

2

RECEIVED

JUN 23 2014

**THE STATE OF SOUTH CAROLINA SC Court of Appeals
IN THE COURT OF APPEALS**

**APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS**

EDGAR W. DICKSON , First Circuit

Case # 2009-CP-18-2200

RENE McMASTERS (RONAGHAN).....Respondent

V.

HOWARD W. CHARPIA and JODY E. CHARPIA.....Appellants

INITIAL BRIEF

**“Motion to Reconsider” and “Motion to Vacate”
Appellant # 2013-002311**

**Howard W. Charpia
Jody E. Charpia
1450 Jahnz Ave.
Summerville, SC 29485
843-873-0976**

Attorney Frank M. Cisa , for respondent

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of the Issues.....	1
Statement of the Case.....	1
Facts.....	2
Arguments.....	3
1. The Court erred in violating the Appellant’s rights of due process and the due process clause.	
Conclusion.....	4

TABLE OF AUTHORITIES

Webster v. Clanton , 259 S.C. 387 , 391 (1972) Supreme Court

Moore v. Moore , 376 S.C. 467 , 657 S.E. 2d 743 (2008)

Cameron & Barkley Co. v. SC Procurement Panel , 317 S.C.

Dept. Social Services v. Holden , 319 S.C. 72, 78) (1995)

Ballenger v. SC Dep't of Health and Env'tl. Control , 331 S.C)

Tyron Federal Savings v. Phelps , 307 S.C. 361) (1992)

STATEMENT OF THE ISSUES

1. **Did the Court violate the Appellant's "due process" and the "due process clause" ?**
2. **Did the Court follow the SCRCP and the rules of the legislature ?**
3. **Did the Court violate Canon 3 of the Code of Judicial Conduct ?**

STATEMENT OF THE CASE

Howard W. Charpia and Jody E. Charpia (Appellants) are the Defendants in this case # 2009-CP-18-2200 . The Respondent , McMasters , seeks to foreclose on a judgment lien against a piece of property located in Dorchester County. The judgment is against Howard W. Charpia only and *not* against Jody E. Charpia . Jody E. Charpia owns one-half interest in said property.

Howard W. Charpia made a "Motion to Reconsider" and Jody E. Charpia made a "Motion To Vacate" with Dorchester County in December 2012. A hearing was held on January 9 , 2013 in Dorchester County with Judge Edgar Dickson presiding for these two (2) motions .

The Appellants *were not notified* of this hearing .

FACTS

The Appellants were never notified of the hearing on January 9, 2013.

**Procedural “due process” requires notice and the opportunity to be heard .
(Cameron & Barkley Co. v. SC Procurement Panel , 317 S.C.)**

**The Clerk of Court was sworn in at this hearing and testified that
Howard W. Charpia (Appellant) was E-mailed for the hearing of 1-9-13 .
The Court did not ask the Clerk for a copy of said E-mail to verify notice.
On January 10 ,2013 , the Clerk of Court E-mailed Howard W. Charpia
stating that the Clerk’s office had a technical error and that they *did not*
send the Appellants notice of this hearing . (exhibit 1)**

**The Appellant , Howard W. Charpia , received an E-mail from Judge
Dickson’s law clerk (Drew Evans) on January 10 , 2013 apologizing for the
oversight of not notifying the Appellants. (exhibit 2)**

**“Due Process” requires notice and the opportunity to be heard at a
meaningful time and a meaningful manner .
(Dept. Social Services v. Holden , 319 S.C. 72, 78) (1995)**

**The Court reversed a decision where it found substantial prejudice from
lack of notice and when a party receives inadequate notice , he must demon-
strate prejudice resulting from the insufficient notice.
(Ballenger v. SC Dep’t of Health and Env’tl. Control , 331 S.C)**

ARGUMENTS

It is fundamental that no judgment or order affecting the rights of a party to the causes shall be made or rendered without notice to the party whose rights are to be affected.

(Tyron Federal Savings v. Phelps , 307 S.C. 361) (1992)

It is a fundamental doctrine of the Law that a party whose personal rights are to be affected by a personal judgment must have his day in Court , or the opportunity to be heard , and that without due notice and an opportunity to be heard , a Court has no jurisdiction to adjudicate such personal rights.

(Moore v. Moore . 376 S.C. 467 , 657 S.E. 2d 743 2008)

The requirements of “due process” not only include notice , but also an opportunity to be heard in a meaningful way and judicial review.

(Grannis v. Ordean , 234 S.C. 1914)

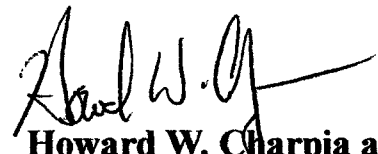
CONCLUSION

The Appellants , Howard W. Charpia and Jody E. Charpia were *never notified* of said hearing of January 9, 2013 . (exhibits 1, 2, 3)

Judge Dickson's Order is incomplete and ambiguous , it sets forth neither findings of fact *nor* conclusions of Law and it fails to set forth the Court's reasoning for it's ruling.

The Court did not comply with the Rule that these issues should be decided with a full and complete record .

WHEREFORE , the Appellants pray this Court reverse the decision of Judge Dickson's order and grant them a new trial .


**Howard W. Charpia and
Jody E. Charpia**