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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Charles J. McCutchen

Appellate Case No. 2025-000705

James S. Patton,

Appellant,

v.

Kera R. Selzer and Dustin S. Selzer,

Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT PROPERLY AFFIRM THE MAGISTRATE JUDGE'S RULING TO ISSUE A RESTRAINING ORDER BECAUSE RESPONDENTS PRODUCED SUFFICIENT EVIDENCE AND THERE WERE NO FACTS SHOWING THE AFFIRMANCE WAS INFLUENCED BY AN ERROR OF LAW?
2. IS THE APPEAL MOOT BECAUSE THE RESTRAINING ORDER AGAINST APPELLANT EXPIRED ON NOVEMBER 5, 2025?

STATEMENT OF THE CASE

On September 30, 2024, Respondents Kera Selzer and Dustin Selzer filed a Complaint and Motion for Restraining Order against Appellant James S. Patton in York County Magistrate Court, alleging Appellant engaged in harassment, first degree (§16-3-1700 (A)). (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 Respondents’ 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. (R.*). Appellant filed a Brief in Support of Appellant’s Appeal to Reverse the Verdict or for a New Trial on February 19, 2025. (R.*). 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 against Appellant. (2024-CP-46-0598) (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.*).

The Restraining Order expired on November 5, 2025, by its own terms. (R.*).

Appellant filed the Initial Brief of Appellant and Designation of Matter on December 2, 2025. (R.*).

On March 2, 2026, Respondents filed a Motion to Dismiss on the grounds that the appeal is moot, due to the Restraining Order expiring on November 5, 2025. (R.*).

STATEMENT OF THE FACTS

Complaint and Motion for Restraining Order

On September 30, 2024, Respondents filed a Complaint and Motion for Restraining Order, alleging that Appellant had engaged in a pattern of conduct which constituted Harassment, First Degree (§16-3-1700 (A)). (R.*). In their Complaint, Respondents alleged that on September 22, 2024, Appellant trespassed on their property and refused to leave; that police were called, and they told Appellant not to come back to Respondents' residence; that on September 28, 2024, Appellant trespassed on Respondents' property, refused to leave, and took pictures of and screamed at Respondent Kera Selzer; and that on September 30, 2024, Appellant videoed Respondent Kera Selzer and Respondents' children from his yard after a no contact order was in place from a judge. (R.*). Respondents requested that Appellant be enjoined from entering or attempting the Respondents' place of residence, employment, education, or other location; and that Appellant be enjoined from communicating or attempting to communicate with the Respondents in a way that would violate Article 17, Chapter 16 of the 176 South Carolina Code of Laws, as amended. (R.*).

Hearing in Magistrate Court

On November 5, 2024, the parties appeared before the Magistrate Judge for a show cause 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 – 46 and p. 46 – 68, respectively). The following exhibits were admitted into evidence by the Respondents: (1) One photograph of Appellant's truck parked on Respondents' property; (2) Four photographs taken from surveillance recordings showing Appellant in the Respondents' front yard on September 8, 2024; (3) Four photographs showing Appellant in swimming trunks in Respondents' front yard on September 22, 2024; (4) Five photographs depicting the Appellant harassing Respondents by videotaping them

and shining lights at them after Appellant's arrest; and (5) Four photographs showing Appellant trespassing on Respondents' property on September 28, 2024. (Hearing Tr. pp. 10, 15, 25, 27, 58). (R.*****)

Eddie Broom, Code Enforcement Officer for York County, and Appellant testified as witnesses for the Appellant. (Hearing Tr. p. 69 – 109). The following exhibits were admitted into evidence by the Appellant: (A) Seven photographs from York County GIS indicating property lines of Respondents and Appellant, York County property report, and survey and plat; (B) York County Code Enforcement Notice of Violation to Respondents; (C) Three photographs taken by Appellant on January 20, 2024; (D) Duke Energy website printout showing water level of Lake Wylie; (E) One photograph taken by Appellant on June 2, 2024; (F) Eight photographs taken by Appellant, showing different areas of the Respondents' property, the shoreline, and lake; and (G) Two photographs taken by Appellant, showing the Respondents' property, Appellant's property, the shoreline, and lake. (Hearing Tr. pp. 70, 72, 87, 90, 91, 96, 97). (R.*****).

