

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Dorchester County
Court of Common Pleas
Kristi L. Harrington, Circuit Court Judge

RECEIVED

OCT 16 2015

Unpublished Opinion No. 2015-CP-427
Submitted April 1, 2015 – Filed August 19, 2015
Appellate Case No.: 2014-000141

S.C. Supreme Court

William McFarland.....Petitioner,

v.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Appellate Case No.: 2014-000141

William McFarland.....Appellant

v.

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

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT

COUNTY OF DORCHESTER

**MUTUAL
RESTRAINING ORDER**

Sofia Mazell and Michael Mazell

PLAINTIFF(S)

2012OR1810300001
CIVIL CASE NUMBER

Vs

William Mcfarland

DEFENDANT(S)

DEFENDANT IDENTIFIERS

SEX *	RACE *	DOB*	STATE	WEIGHT
M	W	11/17/1964	SC	
EYES	HAIR	HEIGHT		
Brn	Blk			

And/or on behalf of minor
family member(s) or other

Relationship to Protected Person:

Defendant's Address

CAUTION:

*Indicates required information for entry into NCIC

☐ Weapon Involved

☐ Weapon Present on Defendant's Property

☐ Access to weapons

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter,
Defendant has been provided with reasonable notice and opportunity to be heard.
Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

☒ That the above named Defendant be restrained from committing further acts of abuse or threats of abuse.

☒ That the above named Defendant be restrained from any contact with the Protected Person as set forth on the attached pages.

The terms of this order shall be effective until

April 12

2013

WARNINGS TO DEFENDANT:

This order shall be enforced in any county of South Carolina and by the courts of any state, District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

State and federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922).

Only the Court can change this order.

For Additional Information Call:

843-832-0300

Sheriff Phone Number

843-832-0370

Clerk of Court Phone Number

After the filing of a complaint and motion for a Restraining Order on September 25, 2012 the Court held a hearing on October 12, 2012 at 10:00 AM. After hearing the evidence, and examining the affidavits and verified pleadings, the Court has determined that the plaintiff ☒ has/ ☐ has not proved by a preponderance of evidence the need for issuance of a Restraining Order.

The Court makes the following findings of fact: (Check all that apply)

- ☒ 1. The Plaintiff lives in Dorchester County, SC (State).
- ☒ 2. The Defendant lives at 105 Oak Village Lane (Street Address) which is in Dorchester County, SC (State).
- ☐ 3. The Defendant is employed at _____ which is located at _____.
- ☐ 4. The Defendant :
 - ☐ is a current or former spouse of the victim
 - ☐ is a current or former intimate partner of the minor child's parent (minor child is protected person)
 - ☐ is a parent of the victim
 - ☐ cohabits or previously cohabited with the victim
 - ☐ has a child/children in common with the victim
 - ☐ is a person similarly situated to a spouse of the victim.
 - ☐ other:
- ☐ 5. The Defendant is a nonresident of this state or cannot be found.
- ☒ 6. The Harassment or Stalking, as described herein, occurred in Dorchester (County), South Carolina.
- ☒ 7. The Defendant has committed the following acts which constitute Harassment in the 1st or 2nd degree or Stalking: The Defendant has stalked and harassed the Plaintiff causing them to fear for their safety.

IT IS THEREFORE ORDERED THAT (Check all that apply):

- ☒ A. The Defendant is restrained, prohibited and forbidden from abusing, threatening to abuse, or molesting the Plaintiff or members of Plaintiff's family.
- ☒ B. The Defendant is restrained, prohibited and forbidden from entering or attempting to enter the Plaintiff's place of residence, employment, education, or the following locations:
- ☒ C. The Defendant is restrained, prohibited and forbidden from communicating or attempting to communicate with the Plaintiff in any way.

☐ D. Federal Firearms Prohibition, pursuant to 18 U.S.C. § 922

1. Does the Order protect an intimate partner, a child of an intimate partner or a child of the defendant? ☐ YES ☐ NO
2. Did the person restrained have actual notice and an opportunity to participate in the hearing? ☐ YES ☐ NO
3. Does the Order find the restrained person a credible threat or explicitly prohibit the use, attempted use, or threatened use of physical force? ☐ YES ☐ NO

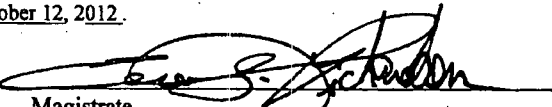
☒ E. A copy of this Order shall be served on the following law enforcement agencies:

DCSO

The terms of this Order remain in effect until April 12, 2013, (a period of at least one year) and may be extended by this Court for good cause shown. If the defendant has been or is during the duration of this Order charged with the crime of Harassment in the 1st or 2nd degree or Stalking, the terms of this Order remain in effect until the conclusion of the defendant's trial.

AND IT IS SO ORDERED.

Entered at 1:46 ☐ a.m. / ☒ p.m. on October 12, 2012.


Magistrate

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL, A FINE OF FIVE HUNDRED DOLLARS, OR BOTH, AND IS IN ADDITION TO OTHER CRIMINAL PENALTIES WHICH MAY RESULT FROM SUCH ACTION.

PURSUANT TO SECTION 16-25-125 OF THE SOUTH CAROLINA CODE OF LAWS, IT IS UNLAWFUL FOR A PERSON WHO HAS BEEN CHARGED WITH OR CONVICTED OF CRIMINAL DOMESTIC VIOLENCE OR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, WHO IS SUBJECT TO AN ORDER OF PROTECTION, OR WHO IS SUBJECT TO A RESTRAINING ORDER, TO ENTER OR REMAIN UPON THE GROUNDS OR STRUCTURE OF A DOMESTIC VIOLENCE SHELTER IN WHICH THE PERSON'S HOUSEHOLD MEMBER RESIDES OR THE DOMESTIC VIOLENCE SHELTER'S ADMINISTRATIVE OFFICES. A PERSON WHO VIOLATES THIS PROVISION IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, MUST BE FINED NOT MORE THAN THREE THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN THREE YEARS, OR BOTH. IF THE PERSON IS IN POSSESSION OF A DANGEROUS WEAPON AT THE TIME OF THE VIOLATION, THE PERSON IS GUILTY OF A FELONY AND, UPON CONVICTION, MUST BE FINED NOT MORE THAN FIVE THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN FIVE YEARS, OR BOTH.

TO LAW ENFORCEMENT OFFICERS:

Notwithstanding any other provision of law, the terms of this Order are enforceable throughout this State. S.C. Code Ann. § 16-3-1750(F). Any person who violates a provision of this Order is subject to a fine of \$500 or imprisonment not to exceed thirty days, or both. S.C. Code Ann. § 16-3-1770(C). Law enforcement officers shall arrest a defendant who acts in violation of this Order after service and notice of the Order have been provided. An arrest warrant is not required. S.C. Code Ann. § 16-3-1800.

COPY GIVEN TO PLAINTIFF BY ____ (initials)

COPY GIVEN TO DEFENDANT BY ____ (initials)

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT

COUNTY OF DORCHESTER

**AMENDED MUTUAL
RESTRAINING ORDER**

William McFarland

PLAINTIFF(S)

2012OR1810300001
CIVIL CASE NUMBER

Vs

Sofia Mazell & Michael Mazell

DEFENDANT(S)

DEFENDANT IDENTIFIERS (Sofia Mazell)

SEX *	RACE *	DOB*	STATE	WEIGHT
F	W	7/15/1971	SC	140
EYES	HAIR	HEIGHT		
Brn	Blk	5'4"		

And/or on behalf of minor
family member(s) or other

Relationship to Protected Person:

Defendant's Address

CAUTION:

☐ Weapon Involved

***Indicates required information for entry into NCIC**

☐ Weapon Present on Defendant's Property

☐ Access to weapons

DEFENDANT IDENTIFIERS (Michael Mazell)

SEX *	RACE *	DOB*	STATE	WEIGHT
M	W	2/8/1964	SC	238
EYES	HAIR	HEIGHT		
Blu	Brn	5'8"		

And/or on behalf of minor
family member(s) or other

Relationship to Protected Person:

Defendant's Address

CAUTION:

☐ Weapon Involved

***Indicates required information for entry into NCIC**

☐ Weapon Present on Defendant's Property

☐ Access to weapons

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter,
Defendant has been provided with reasonable notice and opportunity to be heard.
Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

- ☒ That the above named Defendants be restrained from committing further acts of abuse or threats of abuse.
- ☒ That the above named Defendants be restrained from any contact with the Protected Person as set forth on the attached pages.

The terms of the this order shall be effective until

April 12

2013

WARNINGS TO DEFENDANT:

This order shall be enforced in any county of South Carolina and by the courts of any state, District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

State and federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922).

Only the Court can change this order.

For Additional Information Call:

843-832-0300
Sheriff Phone Number

843-832-0370
Clerk of Court Phone Number

After the filing of a complaint and motion for a Restraining Order on September 25, 2012 the Court held a hearing on October 12, 2012 at 10:00 AM. After hearing the evidence, and examining the affidavits and verified pleadings, the Court has determined that the plaintiff ☒ has/ ☐ has not proved by a preponderance of evidence the need for issuance of a Restraining Order.

The Court makes the following findings of fact: (Check all that apply)

- ☒ 1. The Plaintiff lives in Dorchester County, SC (State).
- ☒ 2. The Defendants live at 107 Oak Village Lane (Street Address) which is in Dorchester County, SC (State).
- ☐ 3. The Defendant is employed at _____ which is located at _____.
- ☐ 4. The Defendant :
 - ☐ is a current or former spouse of the victim
 - ☐ is a current or former intimate partner of the minor child's parent (minor child is protected person)
 - ☐ is a parent of the victim
 - ☐ cohabits or previously cohabited with the victim
 - ☐ has a child/children in common with the victim
 - ☐ is a person similarly situated to a spouse of the victim.
 - ☐ other:
- ☐ 5. The Defendant is a nonresident of this state or cannot be found.
- ☒ 6. The Harassment or Stalking, as described herein, occurred in Dorchester (County), South Carolina.
- ☒ 7. The Defendants have committed the following acts which constitute Harassment in the 1st or 2nd degree or Stalking: The Defendants have stalked and harassed the Plaintiff causing them to fear for their safety.

IT IS THEREFORE ORDERED THAT (Check all that apply):

- ☒ A. The Defendants are restrained, prohibited and forbidden from abusing, threatening to abuse, or molesting the Plaintiff or members of Plaintiff's family.
- ☒ B. The Defendants are restrained, prohibited and forbidden from entering or attempting to enter the Plaintiff's place of residence, employment, education, or the following locations:
- ☒ C. The Defendants are restrained, prohibited and forbidden from communicating or attempting to communicate with the Plaintiff in any way.

☐ D. Federal Firearms Prohibition, pursuant to 18 U.S.C. § 922

1. Does the Order protect an intimate partner, a child of an intimate partner or a child of the defendant?	☐ YES ☐ NO
2. Did the person restrained have actual notice and an opportunity to participate in the hearing?	☐ YES ☐ NO
3. Does the Order find the restrained person a credible threat or explicitly prohibit the use, attempted use, or threatened use of physical force?	☐ YES ☐ NO

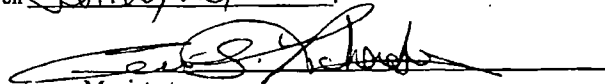
☒ E. A copy of this Order shall be served on the following law enforcement agencies:

DCSO

The terms of this Order remain in effect until April 12, 2013, and may be extended by this Court for good cause shown. If the defendant has been or is during the duration of this Order charged with the crime of Harassment in the 1st or 2nd degree or Stalking, the terms of this Order remain in effect until the conclusion of the defendant's trial.

AND IT IS SO ORDERED.

Entered at 10:35 a.m. / ☐ p.m. on Feb. 22, 2013


Magistrate

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL, A FINE OF FIVE HUNDRED DOLLARS, OR BOTH, AND IS IN ADDITION TO OTHER CRIMINAL PENALTIES WHICH MAY RESULT FROM SUCH ACTION.

PURSUANT TO SECTION 16-25-125 OF THE SOUTH CAROLINA CODE OF LAWS, IT IS UNLAWFUL FOR A PERSON WHO HAS BEEN CHARGED WITH OR CONVICTED OF CRIMINAL DOMESTIC VIOLENCE OR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, WHO IS SUBJECT TO AN ORDER OF PROTECTION, OR WHO IS SUBJECT TO A RESTRAINING ORDER, TO ENTER OR REMAIN UPON THE GROUNDS OR STRUCTURE OF A DOMESTIC VIOLENCE SHELTER IN WHICH THE PERSON'S HOUSEHOLD MEMBER RESIDES OR THE DOMESTIC VIOLENCE SHELTER'S ADMINISTRATIVE OFFICES. A PERSON WHO VIOLATES THIS PROVISION IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, MUST BE FINED NOT MORE THAN THREE THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN THREE YEARS, OR BOTH. IF THE PERSON IS IN POSSESSION OF A DANGEROUS WEAPON AT THE TIME OF THE VIOLATION, THE PERSON IS GUILTY OF A FELONY AND, UPON CONVICTION, MUST BE FINED NOT MORE THAN FIVE THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN FIVE YEARS, OR BOTH.

TO LAW ENFORCEMENT OFFICERS:

Notwithstanding any other provision of law, the terms of this Order are enforceable throughout this State. S.C. Code Ann. § 16-3-1750(F). Any person who violates a provision of this Order is subject to a fine of \$500 or imprisonment not to exceed thirty days, or both. S.C. Code Ann. § 16-3-1770(C). Law enforcement officers shall arrest a defendant who acts in violation of this Order after service and notice of the Order have been provided. An arrest warrant is not required. S.C. Code Ann. § 16-3-1800.

COPY GIVEN TO PLAINTIFF BY ____ (initials)

COPY GIVEN TO DEFENDANT BY ____ (initials)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE MAGISTRATE'S COURT
CIVIL CASE # 2012OR1810300001

SOFIA MAZELL AND MICHAEL MAZELL,

Plaintiff,

vs.

WILLIAM MCFARLAND,

Defendant

NOTICE OF DECISION

A Motion for Reconsideration in this matter was heard before the Honorable Tera S. Richardson on the 1ST of February, 2013 with both parties present, the Plaintiffs Sofia Mazell and Michael Mazell were represented by William B Jung, the Defendant William McFarland was represented by Jason A Daigle. After hearing all testimony and evidence presented I am denying the motion for reconsideration and my original ruling in the issuance of a mutual restraining order stands.

THEREFORE IT IS ORDERED!

Dated this 8 day of March, 2013.



Tera Richardson, Magistrate

2013-CP-18-546

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

✓ MAGISTRATE'S COURT

CASE NO.: 2012OR181030001

SOFIA MAZELL, MICHAEL MAZELL,
PIERCETON MAZELL (MINOR), FAITH
MAZELL (MINOR)

Plaintiff

vs.

WILLIAM MCFARLAND,
Defendant

RETURN OF APPEAL

FILED-RECORDED
2013 JUN 13 AM 9:52
CLERK OF COURT
DORCHESTER COUNTY

This matter is on appeal from the Magistrate's Court for Dorchester County, South Carolina, the Honorable Tera S. Richardson, Presiding Judge.

On October 12, 2012 at 10 AM, the case of Sofia Mazell and Michael Mazell (Plaintiff) vs. William McFarland (Defendant) was called and both parties were sworn. The Mazell's were represented by Attorney Brad Jung. Mr. McFarland was represented by Attorney Web Charpia. The plaintiffs and the defendant are neighbors. The plaintiffs testified that they were being harassed by the defendant whom at the time was the president of their homeowner's association. The plaintiffs stated that the defendant and his wife Jennifer trespassed on their property and when they approached to inquire, a verbal altercation between the parties occurred. From this incident, sprung other altercations about issues such as a letter regarding a returned check from the association. Also, on several occasions the police were involved, although no arrests had been made. They also testified that there were photos taken of them in a public parking lot by the defendant after being beckoned. The plaintiffs stated that expression signs (i.e. Live, laugh, love) were placed in the defendant's yard facing their property intentionally at them.

Page 1

The defendant denied all harassment allegations and testified that he and his wife were also being harassed by the plaintiffs. The defendant stated that the expression signs in his yard are only yard decorations and meant no harm to the plaintiffs. Mr. McFarland stated the photos were taken of Mrs. Mazell to prove that she was not at a homeowner's association meeting at the library in which she was informed. He didn't want her to later say that she wasn't informed about the meeting and that he beckoned her to come into the meeting at the library. The defendant stated that he and other neighbors were looking at a drain that needed to be installed near the property of the plaintiffs and in order for him and the other neighbors to get to the area they had to go on or near the plaintiff's property. The plaintiffs approached him and that led to an altercation. Several other neighbors and one of the responding officers testified to the witnessed altercations between the two parties.

In my findings, I ordered a mutual restraining order between both parties because at the time, given the surrounding circumstances, I felt that it was best for everyone not to have any contact. The restraining order expired on April 12, 2013.

Dated this 11 day of June 2013.

Respectfully Submitted,



Tera S. Richardson
Magistrate, Dorchester County

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-18-546

McFarland

CERTIFIED COPY
2013 DEC 10 AM 10:45

Mazell, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

CLERK OF COURT
DORCHESTER COUNTY

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☒ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This case came before the Court on November 12, 2013, on Appellant McFarland's Appeal from The Honorable Tera Richardson's Order Granting Mutual Restraining Orders. After carefully reviewing the file and finding no error, this Court hereby AFFIRMS The Honorable Tera Richardson's Order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2151

Judge Code

Date

11/25/13

SCRPC Form 4C (03/2013)

Page 1

This judgment was entered on 12-10-2013, and a copy mailed first class or placed in the appropriate attorney's box on 12-10-2013, to attorneys of record or to parties (when appearing pro se) as follows:

William B. Jung 1156 Bowman Rd. Ste. 200 Mt. Pleasant,
SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Alan Daigle 531 Savannah Hwy Charleston, SC
29407-7209

Roy Pearce Maybank PO Box 12579 Charleston, SC 29422

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Sofia Mazell

Michael Mazell, Pierson Mazell
(Plaintiffs) (minor)

vs. Faith Mazell (minor)

William McFarland

(Defendants)

IN THE MAGISTRATE'S COURT

COMPLAINT & MOTION FOR
RESTRAINING ORDER

2012OR1810300001
CIVIL CASE NUMBER

The PLAINTIFF alleges that:

1. The PLAINTIFF lives at 107 Oak Village Lane Summerville, SC 29483
(complete address, including city/state/zip)
which is in Dorchester County, SC (State).

2. The DEFENDANT lives at 105 Oak Village Lane Summerville, SC 29483
(complete address, including city/state/zip)
which is in Dorchester County, SC (State).

3. The Harassment or Stalking occurred in Dorchester County, SC (State).

4. PLAINTIFF further alleges that the following conduct occurred by the DEFENDANT on the times, dates and places listed below, and such conduct falls within the definition of:

☒ HARASSMENT (§16-3-1700(A)) OR ☒ STALKING (§16-3-1700 (B) or (C)).

5. On Sept. 20, 2002; at 12:20 o'clock; p. M., at 107 Oak Village Lane
(location/address)

which is in Dorchester County, SC (State). The conduct complained

of occurred when the Defendant I SOFIA MAZELL PICKED UP
MY MAIL AT THE SUVILLE POST OFFICE AND
OPENED A LETTER FROM THE SOLICITORS WORTHLESS
CHECK-STATING NOTICE OF ARREST AND CRIMINAL
PROSECUTION. WHICH CAUSED ME GREAT WORRY AND
ANXIETY AND LOST OF SLEEP. UPON MEETING WITH
STACY COOK AND PRESENTING EVIDENCE HIS COMPLAINT
WAS DISMISSED.

On 4-11, 2012 at 4:35 o'clock; P. M., at GALLERY MALL
(location/address)

which is in DORCHESTER County, SC (State). The conduct complained of occurred when the Defendant MR BILL MCPALLAN APPROACHED ME AND MY DAUGHTER (BYKOLD) AND HEATHER CAPP'S AND BEGAN TAKING PHOTOS. MY DAUGHTER STATED MR BILL WAS TAKING PICTURES OF US. HE THEN MOTIONED AND SAID COME ON COME ON TO ME TO FOLLOW HIM TO ~~THE~~ TOWARD HIM, HE THEN STOOD AND WATCH ME AND MY DAUGHTER WALK TO MAKE STUDIO

On 7/11, 2012; at 5:10 o'clock; P. M., at 107 OAK VILLAGE
(location/address)

which is in Dorchester County, SC (State). The conduct complained of occurred when the Defendant BILL AND JENNIFER MCPALLAN WERE STANDING ON OUR PROPERTY NEAR A DRAIN. I WENT OUTSIDE TO SEE WHAT THEY WERE DOING. THE BILL AND JENNIFER BOTH HAVE BEEN VERBALLY INSTRUCTED NOT TO SPEAK TO SOFIA. THEY BOTH ASKED HER WHAT WAS WRONG SEVERAL TIME AFTER BEING INSTRUCTED NOT TO, EXAMPLES OF WHAT WAS SAID (Use the space above to state details of harassment/stalking and other facts and circumstances upon which relief is sought. Attach additional sheets if necessary.) WHAT'S A MATTER YOU CAN'T SPEAK WHAT WAS WRONG- OVER AND OVER AGAIN.

6. PLAINTIFF requests: (Check all that apply)

- ☒ a. That the DEFENDANT be temporarily enjoined from abusing, threatening to abuse, or molesting the Plaintiff or members of the Plaintiff's family.
- ☒ b. That the DEFENDANT be temporarily enjoined from entering or attempting to enter the Plaintiff's place of residence, employment, education, or other location.
- ☒ c. That the DEFENDANT be temporarily be enjoined from communicating or attempting to communicate with the Plaintiff in a way that would violate Article, 17, Chapter 3, Title 16 of the 1976 South Carolina Code of Laws, as amended.

SWORN to and Subscribed before me
this 25th day of September, 2012.

Kimberly J. Carter
Notary Public for South Carolina

My Commission expires: July 17, 2016

Sofia Mayell Mitchell
Signature of Plaintiff or Person
Filing on Behalf of Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

SOFIA MAZELL et al.,

Plaintiff(s),

vs.

WILLIAM McFARLAND

Defendant.

THE MAGISTRATE COURT OF
DORCHESTER COUNTY

CASE NO. : 12-OR-18-10300001

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION

FILED OCT 22 2012

TO: THE HONORABLE TERA S. RICHARDSON, DORCHESTER COUNTY
MAGISTRATE COURT

YOU WILL PLEASE TAKE NOTICE that on the tenth day following service of this Motion, or as soon thereafter as counsel may be heard, the undersigned will move before the Honorable Tera S. Richardson for Reconsideration of this court's Order dated October 12, 2012, in which the Court issued a mutual restraining order in the above case.

1. The Motion is being made because the evidence presented to the court did not meet the statutory requirements of stalking or harassment as defined by the South Carolina Code of Laws.

2. The mutual restraining order is impractical and overly prejudicial. The parties are immediate neighbors sharing a common property line. Furthermore, the burden placed on the parties exceeds the beneficial purpose of the restraining order.

3. The Judge found that the Homeowners Association issues were not going to be considered when rendering her opinion. It is extremely relevant in at least two of the three

alleged incidents named in the complaint occurred while Bill McFarland was acting within the scope of his authority pursuant to his duties as HOA president.

4. The remaining item in the complaint, the July 11, 2012 alleged incident, was fully explained to the court by the investigating officer. Judge did not take into consideration that heard from the officer that it was in fact Mrs. Mazell, and not Mr. and Mrs. McFarland, who was listed as the Suspect in the investigation. The Judge erred by not considering the report and testimony that this was also not harassment or stalking.

5. Mr. McFarland's counsel argued that the issuing of a restraining order, even a mutual restraining order, would also go against public policy and set a dangerous legal precedent for homeowner's associations.

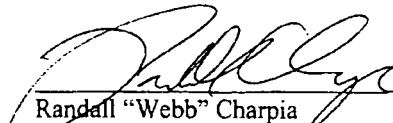
WHEREFORE, the Defendant respectfully requests that the Court reconsider its position and grant the following relief:

1. Dismissal of the Plaintiffs Complaint with Prejudice;
2. Granting of a new hearing if the Court does not dismiss the Complaint and all restraining orders with prejudice;
3. That the provisions of this order are stayed until reconsideration.

This Motion is supported by the statutory and common law of the State of South Carolina, case law, the Rules of Court, and/or such other authority as may be appropriate under the circumstances.

This Motion may also be supported by such memoranda of law if requested by the court.

Dated this 22nd day of October, 2012.


Randall "Webb" Charpia
Charpia Law Firm, LLC
Attorney for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

SOFIA MAZELL et al.,

Plaintiff(s),

vs.

WILLIAM McFARLAND

Defendant.

THE MAGISTRATE COURT OF
DORCHESTER COUNTY

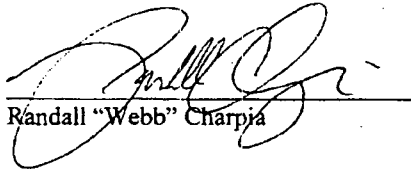
CASE NO. : 12-OR-18-10300001

AFFIDAVIT OF MAILING

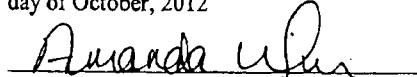
I certify that a copy of the foregoing Motion for Reconsideration in this action was served via hand delivery to the following address(es) on the 22nd day of October, 2012.

