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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

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Kristi L. Harrington, Circuit Court Judge

SEP 01 2015

SC Court of Appeals

Appellate Case No.: 2014-000141

Unpublished Opinion No. 2015-CP-427
Submitted April 1, 2015 – Filed August 19, 2015

William McFarland.....Appellant,

v.

Sofia Mazell, Michael Mazell, Pierceton Mazell, and Faith Mazell..... Respondents.

**PETITION FOR REHEARING OF
APPELLANT WILLIAM MCFARLAND'S**

Amanda R. Maybank, Esquire
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Attorneys for Appellant William McFarland

TO: THE JUSTICES OF THE SOUTH CAROLINA COURT OF APPEALS

Appellant, William McFarland, by and through his undersigned attorneys, petition the South Carolina Court of Appeals for a Rehearing in the above-captioned matter. This petition is based upon the grounds as follows:

I. THE ORDER MISAPPREHENDS THE FACT THAT EXPIRATION OF THE RESTRAINING ORDER RENDERS THE ISSUE OF WHETHER IT WAS PROPERLY GRANTED MOOT.

The order states that that ruling on the issue pending before it will have no practical effect on the parties, and therefore the issue is moot. First, the issue does affect the McFarland because as it currently stands, there is an outstanding, granted, expired restraining order that was filed against him. As discussed in the brief, Mr. McFarland is a businessman and travels internationally. The restraining order may affect client perception of him and may affect his ability to travel. Moreover, the restraining order is public record which may affect his perception in the community.

Second, the Court may address an issue despite mootness when 1) the issue raised is capable of repetition yet, evading review and 2) when the questions considers matters of important public interest. *Curtis v. State of South Carolina*, 345 S.C. 557, 549 S.E.2d 591, 596 (2001). In evaluating whether a moot issue is capable of repetition, yet evading review the Court does not require that the complaining party be subject to the action again. *Byrd* 321 S.C 426, 431, 468 S.E.2d 861, 864.

In *Bryd*, the Court was faced with whether a student suspension, which had since been served, fell within the exceptions to the mootness doctrine. The Court held that short term student suspensions will evade review because they are “by their very nature, completed long before an appellate court can review the issues they implicated.” *Id.*

This case falls into the exception as recognized by *Bryd*. The nature and effective time-period of a restraining order is limited, whereas, the appellate process can take years to complete. In this case, the restraining order was issued in October 2012 and expired in April of 2013¹. Yet, the circuit court did not hear the appeal until November 12, 2013, almost seven months after the expiration of the restraining order.

In holding that the restraining order is moot, essentially, there is no checks and balances procedure in place as to the issuance of the restraining order as they are typically expired before they can be reviewed by the circuit court as the first step of the appellate process.

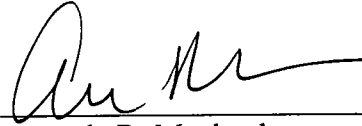
Additionally, holding that the restraining order is moot and not reviewing the underlying issue surrounding its issuance can invite abuse. By the very nature and language of the statute, S.C. Code Ann. §16-3-1700 et al, contemplates criminal actions for harassment and stalking and are not meant to be used by next door neighbors who are not getting along or are in a dispute with the Home Owners Association in their neighborhoods. In this case, the Appellant was acting in accordance with his duties on the Home Owners Association Board. The Respondent, who was unhappy with the Appellant, was able to use the actions to obtain a restraining order. Allowing the restraining order to stand based on the behavior described herein invites abuse by others to file for restraining orders for alleged behavior that falls well below the harassment and stalking threshold, and amounts to petty disputes. Additionally, this will place a burden on the court system to deal with these types of disputes rather than the behavior contemplated by the statute.

¹ I note that the restraining order in this case did not comport with S.C. Code Ann. §16-3-1750(E), which requires that a restraining order remain in effect for “not less than one year.”

CONCLUSION

For the foregoing reasons, Appellant, William McFarland respectfully requests that the Court reconsider this matter.

Respectfully submitted:



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Charleston, South Carolina

August 31, 2015

THE STATE OF SOUTH CAROLINA
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APPEAL FROM DORCHESTER COUNTY
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Kristi L. Harrington, Circuit Court Judge

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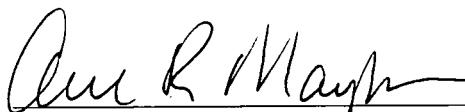
v.

Sofia Mazell, Michael Mazell, Pierceton Mazell, and Faith Mazell..... Respondents.

PROOF OF SERVICE

I certify that on August 31, 2015 I have served a copy of Appellant William McFarland's Petition for Rehearing by placing same in the U.S. Mail with the appropriate postage affixed and addressed to Respondents' attorney as set forth below:

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August 31, 2015

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SC Court of Appeals

Via Fed Ex

Honorable Jenny Abbott Kitchings
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: William McFarland v. Sofia Mazell, Michael Mazell, Pierceton Mazell
and Faith Mazell
Case No.: 2013-CP-18-0546
Magistrate Case No.: 2012OR1810300001
Appellate Case No.: 2014-000141
Claim No. 72-3238-2012
MLF File No. 104.145

Dear Ms. Kitchings:

Enclosed please find the original and (6) copies of Appellate William McFarland's Petition for Rehearing, along with the original and one copy of the Proof of Service regarding the above referenced matter. Also enclosed is our firm check in the amount of \$25.00 or the cost of the filing fee. Please file the original and return clocked copies for our file. A self-addressed, prepaid envelope is provided for this purpose.

Should you have any questions, please do not hesitate to call.

With kind regards, I am

Yours truly,



Amanda R. Maybank

ARM/tgw
Enclosures
cc: All Counsel of Record



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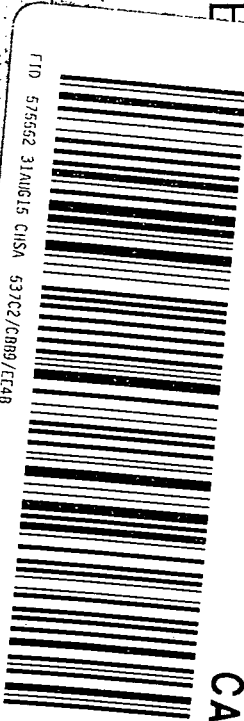
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