Respondent Dustin Selzer

At the hearing, Respondent Dustin Selzer testified to Appellant's pattern of conduct constituting harassment of the Respondents. Mr. Selzer testified that he and his wife Kera and their two children moved into their new home at [] Windswept Cove on or about August 30, 2024. (Hearing Tr. p. 7). Appellant lives next door at [] Windswept Cove. (Hearing Tr. p. 7). Upon moving into their residence, Mr. Selzer testified that he had to ask Appellant to move a truck which Appellant had parked blocking part of Respondents' circular driveway. (Hearing Tr. p. 8.) Mr. Selzer testified regarding Exhibit 1, which was admitted into evidence without objection and shows Appellant's truck blocking a portion of the front of Respondents' house. (Hearing Tr. p. 9). Mr. Selzer testified that Appellant stated that he was allowed to park there due to an easement

running along the roadway, but that Appellant agreed to move his truck and did so within a day or two. (Hearing Tr. p 9 – 10). Mr. Selzer testified that his initial conversation with Appellant “wasn’t bad,” but that “[h]e wasn’t just going to move [the truck].”

Mr. Selzer testified that he first became concerned about Appellant after Appellant told him directly that “[Appellant] is the reason I was able to purchase this home, because he had ran the old elderly couple off. He personally told me that and that’s when we were a little nervous off the rip.” (Hearing Tr. p. 10, line 24 – p. 11, line 4).

Mr. Selzer testified regarding a subsequent event on September 7, 2024, when Appellant came with cake and ice cream into the Respondents’ front yard (between Respondents’ home and lake) uninvited and without prior notice, while his wife’s parents were visiting. (Hearing Tr. p. 11, line 16 – p. 12, line 17). Mr. Selzer noted that they were “trying to still be cordial at this point.” (Hearing Tr. p. 11, line 25), but that Respondents and Mrs. Selzer’s parents were alarmed.

Mr. Selzer testified that Appellant came back into Respondents’ front yard on September 8, 2024, uninvited and without prior notice. (Hearing Tr. p. 12, lines 20-24.) Mr. Selzer testified that it was at this point that his wife began getting upset that Appellant “thinks he can come into my front yard anytime he wants to.” (Hearing Tr. p. 13, lines 2-3). Mr. Selzer testified that he asked Appellant to leave not to come into their yard without asking, that he was not comfortable with Appellant’s behavior at this point, and that Appellant was disrupting Respondents’ privacy. (Hearing Tr. p. 13, lines 5-25). Mr. Selzer identified four photographs admitted into evidence without objection and taken by their security cameras facing the lake, which depict Appellant in the lake and in Respondents’ front yard. (Hearing Tr. p. 14 – 15; R.* Exhibit 2).

Mr. Selzer testified that on September 11, 2024, he requested Appellant to have no further contact with Respondents after Appellant admitted that he had filed a complaint with Duke Energy

about Respondents' privacy fence, after Appellant had initially denied the same. (Hearing Tr. p. 16 – 18).

Mr. Selzer testified that after his request for no further contact with Appellant, Appellant came into the Respondents' front yard again on September 22, 2024. (Hearing Tr. p. 18). Mr. Selzer testified that Appellant was "in just swimming trunks sitting on my sea wall." (Hearing Tr. p. 18, line 21 – 19, line 4). Mr. Selzer testified that friends had just arrived via pontoon boat, and that Mrs. Selzer also got home around the same time and became upset when she realized Appellant was back at Respondents' property. (Hearing Tr. p. 19, lines 6-7). Mr. Selzer noted that his wife locked their minor children in their bedroom due to her concerns. (Hearing Tr. p. 19, line 7). Despite Mr. Selzer and his friends asking Appellant to leave, Appellant refused and continued to sit on the sea wall. (Hearing Tr. p. 19, lines 8-12). Mr. Selzer further testified that after 911 was called, Appellant got off the sea wall and ran into the lake, standing at knee level until the police arrived. (Hearing Tr. p. 19, lines 12-17). Mr. Selzer testified that the reporting York County Sheriff's Office deputies made Appellant leave Respondents' property and formally trespassed Appellant from Respondents' property. (Hearing Tr. p. 21, line 15 – p. 22, line 3). Mr. Selzer testified that he felt terrible, angry, many different feelings; that his wife was upset and scared and ready to sell the house; and that his children were scared and didn't want to go out in the yard. (Hearing Tr. p. 22, lines 22-25). Mr. Selzer testified regarding four photos of Appellant on Respondents' sea wall and standing in the lake, which were admitted without objection. (Hearing Tr. p. 25; R.* Exhibit 3).