Honorable Tera S. Richardson
Presiding Judge
Troy Knight Judicial Complex
212 Deming Way, Box 10
Summerville, SC 29483

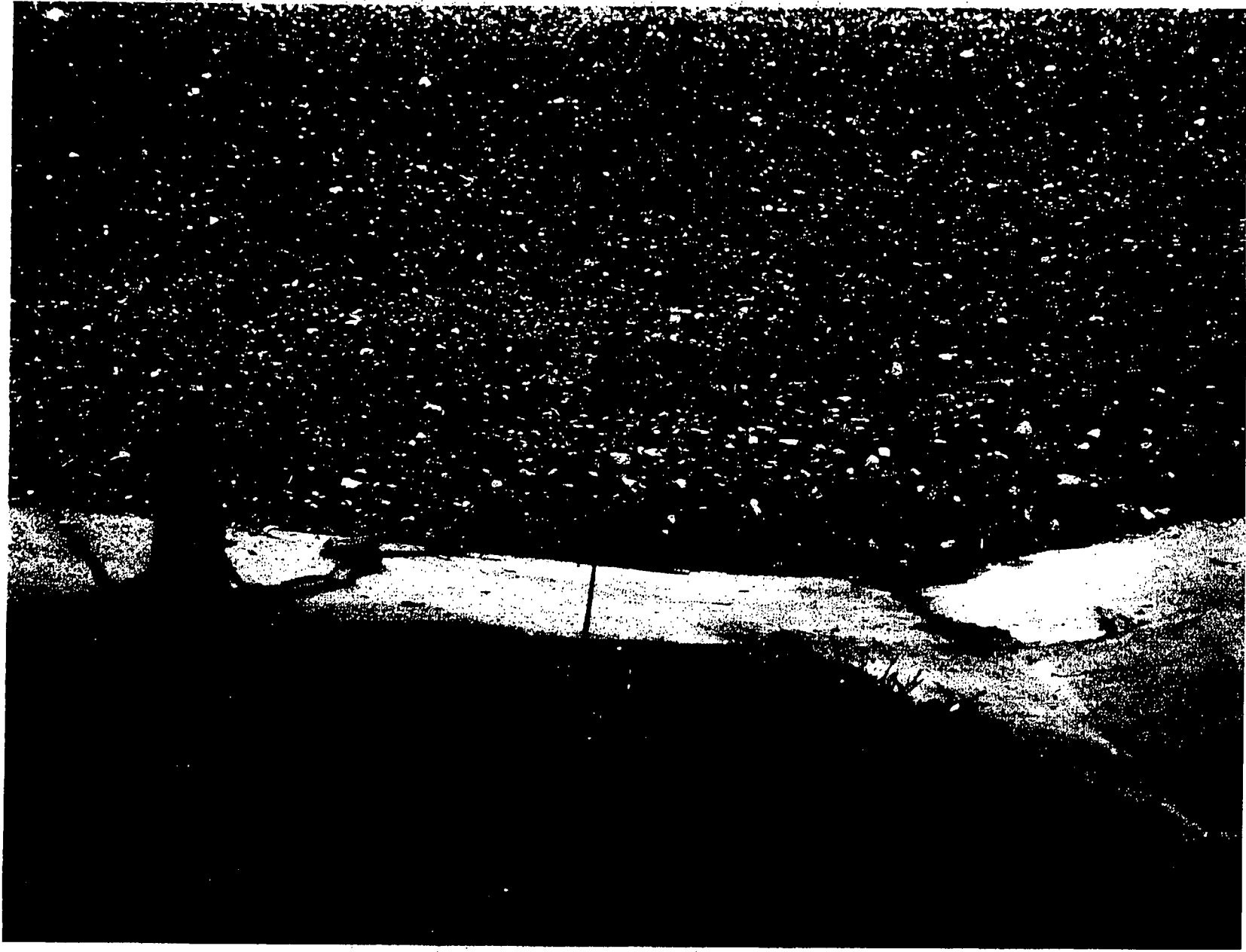
William B. Jung, Esquire
1156 Bowman Road, Suite 100D
Mt. Pleasant, SC 29464
Attorney for Plaintiffs
VIA EMAIL: bradjung@msn.com


Randall "Webb" Charpia

SWORN to before me this 22
day of October, 2012



My Commission expires 4.4.22



SHERIFF L.C. KNIGHT

RECEIPT OF ORDERS OF PROTECTION

RECEIVED
OCT 10 2012
BY Knash

Appendix 24

DORCHESTER COUNTY SHERIFF'S OFFICE

SUMMERVILLE
212 Deming Way, Box #9
Summerville, SC 29483
Office (843) 832-0300
Fax (843) 832-0308



SHERIFF L.C. KNIGHT

ST. GEORGE
100 Sears Street
St. George, SC 29477
Office (843) 563-0259
Fax (843) 563-0263

RECEIPT OF ORDERS OF PROTECTION

CIVIL CASE NUMBER **2012OR1810300001**

PLAINTIFF **SOFIA MAZELL AND MICHAEL**
MAZELL

DEFENDANT **WILLIAM MCFARLAND**

DATE OF ISSUE **October 12, 2012**

DATE AND RECEIVED BY SHERIFF'S OFFICE

DATE AND RECEIVED BY DISPATCH

[Signature] 10/12/12

RECEIVED
OCT 12 2012

BY: Knash

NCIC

72

Solicitor's Worthless Check Unit

1st Judicial Circuit



140 N. Main St., Suite 102
Summerville, SC 29483
843-871-2640

David M. Pascoe, Jr.
Solicitor

September 20, 2012

Sophia Mazell
107 Oak Village Lane
Summerville, SC 29483

NOTICE OF WORTHLESS CHECK **ARREST AND CRIMINAL PROSECUTION**

Your check, draft or instrument number 9326, drawn on First Federal Bank and issued on June 2, 2012 to Live Oak Villiage HOA in the amount of \$1,000.00 has been dishonored.

In order to avoid arrest and criminal prosecution, you must now pay the amount of the check, plus collection charges provided by law before September 30, 2012. The total amount now due is \$1,171.00.

Payment in the form of a MONEY ORDER OR BANK CASHIER'S CHECK must be made payable to SOLICITOR'S CHECK UNIT and mailed to the Solicitor's Check Unit, 140 N. Main St., Suite 102, Summerville, SC 29483.

Do NOT contact the Payee or Merchant who took this check about this check. You MUST handle this matter through the Solicitor's Worthless Check Program. Attempts to intimidate or influence the payee WILL result in additional Felony Charges.

It is in your best interest to take care of this matter immediately.

Sincerely,

Stacey Cook

Stacey Cook, Worthless Check Coordinator

Detach and Return with Payment

Name: Sophia Mazell Case #: D-14523 Date: _____

Make payable to: Solicitor's Check Unit for \$1,171.00

Money Order or Cashier Check #: _____

Send a stamped self-addressed envelope with payment in order to have your check returned to you by mail.

Person ID #: 7109

Dorchester County

Mail To

Solicitor's Check Unit
140 N. Main St., Ste 102
Summerville, SC 29483

NO Personal Checks

Solicitor's Case #: D-14523

P.3

100 Oak Village Lane
Summerville, SC 29483
September 30, 2012

Mr. William McFarland, President
& Board of Director
Mrs. Jennifer McFarland, Treasurer
105 Oak Village Lane
Summerville, SC 29483

Dear Mr. President:

It has come to our attention that certain actions taken by you without approval from the Board of Directors may have placed the Live Oak Village Homeowners Association in legal jeopardy.

In early June a Board of Director was given a check for their homeowner's association dues by Ms. Sophia Mazell, residing at 107 Oak Village Lane, Summerville, SC. I placed this check in an envelope and sent it via Certified Mail on June 14, 2012 to the Live Oak Village Homeowners Association mail box at 106 Oak Village Lane, Summerville, SC. (See attached receipt). This certified letter was never delivered due to a policy related by you that certified mail cannot be delivered to 106 Oak Village Lane, Summerville, SC because there is no physical location. Shortly thereafter, in an e-mail to you, I indicated I would go to the Post Office and sign for the Certified Letter. You never responded to my offer. The certified letter was retrieved from the Post Office by the HOA member at 107 Oak Village Lane on July 12, 2012 and returned to me. I then placed the unopened certified mail envelope in a Priority Mail envelope and sent it to you at 105 Oak Village Lane, Summerville, SC, your home address, with Delivery Confirmation on July 20, 2012. (See attached) The United States Post Office indicates this Priority Mail envelope was delivered to you on July 21, 2012 at 10:14 am. Therefore, the annual dues payment for 107 Oak Village, Summerville, SC was in your or your wife's, the HOA Treasurer, possession as of July 21, 2012 and was not deposited into the Live Oak Village Homeowners bank account.

Along with the Annual Live Oak Village Homeowners Association meeting notice, sent to 107 Oak Village Lane, Summerville, SC on or about September 1, 2012, you or your wife included a late fee assessment. This late fee assessment was neither discussed with nor approved by the Board of Directors. The unopened certified mail envelope sent June 14, 2012 should have been considered timely payment and not subject to any late fees. At this point it is unclear as to why the annual dues assessment for 107 Oak Village Lane was not deposited in a timely manner.

This matter is further compounded by a complaint issued by the Solicitor's office against Ms. Sophia Mazell, 107 Oak Village Lane, Summerville, SC for issuing a "worthless check" on or about September 20, 2012. Failure to deal with the annual dues payment check for 107 Oak Village Lane in a reasonable and timely manner has placed the Live Oak Village Homeowners Association in legal jeopardy based on your and or your wife's individual actions not in conformance with HOA rules and policies. Additionally, the failure of any officer in the Live Oak Village Homeowners Association to fulfill their duties potentially also places all members of the association in legal jeopardy. The actions or inactions by you or your wife to deposit an

annual dues payment in a timely manner are not actions consistent with the duties of the President, Board of Director and Treasurer of the HOA. Therefore, we, as Board of Director members do hereby renounce these actions and affirm these actions were not taken on behalf of the Live Oak Village Homeowners Association. The Live Oak Village Homeowners Association is not responsible for any consequences, legal or otherwise, that may arise from these actions. We, as Board of Director members, do hereby request the resignation of you as President and Board of Director and your wife, Jennifer McFarland, Treasurer effective immediately.

Respectfully,



David Hannemann, Secretary and Board of Director



Thomas Morris, Jr., Board of Director

cc: Mr. Norbert Cummings
Mr. & Mrs. Michael Knight
Mr. & Mrs. Carlton Holcombe
Mr. & Mrs. Michael Mazell
Ms. Kathleen Greene

W. Visa 614

Mazell

THANK YOU FOR SHOPPING AT ACE
ACE HARDWARE OF SUMMERVILLE
713 OLD TROLLEY RD.
SUMMERVILLE, SC. 29485
(843) 875-7234

6/14/12 1:08PM CAK 556 SALE

P 1 EA 3.40 EA N
POSTAGE SALES 3.40

SUB-TOTAL: 3.40 TAX:
TOTAL: 3.40
SC AMT: \$3.40

AK CARD#: XXXXXXXXXXXX0400
ID: 1671012442
AUTH: 01467C AMT: 3.40
Host reference #: 526445 Bat#1697
SWIPED
CARD TYPE: VISA EXPR: XXXX

Trace # 000000



==>> JRNLF26445 <<==
CUST # 45

THANK YOU DAVID K HANNENANN
FOR YOUR PATRONAGE

Name: X

Acct: CASH CUSTOMER

I agree to pay above total amount
according to card issuer agreement
(merchant agreement if credit voucher)

SPECIAL ORDERS ONLY HELD FOR 30 DAYS

Customer Copy

4044 ETEH 2000 0842 0704

45
295

3.40

Five Oak Village HOA

THANK YOU FOR SHOPPING AT ACE
ACE HARDWARE OF SUMMERVILLE
713 OLD TROLLEY RD.
SUMMERVILLE, SC. 29485
(843) 875-7234

7/20/12 2:22PM JHH 556 SALE

P	1	EA	9.00	EA	N
POSTAGE SALES 9.00					
P	*ITEM VOIDED#				L 9.00
P	1	EA	5.90	EA	N
POSTAGE SALES 5.90					
SUB-TOTAL:		5.90	TAX:		
			TOTAL:	5.90	
			BC AMT:	\$5.90	

BK CARD#: XXXXX0000000000000000
ID: 42523719996917075
AUTH: 02096C ANT: 5.90
Host reference #:539344 Sat#000016
SWIPED
CARD TYPE:VISA EXPR: XXXX



==> JRNL#F39344 <<==
CUST # #5

THANK YOU DAVID K HANNEHANN
FOR YOUR PATRONAGE

Name: X

Acct: CASH CUSTOMER

I agree to pay above total amount
according to card issuer agreement
(merchant agreement if credit voucher)

SPECIAL ORDERS ONLY HELD FOR 30 DAYS

Customer Copy

U.S. Postal Service™ Delivery Confirmation™ Receipt

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

(Please Print Clearly)

E. H. McFarland

DELIVERY CONFIRMATION NUMBER: 0120 0441000 DEHT STEO

Postmark
Here

POSTAL CUSTOMER:

Keep this receipt. For inquiries:
Access internet web site at
www.usps.com[®]
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- ☒ Priority Mail™ Service
☐ First-Class Mail™ parcel
☐ Package Services parcel

(See Reverse)

PS Form 152, May 2002



SUMMERVILLE POLICE DEPARTMENT
NOTICE OF TRESPASS

CASE NUMBER

09-018709

EVENT	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE		WEAPON TYPE	
	hume oak village 107 Oak Village Ln						29485			
	INCIDENT DATE	24 HR. CLOCK	IC	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	TIME ARRIVED	DEPART TIME	LOCATION NO.
	3-4-09	1620				3-4-09	1528	1512	1620	SWSL

COMPLAINANT NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	H	EVENING PHONE	H
Nagell - Michael K.			Ag			DS.O U	W	M	45	N		B		B
ADDRESS						CITY	STATE	ZIP CODE	LOCATION NO.					
107 Oak Village Ln						SUMMERVILLE	SC	29485	SWSL					

TO - SUBJECT LISTED BELOW:

You are hereby advised pursuant to Section 16-11-620 of the South Carolina Code of Laws as amended (1976), not to return to the property listed above. Your failure to comply with this notice may result in your arrest. If convicted you will be subject to fines and / or imprisonment.

This notice is valid for your lifetime, unless specified below.

SUBJECT NO. 1	☒ SUSPECT	NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	☐ RUNAWAY	McFarland William				W	M	45	N	11-17-64	511	190	BRN	BRN
	☐ WANTED	FACIAL HAIR SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.												
	☐ WARRANT	ADDRESS												
	☐ ARREST	105 - Oak Village Ln				CITY	STATE	ZIP CODE	LOCATION NO.					
☐ JAIL					SUMMERVILLE		SC	29485	SWSL					
☐ SUMMONS	SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐				ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE TIME OF OFFENSE		DATE TIME OF ARREST					
				DRUGS YES ☐ NO ☐ UNK. ☐ TYPE		TOTAL # ARRESTED								

COMMENTS / LIMITATIONS

NOT Enter Complainant's Property	
McFARLAND Represented Himself as HOA President	
+ Wife as Treasurer	

This notice is at my request, I have received a copy.

[Signature]
COMPLAINANT SIGNATURE

I have received a copy of this notice.

[Signature]
SUBJECT SIGNATURE or REFUSED

RECORDS DIVISION USE ONLY: 1 ☐ ENTERED INTO CAD / RMS						2 ☐ INVOLVEMENTS CREATED		3 ☐ ENTERED BY: (INITIALS)	
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER			
Leath A	3-4-09	140	LT. J.L. PAYTON		03-05-2009	L-8			

RECORDS COPY (White)

COMPLAINANT COPY (Yellow)

SUBJECT COPY (Pink)

Argument

1. **The Evidence Submitted at the Evidentiary Hearing Met the Statutory Requirements of Harassment in the First or Second Degrees**

McFarland's first ground for relief is that evidence received during the October 12, 2012 hearing is insufficient to justify the statutory requirements under S.C. Code Ann. § 16-3-1750 for issuance of a restraining order against a person engaged in harassment in either the first or second degree (S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B), respectively).

To constitute harassment, it is a predicate for a person to have engaged in "a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause the person in his position to suffer mental or emotional distress" for either first or second degree harassment. S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B). Relevant to this case, first degree harassment is committed when the above intentional, substantial and unreasonable intrusion into another's life, which serves no legitimate purpose and causes reasonable mental or emotional distress, occurs after "visual or physical conduct is initiated, maintained or repeated after a person has been provided oral or written notice that the contact is unwarranted or after the victim has filed an incident report with a law enforcement agency.". S.C. Code Ann. § 16-3-1700(A)(2) (Emphasis added).

At the October 12, 2012 hearing, Mazell demonstrated that prior to the events set forth in the Complaint, McFarland had been received oral notice from the Summerville Police Department not to speak to Mazell. Michael Mazell also testified that he repeatedly told McFarland, "Bill, please, do not speak to my wife, please." It

was further established that McFarland had been given a March 9, 2009 Notice of Trespass by the Summerville Police Department, directing him not to enter the Mazell property.

At the October 12, 2012 hearing, it was demonstrated that despite oral and written no contact orders from the Summerville Police Department and repeated entreaties from Michael Mazell, McFarland continued to defy these warnings by having intentional contact with Sofia Mazell and her children designed to frighten and upset Mrs. Mazell and her young children. Reference is made to the September 11, 2012 incident in which McFarland approached Sofia and Faith Mazell from an adjacent property, began photographing them, further approached them when they began walking away from him, yelling "Come on, come on, come on" as they tried to get away from him. A neutral witness, Heather Capps, testified that this unjustified contact made both Mrs. Mazell and her daughter noticeably emotionally distraught. Mrs. Mazell also testified that she has sought counseling due to stress resulting from her interactions with McFarland and his treatment of her.

On July 11, 2012, Mazell called the Summerville Police Department after McFarland followed Sofia Mazell along the property line, yelling "What's your problem?" and "What, you can't talk?" as she attempted to leave his presence. This resulted in another Summerville Police Complaint being initiated by Mazell against McFarland. Further testimony was offered that McFarland has dumped his yard waste on the Mazell property and regularly trespassed onto Mazell's property, digging holes and walking the Mazell property with others when Mazell was not at home.

There was additional evidence that McFarland repeatedly expressed loud fake laughter from his back porch when he saw Sofia Mazell in her backyard. McFarland also admitted to having a sign with the word, "Laugh," turned toward the Mazell property and placed at the Mazell/McFarland property line, so that only Mazell would be able to read the writing on said sign. Further, there was evidence that McFarland has gone so far as to spray water with a garden hose over the fence dividing the property at the Mazell dog minding its own business in the Mazell backyard. Finally, there is the incident where McFarland caused baseless criminal charges to be filed against Sofia Mazell for stopping payment on a check for Mazell's HOA due that McFarland had refused to cash or acknowledge receiving. These charges¹ were dismissed by the First Judicial Circuit Solicitor with deep apologies for having taken misinformation from McFarland at its face value.

As set forth above, second degree harassment is found from "intentional, substantial and unreasonable intrusion" into another's life, which "serves no legitimate purpose" and "causes and would cause a reasonable person to suffer mental or emotional distress." S.C. Code Ann. § 16-3-1700(B). Second degree harassment includes any "verbal, written, or electronic contact that is initiated, maintain or repeated." The misconduct of McFarland directed against Mazell that was proven at the October 12, 2012 hearing meets the statutory requirements of both first and second degree harassment under South Carolina law. Pursuant to S.C. Ann. § 16-3-1750(A), a

¹ The utter lack of justification for the filing of a criminal complaint against Sofia Mazell by McFarland was cited by Home Owners Association Board of Director David Hannemann as cause for himself and the other BOD director to remove McFarland from his prior position on the BOD.

magistrate's court has jurisdiction to restrain an individual who has engaged in first or second degree harassment.

As a final point of law, as discussed between counsel and the Court in post-hearing argument had before this Court rendered decision, McFarland neither submitted an opposition Affidavit or testified at the hearing to rebut the evidence offered against him despite attending the proceedings and receiving a previous continuance to retain counsel. Under well established South Carolina evidence law, "the general rule in civil cases [is] that when a party 'fails to produce testimony from an available, material witness who is within some degree of control of the party, it may be inferred that the testimony of such witness, if presented, would be adverse to the party who failed to call the witness.'" *Baker v. Port City Steel Erectors, Inc.*, 261 S.C. 469, 475, 200 S.E.2d 681 (1973). While McFarland's unwillingness to testify in rebuttal to the evidence presented at the October 12, 2012 hearing "cannot be treated as independent evidence of a fact otherwise unproven", it "can be considered in determining the credibility or probative force of the evidence presented." *Id* at 476, *citing*, *Collins v. Merrimack Mutual Fire Ins. Co.*, 210 S.C. 207, 42 S.E.2d 67 and 29 Am. Jur. (2d), Evidence, Sections 187 and 188 ("[T]he inference has the effect only of authorizing the jury to give greater weight to the evidence of the adverse party, or to give less weight to the evidence of the party who had failed to call the witness, than it might otherwise have done.").

2. The Mutual Restraining Order is Neither Impractical, Overly Burdensome nor Prejudicial to the Parties Subject to the Same

The terms of the Mutual Restraining Order at issue are that neither Mazell nor McFarland should have any contact with each other, either directly or through third parties, and that they should avoid each other. Simply put, this Order only requires that McFarland and Mazell not speak to each other and avoid coming into each other's physical presence whenever possible. Essentially, each party is to leave the other alone. Clearly, it is only willful and intentional conduct and communications to the other which are being enjoined, as accidental or unintentional contact is not prohibited by the Order.

No grounds or argument are cited by McFarland as to why the restraining order at issue is "impractical" or "overly burdensome." All each side has to do to comply with the Restraining Order is to have no intentional, voluntary or purposeful contact or communications with the other party, either directly or indirectly. This is certainly not overly burdensome to anyone who is willing to respect wishes of another as repeatedly conveyed. The only person to whom such an order would be "impractical" or "overly burdensome" is someone who is intentionally attempting to cause distress to another. As the restraining order at issue is mutual, McFarland is no more prejudiced by the Order than Mazell. McFarland cannot deny that he has long been under request, police direction and notice of trespass to refrain from communications with Mazell and to stay off Mazell's property. That McFarland now faces the possibility of criminal sanctions for violating a no-contact order is something that he only has himself to answer for.

3. **The HOA Issues are Irrelevant and Moot to the Need for a Restraining Order**

McFarland's third point is that this Court erred in considering McFarland's misconduct independent of McFarland's association as a member of the Board of Directors ("BOD") with the Live Oak Property Owners Association ("POA"). Certainly, McFarland cannot be heard to claim that because he was a member of the BOD when harassed toward Mazell, his conduct is somehow immunized as a violation of South Carolina criminal law. Moreover, McFarland cannot be allowed to mask his misconduct directed against Mazell under the guise of serving the POA or POA's BOD. What McFarland is actually arguing is that his proven misconduct directed against Mazell had a "legitimate purpose."

As both harassment statutes at issue require that a defendant's intentional or purposeful conduct serve "no legitimate purpose" (S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B), what McFarland is attempting to argue is that his misconduct does not constitute harassment because he was qualified to act in any way he saw fit because he was a member of the BOD. This Court rejected this argument explicitly when it notified the parties that it was McFarland's individual conduct, not the BOD's actions or policies, which was relevant and at issue before the Court. Furthermore, as a preliminary matter, the evidence before the Court was that McFarland had no authority from the POA BOD to cause file a false and baseless criminal complaint against Sofia Mazell. The POA BOD, upon discovery of McFarland's criminal filing against Mazell, considered McFarland to be harassing Mazell and it repudiated McFarland's conduct in the strongest available means by calling for McFarland's resignation and ultimately removing him from the POA BOD. Herein, board member David Hannemann testified

that the POA BOD had no advance knowledge of McFarland's conduct and that he and the other BOD member had voted to remove McFarland from the POA BOD as a result thereof. Simply put, the argument that this Court somehow erred by not considering McFarland's prior status as a POA BOD is a red herring and irrelevant to the issues before this Court.

4. The Court did not Err by Failing to Consider Hearsay in the Report from the Officer Investigating the July 11, 2012 Complaint from Sofia Mazell

The fourth claim for vacating this Court's Restraining Order is that the court erred in excluding the investigative report of a July 11, 2012 in which evidence was offered that McFarland followed Sofia along the property line, yelling "What's the problem?, What's the problem? Can't you talk? Can't you talk?" after Sofia Mazell saw that Mr. and Mrs. McFarland had dug a hole on the Mazell property. Similar to a motor vehicle accident report wherein the investigating office did not witness the actual accident at issue, the report itself is obvious hearsay and properly excluded. This is especially true in instances where, as was the case at the October 12, 2012 hearing, the investigating office is available to testify as to what he actually did investigate. The defendant called the officer at issue, who conceded that anything in his report was only based upon what the parties had told him and that he lacked personal knowledge of anything. This is precisely why the notations in said report are properly excluded as hearsay. In any event, McFarland had ample opportunity to elicit whatever competent and material testimony there was to be had from the investigating officer and cannot be heard now to complain that his direct examination should be substituted or disregarded in favor of hearsay in the investigating officer's report.

5. **Public Policy is not Offended by a Mutual Restraining Order for Neighbors to have No Contact and One Neighbor's Former Status as a Member of the POA BOD is Irrelevant**

McFarland's final argument is includes arguments made in his third ground for vacating the Restraining Order, i.e., that McFarland's former status as a member of the POA BOD immunizes him from criminal sanction for harassment so long as he was on the POA BOD. As set forth above, McFarland has been apparently removed as a BOD member, so this argument may be entirely moot. However, even if McFarland becomes a member of the BOD again or successfully challenges his purported removal, the Mutual Restraining Order at issue, to which Mazell consented on the record, does not restrict McFarland from performing any HOA duties in his official capacity as a member of the BOD. Rather, as this Court made amply clear in rendering its decision, it is only conduct and contact between Mazell and McFarland in their individual capacities that is under a court-ordered restraint. This Court has directed that Mazell and McFarland simply have nothing to do with each other. To suggest that it is somehow against state public policy for neighbors to be the subject of restraining orders is plainly absurd. Escalating disputes between neighbors, unfortunately, are often proper situations for a court to get involved and direct that the parties stay away from and do not speak to each other, directly or indirectly, before more serious consequences and events occur.

