concerned about public access to the shoreline. Appellant also established that he had a pre-existing pattern of photographing the property boundary and sitting on the seawall in January and June 2024 before the Respondents moved into their residence to monitor the water levels. This evidence countered the accusation that Appellant began photographing the area solely to harass the Respondents. Appellant further established that he only took photographs of Ms. Selzer in his defense *after* she confronted him to document the interaction and show he was not on the Respondents' property.

Appellant's conduct was *not* a pattern of intentional, substantial, and unreasonable intrusion into Respondent's *private life* because Appellant's actions served a legitimate purpose

and Respondents did *not* have a reasonable expectation of privacy outside in their yard next to a public access area (i.e., riparian buffer and lake shoreline). Appellant's conduct also would *not* cause a reasonable person in the Respondents' position to suffer mental or emotional distress. Therefore, the Circuit Court erred in affirming the Magistrate Judge's ruling to issue a restraining order by finding the Respondents proved by a preponderance of the evidence that Appellant engaged in harassment, first degree. *See* S.C. Code §§ 16-3-1700 and 1750.

### CONCLUSION

Based on the foregoing reasons, Appellant James S. Patton respectfully requests that this Court reverse the Circuit Court's affirmance of the York County Magistrate Court's issuance of a Restraining Order.

Respectfully submitted,

s/ Dayne Phillips



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