Mr. Selzer testified that on September 28, 2024, he received a call from his wife who said that Appellant was back in the Respondents' front yard taking pictures of their home and her in her pajamas. (Hearing Tr. p. 23, lines 5-9). Mr. Selzer further testified that Appellant had waited

until Mr. Selzer was away from the home to go into the Respondents' yard, and that Appellant was "trying to provoke, intimidate and drive my family crazy." (Hearing Tr. p. 23, lines 12-14). Mr. Selzer testified that police were called back to the residence and that Appellant was arrested for trespassing. (Hearing Tr. p. 23, lines 16-17). Mr. Selzer testified that the no contact order resulting from the trespassing charge was a "blessing for us," but that Appellant continued to harass Respondents by taking pictures of Respondents and their children through Respondents' privacy fence with his light shining at night, taking pictures over the fence, shining laser lights at the house, and calling the police about Respondents' dog being on the riprap. (Hearing Tr. p. 23, line 20 – p. 24, line 19). Mr. Selzer testified regarding five photographs which were admitted into evidence without objection, and which depict Appellant videotaping and shining lights at Respondents after his arrest for trespassing. (Hearing Tr. p. 27, R.* Exhibit 4). The Magistrate Judge mistakenly identifies these photographs as Exhibit 5 during the hearing. (Hearing Tr. p. 27).

Mr. Selzer testified to the effect Appellant's harassment had on him and his family. Mr. Selzer testified that he didn't know what Appellant was capable of based on his behavior, that his wife was scared and developed anxiety due to Appellant's conduct, and that she had to get medication due to inability to sleep. (Hearing Tr. p. 26, lines 13-22).

During cross-examination, Mr. Selzer reiterated his belief that Appellant's actions, after Mr. Selzer asked Appellant for no further contact, were meant to harass and intimidate Respondents and their children. (Hearing Tr. p. 41, lines 6-8). Mr. Selzer further testified that Appellant's actions were intended to provoke and anger Respondents. (Hearing Tr. p. 41, lines 17-19).

On re-direct examination, Mr. Selzer repeated his earlier testimony that he asked Appellant for no further contact with him or his family on September 11, 2024. (Hearing Tr. p. 45, lines 5-

13). Mr. Selzer further testified that Appellant had further contact with Respondents on September 22, 2024; September 28, 2024; and September 30, 2024. (Hearing Tr. p. 45, lines 19-22).

Respondent Kera Selzer

At the hearing, Kera Selzer testified to Appellant's pattern of conduct constituting harassment of Respondents. Mrs. Selzer confirmed her husband's testimony regarding the date they purchased the home at [] Windswept Cove in June 2024, and the date they moved in on August 30, 2024. (Hearing Tr. pp. 47-48).

Mrs. Selzer testified that on a Saturday prior to moving into their new home, she observed Appellant yelling and screaming at boats for about 10 hours, and that this was their first interaction with Appellant. (Hearing Tr. p. 48, lines 6-12). Mrs. Selzer testified that the prior owners of their home had to legally disclose the issues with Appellant at closing. (Hearing Tr. p. 48, lines 23-25). She further testified that, although alarmed by Appellant's behavior early on, they tried to be cordial with Appellant because they had heard how miserable Appellant can make your life." (Hearing Tr. p. 49, lines 3-7).

Mrs. Selzer confirmed her husband's testimony about asking Appellant to leave their yard after he came over unannounced and uninvited on September 8, 2024. (Hearing Tr. p. 50). Mrs. Selzer testified that she was scared at this point, and that she wanted to protect her children. (Hearing Tr. p. 51). She further testified that Appellant was staring at her, intimidating her, and causing her and her children anxiety. (Hearing Tr. p. 51).