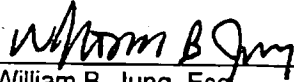
Conclusion

For the aforementioned reasons, the plaintiffs respectfully submit that

defendant's motion should be denied.

Dated: November 1, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William B. Jung", is written over a horizontal line.

William B. Jung, Esq.
1156 Bowman Road, Ste. 100D
Mount Pleasant, S.C. 29464
(843) 416-1104

Attorney for the Plaintiffs

2012OR1810300001
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

FILED FEB 12 2013

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Sofia Mazell, Michael Mazell, Pierceton Mazell)

PLAINTIFF)

c/o William B. Jung, Esquire)

1156 Bowman Road, Unit 100D)

STREET ADDRESS)

Mount Pleasant, SC 29464)

CITY, STATE ZIP)

843-416-1104)

Telephone)

VS.)

William McFarland)

DEFENDANT(S))

c/o Roy P. Maybank & Jason A. Daigle,)

Maybank Law Firm)

531 Savannah Highway)

STREET ADDRESS)

Charleston, SC 29407)

CITY, STATE ZIP)

843-766-8101)

TELEPHONE)

MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION

This Court should grant the Defendant's Motion for Reconsideration and deny the Plaintiffs' Motion for a Restraining Order. There is no legal or factual basis for the granting of the Plaintiffs' motion and it should, therefore, be denied.

Statement of Facts

On or about September 25, 2012 the Plaintiffs filed a Motion for a Restraining Order against the Defendant. Legally, that Motion was based on S.C. Code Ann. § 16-3-1700 for stalking and harassment. Factually, the Plaintiffs rely on three instances of alleged harassment and/or stalking in their Motion. This matter was heard by the Court on October 12, 2012. After the hearing on this matter, this Court issued a Mutual Restraining

Order against and among all parties to this action. On October 22, 2012 Defendant timely filed a Motion for Reconsideration on the Plaintiffs' Motion. The hearing on the Defendant's Motion for Reconsideration shall be heard on February 1, 2013.

Argument

S.C. Code Ann. § 16-3-1700 reads as follows:

As used in this article:

(A) "Harassment in the first degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:

- (1) following the targeted person as he moves from location to location;
- (2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;
- (3) surveillance of or the maintenance of a presence near the targeted person's:
 - (a) residence;
 - (b) place of work;
 - (c) school; or
 - (d) another place regularly occupied or visited by the targeted person; and
- (4) vandalism and property damage.

(B) "Harassment in the second degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

(C) "Stalking" means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear:

- (1) death of the person or a member of his family;
- (2) assault upon the person or a member of his family;
- (3) bodily injury to the person or a member of his family;
- (4) criminal sexual contact on the person or a member of his family;
- (5) kidnapping of the person or a member of his family; or

(6) damage to the property of the person or a member of his family.

(D) "Pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

(E) "Family" means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

(F) "Electronic contact" means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(G) This section does not apply to words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator pursuant to Section 40-18-70.

Despite the fact that the Plaintiffs' Complaint has checked the box for "Stalking", this matter can only reasonably involve alleged violations of S.C. Code Ann. § 16-3-1700(A) and/or (B). The Plaintiffs make no mention, either in their Complaint or in the Hearing Testimony, of any violent intentions or actions on the part of the Defendant that would fall under S.C. Code Ann. § 16-3-1700(C). In fact this section is only applicable if the stalking is accompanied by or followed by an act of violence. See State v. Prince, 335 S.C. 466, 517 S.E.2d 229 (S.C. Ct. App. 1999). Therefore, there is no basis for any relief under section (C) of the statute. Looking further into S.C. Code Ann. § 16-3-1700(A)(1) - there have been no allegations, either in the Plaintiffs' Complaint or in the Hearing Testimony, of the defendant following the Plaintiffs from location to location. As such, this section of the Code is not applicable. Going on to S.C. Code Ann. § 16-3-1700(A)(4) - this provision of the statute speaks solely to vandalism and property damage. As there have been no

allegations, either in the Plaintiffs' Complaint or in the Hearing Testimony, of vandalism or property damage this section of the Code is not applicable.

We are left with S.C. Code Ann. § 16-3-1700(A)(2), (A)(3), and (B). Each of these sections of the code requires the Plaintiff to show "... a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose...". The wording of this statute is important as there are multiple requirements, all of which must be met to qualify as harassment under this statute. For the reasons outlined below, the Plaintiffs have failed to show that the alleged intrusion constituted a pattern (as defined by S.C. Code Ann. § 16-3-1700(D)); was substantial, or; involved their private life.

The Plaintiffs rely on three instances of alleged harassment and/or stalking as the basis for their Motion. The alleged incidents allegedly took place on September 20, 2012; September 12, 2012, and; July 11, 2012. For the reasons outlined below, none of these three alleged incidents qualify as harassment as defined by S.C. Code Ann. § 16-3-1700.

September 20, 2012

The Plaintiffs allege that the Defendant somehow engaged in stalking and/or harassment as defined by S.C. Code Ann. § 16-3-1700 as a result of the First Circuit Solicitor's Office sending a letter concerning a worthless check.

As an initial matter, this contact with the Plaintiffs was initiated by the First Circuit Solicitor's Office, and did not involve visual or physical contact by the Defendant. S.C. Code Ann. § 16-3-1700 does not contemplate contact by third parties. Additionally, the letter received by the Plaintiffs did not have the Defendant's name on it. The letter received by the Plaintiffs did not have the Defendant's return address on it. The letter received by the Plaintiffs was from the First Circuit Solicitor's Office and only referenced a

dishonored check to Live Oak Village HOA – who is not a party to this action. See Letter attached hereto as Exhibit “A”.

Not only does this alleged incident not involve visual or physical contact by the Defendant, but the Defendant also had a “legitimate purpose” as contemplated by S.C. Code Ann. § 16-3-1700. The dishonored check was presented to the Defendant (in his capacity as HOA president) for the payment of homeowner’s dues on July 21, 2012. See Hannemann letter attached hereto as Exhibit “B”. It should be noted that this Letter was Plaintiffs’ Exhibit “3” at the initial hearing of this matter and it was authenticated by Mr. Hannemann. The letter clearly shows that the Defendant, as HOA president, received the check from the Plaintiffs on July 21, 2012. The Plaintiff Michael Mazell testified that he stopped payment on that check on July 27. See Hearing Transcript Page 58, Lines 3-4. Dishonoring a check within ten days of its presentment constitutes a worthless check. See S.C. Code Ann. § 34-11-60(c). This check was dishonored on the sixth day after the Defendant received the check. Accordingly, this was a worthless check. Therefore, the Defendant had the right as a citizen to engage the First Circuit Solicitor’s Worthless Check Unit. Further, the Defendant, as HOA president, has an obligation to engage the First Circuit Solicitor’s Worthless Check Unit. In fact the Defendant, upon advice of their attorney, P. Brandt Shelbourne, Esq., contacted the First Circuit Solicitor’s Worthless Check Unit to protect the interests of the HOA and its residents.

Lastly, the Plaintiff Michael Mazell misled this Court and intended to commit fraud on the HOA by dishonoring his check. Let’s look at Mr. Mazell’s testimony from the hearing of this matter. The check in question was written on June 3, 2012. Hearing Transcript Page 55, Lines 5-6. Mr. Mazell had that check back in his hands on July 12, 2012. Hearing Transcript Page 52, Lines 14-17. Therefore, Mr. Mazell knew that the check

had not been properly presented to or received by the Defendant as HOA president. Mr. Mazell knew that the Defendant was the HOA president. Hearing Transcript Page 52, Line 23. At some point after July 12, 2012, Mr. Mazell gave that same check to Mr. Hannemann who then sent the check via certified mail to the Defendant as HOA president. Hearing Transcript Page 76, Line 25; Page 77, Lines 1, 13-16. So, Mr. Mazell testified that he gave the check to the Board of Directors, when he actually just gave the check to Mr. Hannemann, who cannot accept checks on behalf of the HOA. Hearing Transcript Page 76, Lines 17-24. Further, Mr. Mazell testified that he knew that this check had not cleared his account. Hearing Transcript Page 53, Lines 9-11, 14-16. We also know that the check was not properly presented to the HOA until July 21, 2012. See Hannemann letter attached hereto as Exhibit "B". We know that Mr. Mazell stopped payment on this check on July 27, 2012. See Hearing Transcript Page 58, Lines 3-4. And we know Mr. Mazell did all this with the knowledge that the check had not cleared his account. Hearing Transcript Page 53, Lines 9-11, 14-16. What is even more interesting is that Mr. Mazell sent an email to the Defendant on September 5, 2012 stating that the check in question had yet to clear his account. See Email attached hereto as Exhibit "C". This email was sent 40 days AFTER Mr. Mazell stopped payment on that check. Mr. Mazell issued a bad check with the intent to defraud the HOA. Mr. Mazell then misled this Court into thinking that the Defendant had done something wrong by reporting this bad check to the First Circuit Solicitor's Worthless Check Unit.

In summation, the Defendant's reporting of this bad check to First Circuit Solicitor's Worthless Check Unit and their subsequent letter to the Plaintiffs does not meet the criteria for harassment and/or stalking as the Defendant did not have visual or physical contact with the Plaintiff. This was not an intrusion into the private life of the Plaintiffs as

the check in question was to pay a public debt and was delivered to a third-party (Mr. Hannemann) to deliver to the Defendant as HOA president. Additionally, the Defendant had a "legitimate purpose" as contemplated by S.C. Code Ann. § 16-3-1700 for contacting the First Circuit Solicitor's Worthless Check Unit as the check issued was in fact a bad check. In that same vein, the Defendant's actions were not unreasonable as he owed a duty to the HOA and its residents to ensure that homeowners' dues are paid. Lastly, the Plaintiffs themselves are the ones who created this situation to begin with by issuing a bad check – the Defendant merely reacted in a proper and legal manner to the situation created by the Plaintiffs. As such, this incident does not meet the standard for harassment and/or stalking as contemplated by S.C. Code Ann. § 16-3-1700.

September 12, 2012

The Plaintiffs allege that the Defendant somehow engaged in stalking and/or harassment as defined by S.C. Code Ann. § 16-3-1700 as a result of the Defendant taking a picture of the Plaintiffs' vehicle in a public parking lot from a distance of at least 50 yards away. Photos attached hereto as Exhibit "D" and "E".

On September 12, 2012 the Defendant was conducting an HOA meeting at the Dorchester County Public Library. The Plaintiff Mrs. Mazell knew that this meeting would be conducted at that time, on that day, and at that location. Further Mrs. Mazell knew that the Defendant would be present at that meeting to be conducted at that time, on that day, and at that location. Hearing Transcript Page 19, Line 15-17, 21-25; Page 20, Lines 1-2. What's more, the Plaintiff notified Defendant that they would NOT be present at that meeting. Hearing Transcript Page 20, Lines 1-2.

In the Plaintiffs' Motion for a Restraining Order they allege that the Defendant approached them. This is misleading. At no time was the Defendant ever within 50 yards

of the Plaintiffs' vehicle. See Photos attached hereto as Exhibit "D" and "E". Hearing Transcript Page 127, Line 5. Even the Plaintiffs' own witness, Heather Capps, never mentioned in her testimony that the Defendant approached the vehicle or spoke to the Plaintiffs. Hearing Transcript Page 32, Line 1 – Page 35, Line 18. To the contrary, Mr. Holcombe testified that the Defendant never approached the Plaintiff. Hearing Transcript Page 105, Line 24 –Page 106, Line 21. Mrs. McFarland's testimony was in line with Mr. Holcombe's. Hearing Transcript Page 110, Lines 13-16.

The Defendant did take a picture of the Plaintiffs' vehicle. He took that picture to prove that the Plaintiffs were present at the time, date and location of the HOA meeting. Hearing Transcript Page 110, Lines 1-6. The point of proving that the Plaintiffs could have been present at the HOA, had they so chosen, was to avoid any future complications. The Plaintiff Mrs. Mazell caused issues the year before concerning the HOA meeting starting without her husband being present. Hearing Transcript Page 112, Line 8 – Page 113, Line 2.

In summation, the Plaintiff went to a location at a time and date that she KNEW the Defendant would be present – once again creating the situation themselves. The Defendant's taking a picture of the Plaintiffs' vehicle from a distance of at least 50 yards does not meet the criteria for harassment and/or stalking. This was not an intrusion into the private life of the Plaintiffs as the Plaintiff was in a public parking lot in plain sight of the homeowners who were attending the meeting in the library. Additionally, the Defendant had a "legitimate purpose" as contemplated by S.C. Code Ann. § 16-3-1700 for gathering evidence to prove that the Plaintiff could have attended the meeting had she so chosen. Additionally, the Defendant's actions were not unreasonable as he had issues in the past with the Mazell's attendance at homeowners meetings. As such, this incident does

not meet the standard for harassment and/or stalking as contemplated by S.C. Code Ann. § 16-3-1700.

July 11, 2012

The Plaintiffs final allegation is that the Defendant somehow engaged in stalking and/or harassment as defined by S.C. Code Ann. § 16-3-1700 as a result of the Plaintiff approaching the Defendant to "see what they were doing" on or near the property line between the parties' residences. See Plaintiffs' Complaint. Once again, it is the Plaintiffs, and not the Defendant, who created the situation of which they are complaining. It should be pointed out that Mrs. Mazell, who claims to be scared of the Defendant, has, once again, intentionally put herself in proximity to the Defendant.

First, let's look at Mrs. Mazell's testimony on the matter: "I just went out there to observe what was going on with this hole and in the drainage area. And as I was observing what was going on I was just being repeatedly asked questions by the McFarlands." Hearing Transcript Page 12, Lines 5-8. Mrs. Mazell goes on: "I walked right up to the line, right up to the property line." Hearing Transcript Page 26, Lines 10-11. Based on Mrs. Mazell's own testimony, she is the one who approached the Defendants. She is the one who put herself in that position. As ridiculous as that is, Mrs. Mazell then goes on to contact the police department to issue a report. Report Attached hereto as Exhibit F. The responding officer, James McClellan, had the good sense to list Mrs. Mazell as the Primary or suspect, and list Mrs. McFarland as the victim. Hearing Testimony, Page 100, Lines 7-9. Officer McClellan even goes on to testify about how minor and petty something like this is: "This isn't generally something we take a report for. Generally we tell both parties, you go to your property, quit talking and, you know, act like adults. If you don't have anything nice to say, don't say anything at all. Same thing I tell my children. That's normally what we

normally do. But they were requesting a report. I contacted my supervisor and my supervisor said if they want a report, go ahead and give them a report." Hearing Transcript Page 99, Line 19 – Page 100, Line 2.

In summation, the Plaintiff intentionally approached the Defendant at the property line between their residences – once again creating the situation themselves. The Defendant, as any normal person would do, asked the Plaintiff if something was wrong. This extraordinarily brief and minor interaction does not meet the criteria for harassment and/or stalking. This was not an intrusion into the private life of the Plaintiffs, as the Plaintiff was one who approached the Defendant. Additionally, the Defendant's actions were not unreasonable as he certainly had reason to question why someone was approaching him and observing his actions. As such, this incident does not meet the standard for harassment and/or stalking as contemplated by S.C. Code Ann. § 16-3-1700.

The Mutual Restraining Order is Overly Broad and Defective

The Mutual Restraining Order was issued on October 12, 2012. This Order was issued pursuant to S.C. Code Ann. § 16-3-1750. As an initial matter, the Order issued by this Court does 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". The restraining order issued by this Court purports to be effective from October 12, 2012 until April 12, 2013 – a period of six months. The restraining order is therefore defective on its face. The fact that the Court attempted to make this order effective for only six months goes to show how minor these allegations are and the Court's belief that the Plaintiffs do not need the protection of S.C. Code Ann. § 16-3-1750. Lastly, In the Restraining Order issued AGAINST the Plaintiffs in this matter, the addresses for the parties are incorrect, thereby rendering it defective as well.

The Mutual Restraining Order does not align with the facts and evidence before this Court. The Mutual Restraining Order commands that the Defendant not commit "further acts of abuse or threats of abuse." There is no evidence or allegations of either abuse or threats of abuse anywhere in the record. The Mutual Restraining Order states that "The Defendant has stalked and harassed the Plaintiff causing them to fear for their safety." There is no evidence or allegations of stalking anywhere in the record. Further, the evidence in this case does not meet the statutory standard for harassment. Lastly, there is no evidence anywhere in the record that the Defendant at anytime threatened the Plaintiffs' safety. The Mutual Restraining Order states that "The Defendant is restrained ... from abusing, threatening to abuse, or molesting the Plaintiff..." Again, there is no evidence or allegations of either abuse or threats of abuse or molestation anywhere in the record. Accordingly, the Mutual restraining Order has included an enormous number of restraints for actions that were and are not before this Court.

The Mutual Restraining Order states that "The Defendant is restrained ... from communicating or attempting to communicate with the Plaintiff in any way." This Court ordered in the Hearing that "as far as personal contact, of course, direct contact, I'm ordering you all not to have any contact with each other. Not even through first, second, third parties." Hearing Transcript Page 151, Lines 13-16. These provisions are overly broad.

Conclusion

As can be seen from the above arguments, the incidents which the Plaintiff bases their Complaint and Motion for a Restraining Order do not meet the standard for harassment and/or stalking as contemplated by S.C. Code Ann. § 16-3-1700. In fact, the

only Pattern¹ that is evident throughout is that the Plaintiffs are the ones who continually put themselves in position to have interaction with the Defendants. It was the Plaintiffs' intentional acts that lead to each of the three incidents complained on in the Plaintiffs' Complaint and Motion for a Restraining Order.

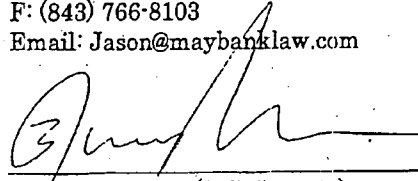
This unfounded restraining order has a permanent effect on Defendant's career (business clients doing due diligence could see there is a restraining order on him with adverse results.) Additionally, a restraining order could also affect Defendant traveling internationally (which is required for his business) and could adversely affect his ability to earn a living.

As a final note, the Plaintiffs actually initiated contact with the Defendant two days after they filed their Complaint and Motion for a Restraining Order. See Exhibit "G". This is hardly the action of people who need a restraining order for their protection. This further illustrates the disingenuous position the Plaintiffs have taken in this matter.

Accordingly, this Court should vacate the judgment it issued on October 12, 2012 and deny the Plaintiffs' Complaint and Motion for a Restraining Order.

¹ "Pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. S.C. Code Ann. § 16-3-1700(D)

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Attorneys for William McFarland

Charleston, South Carolina
2/1, 2013

Solicitor's Worthless Check Unit

1st Judicial Circuit



140 N. Main St., Suite 102
Summerville, SC 29483
843-871-2640

David M. Pascoe, Jr.
Solicitor

September 20, 2012

Sophia Mazell
107 Oak Village Lane
Summerville, SC 29483

NOTICE OF WORTHLESS CHECK ARREST AND CRIMINAL PROSECUTION

Your check, draft or instrument number 9326, drawn on First Federal Bank and issued on June 2, 2012 to Live Oak Village HOA in the amount of \$1,000.00 has been dishonored.

In order to avoid arrest and criminal prosecution, you must now pay the amount of the check, plus collection charges provided by law before September 30, 2012. The total amount now due is \$1,171.00.

Payment in the form of a MONEY ORDER OR BANK CASHIER'S CHECK must be made payable to SOLICITOR'S CHECK UNIT and mailed to the Solicitor's Check Unit, 140 N. Main St., Suite 102, Summerville, SC 29483.

Do NOT contact the Payee or Merchant who took this check about this check. You MUST handle this matter through the Solicitor's Worthless Check Program. Attempts to intimidate or influence the payee WILL result in additional Felony Charges.

It is in your best interest to take care of this matter immediately.

Sincerely,

Stacey Cook

Stacey Cook, Worthless Check Coordinator



Detach and Return with Payment

Name: Sophia Mazell Case #: D-14523 Date: _____

Make payable to: Solicitor's Check Unit for \$1,171.00

Money Order or Cashier Check #: _____

Send a stamped self-addressed envelope with payment in order to have your check returned to you by mail.

Person ID #: 7109

Dorchester County

Mail To
Solicitor's Check Unit
140 N. Main St., Ste 102
Summerville, SC 29483
NO Personal Checks
Solicitor's Case #: D-14523

100 Oak Village Lane
Summerville, SC 29483
September 30, 2012

Mr. William McFarland, President
& Board of Director
Mrs. Jennifer McFarland, Treasurer
105 Oak Village Lane
Summerville, SC 29483

Dear Mr. President:

It has come to our attention that certain actions taken by you without approval from the Board of Directors may have placed the Live Oak Village Homeowners Association in legal jeopardy.

In early June a Board of Director was given a check for their homeowner's association dues by Ms. Sophia Mazell, residing at 107 Oak Village Lane, Summerville, SC. I placed this check in an envelope and sent it via Certified Mail on June 14, 2012 to the Live Oak Village Homeowners Association mail box at 106 Oak Village Lane, Summerville, SC. (See attached receipt). This certified letter was never delivered due to a policy related by you that certified mail cannot be delivered to 106 Oak Village Lane, Summerville, SC because there is no physical location. Shortly thereafter, in an e-mail to you, I indicated I would go to the Post Office and sign for the Certified Letter. You never responded to my offer. The certified letter was retrieved from the Post Office by the HOA member at 107 Oak Village Lane on July 12, 2012 and returned to me. I then placed the unopened certified mail envelope in a Priority Mail envelope and sent it to you at 105 Oak Village Lane, Summerville, SC, your home address, with Delivery Confirmation on July 20, 2012. (See attached) The United States Post Office indicates this Priority Mail envelope was delivered to you on July 21, 2012 at 10:14 am. Therefore, the annual dues payment for 107 Oak Village, Summerville, SC was in your or your wife's, the HOA Treasurer, possession as of July 21, 2012 and was not deposited into the Live Oak Village Homeowners bank account.

Along with the Annual Live Oak Village Homeowners Association meeting notice, sent to 107 Oak Village Lane, Summerville, SC on or about September 1, 2012, you or your wife included a late fee assessment. This late fee assessment was neither discussed with nor approved by the Board of Directors. The unopened certified mail envelope sent June 14, 2012 should have been considered timely payment and not subject to any late fees. At this point it is unclear as to why the annual dues assessment for 107 Oak Village Lane was not deposited in a timely manner.

This matter is further compounded by a complaint issued by the Solicitor's office against Ms. Sophia Mazell, 107 Oak Village Lane, Summerville, SC for issuing a "worthless check" on or about September 20, 2012. Failure to deal with the annual dues payment check for 107 Oak Village Lane in a reasonable and timely manner has placed the Live Oak Village Homeowners Association in legal jeopardy based on your and or your wife's individual actions not in conformance with HOA rules and policies. Additionally, the failure of any officer in the Live Oak Village Homeowners Association to fulfill their duties potentially also places all members of the association in legal jeopardy. The actions or inactions by you or your wife to deposit an



annual dues payment in a timely manner are not actions consistent with the duties of the President, Board of Director and Treasurer of the HOA. Therefore, we, as Board of Director members do hereby renounce these actions and affirm these actions were not taken on behalf of the Live Oak Village Homeowners Association. The Live Oak Village Homeowners Association is not responsible for any consequences, legal or otherwise, that may arise from these actions. We, as Board of Director members, do hereby request the resignation of you as President and Board of Director and your wife, Jennifer McFarland, Treasurer effective immediately.

