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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Magistrate Court

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

Case No. 2024-001566

James Major,

Respondent,

v.

Emily Major,

Appellant.

**RESPONDENTS MOTION FOR
REHEARING AND SUGGESTION
THIS MATTER BE HEARD EN BANC**

In accordance with Rule 221, South Carolina Appellate Court Rules, Respondent James Major, by and through his undersigned counsel of record, moves before this Court for reconsideration of its Order dated May 13, 2026. Respondent received notice of the Courts Opinion on May 13, 2026. Pursuant to Rule 219(b), South Carolina Appellate Court Rules, Respondent James Major Suggests this matter be heard En Banc. In support of this motion, Respondent will show unto this Court as follows:

Absent an Order from the family court, either ordering terms of separate support and

maintenance or separation, or a final divorce decree, spouses cannot stalk or harass the other spouse. Generally, when two people are still married one cannot intrude into the “private life” of another spouse. When there is no Order of separate support and maintenance, allowing married parties to live separate and apart, dividing property, child custody, splitting assets, or resolving other issues, then the spouses are still considered married and as such share property, assets, child custody etc.... Therefore, between spouses there is not much of a “private life” to intrude upon.

Furthermore, in this case most of the communication directed at the Appellant has served a “legitimate purpose.” Respondent intended to check on the wellbeing of his son as well as ask if anything is needed. Respondent was also concerned about the wellbeing of Appellant and has been encouraging her to seek help.

Generally, spouses share many aspects of life, and it would be hard to prove that a spouse was intruding on the “private life” of another spouse. Similarly, one spouse cannot charge the other with larceny of money, trespassing on real property, unauthorized use of vehicles, regardless of how titled, stalking and harassment should be no different. There is a specific statutory court just for this purpose, family court, and there is no reason to get the magistrate court involved which would cause irreparable harm to litigants. The family court has exclusive jurisdiction to handle the parties conduct, parental conduct, and issue restraining orders and enforce them through the Court’s contempt powers. Furthermore, most communication between spouses serves a “legitimate purpose.” Therefore, under the plain language of the S.C. Code Ann. § 16-3-1700 et seq., a spouse cannot by definition stalk or harass another current spouse, absent clear or final orders from family court.

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.”¹ “In other words, subject-matter jurisdiction refers to a court's constitutional or statutory power to adjudicate a case.”² “The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction.”³ The South Carolina Supreme Court has continuously found that the jurisdictional authority of the family court is set forth by the Children’s Code.⁴ S.C. Code Ann. § 63-3-530(A) states that the family court has exclusive jurisdiction over a list specified matters.⁵ More Specifically, S.C. Code Ann. § 63-3-530(A)(18) grants the family court exclusive jurisdiction “to make an order for support of a husband or wife and children by his or her spouse, even though he or she may have left the home, in cases where the spouse's conduct or condition or his or her cruel or inhuman behavior made it unsafe or improper for the deserting spouse to continue to live with him or her. Such orders may require either spouse or any other party to the proceeding: (a) to stay away from the home or from the other or either spouse or children; (b) to permit either spouse to visit the children at stated periods; (c) to abstain from offensive conduct against the other spouse or either of them, or against the children; (d) to give proper attention to the care of the home; (e) to refrain from acts of commission or omission that tend to make the home not a proper place for the other, or either spouse, or the children.”⁶ The Family Court has jurisdiction to order and enforce restraining orders. S.C. Code §63-3-530(19). Also, S.C. Code Ann. § 63-3-530(A)(35) gives the family court exclusive jurisdiction “to hear and determine actions

¹ *Seels v. Smalls*, 437 S.C. 167, 171, 877 S.E.2d 351, 353 (2022).

² *Kosciusko v. Parham*, 428 S.C. 481, 492, 836 S.E.2d 362, 368 (Ct. App. 2019).

³ *Id.*

⁴ *Id.* at 493. *See also*, S.C. Code Ann. § 63-3-530(A)(35) (2008, as amended).

⁵ *See*, S.C. Code Ann. § 63-3-530(A).

⁶ S.C. Code Ann. § 63-3-530(A)(18).

for protection from domestic abuse.”⁷ Furthermore, the Protection from Domestic Abuse Act provides the family court with jurisdiction “over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate.”⁸

The family court has exclusive jurisdiction over “domestic matters” including issuing restraining orders to stay away from the home or from the other or either spouse or children, restraining orders, and actions for protection from domestic abuse.⁹

Furthermore, even if the Appellant is not alleging “abuse” the protections sought after still fall within the exclusive jurisdiction of the family court under S.C. Code Ann. § 63-3-530(A) (18-19), which grant the family court exclusive jurisdiction to make orders “(a) to stay away from the home or from the other or either spouse or children; (b) to permit either spouse to visit the children at stated periods; (c) to abstain from offensive conduct against the other spouse or either of them, or against the children; (d) to give proper attention to the care of the home; (e) to refrain from acts of commission or omission that tend to make the home not a proper place for the other, or either spouse, or the children.”¹⁰ Clearly, the Appellant is requesting the court to order the Respondent to stay away from the home or Appellant, and refrain from certain conduct, which again falls within the jurisdiction of the family court not the magistrate court.

The Appellant could have appropriately filed for a temporary order of protection in magistrate court, but only during non-business hours of the family court.¹¹ On May 5, 2023, around three o’clock

⁷ S.C. Code Ann. § 63-3-530(A)(35).