Mrs. Selzer testified to the events on September 22, 2024, stating that she and the children had just arrived home from walking the dog when the children came back to her screaming that the Appellant is in Respondents' yard again. (Hearing Tr. p. 52, line 24 – 53, line 2). She testified that she locked the children in the bathroom or bedroom and told them not to come out. (Hearing

Tr. p. 53, lines 6-8). Mrs. Selzer further testified that she believed Appellant's actions were intended to provoke, intimidate, and threaten her and her family, and that Appellant was succeeding in doing so and that Appellant was disrupting the Respondents' private life. (Hearing Tr. p. 53, line 21 – p. 54, line 16). Mrs. Selzer testified that Appellant had to be asked several times by police to leave Respondents' property, and that Appellant left but not willingly. (Hearing Tr. p. 54, lines 21-25).

Mrs. Selzer testified to the events on September 28, 2024, stating that she saw Appellant walking over to Respondents' property around 9 or 10 in the morning, taking pictures and videos of Respondents' house. (Hearing Tr. p. 55, lines 8-14). Mrs. Selzer testified that she again had the children locked in their room and that the children were scared and crying, that she was crying, and that she called 911. (Hearing Tr. p. 55, lines 18-21). Mrs. Selzer clarified that Appellant was not photographing the water level or the area along the lake, but rather that Appellant was photographing Respondents' home and Mrs. Selzer. She further testified that Appellant is screaming at her during this incident, and that Appellant is claiming that she's harassing him. (Hearing Tr. p. 56, lines 15-18). Mrs. Selzer testified that the 911 operator advised her to go back into her house due to Appellant's aggressiveness. (Hearing Tr. p. 56, lines 19-22). Mrs. Selzer testified regarding four photographs which were admitted without objection, and which depict Appellant standing in front of Respondents' residence on September 28, 2024. (Hearing Tr. p. 58, R.* Exhibit 5).

Mrs. Selzer testified that on September 28, 2024, Appellant left their property after he realized Mrs. Selzer was on the phone with 911 and prior to police arriving, and that Appellant was arrested at his home for trespassing. (Hearing Tr. p. 57, lines 3-14). Mrs. Selzer further

testified that, due to the water level that day, Appellant had entered the Respondents' property by walking across Respondents' riprap. (Hearing Tr. p. 57).

Mrs. Selzer testified that after Appellant's arrest for trespassing, she was feeling intimidated, anxious, scared, violated, vulnerable, and that she and her husband had made a bad decision in buying the house. (Hearing Tr. p. 58, lines 7-13). Mrs. Selzer testified that around noon on September 30, 2024, her children reported that Appellant was filming them and that she confirmed that Appellant was filming them. She testified that she put the children in the car and left, and that Appellant was filming her and the children as they left, and that the children were crying due to Appellant's intimidation and harassment. (Hearing Tr. p. 59, line 12 – p. 60, line 3).

Mrs. Selzer testified that she went to the Sheriff's Department and was advised by the York County Sheriff's Office to file a petition for a restraining order against Appellant. (Hearing Tr. p. 60, lines 7-10). She testified to the anxiety which was caused by Appellant's harassment and the medical help she sought due to the anxiety. (Hearing Tr. p. 61, lines 8-9). Mrs. Selzer further testified to being unable to sleep, putting in extra locks in her home, and having marital issues due to Appellant's harassment. (Hearing Tr. p. 61, lines 9-14).

Code Enforcement Officer Eddie Broom

At the hearing, Appellant called Eddie Broom as his first witness. (Hearing Tr. p. 69 - 78). Mr. Broom testified that he is a Code Enforcement Officer employed by York County. Mr. Broom testified that as part of his job, he enforces zoning ordinance, including property located along Lake Wylie, and that their department is largely driven by complaints. (Hearing Transcript p. 69 – 70). Mr. Broom testified that he received a complaint made by Appellant regarding Respondents' property on October 8, 2024. (Hearing Tr. p. 70). Mr. Broom testified that he inspected the

complaint and issued a notice of violation to Respondents, dated October 9, 2024. (Hearing Tr. p. 71 – 72; R.* Exhibit B).

On cross-examination, Mr. Broom testified that once Appellant had made his complaint, York County took over from that point forward and that no further assistance was needed from the Appellant. (Hearing Tr. p. 77).

On re-direct examination, Mr. Brook repeated his testimony that he received the complaint regarding Respondents' property on October 8, 2024. (Hearing Tr. p. 77).