Respectfully,



David Hannemann, Secretary and Board of Director



Thomas Morris, Jr., Board of Director

cc: Mr. Norbert Cummings
Mr. & Mrs. Michael Knight
Mr. & Mrs. Carlton Holcombe
Mr. & Mrs. Michael Mazell
Ms. Kathleen Greene

THANK YOU FOR SHOPPING AT ACE
ACE HARDWARE OF SUMMERVILLE
713 OLD TROLLEY RD.
SUMMERVILLE, SC. 29485
(843) 875-7234

7/20/12 2:22PM JHH 555 SALE

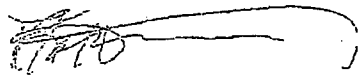
P	1	EA	9.00	EA	N
POSTAGE SALES					9.00
P	*ITEM VOIDED*			[	9.00]
P	1	EA	5.90	EA	N
POSTAGE SALES					5.90
SUB-TOTAL:		5.90	TAX:		
			TOTAL:		5.90
			BC AMT:		\$5.90

BK CARD#: XXXXXXXXXX0400
ID: 425237199956917075
AUTH: 02096C AMT: 5.90
Host reference #:539344 Bat#000016
SWIPED
CARD TYPE:VISA EXPR: XXXX



==> JRNL#F39344 <<==
CUST # *5

THANK YOU DAVID K HAHNEMANN
FOR YOUR PATRONAGE


Name: X

Acct: CASH CUSTOMER

I agree to pay above total amount
according to card issuer agreement
(merchant agreement if credit voucher)

SPECIAL ORDERS ONLY HELD FOR 30 DAYS

Customer Copy

U.S. Postal Service Delivery Confirmation Receipt

Postage and Delivery Confirmation fees must be paid before mailing.
Outside Sales To be completed by mailer
Bill McFarland

DELIVERY CONFIRMATION NUMBER: 012 019 1000 DEAT 2120

Postmark
Here

POSTAL CUSTOMER:
Keep this receipt. For inquiries:
Access internet web site at
www.usps.com
or call 1-800-222-1811

CHECK THE POSTAL SERVICE

- ☒ Priority Mail Service
- ☐ First-Class Mail parcel
- ☐ Package Services parcel

(See Reverse)

PS Form 3800, May 2002

W. Van... 647
March
THANK YOU FOR SHOPPING AT ACE
ACE HARDWARE OF SUMMERVILLE
713 OLD TROLLEY RD.
SUMMERVILLE, SC. 29485
(843) 275-7234

6/14/12 1:09PM CAK 558 SALE

P 1 EA 3.40 EA W
POSTAGE SALES 3.40
SUB-TOTAL: 3.40 TAX:
TOTAL: 3.40
SC AMT: \$3.40

BK CARD#: XXXXXXXXXX0400
ID: 1671012442
AUTH: 01487C AMT: 3.40
Host reference #: 526445 Bat# 1697
SWIPE
CARD TYPE: VISA EXPR: XXXX

Trace # 000000



==>> JRNLF26445 <<==
CUST # 45

THANK YOU DAVID K HANNEHANN
FOR YOUR PATRONAGE

David K Hannehan
Name: X

Acct: CASH CUSTOMER

I agree to pay above total amount
according to card issuer agreement
(merchant agreement if credit voucher)

SPECIAL ORDERS ONLY HELD FOR 30 DAYS

Customer Copy

7010 2780 0002 4319 4404

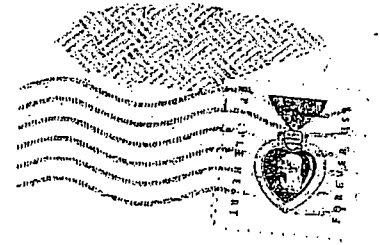
45
295

3.40

Ace Oak Village HOA

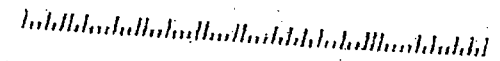
David Hannemann
100 Oak Village Lane
Summerville, SC 29483

CHARLESTON SC 294
01 OCT 2012 PM 2 T



Mr. Bill McFarland, President & BOD
Mrs. Jennifer McFarland, Treasurer
105 Oak Village Lane
Summerville, SC 29483

29483+3254



Subject: [No Subject]

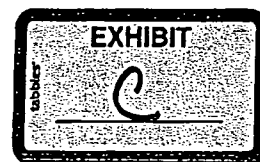
From: michael mazell (mkmazell@yahoo.com)

To: b21536@bellsouth.net;

Cc: kjpm@knology.net;

Date: Wednesday, September 5, 2012 9:46 AM

Mr Mcfarland check #9326 for hoa dues in the amount of \$1000.00 has yet to clear my account. MM



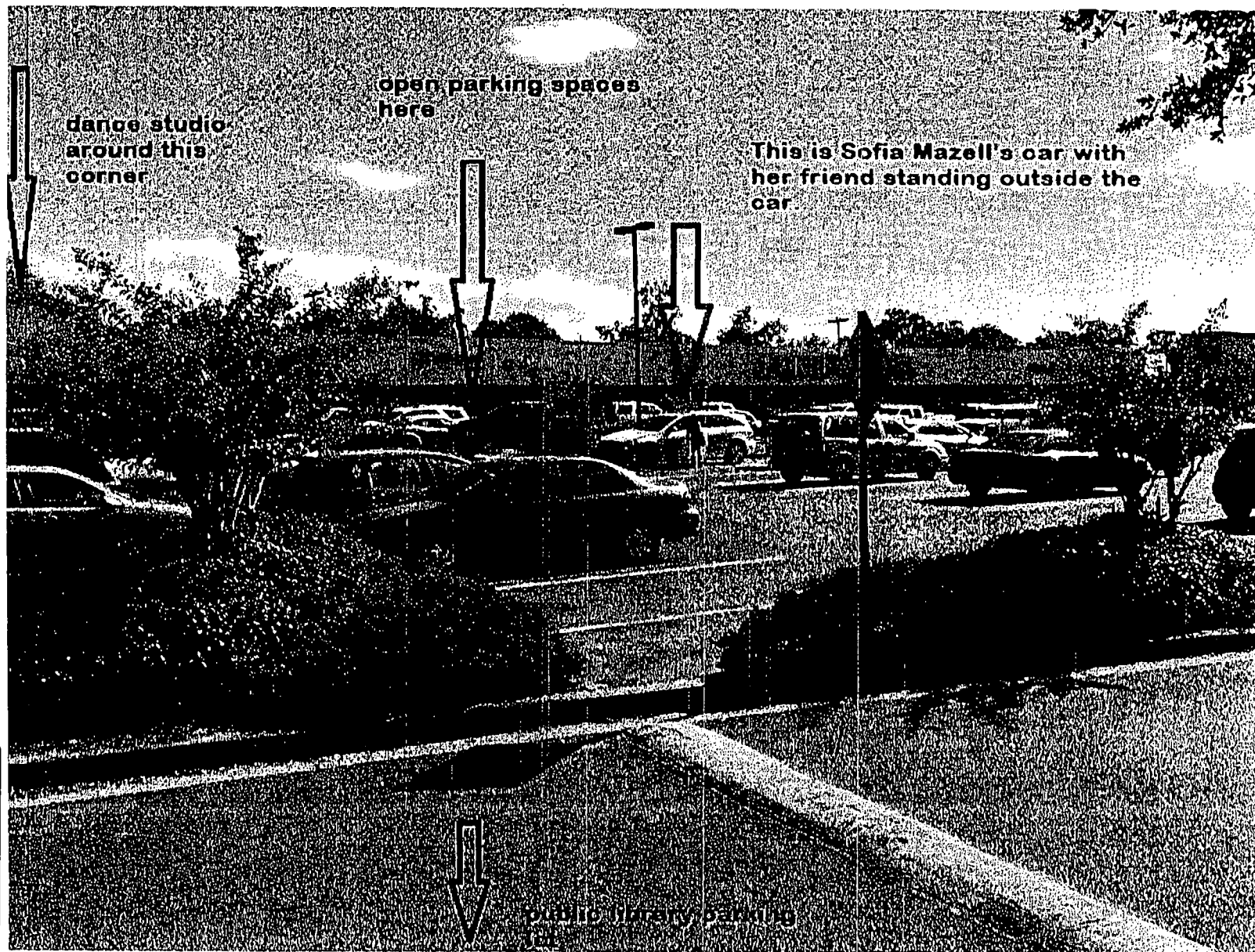


dance studio
around this
corner

open parking spaces
here

This is Sofia Mazell's car with
her friend standing outside the
car

public library building



12-047521

INQ ENT

INCIDENT TYPE		COMPLETED		FORCED ENTRY		PREMISE TYPE		UNITS ENTERED		TYPE VICTIM	
Civil Disturbance (NC)		☒ YES ☐ NO		☐ YES ☒ NO		20- Residence				☒ Individual ☐ Business ☐ Financial Inst. ☐ Governmental ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE		WEAPON TYPE							
(Live Oak Village) 107 Oak Village Lane		29483									
INCIDENT DATE 24 HR CLOCK		DATE		24 HR CLOCK		DISPATCH DATE/TIME 24 HR CLOCK		DISPATCH TIME		TIME ARRIVED	
07-11-2012 1710						07-11-2012 1724		1755		1830	
COMPLAINANT NAME (LAST, FIRST, MIDDLE)		DATE OF BIRTH		RELATIONSHIP TO SUBJECT		RESIDENT		RACE		SEX	
Same As Subject						☒ S ☐ O ☐ U		J		S	
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.			
		Summerville		SC		29483		SWSL			
VICTIM NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT		RACE		SEX		AGE	
McFarland, Jennifer Mofa		OK		☒ S ☐ O ☐ U		W		F		49	
HEIGHT		WEIGHT		HAIR		EYES		DATE OF BIRTH		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
503		128		Bro		Gm		06-23-1964			
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.			
105 Oak Village Lane		Summerville		SC		29483		SWSL			
VISIBLE INJURY VICT #1 ☐ YES ☒ NO ☐ EXPLAIN -											
COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO ☐											
VICTIM #1 USING ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐ DRUGS ☐ YES ☒ NO ☐ UNK. ☐ TYPE:											
TWO-WHEEL ☐ ONE-WHEEL ☐ DETECTIVE/PLANT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J- This Jurisdiction S- State O- Out of State U- Unknown											
☒ SUSPECT NAME (LAST, FIRST, MIDDLE) RACE SEX AGE ETH DATE OF BIRTH HEIGHT WEIGHT HAIR EYES											
Mazell, Sofia Ray W F 41 N 07-15-2012 504 146 Blk Blu											
PHONE OR DRIVER'S LICENSE NUMBER FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.											
(843) 261-7080 SC DL # 007282136											
ADDRESS CITY STATE ZIP CODE LOCATION NO.											
107 Oak Village Drive Summerville SC 29483 SWSL											
☐ JAIL SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐ ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ DATE TIME OF OFFENSE DATE TIME OF ARREST											
☐ SUMMONS DRUGS YES ☐ NO ☒ UNK. ☐ TYPE TOTAL # ARRESTED											

I was dispatched to the incident location for a neighbor dispute. Upon arrival on scene, I met with Sofia (subject), who stated she had a long history of problems with her neighbor's at 105 Oak Village Lane. Sofia stated her mother, Holiday (Witness #2), stated she observed Jennifer (victim), and William (witness #1), standing in the yard of 107 Oak Village Lane. Sofia stated when she walked outside, she did not observe either William, or Jennifer standing in her yard. Sofia stated she observed both Jennifer and William standing near a drain on their property. Sofia stated Jennifer asked her what was wrong several times, but she refused to answer. Sofia stated she was told not to speak to Jennifer or William. Sofia stated after Jennifer asked her what was wrong several times, that William walked up to her and asked her several times what was wrong. She did not reply. Sofia stated she returned to her residence and contacted her husband, who told her to get a police report made. Upon making contact with Jennifer, she stated she observed her friend, Holiday, standing near the property line just watching them. Jennifer stated once Sofia came down next to the property line, she did ask her several times what was wrong, but Sofia refused to respond to her.

ADMINISTRATIVE INFORMATION	PHOTOGRAPHS TAKEN ☐ YES ☒ NO	GPS Location (For future use)	LATITUDE	LONGITUDE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
TYPE/GROUP						
STOLEN						TOTAL VALUE
DAMAGED						
BURNED						
RECOVERED						
SEIZED						

SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☐ ACTIVE ☒ ADM CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5			
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER
J. McClellan	07-11-2012	L-84	<i>[Signature]</i>
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		DATE	UNIT NUMBER
		7-12-12	W

SCIBRS: *[Signature]*

From: michael mazell [mailto:mkmazell@yahoo.com]
Sent: Thursday, September 27, 2012 10:36 AM
To: b21536@bellsouth.net
Subject: SURVEY STAKES AND LAUGH METAL MARKER

Bill I have asked you several times to please move the survey stakes on the corners of what you have deemed our property lines. The stakes are a danger to my small children and the many small children that visit my home along with the repositioned metal laugh sign. The speedy removal of these dangerous items to small children and others would be greatly appreciated. The rebar at ground level and multiple red flags should suffice.

Thanks for your immediate attention to this existing hazard.mm



STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

WILLIAM MCFARLAND

APPELLANT(S)

VS.

SOFIA MAZELL, MICHAEL MAZELL,
PIERCETON MAZELL and FAITH
MAZELL

RESPONDENT(S)

COMMON PLEAS CASE NUMBER

2012OR1810300001

MAGISTRATE CIVIL CASE NUMBER

IN THE COURT OF COMMON PLEAS

NOTICE OF CIVIL APPEAL

The defendant/appellant, William McFarland, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Dorchester.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 12th day of March, 2013.

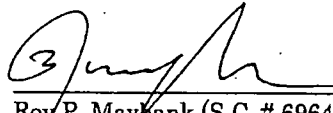
The appellant's exceptions to the judgment of the magistrate are set forth as follows:

1. the Magistrate abused her discretion in issuing the restraining orders at issue;
2. the Magistrate made mistakes of law related to S.C. Code Ann. § 16-3-1700 in issuing the restraining orders at issue;
3. the Magistrate made mistakes of facts related to S.C. Code Ann. § 16-3-1700 in issuing the restraining orders at issue;
4. the facts do not support the issuance of Restraining Orders pursuant to S.C. Code Ann. § 16-3-1700;
5. the Magistrate improperly considered evidence not contained in the Plaintiffs'/Respondents' Complaint
6. the Restraining Orders issued are overly broad, defective on their face, and do not comply with S.C. Code Ann. § 16-3-1750.

SCCA/720 (Amended 8/1/2011)

For the foregoing reasons, and pursuant to S.C. Code Ann § 18-7-170, the Defendant/Appellant would respectfully request the Court reverse the judgment of the magistrate court and deny the Plaintiffs'/Respondents' Motion for a Restraining Order.

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Charleston, South Carolina
3/26, 2013

SCCA/720 (Amended 8/1/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 13-CP-18-0546

SOFIA MAZELL, MICHAEL MAZELL)
PIERCETON MAZELL and FAITH)
MAZELL,)

Plaintiffs-Respondents,)

v)

WILLIAM McFARLAND,)

Defendant-Appellant.)

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2013 NOV 12 AM 9:27
Clerk of Court
DORCHESTER COUNTY

**RESPONDENTS' BRIEF ON APPEAL OF MAGISTRATE'S DECISION TO ENTER
MUTUAL RESTRAINING ORDER**

Plaintiffs-respondents Sofia Mazell, Michael Mazell, Pierceton Mazell and Faith Mazell ("Mazell" or respondents), by their attorney, William B. Jung, Esq., submit this Brief in the appeal filed by defendant-appellant William McFarland ("McFarland" or appellant) for review of a March 8, 2013 Order of Magistrate Tera S. Richardson which denied appellant's motion for reconsideration of a October 12, 2012 Mutual Restraining Order¹ directing that the parties have no contact with each other. .

Argument

- I. **The Mutual Restraining Order at Hand has Expired, thereby Appellant's Appeal is Moot and should be Dismissed.**

In this case, the express terms of the Magistrate's Amended Order dated February 22, 2013 provided: "The terms of this Order shall remain in effect until April 12, 2013." *Id*, see Return, page two "This restraining order expired on April 12, 2013."

¹ The original Mutual Restraining Order was issued on October 12, 2012 following a hearing held on that date. An Amended Order was issued on February 22, 2013 to correct a designation in the original Order wherein William McFarland was listed as the plaintiff instead of the defendant.

As a general rule of South Carolina jurisprudence, an appellate court "only considers cases presenting a justiciable controversy." *Sloan v. Friends of the Hunley*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute which is contingent, hypothetical or abstract." *Id.*

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event rendered any grant or effectual relief impossible for the reviewing court. If there is no actual controversy, this Court will not decide moot or academic questions." *Seabrook v. Knox*, 369 S.C. 191, 631 S.E.2d 907, 910 (2006), *see also Collins Music Co. v. IGT*, 365 S.C. 544, 549, 619 S.E.3d 1, 3 (Ct. App. 2006) (A matter becomes moot when some event occurs making it impossible to grant effectual relief); *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable.").

"The rule that an appellate court limits will not consider immaterial or moot questions applies when reviewing decrees and orders relating to injunctions." South Carolina law does acknowledge three exceptions to the mootness doctrine; however, none of these exceptions applies to the case at bar. First, if the issue raised is capable of repetition but evading review, an appellate court may take jurisdiction over an issue otherwise moot. *Curtis v. State*, 345 S.C. at 596. Second, "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* Third, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal

from that decision is not moot, even though the court cannot give effective relief in the present case." *Id.*

Applying these principals to the case at bar, the Mutual Restraining Order expired on April 12, 2013. Consequently, with no actual order presently in place to affect the conduct of either the respondents or appellants, there is no order that this Court, sitting in an appellate capacity, can vacate, modify or remand. Further, the evidentiary matters that were tried before the Magistrate were² particular to the parties and, consequently, are capable of repetition such that an appellate court needs to establish a rule of law applicable to Mazell and McFarland. Also, there is no manifest public interest involved here. Last, there are no future events or collateral issues³ present to either party contained in the Magistrate's expired Order that justify further review of an expired temporary restraining order. Accordingly, the expiration of the Amended Mutual Restraining Order on April 12, 2013 has rendered moot the issues raised on this appeal, and this appeal may be properly dismissed.

II. The Evidence Submitted at the Evidentiary Hearing Met the Statutory Requirements of Harassment in the First or Second Degrees

In his previous Motion for Reconsideration, McFarland argued that evidence received during the October 12, 2012 hearing was insufficient to justify the statutory requirements under S.C. Code. Ann. § 16-3-1750 for issuance of a restraining

² Mazell and McFarland are no longer neighbors as Mazell sold their home in the summer of 2013.

³ McFarland cannot be heard to claim that the existence of public records, indicating that he once was a defendant in an action for a restraining or even the subject of a mutual restraining order, thereby creates collateral consequences for him. If the existence of a public record and any inferences that could be drawn from a public record of someone having been a party to a civil action was sufficient to constitute "collateral consequences," the mootness doctrine would be entirely swallowed by the exception because there will always be a public record of the names to a lawsuit absent an order sealing a case.

order against a person engaged in harassment in either the first or second degree (S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B), respectively).

To constitute harassment, it is a predicate for a person to have engaged in "a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause the person in his position to suffer mental or emotional distress" for either first or second degree harassment. S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B). Relevant to this case, first degree harassment is committed when the above intentional, substantial and unreasonable intrusion into another's life, which serves no legitimate purpose and causes reasonable mental or emotional distress, occurs after "visual or physical conduct is **"initiated, maintained or repeated after a person has been provided oral or written notice that the contact is unwarranted or after the victim has filed an incident report with a law enforcement agency."** S.C. Code Ann. § 16-3-1700(A)(2) (Emphasis added).

At the October 12, 2012 hearing, Mazell demonstrated that prior to the events set forth in the Complaint, McFarland had been received oral notice from the Summerville Police Department not to speak to Mazell. Michael Mazell also testified that he repeatedly told McFarland, "Bill, please, do not speak to my wife, please." It was further established that McFarland had been given a March 9, 2009 Notice of Trespass by the Summerville Police Department, directing him not to enter the Mazell property.

At the October 12, 2012 hearing, it was also demonstrated that despite oral and written no contact orders from the Summerville Police Department and

repeated entreaties from Michael Mazell, McFarland continued to defy these warnings by having intentional contact with Sofia Mazell and her children designed to frighten and upset Mrs. Mazell and her young children. Reference is made to the September 11, 2012 incident in which McFarland approached Sofia and Faith Mazell from an adjacent property, began photographing them, further approached them when they began walking away from him, yelling "Come on, come on, come on" as they tried to get away from him. A neutral witness, Heather Capps, testified that this unjustified contact made both Mrs. Mazell and her daughter noticeably emotionally distraught. Mrs. Mazell also testified that she has sought counseling due to stress resulting from her interactions with McFarland and his treatment of her.

On July 11, 2012, Mazell called the Summerville Police Department after McFarland followed Sofia Mazell along the property line, yelling "What's your problem?" and "What, you can't talk?" as she attempted to leave his presence. This resulted in another Summerville Police Complaint being initiated by Mazell against McFarland. Further testimony was offered that McFarland has dumped his yard waste on the Mazell property and regularly trespassed onto Mazell's property, digging holes and walking the Mazell property with others when Mazell was not at home.

There was additional evidence that McFarland repeatedly expressed loud fake laughter from his back porch when he saw Sofia Mazell in her backyard. McFarland also admitted to having a sign with the word, "Laugh," turned toward the Mazell property and placed at the Mazell/McFarland property line, so that only Mazell would be able to read the writing on said sign. Further, there was evidence that McFarland has gone so far as to spray water with a garden hose over the fence dividing

the property at the Mazell dog minding its own business in the Mazell backyard. Finally, there is the incident where McFarland caused baseless criminal charges to be filed against Sofia Mazell for stopping payment on a check for Mazell's HOA due that McFarland had refused to cash or acknowledge receiving. These charges⁴ were dismissed by the First Judicial Circuit Solicitor with deep apologies for having taken misinformation from McFarland at its face value.

As set forth above, second degree harassment is found from "intentional, substantial and unreasonable intrusion" into another's life, which "serves no legitimate purpose" and "causes and would cause a reasonable person to suffer mental or emotional distress." S.C. Code Ann. § 16-3-1700(B). Second degree harassment includes any "verbal, written, or electronic contact that is initiated, maintain or repeated." The misconduct of McFarland directed against Mazell that was proven at the October 12, 2012 hearing meets the statutory requirements of both first and second degree harassment under South Carolina law. Pursuant to S.C. Ann. § 16-3-1750(A), a magistrate's court has jurisdiction to restrain an individual who has engaged in first or second degree harassment.

As a final point of law, as discussed between counsel and the Magistrate in post-hearing argument, McFarland neither submitted an opposition Affidavit nor testified at the hearing to rebut the evidence offered against him despite attending the proceedings and receiving a previous continuance to retain counsel. Under well established South Carolina evidence law, "the general rule in civil cases [is] that when a party 'fails to produce testimony from an available, material witness who is within some

⁴ The utter lack of justification for the filing of a criminal complaint against Sofia Mazell by McFarland was cited by HOA Board of Director David Hannemann as cause for himself and the other BOD director to remove McFarland from his position on the BOD.

degree of control of the party, it may be inferred that the testimony of such witness, if presented, would be adverse to the party who failed to call the witness.” *Baker v. Port City Steel Erectors, Inc.*, 261 S.C. 469, 475, 200 S.E.2d 681 (1973). While McFarland’s unwillingness to testify in rebuttal to the evidence presented at the October 12, 2012 hearing “cannot be treated as independent evidence of a fact otherwise unproven”, it “can be considered in determining the credibility or probative force of the evidence presented.” *Id* at 476, citing, *Collins v. Merrimack Mutual Fire Ins. Co.*, 210 S.C. 207, 42 S.E.2d 67 and 29 Am. Jur. (2d), Evidence, Sections 187 and 188 (“[T]he inference has the effect only of authorizing the jury to give greater weight to the evidence of the adverse party, or to give less weight to the evidence of the party who had failed to call the witness, than it might otherwise have done.”).

III. The Mutual Restraining Order is Neither Impractical, Overly Burdensome nor Prejudicial to the Parties Subject to the Same

The terms of the Mutual Restraining Order were that neither Mazell nor McFarland should have any contact with each other, either directly or through third parties, and that they should avoid each other. Simply put, this Order only required that McFarland and Mazell not speak to each other and avoid coming into each other’s physical presence whenever possible. Essentially, each party is to leave the other alone. Clearly, it is only willful and intentional conduct and communications to the other which are being enjoined, as accidental or unintentional contact is not prohibited by the Order.

No grounds or argument are cited by McFarland as to why the restraining order at issue is “impractical” or “overly burdensome.” All each side had to do to comply with the Restraining Order is to have no intentional, voluntary or purposeful

contact or communications with the other party, either directly or indirectly. This is certainly not overly burdensome to anyone who is willing to respect wishes of another as repeatedly conveyed. The only person to whom such an order would be "impractical" or "overly burdensome" is someone who is intentionally attempting to cause distress to another. As the restraining order at issue is mutual, McFarland was no more prejudiced by the Order than Mazell. McFarland cannot deny that he had long been under request, police direction and notice of trespass to refrain from communications with Mazell and to stay off Mazell's property. Simply put, the Mutual Restraining Order only confirmed what Mazell and the Summerville Police Department had directed McFarland to do, i.e., that he leave Mazell alone.

IV. The Issues involving the Live Oak Village HOA were Irrelevant to this Case

McFarland previously argued that the Magistrate erred in considering McFarland's misconduct independent of McFarland's status as a member of the Board of Directors ("BOD") with the Live Oak Village Home Owners Association ("HOA"). Certainly, McFarland cannot be heard to claim that because he was a member of the BOD when harassed toward Mazell, his conduct is somehow immunized as a violation of South Carolina criminal law. Moreover, McFarland cannot be allowed to mask his misconduct directed against Mazell under the guise of serving the HOA or HOA's BOD.

As both harassment statutes at issue require that a defendant's intentional or purposeful conduct serve "no legitimate purpose" (S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B)), what McFarland is attempting to argue is that his misconduct does not constitute harassment because he was qualified to act in any way he saw fit because he was a member of the BOD. Magistrate Richardson rejected this argument

explicitly when she notified the parties that it was McFarland's individual conduct, not the BOD's actions or policies, which was relevant and at issue before her. Furthermore, as a preliminary matter, the evidence before the Magistrate was that McFarland had no authority from the BOD to cause file a false and baseless criminal complaint against Sofia Mazell.

The BOD, upon discovery of McFarland's criminal filing against Mazell, considered McFarland to be harassing Mazell, and it repudiated McFarland's conduct in the strongest available means by calling for McFarland's resignation and ultimately removing him from the HOA BOD. Herein, board member David Hanneemann testified that the HOA BOD had no advance knowledge of McFarland's conduct and that he and the other BOD member had voted to remove McFarland from the HOA BOD as a result thereof. Simply put, the argument that this Court somehow erred by not considering McFarland's prior status as a HOA BOD is a red herring and irrelevant to the issues before this Court.

