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SC Court of Appeals

**FORM 13
BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON
COUNTY
Court of Common Pleas

Thomas Rode, Circuit Court Judge

Case No. 2025-CP-10-07109
Appellate Case No. 2026-001551

Marisa Wright,

Respondent,

v.

Marie Middleton,

Appellant.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

This appeal is from the Common Pleas Court's order denying Appellant's appeal and affirming the Magistrate Court's restraining order. The dispositive question is not merely whether the Magistrate Court heard conflicting testimony. It is whether the Common Pleas Court properly reviewed the papers and record before it, applied the governing statutory elements, and affirmed a judgment supported by admitted evidence and findings adequate for appellate review.

Respondent's preservation argument underscores, rather than resolves, a material uncertainty. The Common Pleas Order states that the record did not show that Appellant sought to introduce evidence that was excluded and that Appellant acknowledged her attorneys did not offer the evidence. The Court of Common Pleas concluded that the Record does not show that Appellant sought to introduce any evidence that was excluded by the Magistrate Court. On the contrary, Appellant acknowledged that her attorneys did not offer the evidence she claims should have been admitted. The Court found that the Magistrate Court did not err by failing to admit relevant evidence. Appellant therefore does not ask this Court to declare, on an unclear record, that the Magistrate Court definitively excluded a completed evidentiary proffer. Instead, Appellant submits that the conflict between her initial brief's characterization and the Common Pleas Order warrants clarification or a limited remand if the existing record does not permit a reliable determination.

A similar problem arises from the Common Pleas reliance on "written statements made to police officers." Respondent acknowledges that, upon information and belief, no written statements were introduced into evidence. If those statements were not admitted, they could not properly support the restraining order or the affirmance. At minimum, the basis for the

Common Pleas Court's reference must be clarified. Appellant's argument that the Magistrate's findings are conclusory and unsupported by a preponderance of the evidence is not supported by the record. The Magistrate's Return details the testimony presented by the Respondent and the witnesses she presented at trial. While the Return references that "[p]olice were called and statements were written", that is a summary of Respondent's testimony and not an indication of consideration of any statements that were admitted into evidence. In fact, upon information and belief, no written statements were introduced and therefore could not have been considered by the Magistrate. Appellant herself has called the police and made reports on numerous other incidents before this against Respondent that could show the filing by Respondent was retaliatory and vindictive, especially given that Appellant had requested that her child stop trespassing her property, which continued after the Restraining Order request and can be documented with evidence, which would show Respondent herself, the filer of the order, was not scared or fearful of Appellant.

ARGUMENT

I. THIS APPEAL CHALLENGES THE COMMON PLEAS COURT'S AFFIRMANCE.

Respondent correctly recognizes that this is an appeal from the Common Pleas Court's July 1, 2026 order denying Appellant's appeal. Accordingly, Appellant challenges whether that court properly exercised its appellate function when affirming the Magistrate Court.

Section 18-7-130 provides that an appeal from Magistrate Court shall be heard upon all the papers in the case. Section 18-7-140 grants the reviewing court the same power over its determinations and directs it to render judgment in the same manner as in actions pending in circuit court. Section 18-7-170 permits affirmance or reversal, in whole or in part, for errors of

law or fact. The Common Pleas Court accordingly possessed a broad scope of review over the Magistrate Court's ruling. Common Pleas Order at 2.

Accordingly, Appellant challenges whether that court properly exercised its appellate function when affirming the Magistrate Court. Pursuant to S.C. Code Ann. § 16-3-1750, the Magistrates Court has jurisdiction over restraining orders involving claims of harassment in the first or second degree and stalking. S.C. Code Ann. § 16-3-1750. This discretion should not be awarded when it is unfair and prejudicial and can be proven to be through direct and indirect evidence in the interests of justice and fairness.

That statutory framework required more than an automatic acceptance of the result below. The Common Pleas Court was required to determine whether the Magistrate Court's judgment rested on the record, whether the governing legal elements were applied, and whether the findings were supported by admissible evidence. Appellant's present appeal asks this Court to review whether the Common Pleas Court fulfilled those obligations.

II. THE RECORD REQUIRES CLARIFICATION CONCERNING APPELLANT'S ELECTRONIC EVIDENCE.

Respondent argues that Appellant neither offered nor proffered Ring footage, FaceTime or call logs, videos, or photographs. The Common Pleas order states that the record did not show that Appellant sought to introduce evidence that was excluded and that Appellant acknowledged her attorneys did not offer the evidence. Respondent similarly asserts that Appellant introduced no exhibits and relied only on her testimony. Respondent's Br. at 7–8.