Appellant James Patton

At the hearing, Appellant testified in his defense. (Hearing Tr. p. 77 – 109). Appellant testified that he moved to [] Windswept Cove permanently in 2021, but that his family owned the property since 1985. (Hearing Tr. p. 78 – 79). Appellant testified that he is an entrepreneur. (Hearing Tr. p. 79). Appellant testified that he has a 20,000 square foot warehouse in Matthews, North Carolina, with storage and light assembly area. (Hearing Tr. p. 80).

Appellant that his first contact with Respondents after they purchased their home was regarding his truck being parked in the "road right of way" in front of Respondents' property (Hearing Tr. p. 81). Appellant claimed that it was okay for him to park there. (Hearing Tr. p. 82). Appellant testified that the truck he parked in front of the Respondents' property was not running at the time. (Hearing Tr. p. 82). Appellant testified that he agreed to move his truck after his conversation with Mr. Selzer. (Hearing Tr. p. 82).

Appellant testified that he went to Respondents' home on September 2, 2024, without invitation from the Respondents or notice to Respondents prior to his arrival. (Hearing Tr. p. 84.) Appellant testified that in July 2024, he yelled at a boater in front of Mr. Selzer and his son,

claiming that the boater had violated the 50 foot no wake zone in front of Appellant's pier. (Hearing Tr. p. 84 -- 85).

Appellant claimed that he is interested in the water level of Lake Wylie and that he took pictures of the riparian buffer and surrounding areas to document water levels. (Hearing Tr. p. 86). Appellant testified to the reasons that he filed a complaint regarding Respondents' privacy fence with Duke Energy on September 11, 2024. (Hearing Tr. p. 91).

Appellant testified to taking pictures of Respondents' property during the morning of September 28, 2024, the date of his arrest for trespassing. (Hearing Tr. p. 92). Appellant claimed that he went over there when he thought that Respondents were not home. (Hearing Tr. p. 93). Appellant acknowledged that he could take a picture of Respondents' privacy fence from his own property but claimed he went back over there to get a picture from the other side. (Hearing Tr. p. 93). Appellant's testimony indicates he understood that his presence would cause confrontation with Respondents. (Hearing Tr. p. 93).

On cross-examination, Appellant acknowledged having his own driveway but that he parked his truck in front of Respondents' residence for an extended period. (Hearing Tr. 99 -- 100). Appellant testified that the prior owners of Respondents also objected to him about his truck being parked in that location. (Hearing Tr. p. 101). Appellant acknowledged that it is Duke Energy's job to investigate complaints regarding property along Lake Wylie, and that Appellant does not work for Duke Energy. (Hearing Tr. p. 103).

Appellant claimed that he did not remember Mr. Selzer requesting no further contact on September 11, 2024. (Hearing Tr. p. 104). Appellant claimed that it was not his intent on September 22, 2024, to bother or harass the Respondents but that his behavior might have bothered them. (Hearing Tr. p. 104). Appellant acknowledges not leaving the area in front of Respondents'

home until police asked him to leave. (Hearing Tr. p. 105). Appellant testified that he returned to the area in front of Respondents' home on September 28, 2024, after he had been requested to leave the week prior and trespassed from Respondents' property (Hearing Tr. p. 106). Appellant claimed that he had a right to be in that location. (Hearing Tr. p. 106 – 107). Appellant acknowledged that he recorded Mrs. Selzer after being arrested for trespassing and ordered to have no contact with the Respondents (Hearing Tr. p. 107 – 108). Appellant denied taking pictures of and filming Respondents through the privacy fence. (Hearing Tr. p. 108). Appellant also denied telling Mr. Selzer that Appellant was the reason the Respondents were able to purchase their home. (Hearing Tr. p. 108).

Magistrate Judge Findings

The Magistrate Judge ruled that he was issuing a Restraining Order against Appellant. (Hearing Tr. p. 116). The Magistrate Judge found that Appellant's conduct occurred in York County and met the definition of harassment in the first degree and that it was intended to cause Respondents emotional distress and that Respondents suffered emotional distress. (R.*; Hearing Tr. p. 116). The Magistrate Judge found that Appellant trespassed on Respondents' property on multiple occasions. (R.*; Hearing Tr. p. 116). The Magistrate Judge found that Appellant went to Respondents' property with the intention of causing them emotional distress and noted the visual contact that was initiated, maintained, or repeated by Appellant, which would fall under Subsection A, Number 2. (Hearing Tr. p. 116). The Magistrate Judge found that Appellant had walked onto Respondents' property, used his cell phone to record Respondents while there were at their home on their own private property, and shined laser lights at Respondents' property. (Hearing Tr. p. 117). The Magistrate Judge found that a reasonable person would find Appellant's behavior to be offensive and that Respondents subjectively found it to be offensive. (Hearing Tr. p. 117).