V. The Court did not Err by Failing to Consider Hearsay in the Report from the Officer Investigating the July 11, 2012 Complaint from Sofia Mazell

In his prior Motion for Reconsideration, McFarland argued the Magistrate erred in excluding the notes of a police officer found in a July 11, 2012 incident report, in which evidence was offered that McFarland followed Sofia along the property line, yelling "What's the problem?, What's the problem? Can't you talk? Can't you talk?" after Sofia Mazell saw that McFarland had dug a hole on the Mazell property. Similar to a motor vehicle accident report when the investigating officer does not witness the actual accident, the report itself was obvious hearsay and properly excluded. This is especially true in instances where, as was the case at the October 12, 2012 hearing,

the investigating officer was available to testify about the investigation. McFarland called the officer at issue, who conceded that anything in his report was only based upon what the parties had told him and that he lacked personal knowledge of anything. This is precisely why the notations in said report are properly excluded as hearsay. In any event, McFarland had ample opportunity to elicit whatever competent and material testimony there was to be had from the investigating officer and cannot be heard now to complain that his direct examination should be substituted or disregarded in favor of hearsay in the investigating officer's report.

VI. Public Policy is not Offended by a Mutual Restraining Order for Neighbors to have No Contact and One Neighbor's Former Status as a Member of the POA BOD is Irrelevant

McFarland also argued that his status as a member of the POA BOD immunized him from criminal sanction for harassment so long as he was on the POA BOD. As set forth above, McFarland may have been removed as a BOD member, so this argument may be entirely moot. However, even if McFarland becomes a member of the BOD again or successfully challenges his purported removal, the Mutual Restraining Order at issue, to which Mazell consented on the record, does not restrict McFarland from performing any HOA duties in his official capacity as a member of the BOD. Rather, as this Court made amply clear in rendering its decision, it is only conduct and contact between Mazell and McFarland in their individual capacities that was under restraint. The Magistrate only directed that Mazell and McFarland simply have nothing to do with each other. To suggest that it is somehow against state public policy for neighbors to be the subject of restraining orders is plainly absurd. Escalating disputes between neighbors, unfortunately, are often proper situations for a court to get

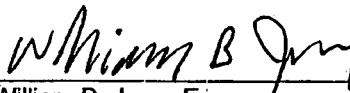
involved and direct that the parties stay away from and do not speak to each other, directly or indirectly, before more serious consequences occur.

Conclusion

For the aforementioned reasons, the respondents respectfully submit that this Court should dismiss this appeal as moot or otherwise affirm the decision of the Magistrate.

Dated: November 12, 2013

Respectfully submitted,



William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

Attorney for the Plaintiffs/Respondents

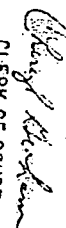
Proof of Service

I, William B. Jung, Esq., an attorney admitted to practice law in the State of South Carolina, certify under penalty of perjury that on November 12, 2013 I served this Memo of Points and Authorities upon the defendant William McFarland by hand delivering a copy thereof to the defendant's counsel at the address listed below:

Jason Daigle, Esq.
Maybank Law Firm
P.O. Box 12579
Charleston, S.C. 29422

Dated: November 12, 2013


William B. Jung

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CLERK OF COURT
BERKELEY COUNTY

Appellant of having a restraining order issued against him can only be resolved by having that improperly issued restraining order overturned by the circuit court.

Even if the Court does consider the issue moot, all three exceptions to the mootness rule as outlined in Curtis v. State, 345 S.C. 557, 567 (2001) apply to this case. The first exception to mootness as outlined by Curtis that applies to this case is if the issue raised is capable of repetition but evading review. The restraining order in question was issued pursuant to S.C. Code § 16-3-1700 and S.C. Code § 16-3-1750. These are criminal statutes for Harassment and Stalking. These are very serious offenses with very serious ramifications. These statutes are not meant to be used by two next-door neighbors who do not like each other and cannot get along. To allow this restraining order to stand based upon the petty, minor, and non-threatening alleged actions of the Appellant would render these statutes ineffectual. It would further invite other people motivated by spite and contempt to file for restraining orders for alleged behavior that falls well below the harassment and stalking threshold.

The second exception to mootness as outlined by Curtis that applies to this case is an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. This exception dovetails with the first exception above. The interpretation and application of S.C. Code § 16-3-1700 and S.C. Code § 16-3-1750 is important to the safety and well being of South Carolinians. The statutes are meant to protect people in South Carolina from actual harassment and stalking as defined by the

statute. The statutes are not in place so that next door neighbors have a legal avenue when they simply do not like each other and cannot get along. Allowing this restraining order to stand based on the alleged behavior of the Appellant is a patent misuse of the statute, and a rule should be established to use these statutes for actual harassment and stalking as defined by the statute.

The final exception to mootness as outlined by Curtis that applies to this case is if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. The decision by the trial court will have collateral consequences for the Appellant. The Appellant travels internationally for business and is frequently "checked out" by potential customers. Having a quasi-criminal restraining order issued against him would have an effect on the Appellant's ability to travel internationally and his ability to develop new customers. As such, the improperly issued restraining order has collateral consequences beyond the scope of the restraining order itself.

II. The Evidence Submitted to the Trial Court Does Not Meet the Statutory Requirement for harassment.

The Appellant's stance on this issue is outlined in his Memorandum in Support of Motion for Reconsideration and is incorporated herein by reference. The Complaint for the Restraining Order referenced only three alleged incidents. All other alleged incidents were not properly before the trial court as they were not in the Respondents' Complaint. The Respondents' contention that the trial court used other alleged incidents that were not in the Complaint to grant the restraining

order only bolsters the Appellant's position that the trial judge abused her discretion.

Lastly, the Respondents' position that the Appellant failed to provide testimony, affidavits or otherwise to counter the Respondents' position at trial is misplaced. The respondent is basing this position on the holdings of Baker v. Port City Steel Erectors, Inc., 261 S.C. 469 (1973). Baker is a circuit court case alleging wrongful death. In circuit court the parties have the benefit of written discovery, document production, subpoenas, depositions, and expert witnesses. The Baker case is in no way applicable to the trial of this matter. This case was tried in magistrate's court with only the Complaint to guide the litigation. Accordingly, the only three incidents that the Appellant could know about were three alleged incidents outlined in the Respondents' Complaint. There is no way the Appellant could have produced rebuttal testimony, affidavits or other evidence to allegations that were not presented or known to the Appellant until trial.

III. The Restraining Order is Impractical, Overly Burdensome and Prejudicial

The Appellant's stance on this issue is outlined in his Memorandum in Support of Motion for Reconsideration and is incorporated herein by reference.

IV. Issues involving Live Oak Village HOA

These issues are not germane to this appeal.

V. Hearsay Issues

This appeal is not based on the trial court's refusal to allow in hearsay evidence.

VI. Public Policy

As an initial matter, the respondents' contention that the Appellant has been removed as a board member of the Live Oak Village HOA is patently false. The Appellant is a current active board member of the Live Oak Village HOA. The Appellant's stance on this issue is outlined above and in his Memorandum in Support of Motion for Reconsideration and is incorporated herein by reference.

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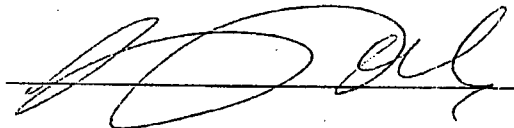
Roy P. Maybank (S.C. # 69643)
Jason A. Daigle (S.C. #73308)
Attorneys for William McFarland

Charleston, South Carolina
11/13, 2013

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☒ e-mailing, facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 13 day of Nov, 2013.



Cheryl Blanton
CLERK OF COURT
DORCHESTER COUNTY
2013 NOV 15 PM 1:29
CERTIFIED COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No.: 13-CP-18-0546

RECEIVED

JAN 8 2014

SC COURT OF APPEALS

William McFarland.....Appellant,

v.

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

NOTICE OF APPEAL

William McFarland appeals the order of the Honorable Kristi L. Harrington, dated November 25, 2012 and filed with the Clerk of Court on December 10, 2013, denying Appellant's appeal from the Magistrate Court of Dorchester County. Appellant received written notice of the entry of this order on December 13, 2013.



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January 8, 2014
Charleston, South Carolina

Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No.: 13-CP-18-0546

William McFarland.....Appellant,

v.

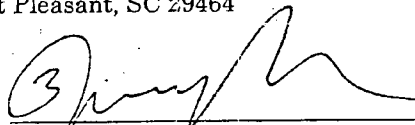
Sofia Mazell, Michael Mazell, Pierceton Mazell, and Faith Mazell.....Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal by depositing a copy in the U.S.

Mail, postage paid on January 6, 2014 addressed to Respondents' attorney as set forth
below:

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January 6, 2014
Charleston, South Carolina

RECEIVED

JAN 13 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-18-546

McFarland

Hazzell, et al.

CERTIFIED COPY
2013 DEC 10 AM 10:45

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

CLERK OF COURT
DORCHESTER COUNTY

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☒ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☒ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This case came before the Court on November 12, 2013, on Appellant McFarland's Appeal from The Honorable Tera Richardson's Order Granting Mutual Restraining Orders. After carefully reviewing the file and finding no error, this Court hereby AFFIRMS The Honorable Tera Richardson's Order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2151
Judge Code

Date

SCRPC Form 4C (03/2013)

Page 1

This judgment was entered on 12-10-2013, and a copy mailed first class or placed in the appropriate attorney's box on 12-10-2013, to attorneys of record or to parties (when appearing pro se) as follows:

William B. Jung 1156 Bowman Rd. Ste. 200 Mt. Pleasant,
SC 29464

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Jason Alan Daigle 531 Savannah Hwy Charleston, SC
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ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Mazell v McFarland Transcription
1

1 STATE OF SOUTH CAROLINA) MAGISTRATE'S COURT
2 COUNTY OF DORCHESTER) CASE NO.: 2012OR1810300001
3 SOPHIA MAZELL, MICHAEL MAZELL,)
4 PIERSTON MAZELL,)
5 Plaintiff,)
6 -vs-)
7 WILLIAM MCFARLAND,)
8 Defendant.)
9 _____)
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11
12
13
14

15 Transcription of Court Proceeding by Judy W.
16 Galuppo, Professional Court Reporter and Notary
17 Public for the State of South Carolina.
18
19
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21
22

23 GALUPPO COURT REPORTING
24 843.729.8190
25 GALUPPOCR@GMAIL.COM

2

1 A-P-P-E-A-R-A-N-C-E-S

2
3 Appearances for the Plaintiff

By: William B. Jung, Esquire, Esquire
Page 1

4 Mazell v McFarland Transcription
5 WILLIAM B. JUNG ATTORNEY AT LAW
6 1156 Bowman Road, Suite 100D
7 Mt. Pleasant, South Carolina 29464
8 843.416.1104

9 Appearances for the Defendant

10 By: Randall L. Charpia, Esquire
11 RANDALL L. CHARPIA
12 300 N. Cedar Street
13 Summerville, South Carolina 29483
14 843.261.7026

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PROCEEDING

THE COURT: Good morning. This is judge
Richardson. And I'm here to conduct Civil Court
this morning. Today is Friday October 12th, 2012.
And this is the case of, is it Sophia Mazell?

MR. JUNG: Yes, Your Honor, Sophia
Michael Mazell. My name is Brad Jung for the
plaintiffs.

THE COURT: Brad Jung.

MR. JUNG: Yes, Your Honor.

THE COURT: And William McFarland?

MR. MCFARLAND: Yes, Your Honor.

THE COURT: And you are?

MR. CHARPIA: Webb (ph) Charpia here for
the McFarlands.

THE COURT: Thank you. I really need
y'all to do me a huge favor and switch sides;
plaintiffs over here and defendant over here. Thank
you.

Mr. Jung, you have the floor, sir.

MR. JUNG: Very well, Your Honor. Thank
you very much.

May it please the court, I would like to
Page 5

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24 call -- Your Honor, just very briefly. This is a
25 case for a restraining order under Section 1750 of
7

1 Title 16 Chapter 3. It is our intention to
2 demonstrate, Your Honor, that the defendant in this
3 case, Mr. William McFarland, has intentionally,
4 purposefully over a pattern of time harassed
5 intending to basically cause emotional distress to
6 my client. My client seeks a restraining order
7 against this conduct.

8 We intend to show Your Honor that
9 Mr. McFarland's been on notice that he's not to have
10 any contact with Ms. Mazell and Mr. Mazell and he's
11 consistently violated this order that's a restraint
12 on every occasion that he can possibly find.

13 We would call Ms. Mazell as our first
14 witness.

15 THE COURT: Okay. Please watch your
16 step as you take the stand. Raise your right hand
17 for oath.

18 - - -
19 whereupon, Sophia Mazell, having been first
20 duly sworn, testifies as follows:

21 - - -
22 THE COURT: Thank you. Please take your
23 seat and please answer any questions that Mr. Jung
24 may have for you.

25

8

1 DIRECT EXAMINATION

Page 6

Mazell v McFarland Transcription

2 BY MR. JUNG

3 Q Good morning. Ms. Mazell, could you
4 please identify yourself to the Court and state with
5 where you live.

6 A My name is Sophia Mazell. And I live at
7 1207 Oak Village Lane.

8 Q And is that located within Dorchester
9 County?

10 A Yes, it is.

11 Q All right. And how long have you
12 resided at that location?

13 A We moved in January of '05.

14 Q Okay. And who else lives there besides
15 yourself?

16 A My husband, Michael Mazell, Faith Mazell
17 and Pierceton Mazell.

18 Q And Faith and Pierceton, your children,
19 how old are they?

20 A Pierceton just turned 11 and Faith is 8.

21 Q All right. Do you know the gentleman
22 sitting to my left, Mr. William McFarland?

23 A Yes.

24 Q Can you state how you know him and how
25 long you've known him?

9

1 A Since we moved in. And actually I met
2 him before we had moved in in '04.

3 Q All right. And is he a neighbor of
4 yours?

5 A Yes, he is our neighbor, next door
6 neighbor.

Page 7

12 up. It looked like it might have been a phone
13 camera. When I got out of the vehicle I showed my
14 dance bag. He was motioning "come on, come on." I
15 then said, "I'm taking my daughter to dance."

16 Q Did he -- did he speak anything to you?

17 A Yes. And motioned.

18 Q Did he say "come on, come on"?

19 A Yes.

20 Q He was directing that to you?

21 A Yes.

22 Q Okay. Did he introduce himself? Did he
23 indicate why he wanted you to come with him?

24 A No.

25 Q Okay. What did you do after that?

11

1 A I turned and walked with my daughter in
2 hand to the dance studio.

3 Q All right. Now, at anytime in the past
4 have you had incidents with Mr. McFarland where
5 resulting in either your husband or police officer
6 or telling Mr. McFarland in your presence to have no
7 contact with you?

8 A Yes.

9 Q Okay. How long has this been going on
10 between Mr. McFarland and yourself?

11 A It dates back to '07.

12 Q Okay. I imagine there's numerous
13 occasions. But why don't we go back to the next
14 occasion prior to September 11th. In or about
15 July of 2012 was there another incident involving
16 Mr. McFarland and your property?

Mazell v McFarland Transcription
17 A Yes, sir.
18 Q Can you tell us about that?
19 A At the time my step-mom had been
20 visiting and she had witnessed that Ms. McFarland --
21 MR. CHARPIA: Objection. Hearsay.
22 BY MR. JUNG
23 Q Yes. Only things that you know
24 personally that you saw or heard.
25 A Okay. So my step-mom came and got me.

1 I went outside. And when I went outside Mr. and
2 Mrs. McFarland where on an area that is considered
3 our property where there is a fence line and a
4 drainage and there was a hole that they were
5 digging. I just went out there to observe what was
6 going on with this hole and in the drainage area.
7 And as I was observing what was going on I was just
8 being repeatedly asked questions by the McFarlands.

9 Q Okay. Have you in the past had the
10 McFarlands shout things at you on occasion?

11 A Yes.

12 Q And have you ever responded to the
13 McFarlands?

14 A That day I did not respond to the
15 McFarlands, no.

16 Q What was your reason for not answering
17 them?

18 A I did not answer their questions because
19 they have been asked not to talk to us and it would
20 have put a situation that he would have had to
21 respond even more so.

Page 10

Mazell v McFarland Transcription

22 Q All right. Have the McFarlands placed
23 any kind of signage in your property or on the
24 adjacent lines that you feel is designed for you to
25 see?

13

1 A Yes.

2 Q Can you tell us about that?

3 A Last fall I have a picture of when
4 originally a sign with the word "laugh" was placed
5 right at the property line facing our house. And I
6 took a picture to show it was facing our house.

7 Then in the spring this "laugh" sign was
8 moved to the backyard.

9 Q Now the person who could read the word
10 "laugh" would be where?

11 A Anyone who came to the house, my kids,
12 myself, my husband. Anybody that would have come to
13 our house.

14 Q Have you ever had occasion to be outside
15 your property and hear forced laughter?

16 A Absolutely. Yes.

17 Q From the McFarlands?

18 A Yes.

19 Q And is that something that happens
20 occasionally?

21 A Yes.

22 Q Okay. You indicated in the past that
23 Mr. McFarland, you've heard him been asked not to
24 speak to you. I want to take you back to an
25 incident involving essentially a -- I'll call it a

14

Mazell v McFarland Transcription

1 hit-and-run, albeit an accidental hit-and-run, where
2 the police were called. I believe this occurred in
3 2007?

4 A Yes.

5 Q Are you familiar with this matter?

6 A Yes.

7 Q Can you elaborate on it?

8 A There was an accident with a neighbor
9 that lives in front of us that hit one of our
10 vehicles; during this time the police were called.
11 That situation was escalated. The McFarlands got
12 involved in that situation.

13 Q Now, the McFarlands, were they driving
14 the vehicle that struck your vehicle?

15 A Absolutely not.

16 Q So to your knowledge was there a reason
17 why they became involved in this matter?

18 A To my knowledge, no.

19 Q What did they do once they did become
20 involved in the matter?

21 A They spoke in behalf of the person that
22 hit, they were yelling at my husband and I.

23 Q Okay. And essentially you were the
24 complainant, and essentially one of your husband's
25 vehicles was struck?

15

1 A A company vehicle, yes.

2 Q And did the McFarlands have kind words
3 about you, the fact that the police were there?

4 A No.

5 Q Can you be more specific in terms of
Page 12.

Mazell v McFarland Transcription

6 what were they saying to you when they were yelling
7 at you?

8 A The fact that we didn't even own that
9 vehicle, what were we so worried about.

10 Q Your husband is general manager for
11 Stokes-Craven in I believe Manning, South Carolina?

12 A Yes.

13 Q So he has cars from time to time,
14 dealership cars that he's responsible for?

15 A Yes, sir.

16 Q I want to take you back to -- or little
17 further in time from 2007 to 2009. And are you
18 aware of any matter warranting the Summerville
19 Police Department to become involved and issue a
20 notice of trespass to Mr. McFarland?

21 A Yes.

22 Q Okay. I'm going to show you what's
23 been -- what's been marked as Plaintiff's Exhibit 1
24 and ask if you can identify that.

25

16

1 (Plaintiff's Exhibit No. 1 is offered for
2 identification.)

3 A Yes.

4 MR. JUNG: Plaintiff's 1 for
5 identification.

6 BY MR. JUNG

7 Q Ms. Mazell, are you familiar with the
8 incident that necessitated that Notice of Trespass
9 to be issued against Mr. McFarland?

10 A I am familiar with several incidences.
Page 13

Mazell v McFarland Transcription

11 And I believe that I do recall why this happened,
12 yes.

13 Q Okay. Can you elaborate?

14 A The date on this was '09. There was a
15 situation where my --

16 MR. CHARPIA: I'm going to object to any
17 testimony that she presents that is not related to
18 her filling out the report. It doesn't look like
19 her name's on it. So if she can just testify to
20 knowledge.

21 THE WITNESS: Yes, I have knowledge.

22 BY MR. JUNG

23 Q Go ahead.

24 A I have knowledge of this situation.

25 Q Okay. Is it your understanding that as
17

1 of 2009, and we'll handle this through a better
2 witness --

3 A Okay.

4 Q -- that Mr. McFarland was directed not
5 to trespass upon your property?

6 A Yes.

7 Q Has anybody such as your husband ever
8 told Mr. McFarland in your presence not to speak to
9 you?

10 A Yes.

11 Q Has Mr. McFarland ever honored those --
12 that caution that he shouldn't speak with you?

13 A No.

14 Q Ms. Mazell, how do you feel towards
15 Mr. McFarland? Does he upset you?

Page 14

Mazell v McFarland Transcription

16 A I feel that I am honestly worried for
17 the safety of myself.

18 Q Okay. Does that -- have you -- does
19 it -- essentially are you nervous about
20 Mr. McFarland?

21 A I am.

22 Q Do you fear Mr. McFarland?

23 A Absolutely.

24 Q Has that fear, does it affect your
25 emotional well being?

18

1 A Yes.

2 Q Do you lose sleep?

3 A Yes.

4 Q Have you sought counseling because of
5 this matter?

6 A I have been to a doctor because of this
7 matter, yes.

8 MR. JUNG: Okay. I have no further
9 questions.

10 THE COURT: Thank you. Mr. Charpia.

11 MR. CHARPIA: Yes, Your Honor. I just
12 have a couple questions.

13 CROSS EXAMINATION

14 BY MR. CHARPIA

15 Q I'm going to ask you just a couple
16 questions about the Galleria. You mentioned
17 Mr. McFarland and you are neighbors; is that
18 correct?

19 A Yes.

20 Q And what -- was there anything else
Page 15

Mazell v McFarland Transcription

21 going on that day that you're aware of that would
22 have required Mr. McFarland to be in the general
23 area of you?

24 A Yes.

25 Q Okay. what was that?

19

1 A There was, at the library --

2 THE COURT: I'm sorry. what day is
3 this.

4 MR. CHARPIA: This is the
5 September 12th day.

6 THE COURT: Thank you.

7 BY MR. CHARPIA

8 Q Sorry. Go ahead.

9 A For myself to be in that general area?

10 Q No, ma'am. Mr. McFarland.

11 A The reason why he was in the general
12 area?

13 Q Yes, ma'am.

14 A To get to the library.

15 Q why was he supposed to be at the
16 library?

17 A There was supposed to be a meeting held.

18 Q Do you know if that meeting was held?

19 A I do not know if that meeting was held
20 or not.

21 Q Were you noticed of a meeting being held
22 on that day, particular day?

23 A Myself and my husband were sent a letter
24 of that meeting.

25 Q Okay. So -- and did you attend?

Page 16

1 A We had given notice that we would not
2 attend.

3 Q Did you file a police incident report in
4 connection with this?

5 A In connection with the pictures being
6 taken, yes.

7 Q Okay. And are you familiar with that
8 report?

9 A Yes. I filed that report.

10 Q Okay. In your complaint that you filed
11 regarding the restraining order today you've
12 referenced somebody taking pictures of your
13 daughter.

14 A It was pictures of all of us, my
15 daughter, myself and Ms. Heather Capps.

16 Q Okay. I think this is your -- okay.
17 I'm just going to read a brief part of it. It says:
18 My daughter stated that Mr. Bill was taking pictures
19 of us. He then motioned for me to come on and
20 follow him, towards him.

21 That incident report that you filed, was
22 there any mention at all of your daughter being
23 present?

24 A In the incident report?

25 Q The one that you've -- not this one.

21

1 Not the complaint that you filed for here today, but
2 the actual incident report that you said you
3 remember filing and that you were familiar with the

Mazell v McFarland Transcription

4 contents.

5 A The police officer did write that down,
6 yes, sir.

7 Q Okay. Let me see if we can find that
8 real quick because I need to ask you about that.

9 MR. CHARPIA: It's my understanding or
10 Counsel's already stipulated to it, Your Honor, that
11 we've got a photograph as Exhibit 1 and the return
12 that we filed should be in your folder and I believe
13 marked No. 2. Yeah, it's in Exhibit B which you
14 should have a copy of that.

15 May I approach, Your Honor?

16 THE COURT: Sure.

17 BY MR. CHARPIA

18 Q Is this a copy of what you filed? You
19 can take a copy of that and look at it.

20 A Okay. I would like to say that this is
21 a portion of what he had.

22 Q Do you have another record other than
23 this?

24 A What I filled out at the police station
25 is the complete form.

22

1 Q Do you have a copy of the complete form?

2 A I do not.

3 Q Okay. But this is the -- you would
4 acknowledge this was his report, it's his signature
5 down here; right?

6 A Oh, well let me see. Okay. This is a
7 copy of the report.

8 Q Okay. And could you please point to the

Page 18

Mazell v McFarland Transcription

9 provision that says that your daughter was present?

10 A My daughter was present, sir.

11 Q Is it in the report?

12 A It's in the police report at the police

13 station that I filled out.

14 Q Okay.

15 A You know how you write a written report,

16 it's in that.

17 Q Okay. Well if you can furnish that

18 maybe we can have some insight. But this report

19 doesn't have anything, any mention of your daughter;

20 is that correct?

21 A That report does not, the handwritten

22 one does.

23 Q Okay. Well, you've acknowledged that

24 Mr. McFarland was exactly where he was supposed to

25 be and you had notice that he was going to be there;

23

1 correct?

2 A I had no knowledge that he was where he

3 was supposed to be. He was not in the library

4 parking lot.

5 Q Let's talk about that for just a minute.

6 Exhibit A, Your Honor, the photograph, is that a

7 picture -- or let me give it to you and see if you

8 can look at it and help us with this. Is your

9 vehicle -- appears to be like a white?

10 A This is my car, yes.

11 Q And was that photograph taken beside the

12 street across the street? Can you tell from where

13 that is?

Mazell v McFarland Transcription
THE COURT: What is she pointing to?