⁸ S.C. Code Ann. § 20-4-30(A) (1984, as amended).

⁹ S.C. Code Ann. § 63-3-530(A) (18-19,35). See also, S.C. Code Ann. § 20-4-30(A).

¹⁰ S.C. Code Ann. § 63-3-530(A)(18).

¹¹ S.C. Code Ann. § 20-4-30(A).

p.m., when the Appellant filed the Motion for a Restraining Order, there were several family court judges holding court including but not limited to; Judge Crouch, Judge Frierson-Smith, Judge Hurley, Judge Jones, Judge Kimmons, Judge Newton, and Judge Pincus.¹² Clearly, the family court was operating and open for the Appellant to file for an order of protection. Furthermore, the Appellant could have filed an order of protection in family court any time after the dismissals of Judge Boyd or Judge Curtis, but the appellant failed to seek relief through family court.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. The plain language of a statute is the best evidence of the legislature's intent. It is also a long-standing principle of statutory analysis that the implied repeal of statutes is not favored. Rather, statutes touching upon the same subject matter must be read in harmony to give effect to each whenever possible, as it is presumed that the legislature is familiar with prior legislation and, if it intended to repeal an existing law, it would expressly do so. The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.”¹³ When the statutes are read together and with legislative purpose in mind it is clear that “household members” may still file for restraining orders under S.C. Code Ann. § 16-3-1750 as long as it does not interfere with the jurisdiction of the family court. For example, if the ex-spouses had a temporary order in place requiring one spouse to stay away from the other, or were divorced, and one ex-spouse was stalking or harassing the other beyond the communication required by family court orders, then the magistrate court could issue a restraining order and seek contempt in the family court.

However, in this case, the family court has not yet determined the issues of the parties living

¹² *See*, South Carolina Family Court Calendar.

¹³ *Seels v. Smalls*, 437 S.C. 167, 176-177, 877 S.E.2d 351, 356 (2022).

separate and apart, marital property division, child custody, or any other rights or obligations that could be affected by the issuance of a restraining order. It is paramount that the family court determines the issues involved before the Respondent is deprived of his rights to marital assets, marital property, child custody, visitation, etc.... by the issuance of a restraining order. Surely, the legislature did not intend to allow spouses to circumvent family court and be able to restrict a spouse from their home, their ability to communicate with their children, their ability to see their children, and so much more just by way of a restraining order issued by the magistrate court. The Courts Order in this matter does not adequately address this issue in its ruling:

We trust our magistrate courts to be sensitive to the interpersonal dynamics between the parties when granting a temporary restraining order and tailor any relief it may grant to avoid infringing on the family court's exclusive jurisdiction with regard to family matters—e.g., refraining from prohibiting a parent from contacting their coparent related to visitation of the children.

If the magistrate court grants a married person a restraining order it will inhibit the person restrained ability access to their children, attending their children's school events, children's extracurricular events, attending children's doctor's appointments, return to their home, use their property, without ever having to go before the family court.

Furthermore, it is logical to assume that a certain amount of communication and visitation is required between spouses or ex-spouses when children are involved. When spouses, ex-spouses, or other "household members" are involved the magistrate court may issue a restraining order under S.C. Code Ann. § 16-3-1750, but the court must give deference to any family court orders. In this case, the family court has not issued any specific restraining orders or final decrees. Therefore, the

magistrate court must submit to the family court's jurisdiction in this particular case to protect the rights of the parties involved.

The Appellant is not left without remedy and may file for separate support and maintenance, a divorce, and request an order of protection in family court. The family court will be able to determine the parameters of the separation, and all of the issues involved in the divorce. The family court can order property division, child custody, visitation, and parenting agreements.¹⁴ The family court can also issue orders that require one spouse to stay away from the home, or other spouse, or child, require a spouse to abstain from offensive conduct, and require a spouse to refrain from acts of commission or omission that make the home an improper place.¹⁵ The family court may also issue orders of protection if needed.¹⁶ There is no deadly "ping pong" effect between the magistrate court and family court in this matter. The matter is clearly a family court issue, and all the relief Appellant is seeking can be granted by a family court. It is Appellant's responsibility to follow through with the family court case if that is what she wishes. It is not the duty of the magistrate court to impose jurisdiction when the Appellant has failed to fulfill that responsibility.

CONCLUSION

For the reasons stated, Respondent requests this Court reconsider the Order dated May 13, 2026 and uphold the ruling of the Circuit Judge dismissing this action. Respondent further moves pursuant to Rule 219(b) of the South Carolina Appellant Court Rules Respondent and suggests this matter be heard En Banc.

¹⁴ S.C. Code Ann. § 63-3-530(A).

¹⁵ S.C. Code Ann. § 63-3-530(A)(18).

¹⁶ S.C. Code Ann. § 20-4-30(A).

Respectfully submitted,

/s/ Michael Laubshire

Columbia, SC
May 28, 2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the Respondent Motion for Rehearing and Suggestion that this matter be heard En Banc by email and by depositing a copy in the United States Mail, postage prepaid, on the 28th day of May, 2026, addressed to the attorney for the Petitioner as follows:

Mrs. Brett Lamb Stevens, Esq.
1525 Senate Street
Columbia SC 29208

/s/Tori Ford

Victoria L. Ford, Paralegal
The Laubshire Law Firm

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