The Magistrate Judge found that Appellant did not have a legitimate purpose for his pattern of conduct and that it was done with the intention of causing Respondents emotional distress, and that it did in fact do so. (Hearing Tr. p. 117 – 118). The Magistrate Judge found that Respondents had presented sufficient evidence to support the issuance of a Restraining Order against Appellant (Hearing Tr. p. 116 – 118). The Restraining Order issued by the Magistrate Judge prohibited Appellant from going on the property of Respondents and prohibited Appellant from communicating with Respondents in any way, including their children. (Hearing Tr. p. 118). The Magistrate Judge ruled that the Restraining Order would expire November 5, 2025.

Magistrate's Return

Following Appellant's filing of a Notice of Intent to Appeal on November 25, 2024, the Magistrate Judge filed its Return on January 17, 2025. (R.*). The Magistrate Judge found that Respondents had met their burden of proof by proving by a preponderance of the evidence that Appellant had engaged in conduct rising to the level of Harassment in the First Degree, as defined by Section 16-3-1700(A) of the South Carolina Code of Laws. (R.*).

The Magistrate Judge pointedly remarked on the fact that the Appellant continued his course of conduct despite being under bond conditions pursuant to his arrest for trespassing on the Respondents' property on September 28, 2024. The Magistrate Judge also noted that his finding that the Appellant had trespassed on the Respondents' property was not a determining factor in ruling that the Respondents had met their burden of proof and that a Restraining Order should be issued against Appellant. Rather, the Magistrate Judge made its decision based on its belief that the Appellant's actions were malicious and perpetrated to torment the Respondents and run them off, which the Respondents testified that the Appellant had boasted about doing to the previous owners of Respondents' home.

Appeal in Circuit Court

On February 19, 2025, Respondents filed a Memorandum in Support of Magistrate's Return and Opposition to the Appeal. (R.*). Respondents argued that the Magistrate Judge made the necessary findings of fact required to issue a Restraining Order pursuant to South Carolina law. (R.*). Respondents argued that the Magistrate Judge correctly found that the Respondents had met their burden of proof by a preponderance of the evidence, and that they had proved that Appellant's pattern of conduct constituted Harassment in the First Degree. (R.*). Respondents argued that the Magistrate Judge, as the trier of fact at the bench trial, having listened to the testimony of all witnesses and reviewed the evidence submitted by both sides, along with having the opportunity to judge the credibility of the witnesses, did not abuse its discretion in finding that the requirements for a restraining order had been met. (R.*). Respondent argued that the testimony and evidence submitted by the Respondents at the hearing support the Magistrate Judge'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 the Respondents emotional distress, and would cause a reasonable person in the Respondents' position emotional distress. (R.*). Appellant filed a Brief in Support of Appellant's Appeal to Reverse the Verdict or for a New Trial on February 19, 2025. (R.*).

On February 25, 2025, the parties appeared before the Circuit Court to address the issues raised on appeal. (Appeal Tr. p. 1 – 15). Counsel for Appellant argued that if there is a legitimate purpose for the Appellant's actions, then it does not constitute harassment, and that the Restraining Order is deficient in the following ways: (1) lack of a specific finding regarding whether Appellant's conduct constituted harassment in the first or second degree, or stalking; (2) the finding that Appellant was videotaping the wife and children when there was never any videotape

or evidence put in that Appellant did that; and (3) the finding that Appellant had trespassed on Respondent's property. (Appeal Tr. p. 5 - 7). Counsel for Appellant argued that the case is about a property dispute and that Appellant's actions served a legitimate purpose. (Appeal Tr. p. 7 - 8).