14
15 What car are you asking her to identify?

16 MR. CHARPIA: I'm sorry, Your Honor.
17 There's an individual in green pants and a white
18 sedan. I believe --

19 THE COURT: Okay.

20 MR. CHARPIA: I believe she's identified
21 that's her car.

22 THE WITNESS: It is.

23 BY MR. CHARPIA

24 Q who is that individual beside you?

25 A Ms. Capps.

24

1 Q Okay. And would this photograph be
2 taken, how far away would you say? Is that just a
3 guess, is that more than 10 feet?

4 A I can tell you that that vehicle and the
5 approximate length of where that picture was taken,
6 I cannot tell you the amount of feet, no, sir.

7 Q would it appear to be taken across the
8 street? There's a little bump right here, and here
9 just on the other side would be the library. Are
10 you familiar with that area?

11 A Yes, sir.

12 Q Okay. But it wasn't taken right beside
13 your car. And you can't make out your daughter from
14 that photograph, can you?

15 A No.

16 Q Okay. Thank you.

17 THE COURT: Mr. Jung?

18 MR. JUNG: That's it? Ms. Mazell --

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19 Mazell v McFarland Transcription
MR. CHARPIA: I'm not finished.
20 THE COURT: I'm sorry. You said "thank
21 you" so I didn't know if you were.
22 MR. JUNG: Thank you.
23 BY MR. CHARPIA
24 Q I'm going to move on to the next
25 incident. On July 11th, that was the incident where
25

1 you called the Summerville Police Department in
2 reference to a complaint that you filed. I believe
3 the responding officer was Officer McClellan. Does
4 that ring a bell?

5 A Yes.

6 Q Now in your report that you filed, your
7 Restraining Order report you mentioned that the
8 McFarlands were standing on our property on a drain
9 and you went outside to see what they were doing; is
10 that correct?

11 A Yes.

12 Q Did you personally observe them on your
13 property?

14 A As far as our survey goes, sir, that was
15 our property.

16 Q No. I'm sorry. The question is yes or
17 no. Did you observe them on your property?

18 A Yes.

19 Q Okay.

20 THE COURT: Are you speaking of the
21 Complaint that was filed?

22 MR. CHARPIA: Yes.

23 THE COURT: Okay.

Page 21

24 BY MR. CHARPIA

25 Q What were Mr. and Mrs. McFarland doing
26

1 that day? Were they working out in the yard?

2 A Looked to me like they were adding to
3 some drainage.

4 Q Okay. Are they in the business of doing
5 some drain work?

6 A I'm not sure what business they're in,
7 sir.

8 Q Okay. From what vantage point did you
9 view them?

10 A Excuse me? I walked right up to the
11 line, right up to the property line.

12 Q To the property line?

13 A Yes. Yes.

14 Q All right. And they were on their side
15 of the line and you were on yours? I'm trying to
16 get some proximity of where everyone was at.

17 A They were on the line.

18 Q Okay. On their side of the line? Help
19 me. Please clarify that for me.

20 A Yes. You'd like me to clarify it?

21 Q Sure.

22 A Okay. By our survey, sir, they were on
23 the property line.

24 Q Okay. Well I'm still confused. On the
25 property line on their part of the line? Tell me
27

1 about that drainage ditch; is that something, a
2 measure that the HOA took?

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3 A The measure that the HOA took? No.
4 Q well, that wasn't an easement that they
5 put in? Oh, I'm sorry.
6 When you went to investigate the yard
7 work that they were doing, what happened after that?
8 Did you go to the mailbox? Did you go to doing what
9 you were doing?
10 A Yes.
11 Q Do you recall calling Summerville Police
12 Department?
13 A Yes.
14 Q what happened after that?
15 A The police officer came out.
16 Q Okay. And he made an investigation; he
17 spoke to you and he spoke to --
18 A Yes. He listened to me.
19 Q And then he talked with the McFarlands?
20 A Yes, sir.
21 Q Okay. And have you received a copy of
22 that report?
23 A Yes.
24 MR. CHARPIA: Your Honor, I believe he's
25 not stipulating to this report. I'll let him make
28

1 that objection. I'm going to -- what I have had
2 marked as an Exhibit C, the report that was filed by
3 Ms. Mazell and signed by Officer McClellan, we'd
4 like to introduce that into evidence.

5 MR. JUNG: Your Honor, my objection is
6 based on hearsay. This report is no different than
7 an accident in a motor vehicle accident. It's my
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8 understanding after having spoken to the Officer
9 McClellan that Counsel is referring to, that he did
10 not actually investigate this report. He's merely
11 acting as a supervisory capacity. I don't dispute
12 this is an authentic police report taken by the
13 Summerville Police Department. But to the extent
14 there's hearsay in here and to the extent that
15 essentially that the witness he's called to
16 introduce this doesn't have any personal knowledge
17 of it, I believe it's hearsay and I don't believe it
18 should be considered for the truth of its contents.

19 MR. CHARPIA: I believe it's ordinary
20 business record; should be in for that purpose, not
21 hearsay. And certainly she can testify for her own
22 ability. And we have the officer here so we're
23 certainly going to be able to cover any ground
24 that's in here. I'm offering it for purposes of
25 demonstrating what the report, the findings of the
29

1 report.

2 THE COURT: Okay. So the officer is
3 here?

4 MR. CHARPIA: Uh-huh.

5 THE COURT: And of course Ms. Mazell is
6 on the stand. So, no, the report would not be
7 allowed.

8 MR. CHARPIA: Okay.

9 BY MR. CHARPIA

10 Q Did you make contact at all with the
11 McFarlands?

12 A Contact? No.

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13 Q Did you approach them at all?
14 A On what day?
15 Q We're still on the same day?
16 A No.
17 Q Did you make any manner or gesture
18 towards them at all?
19 A Absolutely not.
20 Q Including but not limited to gesturing
21 your middle finger to Mr. McFarland?
22 A Absolutely not.
23 MR. CHARPIA: Your Honor, that's all the
24 questions I have right now. I reserve the right to
25 Redirect if he has any questions.

30

1 THE COURT: Sure. Thank you.
2 MR. JUNG: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. JUNG
5 Q You indicated in response to Counsel's
6 questioning that Mr. McFarland was at the library
7 for purposes presumably of an HOA meeting; is that
8 accurate?
9 A Yes.
10 Q And the parking lot that you were in,
11 was that in the library parking lot or was that a
12 different parking lot?
13 A Different parking lot.
14 Q And did Mr. McFarland come into the
15 parking, your parking lot leaving the library
16 parking lot?
17 A Yes, sir.

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18 Q Did he approach you?
19 A My vehicle.
20 Q Yes. And did he -- did he make gestures
21 to you? And did he say "come on with me"? words to
22 that effect?
23 A Yes.
24 Q Were you intimidated by that?
25 A Yes, sir.

31

1 MR. JUNG: No further questions.
2 THE COURT: Thank you.
3 MR. CHARPIA: Your Honor, no further
4 questions.
5 THE COURT: Thank you.
6 MR. JUNG: Thank you. Sophia, you can
7 sit down.
8 THE COURT: You may be seated. Thank
9 you.
10 THE WITNESS: Okay.
11 (At this time the witness, Sophia Mazell, is
12 excused from the witness stand.)
13 MR. JUNG: I just have very short
14 testimony of Ms. Heather Capps.
15 THE COURT: Heather Capps with a C or K?
16 THE WITNESS: C, C-A-P-P-S.
17 THE COURT: Thank you. Please raise
18 your right hand for oath.

19
20 whereupon, Heather Capps, having been first
21 duly sworn, testifies as follows:
22

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23 THE COURT: Thank you. Please take your
24 seat and answer any questions Mr. Jung may have for
25 you.

32

1 DIRECT EXAMINATION

2 BY MR. JUNG

3 Q Good morning Ms. Capps. Thank you for
4 coming. Do you know Ms. Mazell?

5 A Yes, I do.

6 Q Can you state how you know her.

7 A Me and her have children that dance
8 together.

9 Q Okay. Were you present on or about
10 either I'm not sure it's September 11 or
11 September 12th of this year?

12 A I believe it was September 12th; and
13 yes, I was present.

14 Q Okay. My mistake. And you were at the
15 parking lots at the dance studio?

16 A I was.

17 Q Can you just tell us what happened at
18 that incident?

19 A Well, basically I had actually left the
20 library. I had a child that was at the library and
21 ran to the car to get something, and when I left the
22 library I spoke to her briefly as I was walking to
23 my car to get actually my computer out of the car.
24 And when I went back she was like, "can you come
25 over here and talk to me for a minute?"

33

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So I walked over and spoke with her.

1
2 And about that time Faith was sitting in the front
3 seat with Sophia, she was in the passenger front
4 seat. And Faith started saying, "he's taking a
5 picture, he's taking a picture." And she looked
6 like, you know -- and all I can say is that I
7 remember turning around and looking and seeing a man
8 with a -- it looked like a phone turned sideways.
9 And I could tell they were upset. And I said, "Are
10 you okay?"

11 And she said, "yeah, I'm okay."

12 And I just basically walked away after I
13 knew they were okay.

14 Q Okay.

15 A And headed to the library.

16 Q How long have you known Ms. Mazell?

17 A Probably about two years.

18 Q Okay. And do you have fairly frequent
19 contact with her?

20 A We see each other at the dance studios
21 and at competition.

22 Q Do you know her well enough to be able
23 to make an opinion as to her emotional state?

24 A I think, yes, sir.

25 Q And would you characterize -- how would you
34

1 characterize her emotional state upon, you know,
2 discovering that Mr. McFarland was approaching and
3 taking pictures of her?

4 A She was -- she was definitely shaken.
5 And I can say that Faith was actually even more

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6 shaken than her because she just kept saying, "why
7 is he taking a picture? why is he taking a picture?
8 He's taking a picture. He's taking a picture."

9 Q Okay. Thank you. That's all?

10 THE COURT: Mr. Charpia?

11 CROSS EXAMINATION

12 BY MR. CHARPIA:

13 Q Do you have any personal knowledge of
14 why he may or may not have taken a picture?

15 A I just --

16 Q You just know he took a picture?

17 A Uh-huh.

18 Q Okay. Thank you.

19 MR. CHARPIA: No further questions, Your
20 Honor.

21 THE COURT: Sure. Mr. Jung?

22 MR. JUNG: Your Honor, Ms. Capps has
23 asked to be excused as quickly as possible. I have
24 no further -- can she be excused?

25 MR. CHARPIA: Your Honor?

35

1 BY MR. CHARPIA

2 Q How many times did you go into the
3 library?

4 A That day?

5 Q Uh-huh.

6 A I went into the library with my daughter
7 and dropped her off. Walked back to the car. It's
8 in -- it's in a close parking lot. I walked back to
9 my car and walked straight back into the library
10 after speaking with her.

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11 Q Okay.

12 A And then left later that day.

13 Q And did Ms. Mazell ask if there was a

14 meeting going on inside? Was there any conversation

15 about an HOA meeting at all?

16 A No, not that I know of.

17 Q Okay. Thank you.

18 THE COURT: Thank you.

19 (At this time the witness, Heather Capps, is

20 excused from the witness stand.)

21 MR. JUNG: I'd like to call Mr. Michael

22 Mazell.

23 THE COURT: Please raise your right hand

24 for oath, sir.

36

1 whereupon, Michael Mazell, having been first

2 duly sworn, testifies as follows:

3 - - -

4 THE COURT: Thank you. Please answer

5 any questions that Mr. Jung may have for you.

6 MR. JUNG: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. JUNG

9 Q Mr. Mazell, would you identify where you

10 live and how long you've been living there.

11 A Living at 107 Live Oak Village; been

12 there since '05.

13 Q Okay. And I believe I mentioned that

14 you are the general manager of Stokes-Craven Autos

15 in --

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16 A Yes, sir.

17 Q And your neighbor is the McFarlands?

18 A Yes.

19 Q Let me start with has Mr. McFarland, to
20 your knowledge, ever contacted your employment?

21 A Yes.

22 Q Okay. And can you tell us what happened
23 there?

24 A He called my employer and accused me of
25 what they call in the car business of curbing cars;
37

1 that I was selling vehicles out of my yard.

2 Q Okay.

3 MR. CHARPIA: I object to this as
4 hearsay. I don't have any way to cross examine
5 that. I certainly wasn't present, neither one of us
6 were for that conversation. Anything he's saying is
7 complete hearsay.

8 BY MR. JUNG

9 Q Let me ask you, did your employer
10 contact you in response to a call that --

11 A Yes.

12 Q And what did --

13 MR. CHARPIA: Objection, hearsay, Your
14 Honor.

15 THE COURT: Okay. Can you rephrase?

16 MR. JUNG: Very well.

17 BY MR. JUNG

18 Q Mr. Mazell, has Mr. -- to your
19 knowledge, have you ever received a complaint from
20 your employer that they received word from a

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neighbor of yours by the name of Mr. McFarland?

22 A Yes.

23 Q Could you tell us what you heard from
24 your employer?

25 A That --

38

1 MR. CHARPIA: Your Honor, there's no way
2 to ask this that's not hearsay.

3 THE COURT: Withdraw.

4 MR. JUNG: I'll move on, Your Honor.

5 BY MR. JUNG

6 Q Let me ask you this. Have you ever
7 asked Mr. McFarland to have no contact with your
8 wife?

9 A Yes.

10 Q Okay. And how many times have you done
11 that?

12 A The first occasion, first time I told
13 Mr. McFarland to not have any contact with my wife
14 and my family was my dog Buddy, who was a 13-pound
15 Shih Tzu who was behind a seven-and-a-half-foot
16 fence, and Mr. McFarland decided to spray him in the
17 face with a water hose through the fence. I called
18 Bill and asked him why he did it. He laughed. And
19 I said, Bill, please never do something like that
20 again and also never speak to my wife or my
21 children. Why would you spray a 13-pound dog, a
22 13-pound dog through a fence? And that a Shih Tzu
23 has very big eyes and that it can be very harmful to
24 them. And all he did was laugh and hang up.

25 Q Is that the only incident that you asked

39

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1 Mr. McFarland?

2 A No. We have a neighbor, the Drummonds,
3 that unfortunately wrecked one of my cars one night
4 in the front of my house. And about two or three
5 months later we were having a party for my wife for
6 her birthday and I was in cooking, and I heard a
7 bunch of screaming and some children screaming. And
8 I quit doing what I was doing in the kitchen and
9 walked outside and my Dodge Dakota that was one of
10 my demos from Hoover was knocked up against my
11 porch. And I looked out and I saw -- you can see a
12 trail of where somebody had been dragged from my car
13 into the Drummond's home. I was then approached by
14 a local attorney, Mr. Peter Wyckoff I believe was
15 his name by Mr. McFarland about this guy had wrecked
16 my car and that he did not want me to call the
17 police. And I informed Mr. McFarland an Mr. Wyckoff
18 I had to, that he had already wrecked one car and I
19 paid for it, the repairs that I had to pay.

20 Q This is Mr. who?

21 A Mr. Scott Drummond. And that it was my
22 obligation to Mr. Hoover to take his business
23 interest --

24 MR. CHARPIA: Objection, relevance. I'm
25 not sure where this is going.

40

1 MR. JUNG: I believe the question was
2 have you had any other incidents.

3 A The police then -- I did call the
4 police. Mr. McFarland, Jennifer continued to holler
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5 and scream at me about calling the police on this
6 guy. This went on for hours. It was raining
7 outside. The police came. It ended up about five
8 or six officers. So we went inside the Drummonds'
9 home to get Scott to try to talk with him, they
10 couldn't find him. He had left the home. So I went
11 and was looking for Scott between the Drummond's
12 home and Mr. Payne's home and kept on hearing Bill
13 and Jennifer screaming at my wife. And then the
14 police told them to remove themselves. And they
15 went to the porch, their porch. And I walked up to
16 the porch and I said, "Bill, I've asked you this
17 before, I'm asking it one more time: Please quit
18 speaking to my wife. Do not speak to my wife. Do
19 not speak to my children."

20 And he looked at me, "I have no idea why
21 you're worried. You don't even own any vehicles."

22 And I said, "Bill, that's exactly why
23 I'm doing what I'm having to do. My interest and my
24 responsibility is to Hoover, it's not to me. And,
25 Bill, please, please quit speaking to my wife and my
41

1 family." And then I went -- I backed down the
2 steps.

3 The police, they ended up,
4 unfortunately, having to arrest Mr. Drummond that
5 night once they found him.

6 Q Okay. To your knowledge, has
7 Mr. McFarland ever honored your request?

8 A No.

9 Q Can you tell us some examples -- I
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10 assume that this has been going on for some period
11 of time.

12 A It goes on if we're out in the yard,
13 they laugh. They've got this exuberant, exaggerated
14 laugh that they do. Another occasion where he -- I
15 got a phone call, my daughter had a 104 temperature
16 and I was pulling a boat and I came home to be able
17 to get her medicine and check on her at the doctors,
18 and I parked the boat in front of the yard. We had
19 just gotten a new neighbor, Mr. Carl Holcombe.
20 Being a good neighbor I went next door as a courtesy
21 and rang his door bell, and he answered. And I
22 said, "Mr. Holcombe, I apologize. But my daughter
23 has 104 to 105 temperature and very ill, I need to
24 leave this boat here but I'll get it removed either
25 tonight or first thing in the morning once I verify
42

1 my wife is safe."

2 Mr. Holcombe looked at me and indicated
3 to me that was no problem.

4 As I turned, Mr. McFarland comes running
5 up his steps and jams a covenant piece of paper in
6 my face and calls me fat and all this kind of stuff.
7 which he's right. I am fat, unfortunately. But he
8 stuffed the paper in my face. And I said, "Bill,
9 please. This is not the time or place for this. My
10 daughter is ill, my son is standing here. Would you
11 please leave me alone."

12 I looked at Carlton Holcombe,
13 Mr. Holcombe, looked to him for some relief, maybe
14 he would ask him to step down the stairs or steps,
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15 what have you, and he simply just walked back into
16 his home. Well me and my son, as we're going down
17 the steps, Bill stopped and jammed the paper in my
18 face again and told me about the covenants and rules
19 and I had to move this boat.

20 And I said, "no, I'm not moving this
21 boat right now. My daughter is ill." So I keep
22 going down the stairs. He keeps screaming at me.
23 He keeps sticking his finger in my face. My son is
24 crying because Bill is saying he's going to have me
25 arrested.

43

1 And I said, "Bill, for what?"

2 "Well you can't have that boat parked
3 there."

4 A I said, "Bill, please stop. I have no
5 more buttons for you to push. Please quit pushing
6 my buttons. Please. My daughter is sick. My
7 daughter is very sick. I have to get my daughter.
8 I will move this boat either tonight or in the
9 morning."

10 He keeps on, keeps on. My son is
11 dragging my leg. Finally get out of that situation.
12 Another police officer shows up, he comes.
13 Policeman comes, calls me outside, tells me just to
14 stand there. He goes into Mr. McFarland and Ms.
15 McFarland's home. He leaves me standing out there
16 in the yard. I'm standing out there in the sun and
17 waiting and waiting. And I said, "hey, Officer, you
18 going to come out and talk to me?"

19 well, the police officer comes back out

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20 and walks over and tells me I have to come to his
21 car.

22 I said, "no, we're going to discuss this
23 right here."

24 Well he gives me the covenants and says
25 Mr. McFarland, the president of the HOA, and

44

1 Ms. McFarland, the secretary or board of director of
2 the HOA, state that you have to remove this boat and
3 you have to remove it now; and Mr. Mazell you have
4 to remove it now or I have to take further action."

5 And I said, "Officer, you're brand new."
6 I can tell based on his rank. I said, "before you
7 get yourself in a situation that's incorrect, would
8 you please call your supervisor and have your
9 supervisor come out." I said, "because I don't have
10 to move this boat right now. I'm not in any
11 violation of any laws and really I'm not in any --
12 to my knowledge, not in violation of the covenants
13 right now."

14 So a supervisor came out, instructed
15 that officer that he was stepping over his
16 boundaries. That the covenants in the neighborhood,
17 the forms they'd given him was not something he
18 could act on.

19 Once again I requested a trespass for
20 Mr. McFarland not to speak to my family.

21 MR. JUNG: Let me approach, Your Honor.
22 I show you what's been identified as Plaintiff's 1
23 and ask if you can identify that document.

24 THE COURT: May I see it before he --
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25 MR. JUNG: It's the same document I
45

1 showed you earlier.

2 THE COURT: Okay.

3 A It's the No Trespass that I signed as
4 the complainant, this No Trespass that states
5 Mr. McFarland presented himself as the HOA president
6 and wife as the treasurer.

7 Q And this incident that you're testifying
8 to, say, about the boat and your daughter's fever,
9 is that what prompted that Trespass Noticed issued
10 against Mr. McFarland to your knowledge?

11 A Yeah. It was drawn down there because
12 Mr. McFarland was falsely saying I was threatening
13 him. And I never did. At one time I was simply
14 wanting him to get him to quit screaming and
15 hollering in front of my son.

16 Q You mentioned previously that
17 Mr. McFarland would make an exaggerated laugh.

18 A Yes.

19 Q My question is --

20 MR. CHARPIA: Your Honor, I'm sorry. I
21 initially stipulated to a document that my client is
22 showing me, and this document appears to be not the
23 original, the one that's been entered into evidence
24 has different handwriting. I'm trying to figure out
25 which one it is. If we can take just a second.
46

1 Both have a case number right up top. This is not
2 the same handwriting as that.

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MR. JUNG: This appears to be the same

to me.

MR. CHARPIA: I guess what I'm saying is
that it looks like this has been added to.

THE COURT: I haven't even seen it.

MR. JUNG: Can we do this off? This is
a Cross Examination issue.

MR. CHARPIA: I'm going to just enter it
into evidence unless it can be -- probably get a
record of it. It's the same exact document but
different bottom.

MR. JUNG: I think I can handle a
foundation, Your Honor.

THE COURT: Thank you.

BY MR. JUNG

Q Mr. Mazell, is that your signature at
the bottom of this document?

A Yes.

MR. JUNG: I offer Plaintiff's Exhibit
1.

THE COURT: And again you object.

MR. CHARPIA: I would renew my objection
and base it on the fact that the document that is
47

presented has been altered and therefore I don't
think it can be properly authenticated.

THE COURT: How do you know it's been
altered?

MR. CHARPIA: Your Honor, may I
approach? You've got the case number, same date,
different handwritings on both of this and I don't

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know which is what.
9 THE COURT: Are you speaking of the
10 signatures here?
11 MR. CHARPIA: These are exact same
12 documents but they've been altered.
13 THE COURT: I'm sorry. Say that again
14 Mr. Charpia.
15 MR. CHARPIA: There's only one Trespass
16 Notice. And these are completely different so I'm
17 trying to figure out which one it is. And they're
18 both dated and signed.
19 MR. JUNG: I think this can be handled
20 on Cross, Your Honor.
21 MR. CHARPIA: What I'm objecting to,
22 Your Honor, is that there's differences in the
23 comments and limitations.
24 THE COURT: Here.
25 MR. CHARPIA: Clearly you can see
48

1 that --
2 MR. JUNG: Why do we need both of them?
3 THE COURT: I mean I -- it hadn't -- I'm
4 not allowing it in, of course, the form. But I mean
5 what --
6 MR. CHARPIA: I'm objecting to it being
7 offered into evidence. I can't verify that the
8 report has not been altered if I have two different
9 variations of the same report.
10 THE COURT: Is the officer here?
11 MR. JUNG: I don't know. I mean I
12 believe we've got a signature of the defendant here.

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14 THE COURT: Yes, I see it of course, a
15 complainant signature here. And it's already been
16 testified to that this trespass was --

17 MR. CHARPIA: Your Honor, we're okay.

18 THE COURT: -- issued. Okay.

19 MR. JUNG: Thank you.

20 THE COURT: Sure.

21 BY MR. JUNG

22 Q Mr. Mazell, so Mr. McFarland was on
23 trespass notice to not enter onto your property?

24 A Yes.

25 Q Has he honored that to your knowledge?

A No.

49

1 Q Tell us how he has not.

2 A He entered my property on several
3 occasions with employees from the Town of
4 Summerville.

5 Q Okay. Can you elaborate on the
6 circumstances there?

7 A Again now to my knowledge, the Town of
8 Summerville and Mr. McFarland were making different
9 plans and what have you for some type of drainage
10 that had to go through a section of my property
11 which the Town did have an easement in. And I was
12 not privy or asked to attend these meetings. And it
13 turns out that they on several occasions entered my
14 property against a court order or a trespass order.

15 Q Okay. And if necessary we can call a
16 witness?

17 A Yes.

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18 Q Is there any knowledge of any kind of
19 dumpings that has been placed on your property?

20 A Yes. Approximately a year ago I came
21 home one night and there was the trimmings from
22 Mr. McFarland's yard partially in my driveway and
23 straight behind my sago palm in my gated area. I
24 pulled up into my driveway, went inside and got a
25 broom and a shovel and removed them from my driveway
50

1 and moved them over as the McFarland's watched me on
2 the porch.

3 About three or four days later the same
4 event occurred again. I again moved them. I
5 actually said to my wife, I said, "well we must be
6 getting ready to get a meeting because we're getting
7 ready to get notice of a meeting," I said, "because
8 for whatever reason Bill and Jennifer changed
9 whatever they're putting in their landscaping and
10 their trimming and they're putting it in our
11 driveway and as close as they can to our palm to
12 apparently I guess get a rise or something." And I
13 continually moved them.