Appellant's initial brief characterized the record differently. It asserted that the electronic materials were identified and proffered, while also acknowledging that counsel did not complete their formal admission at the Magistrate hearing. Appellant's Br. at 2–4. The initial brief further attributed the omission to counsel's failure to lay a technical foundation and to an asserted refusal to permit a full proffer. Appellant's Br. at 2, 4.

Appellant does not ask this Court to resolve that discrepancy by assuming facts that the record does not establish. If the record confirms that counsel never offered or proffered the materials, Appellant cannot recast that omission as an evidentiary ruling by the Magistrate Court. But if the papers reflect an attempted offer, identification of the evidence, or an incomplete proffer, the reviewing courts must address what occurred and whether the issue can be meaningfully reviewed.

The appropriate response to an ambiguous record is not to adopt either party's unsupported characterization. It is to remand for clarification of whether the electronic evidence was offered, whether a proffer was attempted, what ruling, if any, the Magistrate Court made, and whether the materials became part of the papers transmitted on appeal. That limited relief would preserve the distinction between evidence affirmatively excluded and evidence never offered.

The requested remand is also material to the merits. Appellant's initial brief represented that the electronic materials were contemporaneous and time-stamped and that they concerned Appellant's location and conduct during incidents alleged by Respondent. Appellant's Br. at 2–3. Whether those materials were properly presented below cannot be decided through competing assertions in the briefs.

III. THE REFERENCE TO WRITTEN POLICE STATEMENTS REQUIRES REVIEW OR CLARIFICATION

The Common Pleas order states that the Magistrate's Return included an extensive discussion of Respondent's testimony "and written statements made to police officers." Here, Appellant contends that the evidence presented at trial did not meet the burden of proof necessary to show that by a preponderance of the evidence, a restraining order should be issued. Statements were not admitted into Court. This is because Appellant alleges that the testimony considered during the trial was false and defamatory. That language matters because the order used the materials discussed in the Return to support its conclusion that the Magistrate Court thoroughly reviewed the evidence.

Respondent now contends that the Magistrate's reference to police and written statements merely summarized testimony. Respondent's Br. at 9. Respondent also states, upon information and belief, that no written statements were introduced and therefore could not have been considered by the Magistrate Court. Respondent's Br. at 9.

That explanation does not eliminate the ambiguity in the Common Pleas order. If the "written statements" were admitted exhibits, the record should identify them and permit review of their use. If they were not admitted, they should not have been treated as evidence corroborating the judgment. If the Return merely recounted testimony for parties that were biased or not independent and statements that were made based on hearsay and that statements existed, the Common Pleas order should not characterize the statements themselves as evidence considered by the Magistrate Court.

Findings supporting a restraining order must rest on evidence admitted at the hearing. The Court should therefore vacate and remand for clarification of whether the written police

statements were admitted, whether their contents were considered, and what admitted evidence supports the relevant findings. Without that clarification, meaningful review is impaired.

IV. DEFERENCE DOES NOT INSULATE LEGAL ERROR, INADEQUATE FINDINGS, OR RELIANCE ON MATTERS OUTSIDE THE EVIDENTIARY RECORD

Respondent invokes the principle that a reviewing court may not disturb approved factual findings when any evidence, however slight, tends to prove the issues involved. Respondent's Br. at 6. "The decision of whether to issue a restraining order is within the trial judge's discretion." *Brandt v. Gooding*, 368 S.C. 618, 629, 630 S.E.2d 259, 264 (2006) (citing *State v. Hill*, 266 S.C. 49, 52, 221 S.E.2d 398, 399 (1976)). Therefore, Appellant must show an abuse of that discretion to prevail in her appeal. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). Deference should be given to the trial court's superior position to weigh the evidence presented and evaluate witness credibility during the trial. See *State v. Williams*, 321 S.C. 455, 469 S.E.2d 49 (1996). Respondent also relies on deference to the trial court's assessment of credibility and on the discretionary nature of restraining-order relief. Respondent's Br. at 6.

Those principles do not answer Appellant's arguments. Respondent's own cited standard provides that an abuse of discretion occurs when a ruling rests on an error of law or, when grounded in factual conclusions, lacks evidentiary support. Respondent's Br. at 6. Thus, deference does not prevent review of whether the lower courts applied the correct statutory elements, relied on admitted evidence, or made findings sufficient to show how the evidence satisfied the statute.