Counsel for Respondent argued that Respondents presented sufficient evidence to support the Magistrate Judge's finding that Appellant's conduct constituted harassment of the Respondents. (Appeal Tr. p. 9). Counsel for Respondents argued that the following evidence supported the Magistrate Judge's finding: (1) the testimony of Respondents requesting no contact with Appellant on September 11, 2024; (2) the testimony of Respondents regarding the Appellant returning to the area in front of their residence on September 22, 2024, in swimming wear, refusing to leave until told to do so by police, and being trespassed from Respondents' property; (3) the testimony of Respondents regarding the Appellant returning to the area in front of their residence on September 28, 2024, taking pictures of Mrs. Selzer and Respondents' home, and being arrested for trespassing; and (4) the testimony of Respondents regarding Appellant photographing their family through the privacy fence on September 30, 2024, after the no contact order was in place for the trespassing charge. (Appeal Tr. p. 9 - 11). Counsel for Respondent argued that the Magistrate Judge had considered Appellant's testimony and his argument that his actions served a legitimate purpose but found that Appellant's testimony on this was not credible and that it was much more likely that Appellant's actions were intended to torment and cause Respondents distress. (Appeal Tr. p. 12).

The Circuit Court issued its Order affirming the Restraining Order on March 12, 2025, ruling that the Magistrate Judge's 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 that the Magistrate Judge did not abuse its 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.*). On April 11, 2025, Appellant filed a Notice of Appeal before this Court. (R.*).

STANDARD OF REVIEW

Where the circuit court has affirmed the magistrate court decision, the Court of Appeals looks to whether the circuit court order is "controlled by an error of law or is unsupported by the facts." *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct.App.2001). "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 magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law." *Id. See, A & I, Inc. v. Gore*, 621 S.E.2d 383, 366 S.C. 233 (S.C. 2005).

ARGUMENT

I. THE CIRCUIT COURT DID NOT ERR IN DENYING THE APPELLANT'S MOTION TO SET ASIDE THE PRIOR ORDER PURSUANT TO SCRPC RULE 60(b)(3).

The Circuit Court did not err or abuse its discretion in denying the Appellant's motion to set aside the prior order pursuant to SCRPC Rule 60(b)(3). The Circuit Court was correct in affirming the Magistrate Judge's ruling that Respondents had met their burden of proof by a preponderance of evidence and in its decision that the Magistrate Judge's decision is supported by the evidence in the record and not based on an error of law. Absent an abuse of discretion by the Circuit Court, this Court should dismiss this appeal and affirm the Circuit Court's Order affirming the Restraining Order.

As the trier of fact at the bench trial, having listened to the testimony of all witnesses and reviewed the evidence submitted by both sides, along with having the opportunity to judge the credibility of the witnesses, the Magistrate Judge did not abuse its discretion in finding that the Appellant had engaged in conduct rising to the level of Harassment in the First Degree, as defined by Section 16-3-1700 of the South Carolina Code of Laws, and that the Respondents had proved by the preponderance of the evidence the requirements for the issuance of a restraining order pursuant to Section 16-3-1750 of the South Carolina Code of Laws. The Magistrate Judge's decision was not based on an error of law. 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 the Respondents emotional distress, and would cause a reasonable person in the Respondents' position emotional distress. In its ruling, the Magistrate Judge stated that it considered Appellant's testimony alleging his actions served a

legitimate purpose but concluded that Appellant's testimony was not credible and that it was more likely that his actions were intended to torment and harass the Respondents.

II. THE APPEAL IS MOOT DUE TO THE EXPIRATION OF THE RESTRAINING ORDER ON NOVEMBER 5, 2025.

Due to the expiration of the Restraining Order against Appellant on November 5, 2025. Respondents argue that the appeal should be dismissed as moot. Because the restraining order has already expired, Respondents believe that a ruling on the issues pending before the Court will have no practical effect on the parties. "A case becomes moot when judgement, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001), citing *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

In any event, based on the applicable standard of review, Appellant has produced no evidence that the ruling below was "controlled by an error of law or is unsupported by the facts." *Parks*, 345 S.C. 484 at 490, 548 S.E.2d at 608.

CONCLUSION

For the reasons stated, this Court should dismiss this appeal and affirm the Circuit Court's Order affirming the Restraining Order against Appellant. The appeal should also be dismissed as moot based on its expiration on November 5, 2025.

Respectfully submitted,

/s/ J. Creighton Hayes



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