14 I then contacted the Town. I reminded
15 the Town of Summerville that the correct place
16 actually is on Central Avenue, it's not even near my
17 property. But if for some reason or Mr. McFarland,
18 Mr. McFarland had changed wherever of putting it,
19 and I didn't have a problem with them putting their
20 trash -- their yard clippings and what have you, but
21 I would like for them to do what I agreed to for the
22 rest of the neighborhood, which about seven or eight

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23 houses down was non-maintained road and move about
24 10 or 15 feet down.

25 Q But to your knowledge, you're trying
51

1 to -- your point is that they threw it on your
2 property, dumped their dumpings?

3 A Right.

4 Q The hole that your wife testified to, do
5 you have an opinion as to whether that was on your
6 property?

7 A That particular part of the drain is on
8 our property.

9 Q All right.

10 A And so I did contact the Town. The Town
11 came out a couple times, they informed me they
12 talked to Mr. McFarland; he went to the Town and
13 they said that he complained to them about it. I
14 again reminded the Town that it's actually supposed
15 to be down Central and to please get it, to remove
16 it where everybody else did. But, you know, he just
17 continued to be in my driveway, and I continued to
18 remove it.

19 Finally, I think my understanding from
20 the Town was that Code Enforcement did go, and they
21 finally started moving it.

22 Q Let me switch gears. Do you have any
23 knowledge of a criminal matter that you and your
24 wife had to deal with in response to Mr. McFarland?

25 A Yes. We wrote a check to the Homeowners
52

1 Association back in June. I became very ill and was
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2 hospitalized almost the whole month of June. And
3 the check was given to the HOA, one of the board of
4 directors. It then was also sent by certified mail
5 and not picked up. We also, we had to file -- we
6 had to go and talk with the Post Master. We've had
7 a lot of things missing from our mailbox. And one
8 day when I finally was able to go to the mailbox
9 physically there was a third notice of a certified
10 check or certified item that needed to be picked up.
11 I didn't know what it was because I did not send it
12 to the HOA certified, we had given it to them. So I
13 went and retrieved it. Tried to retrieve it on
14 three occasions but I couldn't find it. Finally on
15 the 12th of July they found it and I notified the
16 Board of Directors that I did retrieve this check
17 once again. Following the state statutes and what
18 have you, after ten days of giving someone a check
19 and what have you, you do have a right to stop
20 payment.

21 Q Mr. McFarland is what in relation to the
22 HOA?

23 A He is the president of the HOA.

24 Q So what you're saying is you tried to
25 pay your annual dues?

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1 A Yes.

2 Q And?

3 A They refused to either pick them up or
4 receive them from the Board of Directors.

5 Q And did you notify Mr. McFarland via
6 e-mail that your check hadn't been cashed?

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7 A Right. They had sent us a receipt which
8 I thought was odd, showing that the check, you know,
9 that they received money. So I immediately sent an
10 e-mail stating that that check had not cleared my
11 bank.

12 Q Okay. And your intention was what in
13 that?

14 A To notify them that, hey, this receipt
15 you just gave me is not -- you know, the money's not
16 came (sic) out of my bank.

17 Q So you wanted to pay your bills?

18 A I wanted to pay my bills and move on.
19 However, after the great period of time, well over
20 the 10-day limit, state statute, I decided to stop
21 payment because I didn't know what was going on with
22 my check.

23 Q Okay. Now did there come a time that
24 you had to respond to the solicitor's office?

25 A Yes. My wife called me at work on a
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1 Saturday and opened up the mailbox and there was an
2 arrest -- I call it -- it says a warrant that we had
3 received. And Mr. McFarland had gone to the
4 Fraudulent Check Division and apparently, based on
5 what my understanding is from them, told them that
6 we had wrote them a check with fraudulent intent not
7 to pay. So I asked the lady, you know, when can I
8 meet with them? So I also asked her what did I need
9 to bring? And she said well, you can bring -- you
10 know when you wrote the check, she wanted me to show
11 her our ambulance, which I thought was odd. But I
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12 said okay, I'm willing to show you our balance for
13 our check.

14 So when we got there she first
15 apologized before she sat down. She said, "I did
16 not look at this case personally. My assistant did.
17 And Mr. and Mrs. Mazell, we apologize, we should
18 have never, ever processed this."

19 Q Is this the notice that you and your
20 wife received from the solicitor notifying you that
21 a criminal complaint has been filed against you?

22 A Yes. It clearly states this was a
23 worthless check, arrest and criminal prosecution.

24 MR. JUNG: Plaintiff's 2, Your Honor.

25

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1 (Plaintiff's Exhibit No. 2 is marked for
2 identification.)

3 A So I sat down and asked her how did they
4 base doing this action, what proof was provided.
5 And she showed me the check that was written on June
6 the 3rd. She then immediately stated that she would
7 immediately dismiss this. She would give us a
8 letter of dismissal and she would also inform
9 Mr. McFarland that this was not a worthless check.

10 Q Does that filing of the criminal
11 complaint by you or against your wife by
12 Mr. McFarland coincide with any events that occurred
13 within days of that event?

14 A Yes. It just seems like every time that
15 they get some type of notice of a meeting or some --
16 there's a letter sent out by the HOA that we end up

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17 with some type of complaint.

18 Q To your knowledge did the notice of the
19 filing of the criminal complaint, how close in time
20 was that to the incident that occurred at the dance
21 class parking lot?

22 A Yeah. The officer said that they made
23 several attempts to speak with the McFarlands. They
24 called us and said they had no contact with them and
25 then before, within days we end up with an arrest

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1 warrant for my wife.

2 Q Okay. I just have a couple more
3 questions, sir.

4 How long have you been married to
5 Sophia?

6 A Eleven years.

7 Q Can you tell us -- can you describe to
8 the Court how when your wife has to come in contact
9 with Mr. McFarland it affects her?

10 A She's -- she's scared. She's a nervous
11 wreck. Most of these events seem to happen when I'm
12 not home. We go out in our yard -- as a matter of
13 fact, last couple Saturdays ago I was taking my son
14 to work, it was take-your-child-to-work day, and Ms.
15 McFarland was hiding behind the -- hiding behind her
16 fence filming us. I didn't understand what that
17 was. And Bill was right there behind.

18 Three Octobers in a row when we would
19 have children over to camp out in the backyard for
20 my son's birthday -- I don't know if anybody knows
21 much about October. The oak trees aren't shedding,

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22 there's not a whole lot of leaf foliage and all
23 that. But quarter to six, quarter to seven, Bill
24 would get out there and be blowing his yard with
25 kids sleeping in tents. I never understood. But he

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1 did it all three times. So we quit doing that.
2 It's just continual.

3 Q Do you feel Mr. McFarland has animosity
4 against you and your family?

5 A Yes, I do.

6 Q And can you explain that?

7 A Well, I wish I could explain it. You
8 know, it's -- at our last, last Homeowners
9 Association meeting I went to -- I asked a couple
10 questions about some landscaping bills and could I
11 see them and this and this. And Bill became
12 enraged, started to stick his finger in my face and
13 screaming at me. And once again begged him, quite
14 frankly, I said, "Bill, would you please quit
15 hollering at me. Please quit hollering at my wife.
16 I'm simply just asking questions." And they'd just
17 continue, continue. So I finally just told my wife,
18 "it's just best for us to leave."

19 MR. JUNG: Mr. Mazell, thank you very
20 much. Please answer Mr. Sharpe's questions?

21 THE COURT: Mr. Charpia.

22 MR. CHARPIA: May it please the Court, I
23 just have a couple of questions.

24 CROSS EXAMINATION

25 BY MR. CHARPIA

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1 Q Do you recall what day you stopped
2 payment on the check?

3 A Yes, sir. I stopped payment on
4 July 27th.

5 Q And after you stopped payment did you
6 receive any notice from the HOA that said, hey, this
7 is what we need, we need you to pay the HOA dues?

8 A No. We received another receipt saying
9 that we paid, and it was a 55-dollar balance.
10 That's when I sent an e-mail saying we did not --
11 that check had not cleared.

12 Q So you knew that you hadn't paid it?

13 A Yes.

14 Q And today have you paid the dues?

15 A Yes. I gave the board of directors a
16 cashiers check.

17 Q On which day?

18 A Back on a special meeting we had about a
19 week ago, presented him with a cashier's check, and
20 instructions are when Mr. McFarland released my
21 other check that he could, the HOA certainly could
22 have my cashier's check.

23 Q So you haven't actually paid them yet?

24 A Yes, sir, I gave the board of directors
25 (inaudible).

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1 Q I'm just trying to understand this
2 contingency that you were discussing. Can you
3 elaborate on that?

4 A It's not my contingency. The board of

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5 directors who were elected president and what
6 have you immediately requested that they get the
7 other check back with getting the cashier's check.

8 Q I'm not understanding what other check
9 you reference. That's what I'm asking.

10 A There was a cashier's check that the
11 Homeowners Association is in possession of, \$1,000,
12 they have that as my dues. And part of the board of
13 directors have requested that the McFarlands
14 relinquish the check that I stopped payment on for
15 the \$1,000 cashier's check.

16 Q I'm not understanding how you have --
17 have you paid your dues or not?

18 A Yes.

19 Q Okay. And what is the contingent
20 relationship? I'm not understanding this
21 contingency. The HOA has a check that you stopped
22 payment on?

23 A Yes, sir.

24 Q And you're not going to allow them to
25 cash it until you get --

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1 A No, sir. They asked for that. I did
2 not. The board of directors.

3 Q who asked for it?

4 A The current board of directors. You're
5 not listening.

6 The current board of directors, they're
7 the ones that made a request to get the other check.
8 I did not make that request. I did not put a
9 contingency on it. You're not listening to my

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10 answer.

11 Q I'm just trying to clarify. You had
12 some instructions about a canceled check.

13 A No, sir. I had no instructions about
14 it. The board of directors, they asked that the
15 McFarlands return the check that I wrote them on
16 June the 23th, and they have a copy of that check.

17 Q Do you have a copy of that check?

18 A No, sir, I do not. The board of
19 directors have it; you can get it from them.

20 MR. CHARPIA: Just one second, Your
21 Honor. Got one-third of the board of directors
22 here, and we don't have any knowledge of a check so
23 I'm trying to verify.

24 THE COURT: Let's keep in mind that we
25 aren't here for a check.

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1 MR. CHARPIA: This is a matter that they
2 made in the complaint.

3 THE COURT: I understand. And if you
4 would just briefly go through that, I'd greatly
5 appreciate it.

6 MR. CHARPIA: The only thing that we're
7 aware of is a stop payment check. If you could
8 produce some evidence that you paid then we can move
9 on.

10 THE WITNESS: You can get that from the
11 board of directors, it's not in my possession.

12 MR. JUNG: It's our intention to call
13 one of the board of directors.

14 THE COURT: Wait. Wait. Wait.

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15 Mazell v McFarland Transcription
Go ahead, sir.

16 THE WITNESS: It's not in my possession,
17 the board of directors has it.

18 THE COURT: Okay.

19 BY MR. CHARPIA

20 Q Were you present at the library in
21 connection with the events that we were talking
22 about?

23 A No, sir. I received a phone call about
24 the events.

25 Q You answered my question. That's all I
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1 needed.

2 A And then I came to pick up my daughter.

3 THE COURT: Mr. Mazell, just answer the
4 question yes or no.

5 THE WITNESS: Yes, ma'am.

6 BY MR. CHARPIA

7 Q Were you present when Officer McClellan
8 came to the residence in response to the McFarlands
9 being near a drainage ditch?

10 A No, sir.

11 Q Can you testify with any personal
12 knowledge as to those matters in which your wife
13 complained about in connection with the Galleria or
14 the drainage situation?

15 A No.

16 MR. CHARPIA: No further questions, Your
17 Honor.

18 MR. JUNG: No questions, Your Honor.

19 THE COURT: Thank you, Mr. Mazell. You

20 Mazell v McFarland Transcription
may be set seated.

21 THE WITNESS: Thank you.

22 (At this time the witness, Michael Mazell, is
23 excused from the witness stand.)

24 MR. JUNG: If it please the Court, we
25 call Mr. Hannemann, Mr. David Hannemann.

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1 THE COURT: It's Mr. David Hannemann.
2 Can you please spell that for the record.

3 THE WITNESS: H-A-N-N-E-M-A-N-N.
4 - - -

5 whereupon, David Hannemann, having been
6 first duly sworn, testifies as follows:
7 - - -

8 THE COURT: Thank you. Please take your
9 seat and answer any questions Mr. Jung may have for
10 you.

11 MR. JUNG: Thank you.

12 DIRECT EXAMINATION

13 BY MR. JUNG

14 Q Mr. Hannemann, where do you residence?

15 A I reside at 100 Oak Village Lane.

16 Q And the Oak Village Lane, am I accurate
17 in saying that's a community of seven different
18 homesites?

19 A Yes, sir.

20 Q Okay. And both Mr. Mazell, Ms. Mazell
21 and the McFarlands are members of that same
22 community; correct?

23 A Yes, sir.

24 Q Okay. And at what point in time were

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25 you -- excuse me. Withdrawn.

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1 Were you ever on the Board of Directors
2 of that HOA along with Mr. McFarland?

3 A Yes.

4 Q Okay. Do you have knowledge of the
5 Board's treatment of the Mazells over the course of
6 time that you were a member of that board?

7 A There were some legal fees that occurred
8 prior to my moving into the association that were
9 directed against Mr. Mazell, some 11 or \$12,000 in
10 legal fees for issues related to complaints from the
11 Homeowners Association against Mr. Mazell.

12 Q My question is, in your capacity as a
13 member of the HOA did you have opportunity to form
14 an opinion as to actions that the board and/or its
15 president took against or took towards Mr. and
16 Ms. Mazell?

17 A Well, the Board has never really met
18 other than several special meetings, and those
19 special meetings -- they're three board of director
20 members, the last year three -- two of the board of
21 directors, myself and my neighbor next door, Mr. Tom
22 Morris, have attempted to have meetings of the board
23 of directors; we've asked for them and they've never
24 occurred. So I can't say that.

25 Q well, I think I may have -- do you have
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1 a knowledge of how Mr. McFarland personally, not in
2 his capacity necessarily as a member of the board or
3 president of the board, has treated Mr. And

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4 Ms. Mazell?

5 A Not personally, no.

6 Q Are you aware of any incidents that
7 Mr. McFarland undertook in his individual capacity
8 against the Mazells that were designed, in your
9 opinion, to injure or damage or cause inconvenience,
10 et cetera, to Mr. And Ms. Mazell?

11 MR. CHARPIA: Your Honor, I'm not sure
12 how he can crawl inside my client's head and make
13 that determination. I would object.

14 THE COURT: Thank you. Withdraw.

15 MR. JUNG: Fair enough. I would
16 apologize, Your Honor.

17 BY MR. JUNG

18 Q Are you aware of the situation involving
19 the complaint that Mr. McFarland filed against the
20 Mazells to an unpaid, basically worthless check?

21 A Yes, I am.

22 Q Was that an action that the board of
23 directors had any knowledge was being undertaken?

24 A No.

25 Q And is it your opinion that

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1 Mr. McFarland undertook that action on behalf of the
2 Board?

3 A It's my opinion he did not consult the
4 Board and the Board had no knowledge. And we would
5 not have supported that.

6 Q Right. I mean if this check
7 allegedly -- this check was, Mr. Mazell's check,
8 payable to the HOA; correct?

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9 A That's correct.

10 Q And is it your knowledge that
11 Mr. Mazell -- excuse me. Mr. McFarland undertook to
12 file a complaint against the Mazells in a sense
13 saying that they had issued a worthless check to the
14 HOA?

15 A That's my understanding.

16 Q Okay. What, if any, action did you take
17 upon learning that Mr. McFarland was essentially
18 filing complaints on behalf of the HOA against a
19 member, one of seven homeowners?

20 A Myself as a board of director and
21 Mr. Morris as a board of director wrote a letter to
22 Mr. McFarland as president and board of director and
23 his wife, treasurer, outlining the fact that they by
24 unfair actions placed the Homeowners Association in
25 legal jeopardy by issuing a complaint for which

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1 there was insufficient information. And he had
2 never consulted the board of directors as required
3 by the covenants and bylaws to take forth such
4 action.

5 Q Mr. Hannemann, is this your letter to
6 Mr. And Ms. McFarland?

7 A It is.

8 Q Okay. And I'm -- I offer Plaintiff's
9 Exhibit 3.

10 (Plaintiff's Exhibit No. 3 is offered for
11 identification.)

12 A Now these are the -- to clarify, if I
13 may, the check was given to me by Ms. Mazell while

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14 her husband was in the hospital. I received the
15 check and sent it via certified mail to the
16 Homeowners Association mailbox. As Mr. Mazell
17 explained, the check was never picked up. It took
18 him some time to find the check. He found the
19 check. Returned the check in its original unopened
20 certified mail envelope to me which I then placed in
21 a priority mail envelope and resent it not to the
22 Homeowners Association mailbox but Mr. McFarlands'
23 home address with delivery confirmation. I know he
24 got that letter based on the post office records on
25 the 21st of June.

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1 Mr. Mazell and his wife explained to me
2 that there had been an issue relating to the check
3 and that she had been served a warrant by
4 solicitor's office for a worthless check. At which
5 point Mr. Morris and I thought that we needed to do
6 two things; one is to establish a record for how the
7 check had been transferred from a board of director
8 member, attempted delivery to the Homeowners
9 Association, back to the board of director to
10 Mr. McFarland; and then we wanted to make sure that
11 we as members of the Board of Directors distanced
12 ourselves as a Homeowners Association from the
13 actions taken by Mr. and Mrs. McFarland.

14 Q Let me ask you a question. Do you
15 believe that based on your membership on the board,
16 your living within close proximity of both parties,
17 that the McFarlands bear any opinion towards the
18 Mazells?

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19 A I believe they bear malice.
20 MR. CHARPIA: I'm going to object to
21 that, Your Honor.
22 THE COURT: Withdraw.
23 MR. JUNG: All right.
24 BY MR. JUNG
25 Q Did you ask any action of -- did you ask

3 A Yes.

5 A Yes.

8 A We held a special meeting and we have --
9 on the 4th of October we held a special meeting, and
10 in accordance with the covenants and bylaws we sent
11 a meeting notice to all the homeowners so that they
12 could participate in the nomination of officers. We
13 held that meeting and the election of officers
14 occurred. And at that meeting we then approved
15 previous board minutes and we also had Mr. Mazell's
16 certified check and that we stated at that meeting
17 that we would relinquish the certified check to the
18 Homeowners Association upon receipt of the personal
19 check that had been delivered or had been held by
20 Mr. McFarland since the 21st of June.

23 A No. In fact, I'm not permitted to
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24 contact him directly, per instructions from his
25 lawyer.

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1 Q Okay. Are you aware -- did you have any
2 opportunity to observe the sign that Mr. McFarland
3 has placed at the Mazells'?

4 A Yes.

5 Q Can you elaborate?

6 A I was called by Ms. Mazell quite excited
7 and agitated that she wanted me to come over to her
8 home so that she could walk out of her house, down
9 her stairs to the edge of her property and take a
10 photograph. I went over to her house. I
11 accompanied her down, she took pictures. And there
12 was a sign that had -- it's a small metal sign that
13 was in the ground apparently on the property of
14 Mr. McFarland. There was an area of grass that had
15 been uprooted, and the sign was placed directly
16 towards so that the only person that could read the
17 sign correctly would be the Mazells.

18 Q I'm going to show you what I'm going to
19 identify as evidence Plaintiff's Exhibits 4 and 5,
20 and ask if you can testify as to the scene depicted
21 in those photographs.

22 (Plaintiff's Exhibit No. 4 and 5 are marked for
23 identification.)

24 A This was the sign that I was asked by
25 Ms. Mazell to go with her to take photographs of.

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1 Q Thank you. Can you identify the smaller

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2 photograph. Mazell v McFarland Transcription
3 If you can't, you can't?
4 A I can't. I've not seen that.
5 Q Okay.
6 MR. JUNG: Withdrawn. Your Honor,
7 Plaintiff's Exhibits 4 and 5. This is 3.
8 Mr. Hannemann, thank you. I don't have
9 any further questions.
10 THE COURT: Mr. Charpia?
11 MR. CHARPIA: Thank you, Your Honor.
12 CROSS EXAMINATION
13 BY MR. CHARPIA
14 Q Do y'all have an official check
15 receiving policy in place right now? Are you trying
16 to endeavor to get one?
17 A We're trying, but we have not received
18 any of the records or the financial information from
19 the prior officers.
20 Q What is the normal procedure for getting
21 paid for the HOA fees? Can you tell us how that is?
22 How do the other members of the HOA do it?
23 A I don't know how the other members do
24 it. I pay by check. We had originally scheduled a
25 special Homeowners Association meeting for the 31st
of May. Mr. McFarland chose not to attend that

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1 meeting. We had intended to give our checks to him
2 and his -- well, actually to the treasurer.

3 Q So he wasn't present?

4 A He was not present.

5 Q Okay. How do you personally pay your
6 HOA dues?

7 Mazell v McFarland Transcription
A I sent them by mail.
8 Q How? Certified? Regular?
9 A If I had an issue and had a question as
10 to whether he would answer my question --
11 Q It's a simple question.
12 A It's not a simple question because
13 you're asking me a question about how I would send
14 something. And I would send it --
15 THE COURT: Mr. Holcombe, calm down.
16 And please state your question.
17 THE WITNESS: I would send it via mail.

18 BY MR. CHARPIA

19 Q Let me restate it. Under normal
20 circumstances and you're wanting to pay your bills,
21 how do you send it?

22 A I normally send it via mail.

23 THE COURT: Okay.

24 BY MR. CHARPIA

25 Q U.S. regular mail?

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1 A U.S. regular mail.

2 Q Okay. And what address do you send it
3 to normally?

4 A I send it to 106, the Homeowners
5 Association box.

6 Q Okay. Any problems ever not having them
7 cashed on time?

8 A You asked me -- are you asking two
9 questions or are you asking one question.

10 Q Well --

11 THE COURT: I believe I asked one

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12 question.

13 A You asked me if I had any problems, and
14 I was going to elaborate on that.

15 Q I'll rephrase. I only meant to ask one
16 question. The question I was asking was when you
17 sent these by regular mail were your checks cashed
18 in the normal fashion?

19 A Can you define what normal fashion would
20 be, please.

21 Q Were your checks cashed when you sent
22 them in a reasonable amount of time?

23 A Eventually. I don't know what you call
24 a reasonable amount of time? What do you call a
25 reasonable amount of time?

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1 THE COURT: Normally the counsel asks
2 questions.

3 THE WITNESS: I understand that, ma'am.
4 I understand. There's an issue that I'm not
5 really -- he's not asking questions --

6 THE COURT: First of all, you need to
7 respect this court, sir.

8 THE WITNESS: Yes, ma'am. I'm sorry. I
9 apologize.

10 THE COURT: And if I hear that again
11 then, I'm sorry, you have to spend some time next
12 door.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: I demand respect and I get
15 it. Now you listen as I speak, please.

16 THE WITNESS: Yes, ma'am.

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17
18 your question?

19 MR. CHARPIA: Thank you, Judge.

20 BY MR. CHARPIA

21 Q When you send these checks, your
22 personal checks regular mail for your HOA payment,
23 are they cashed in the regular fashion? Any
24 problems cashing it?

25 A No, I don't -- I don't think so.
75

1 Q All right. And to your knowledge have
2 any other homeowners had any other issues with
3 payment by sending it regular mail?

4 A I don't know.

5 Q Have you in your regular capacity to
6 receive checks -- you said you sent them to somebody
7 else. I'm trying to figure out -- you don't have a
8 policy in place, a bona ficial (ph); is that right?

9 A That's correct.

10 Q Okay. The other homeowners, when they
11 deposit their check, they send them to the 106
12 address?

13 A I don't know.

14 Q Okay. Is that the understood policy?

15 A I don't know.

16 Q Is that the unofficial understood
17 policy?

18 A I don't know. I sent it to the
19 Homeowners Association because that's what I was
20 told to do.

21 Q Okay. Told by whom?

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1 A I sent their check.
2 Q Okay. Which did you send it in a
3 different manner in which you yourself sent it?
4 A I had sent my dues check to the
5 Homeowners Association mailbox. I failed to
6 actually seal the envelope. When I dropped it into
7 the mailbox I noted it was an unsealed envelope. I
8 immediately sent an e-mail to Mr. McFarland
9 informing him of that situation and asked him to
10 tell me when he received my check.
11 Q For you personally, not the Mazells?
12 A For me personally.
13 Q Okay. So when you got a check hand
14 delivered to you from the Mazells, what did you then
15 do with that check?
16 A I sent it certified mail.
17 Q And why did you do that?
18 A Because it took Mr. McFarland 12 days to
19 respond to my request that he received my check and
20 an open envelope.
21 Q Okay. Well, is there anybody there to
22 accept a certified mail at the 106 address?
23 A It is a mailbox.
24 Q Okay. So it wouldn't be the same as
25 sending it to somebody and then actually be able to

78

1 sign for it because it's just a box; correct?

2 A Yes.

3 Q Okay. But it was sent in a different
4 manner than what you would normally send it. You
5 sent it -- you can understand there would be a

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6 little confusion in that; would that be
7 unreasonable?

8 A I don't think so.

9 Q But you do it -- you send it in a
10 different manner that would normally be sent by the
11 other Homeowners Association -- I mean, that's how
12 you sent it; correct?

13 A That's how I sent it. I can't answer
14 what other homeowners would do.

15 Q Okay. No other question.

16 MR. CHARPIA: No other questions.

17 THE COURT: Thank you. Mr. Jung?

18 MR. JUNG: Nothing, Your Honor. Thank
19 you.

20 THE COURT: Thank you. You may be
21 seated.

22 (At this time the witness, David Hannemann, is
23 excused from the witness stand.)