Credibility deference governs the evaluation of testimony actually received. It does not convert unadmitted material into evidence. Likewise, the “any evidence” formulation cannot substitute for identification of evidence supporting each essential statutory requirement. A court’s discretion to issue a restraining order must be exercised under the governing law and upon an adequate evidentiary foundation.

The nine-day interval between hearing and decision does not resolve these defects. The Common Pleas order relied in part on the interval between the Magistrate hearing and the restraining order as confirmation that the Magistrate Court thoroughly deliberated. Common Pleas Order at 3. Time spent considering a matter cannot establish what evidence was admitted, whether extra-record material was used, or whether each statutory element was found.

V. THE FINDINGS DO NOT ADEQUATELY ADDRESS THE STATUTORY ELEMENTS

Appellant’s initial brief identified the relevant statutory requirements as a pattern of two or more acts evidencing continuity of purpose, intent, and the absence of a legitimate purpose. Many of the incidents relied upon by the Magistrate, complaints to the HOA, photographing from one’s own property, and other speech or conduct, either constitute constitutionally protected activity or serve legitimate purposes. The harassment/stalking statute requires a “pattern” of two or more acts evidencing continuity of purpose that serve no legitimate purpose. See S.C. Code Ann. § 16-3-1700(A), (G). The Magistrate did not adequately analyze whether each act was unprotected and without legitimate purpose, nor did the Return tie each statutory element to admissible evidence. Appellant’s Br. at 4–5. The lower courts were therefore required to connect admissible evidence to those elements rather than rely on a generalized conclusion that Appellant initiated “unwanted contact.”

The Magistrate Court found that Appellant initiated unwanted contact warranting a restraining order. Respondent's Br. at 5. But "unwanted contact" does not, by itself, establish every element identified under § 16-3-1700. The findings must explain which acts formed the pattern, how those acts demonstrated continuity of purpose and the required intent, and why they served no legitimate purpose. And, what is defined as "unwanted contact" if Appellant had not initiated contact with Respondent, verbally or otherwise, since the Fall of 2024. The conclusions made by the Court do not align with the facts.

Respondent argues that the Return describes conduct occurring over more than a year, including conduct involving Respondent's children. Respondent's Br. at 9. Even if the testimony supports particular events, the analysis must distinguish multiple unrelated or ambiguous encounters from a legally sufficient pattern directed at Respondent. It must also address Appellant's contention that certain conduct occurred on her own property or otherwise had a legitimate purpose. Appellant's Br. at 4–5.

The Common Pleas order did not separately analyze those statutory requirements. Instead, it concluded that the evidence met the preponderance standard after referring generally to Respondent's testimony, written police statements, the testimony of Respondent's husband and a neighbor, credibility, and the period of deliberation. Common Pleas Order at 3. That generalized discussion does not reveal which admitted evidence established each required element.

Where the findings do not permit the reviewing court to determine whether the statute was correctly applied, deference is not a substitute for analysis. The order should be reversed or vacated, or the case should be remanded for specific findings tied to admitted evidence.

VI. RESPONDENT'S REQUESTS UNDER RULES 220(c) AND 222 SHOULD BE DENIED

Respondent asks this Court to affirm on any other ground appearing in the record under Rule 220(c), SCACR. Respondent's Br. at 10. That request does not cure the unresolved record questions. An alternative ground cannot sustain affirmance unless the existing record establishes that ground. Here, the uncertainty concerning the electronic evidence, the status of the written police statements, and the absence of element-specific findings prevent confident affirmance on an unspecified alternative basis.

Respondent also requests costs under Rule 222, SCACR. Respondent's Br. at 10. That request should be denied because Appellant presents substantial questions concerning the evidentiary record, the scope of appellate review, and the findings necessary to support the restraining order. If Appellant obtains reversal, vacatur, or remand, Respondent's request for costs should likewise be denied.

CONCLUSION AND PRAYER FOR RELIEF

For these reasons, Appellant respectfully requests that this Court reverse or vacate the Common Pleas Court's order affirming the restraining order. Alternatively, Appellant requests a limited remand to clarify whether the electronic evidence was offered or proffered, whether the written police statements were admitted or considered, and which admitted evidence supports each statutory element under S.C. Code Ann. § 16-3-1700. Appellant further requests that Respondent's requests under Rules 220(c) and 222, SCACR, be denied.

October 18, 2026

Respectfully submitted,

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