24 MR. JUNG: Very brief witness, Your
25 Honor. The plaintiff would call Ms. Aimee Pereira.
79

1 THE COURT: Good morning. Could you
2 please state your name.

3 THE WITNESS: Aimee Pereira.

4 THE COURT: How do you spell your last
5 name.

6 THE WITNESS: P-E-R-E-I-R-A. And Aimee
7 is A-I-M-E-E.

8 THE COURT: Thank you.

9 - - -
10 whereupon, Aimee Perierra, having been first
Page 66

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11 duly sworn, testifies as follows:

12

13 THE COURT: Thank you. Please take your
14 seat and answer any questions that Mr. Jung may have
15 for you.

16 DIRECT EXAMINATION

17 BY MR. JUNG

18 Q Good morning, Ms. Pereira. Do you know
19 Ms. Mazell?

20 A Yes.

21 Q Are you aware of an incident occurred
22 where the police had to be called to the Mazell
23 house?

24 MR. CHARPIA: Who is this witness? I'm
25 sorry.

80

1 MR. JUNG: I apologize. Would you state
2 your name for the record, please.

3 A Aimee Pereira.

4 Q Ms. Pereira, where do you live? And how
5 do you know, if you know, Ms. Mazell?

6 A I live up Old Trolley in Summerville.
7 And I met Sophia when both of our sons were in
8 preschool together.

9 Q Okay. Are you familiar with the
10 incident where the police had to be called involving
11 an inaction between Mr. McFarland and Ms. Mazell?

12 A The incident was when Scott Drummond
13 slammed his car into the parked cars that were in
14 front of the Mazells' house.

15 Q So you were attending that party at the
Page 67

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16 Mazells' house?

17 A Uh-huh. Yes.

18 MR. CHARPIA: Objection, Your Honor.

19 The auto accident, none of this -- the auto accident
20 isn't in the complaint that we're here for.

21 MR. JUNG: It'll show a pattern, Your
22 Honor. And it's -- I really just have one more
23 question of this witness.

24 THE COURT: Thank you.

25 BY MR. JUNG

81

1 Q Were you present when the police
2 instructed Ms. Mazell not to speak -- I mean
3 Mr. McFarland not to speak to Ms. Mazell?

4 MR. CHARPIA: Objection, hearsay.

5 MR. JUNG: If she heard it, she heard
6 it.

7 THE COURT: What's the --

8 MR. CHARPIA: It's offered for the proof
9 of the matter.

10 MR. JUNG: And essentially I think she
11 can testify that she heard a police officer say
12 something.

13 THE COURT: No.

14 MR. JUNG: No? Okay, Your Honor. Let
15 me ask this question.

16 BY MR. JUNG

17 Q Were you present when Mr. McFarland was
18 speaking or yelling at the Mazells?

19 A Yes.

20 Q And can you describe what he was doing?

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21 A He was yelling, "just leave him alone,"
22 meaning Scott. Just telling the Mazells to leave
23 Scott alone and to let Scott go back in the house
24 and that this wasn't an issue. He was asserting
25 himself into the problem area.

82

1 Q Essentially did Mr. Mazell -- were you
2 present when Mr. Mazell approached Mr. McFarland?

3 A Yes.

4 Q What did you observe?

5 A I just saw Mr. Mazell just ask him --
6 that they had to deal with it and it wasn't his
7 problem.

8 Q Essentially --

9 A It wasn't Mr. McFarland's problem.

10 Q -- did Mr. Mazell ask Mr. McFarland to
11 stop harassing his wife?

12 A He didn't use the word "harassing"
13 but --

14 Q Speaking to her?

15 A -- speaking, yes.

16 MR. JUNG: No further questions.

17 THE COURT: Thank you. Mr. Charpia?

18 CROSS EXAMINATION

19 BY MR. CHARPIA

20 Q Was the context of the -- I'm sorry.

21 I'm going to ask you just one or two questions. I
22 won't keep you.

23 Was the context of the "don't talk to my
24 wife," was it, in your opinion, within the confines
25 of the situation? Meaning, there was an escalated
 Page 69

1 event going on, emotions were running high. was the
2 understanding of the no contact was let's just walk
3 away and leave things alone?

4 A Yes, at that moment it was. There had
5 been prior --

6 Q I'm --

7 A Okay. At that moment, yes.

8 Q Okay.

9 MR. CHARPIA: No further questions, Your
10 Honor.

11 THE COURT: Mr. Jung?

12 MR. JUNG: Nothing further, Your Honor.

13 THE COURT: Thank you, ma'am. You may
14 step down.

15 (At this time the witness, Aimee Pereira, is
16 excused from the witness stand.)

17 THE COURT: Morning. Please state your
18 name.

19 THE WITNESS: Robert Macdonald.

20 M-A-C-D-O-N-A-L-D.

21 THE COURT: Thank you, Mr. Macdonald.
22 Please raise your right hand for oath.

23

24

25

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1 - - -
2 whereupon, Robert Macdonald, having been
3 first duly sworn, testifies as follows:

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4

5

THE COURT: Thank you. Please take your

6

seat.

7

DIRECT EXAMINATION

8

BY MR. JUNG

9

Q Mr. Macdonald, I apologize for

10

forgetting your name. You've been subpoenaed to

11

come here today?

12

A Yes.

13

Q And what is your employment or --

14

A Town of Summerville Storm Water Manager.

15

Q Okay. Have you ever had occasion to

16

come out to the property known as 107 Life Oak

17

Drive? I believe it is in Live Oak Village.

18

A Many.

19

Q Sir?

20

A Many.

21

Q Many times, okay. And do you know who

22

the property owner of 107 Live Oak Drive is,

23

according to your records?

24

A I don't have the number. I know where

25

the Mazells live and I know where the McFarlands

85

1

live.

2

Q Okay. Did you ever have occasion to be

3

on the Mazells' property with Mr. McFarland?

4

A Yes.

5

Q Okay. And was Mr. McFarland on the

6

Mazells' property to your knowledge?

7

A To my knowledge, yes.

8

Q Can you tell us, I believe you recently

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9 had opportunity to check your records, but when did
10 that occur, to your knowledge?

11 A The time frame which we were having
12 meetings was in the early part of 2010. It was
13 several meetings through say March to June of two
14 thousand --

15 MR. CHARPIA: Your Honor, we're not here
16 on a trespass issue. We're here on what she's
17 presented. I feel like we're going way out of
18 bounds on these.

19 MR. JUNG: We have a trespass notice
20 that's been introduced into evidence dated --

21 MR. CHARPIA: I objected to it being
22 entered into evidence.

23 MR. JUNG: I thought the Court ruled on
24 it. But it was in 2009, Your Honor. And here we
25 are testimony of 2010 that the gentleman's on the
86

1 property. I believe that would show a pattern of.

2 THE COURT: Proceed.

3 MR. JUNG: Thank you.

4 BY MR. JUNG

5 Q You indicated that it occurred many
6 times.

7 A There was more -- I can't say how many
8 times. There was more than one occasion where we
9 met with the McFarlands per their request on the
10 property in relevance to the drainage structure that
11 was being installed.

12 Q One final question. Do you have any
13 doubt in your mind that that was after 2009?

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14 A Yes, it was 2010, early part of 2010.
15 MR. JUNG: Thank you, sir.
16 MR. CHARPIA: Thank you.
17 CROSS EXAMINATION
18 BY MR. CHARPIA
19 Q Could you tell me your full name again.
20 I'm sorry. I didn't --
21 A Robert Macdonald, M-A-C-D-O-N-A-L-D.
22 Q And what do you do for the Town?
23 A Storm Water Manager.
24 Q What is your job title there?
25 A Storm Water Manager.

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1 Q For the Town of Summerville?
2 A Yes, sir.
3 Q And why were you on the Mazells'
4 property? I'm just trying to get some
5 clarification?
6 A Due to the storm water system that was
7 to be installed.
8 Q Okay. And was this part of your duties
9 of being there? Who contacted you? How did you get
10 there?
11 A There were occasions where both parties
12 had contacted us. We had many meetings there.
13 There were occasions where the McFarlands requested
14 meetings in relation to the structure that was being
15 installed.
16 Q Okay. Would Mr. McFarland or his wife
17 be present on the property? I mean were they
18 supposed to be there? There was a meeting going on?

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19 A Well that's not for me to determine

20 whether or not they were supposed to be on

21 somebody's property.

22 Q What was the context of them being over

23 there? Was it by design that the parties be over

24 there because they were investigating a common

25 property dispute or an easement?

88

1 A To my knowledge there was a line

2 dispute; I can't testify to that; I don't know.

3 Q But it would be in the context of the

4 easement, I mean it was an HOA issue; is that right?

5 A No, it's not an HOA easement. It was a

6 Town drainage easement. The Town has a right to

7 maintain drainage.

8 Q Was Mr. McFarland assisting you on kind

9 of bringing you up to speed on things? Why was he

10 there on the Mazell property? I'm just trying to

11 figure that out.

12 A The exact reason I can't say exactly at

13 this time. That was a long time ago.

14 Q Okay.

15 A But it was in regards as to what they

16 were wanting done as far as the drainage system.

17 Q Okay. But it would have been in the

18 context of -- oh, is it possible that it would have

19 been in the context of an HOA issue?

20 MR. JUNG: That's speculation, Your

21 Honor.

22 THE COURT: Can you rephrase the

23 question.

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24 BY MR. CHARPIA

25 Q You don't know why they were on the
89

1 property, the Mazells -- I mean the McFarlands on
2 the Mazells' property?

3 A To discuss the issues of the drainage
4 structure that was being installed.

5 Q Okay. But they weren't obviously
6 intending to trespass on the property. They were
7 there for a specific purpose?

8 A I can't say what.

9 Q You can only say they were there for the
10 storm drainage.

11 A They were on that property. That's all
12 I can testify.

13 Q When the McFarlands called you out there
14 did the Mazells ever come onto their property?

15 A No. We've never done -- we have -- the
16 Storm Water Department has never done anything on
17 the Mazells' property other than on the flood street
18 property (sic).

19 MR. CHARPIA: All right. Thank you.

20 MR. JUNG: One question.

21 REDIRECT EXAMINATION

22 BY MR. JUNG

23 Q Was it the Storm Water Department or the
24 McFarlands that initiated your presence being on the
25 Mazells' property?

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1 A It was the McFarlands.

2 Q Thank you. No further questions.
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3 THE COURT: Mr. Charpia?

4 MR. CHARPIA: No, Your Honor.

5 THE COURT: I see. Thank you, sir. You
6 may be seated.

7 (At this time the witness, Robert Macdonald, is
8 excused.)

9 MR. JUNG: Your Honor, may I have a
10 moment to consult with my client?

11 THE COURT: Yes. As a matter of fact,
12 this court will recess for five minutes.

13 (At this time there is a brief break in the
14 proceeding.)

15 THE COURT: Okay. Mr. Jung.

16 MR. JUNG: If it please the Court, Your
17 Honor, the Plaintiff rests.

18 THE COURT: Thank you.

19 Mr. Charpia?

20 MR. CHARPIA: Thank you, Your Honor.

21 I'd like to at this time make a motion to dismiss
22 for there not being sufficient evidence on the
23 record to meet the burden that we have been here for
24 today.

25 THE COURT: Thank you.

91

1 Mr. Jung?

2 MR. JUNG: Certainly, Your Honor, I
3 believe the statute is fairly broad and encompasses
4 substantial and reasonable intentional intrusion for
5 no legitimate purpose causing mental or emotional
6 distress. I respectfully submit that what Your
7 Honor has heard today is evidence in a pattern of
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8 intention, unreasonable and substantial intrusion
9 into the lives of my clients by the defendant, and
10 certainly for no legitimate purpose and certainly
11 causing emotional distress. And I would submit that
12 the evidence is more than sufficient to bear out the
13 case going forward, Your Honor.

14 THE COURT: Anything else, Mr. Charpia?

15 MR. CHARPIA: Your Honor, I would
16 certainly reference the stalking and harassment
17 statutes were there for circumstances that involve
18 certain protective measures, but I haven't seen
19 anything here that would rise to those levels and
20 certainly not a pattern to anything. They are
21 different and isolated events that when we put
22 things into context I'm confident it won't be an
23 issue.

24 THE COURT: Anything else, Mr. Jung?

25 MR. JUNG: Nothing further, Your Honor.
92

1 THE COURT: Mr. Charpia, I'm going to
2 deny your motion at this time.

3 MR. CHARPIA: Okay.

4 THE COURT: You may proceed.

5 MR. CHARPIA: I'd like to call the first
6 witness, Jim Weldon.

7 Can you please state your full name for
8 the record.

9 THE COURT: One moment.

10 And your name is?

11 THE WITNESS: Jim Weldon.

12 THE COURT: I'm sorry? Jim Weldon?
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13 THE WITNESS: Yes, ma'am.

14 THE COURT: Please raise your right hand
15 for oath, Mr. Weldon.

16 - - -
17 Whereupon, Jim Weldon, having been first
18 duly sworn, testifies as follows:

19 - - -
20 THE COURT: Thank you. Please take your
21 seat and once again state your name for the record.

22 THE WITNESS: Jim Weldon.

23 THE COURT: And answer any questions
24 that Mr. Charpia may have for you.

25 MR. CHARPIA: Thank you, Your Honor.
93

1 THE COURT: Sure.

2 DIRECT EXAMINATION

3 BY MR. CHARPIA

4 Q Why are you here today?

5 A Subpoenaed by --

6 Q Can you speak up a little bit?

7 A Subpoenaed by the -- I'm sorry. The
8 McFarlands.

9 Q Mazells?

10 A Mazells. I'm sorry.

11 Q Okay. What is your capacity -- what do
12 you do?

13 A Code enforcement for the Town of
14 Summerville.

15 Q And have you on occasion been called by
16 the Mazells to respond to an issue of any debris?

17 A No, sir, not that I can remember.

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18 Q Have you ever issued any fines,
19 citations or otherwise for them for any debris on
20 their property?

21 A No.

22 Q Okay. Can you testify with any personal
23 knowledge as to whether or not there's been any
24 debris put on the property belonging to the
25 McFarlands on the Mazells' property?

94

1 A I can very vaguely, and I can't remember
2 the context but I can very vaguely recall a
3 conversation with the McFarlands. I'm sorry. I'm
4 trying.

5 Q To M names, yeah.

6 A And I basically remember the
7 conversation being, you have to maintain your yard
8 to be on your property, not to be transporting it
9 for another area to be in.

10 Q Okay. But performed investigation, no
11 citations, they were never cited?

12 A That's right.

13 Q Okay. Thank you.

14 MR. CHARPIA: No further questions, Your
15 Honor. Please answer any questions.

16 MR. JUNG: I have no questions, sir.

17 THE COURT: Thank you.

18 (At this time the witness, Jim Weldon, is
19 excused from the witness stand.)

20 MR. CHARPIA: I call next, second
21 witness, Officer McClellan.

22 THE COURT: And your name?
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23 THE WITNESS: Officer James McClellan.
24 THE COURT: Please raise your right hand
25 for oath.

95

1
2 Whereupon, Officer James McClellan, having
3 been first duly sworn, testifies as follows:
4

5 THE COURT: Thank you. Please take your
6 seat. State your name once again for the record.

7 THE WITNESS: I'm Officer James
8 McClellan with the Summerville Police Department.

9 THE COURT: Answer any questions
10 Mr. Charpia may have for you.

11 DIRECT EXAMINATION

12 BY MR. CHARPIA

13 Q Thank you for coming today. And I
14 appreciate your patience.

15 what is your rank?

16 A I'm a patrolman first class, full
17 training officer.

18 Q You're employed by whom?

19 A The town of Summerville, sir.

20 Q Okay. Do you recall the incidents of
21 July 11th?

22 A Yes, sir, I have a report from it.

23 Q well, from your own knowledge do you
24 recall the events as they happened on that day?

25 A Very vaguely. Like I said, I have a

96

1 Mazell v McFarland Transcription
report I can read from. I've answered a lot of
2 calls since then.

3 MR. CHARPIA: Permission to refresh his
4 recollection with the events.

5 MR. JUNG: The only objection I have,
6 Your Honor, and I think we ought to stop this early,
7 if this witness has any personal knowledge of the
8 events that took place that are subject of the
9 report or merely he's signing off in a supervisory
10 capacity.

11 MR. CHARPIA: Your Honor, the Court has
12 granted latitude to them to present evidence from
13 reports she's filed. I would ask for the same
14 courtesy. We do have the officer here to testify.

15 THE WITNESS: Your Honor?

16 THE COURT: Yes. Speak.

17 THE WITNESS: I'm not the supervisor.
18 I'm the reporting officer.

19 THE COURT: You're the reporting
20 officer?

21 THE WITNESS: Yes, Your Honor.

22 MR. JUNG: My mistake.

23 THE COURT: Okay.

24 BY MR. CHARPIA
25 Q Feel free to refresh your recollection.

97

1 MR. CHARPIA: The notes, I believe for
2 your purposes, is Exhibit No. 3, I believe -- letter
3 C.

4 THE COURT: C?

5 MR. CHARPIA: Yes.

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6 A Yes, on July 11th, 2012 I was
7 dispatched to 107 Oak Village Lane at around 5:24
8 from the dispatcher call. The incident apparently
9 occurred around 5:10 from the report I have in front
10 of me. This was a call actually for our sister
11 shift, but because we come onto work at 6:00 p.m. we
12 generally start taking calls earlier, Your Honor,
13 just so they can get home to their families on time.
14 So this was my first call of the night that night.

15 When I arrived on scene it was for a
16 neighbor dispute. Upon arrival I met with
17 Ms. Sophia who stated that she had a long history of
18 problems with her neighbors at 105 Oak Village Lane.
19 which I was not aware of. I had never been out
20 there to any calls to my recollection before that
21 date.

22 She stated her mother, Ms. Holliday,
23 witnessed -- she was witness number 2, stated she
24 observed Jennifer and William standing in their yard
25 at 107 Oak Village Lane. Sophia stated when she

98

1 walked outside she did not observe either William or
2 Jennifer standing in her yard. Sophia stated she
3 observed both Jennifer and William standing near a
4 drain on their property.

5 Sophia stated Jennifer asked her what
6 was wrong several times, but she refused to answer.
7 Sophia stated she was told not to speak to Jennifer
8 or William. Sophia stated after Jennifer asked her
9 what was wrong several times that William walked up
10 to her and asked her several times again what was

11 wrong. She did not reply. Sophia stated she
12 returned to her residence and contacted her husband
13 who stated -- you want me to keep going, sir?

14 Q Yes. Yes. Well actually I can -- we'll
15 get -- can you please tell the Court who initiated
16 the contact with your office.

17 A which was relayed from dispatch, I
18 believe Sophia was the complainant.

19 Q And you testified that you spoke with
20 the Mazells. And you also testified that you spoke
21 with Mr. And Ms. McFarland; is that correct?

22 A I spoke to her on the scene. I spoke to
23 her husband after leaving the scene, if I remember
24 correctly. And I didn't speak to --

25 Q Okay. You hadn't -- he wasn't there?
99

1 A Yeah. I spoke to the McFarlands who
2 were outside. When I -- when I arrived on scene
3 they were outside looking in the yard still. I
4 talked to the McFarlands and gained their side of
5 the story.

6 Q Do you see in this courtroom today the
7 person that's listed as the witness to the alleged
8 trespass?

9 A Not to my recollection.

10 Q Okay. In your report it clearly states
11 that Ms. Mazell did not personally observe it. And
12 those were her statements?

13 A That's what she stated to me, sir.

14 Q And afterwards did you -- I mean what
15 were your thoughts afterwards? Did you have to go

16 consult with your supervisor?

17 A I actually -- I did contact my
18 supervisor and asked him if we even would take a
19 report for this. This isn't generally something we
20 take a report for. Generally we tell both parties,
21 you go to your property, quit talking and, you know,
22 act like adults. If you don't have anything nice to
23 say, don't say anything at all. Same thing I tell
24 my children. That's normally what we normally do.
25 But they were requesting a report. I contacted my
100

1 supervisor and my supervisor said if they want a
2 report, go ahead and give them a report.

3 And during my investigation, talking to
4 both sides, the McFarlands both stated that when
5 Ms. Sophia went to check her mail on the way back
6 she extended the middle finger in a derogatory
7 gesture towards them. And based on all the evidence
8 that I had in front of me at that point in time,
9 Ms. Mazell seemed to be the primary. That's why she
10 was listed as the -- that's why she's in the subject
11 block. She's not listed as the suspect.

12 Q Okay. So you made a full investigation,
13 called your supervisor while you were out there,
14 essentially -- and I don't want to capture the
15 words -- if I'm not mistaken, there for an
16 unreasonable complaint?

17 A We deal with these complaints all the
18 time, sir. I mean, they're never unreasonable. But
19 we generally never have to take it to the point that
20 we normally do a report. Normally once you talk to

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21 both parties and you say, look, I understand you
22 have differences... I mean that's like being in the
23 same house with someone for so long, you're going to
24 eventually have squabbles, it's going to happen.

25 Q Sure.

101

1 A We generally tell people, go to your
2 sides. Take some time. Cooler heads will prevail
3 with time.

4 At this point in time you can just see
5 that it's something that had been ongoing for so
6 long at this point so that's why my supervisor
7 suggested that we do the report.

8 Q Okay.

9 MR. CHARPIA: Please answer any
10 questions that --

11 MR. JUNG: Thank you.

12 CROSS EXAMINATION

13 BY MR. JUNG

14 Q You didn't see anything that occurred
15 that's the subject of your report; correct?

16 A Everything was pulled in by both the --
17 both sides of the parties.

18 Q So did you question Ms. Mazell whether
19 she used the middle finger gesture towards the
20 McFarlands?

21 A I cannot answer that 100 percent, sir.

22 Q It's not in your report, is it?

23 A Not that I see.

24 Q And you don't recall her saying yes, I
25 used the middle finger gesture?

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1 A I can't answer that 100 percent.

2 Q And you're basing that on just what the
3 McFarlands told you but you have no personal
4 knowledge as to whether or not it's the truth.

5 A Generally that's what we do, sir. We
6 take both sides and then put it our report.

7 Q Fair enough. Thank you, sir.

8 MR. JUNG: Thank you.

9 THE COURT: Anything further?

10 MR. CHARPIA: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. CHARPIA

13 Q It was your full investigation. You
14 would have had an opportunity to ask her about it
15 until you talked to the -- you talked with her
16 first; correct?

17 A Yes, sir. I talked with her, I talked
18 with the McFarlands, and I went back and I gave
19 Ms. Sophia the case number. And at that point in
20 time I was still deciding which way it was going to
21 go, trying to make sure I had all the facts
22 together. And then after I left the scene is when I
23 actually stopped and typed the report and that's
24 when I made my determination it should go where.

25 MR. CHARPIA: No further questions.

103

1 Thank you.

2 MR. JUNG: I don't have anything.

3 THE COURT: Do you have anything else?

4 MR. JUNG: No, thank you.

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5 THE COURT: You may be excused.

6 (At this time, the witness, James McClellan, is
7 excused from the witness stand.)

8 MR. CHARPIA: I'd like to call the next
9 witness, Jennifer McFarland.

10 THE COURT: Ms. McFarland, please raise
11 your right hand.

12 - - -

13 whereupon, Jennifer McFarland, having been
14 first duly sworn, testifies as follows:

15 - - -

16 THE COURT: Thank you. Please take your
17 seat.

18 THE WITNESS: Thank you.

19 THE COURT: Please state your name once
20 again for the record and answer any questions
21 Mr. Charpia has for you.

22 THE WITNESS: Sure. Jennifer McFarland.

23 DIRECT EXAMINATION

24 BY MR. CHARPIA

25 Q Jennifer, thank you for being here
104

1 today.

2 what is your relationship, we already
3 know but state it for the record, with the
4 defendant?

5 A He's my husband.

6 Q Okay. Does he have a nickname?

7 A Bill.

8 Q Bill. On the -- if you need a copy of
9 this, I'll be happy --

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10 A No, I remember it, well versed.

11 Q Okay. Your Honor, I'm referencing the
12 complaint that Ms. Mazell filed.

13 Were you present at the Homeowners
14 Association meeting on September 12th, I believe?

15 A It is September 12th. She wrote
16 September 11th.

17 Q Okay. But you were present there?

18 A Yes.

19 Q Who all was there with you?

20 A Mr. Carlton Holcombe, and my son,
21 Mitchell, and my husband, Bill.

22 Q Okay. And what are the noticing
23 mechanisms in place in terms of calling a meeting
24 with -- you know, do y'all send out certified mail?
25 Do y'all send out --

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1 A Yeah. Well the bylaws state you must
2 send it out within 10 days or no sooner than ten
3 days, the date of the meeting, and we notice it via
4 certified mail.

5 Q Okay. And do you recall if the Mazells
6 were noticed on the hearing?

7 A Yes.

8 Q Excuse me. I'm sorry.

9 A The meeting.

10 Q The Homeowners Association meeting?

11 A Uh-huh.

12 Q Okay. Can you describe the parking
13 situation that day?

14 A At the public library, the public
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15 library lot was full.

16 Q Okay.

17 A So when we arrived Bill dropped myself,
18 Mr. Holcombe and our son off at the door and he
19 proceeded to the Galleria parking lot and parked at
20 the very edge of that so that he could, you know,
21 come into the meeting because there was no space in
22 the parking lot of the library.

23 Q Is it kind of an unofficial overflow
24 parking?

25 A I would say.

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1 Q Okay. But it wouldn't have been -- he
2 was going -- he was where he was supposed to be and
3 everybody knew he was in the meeting; right?

4 A At the exact time, yes.

5 Q Okay. Before the meeting took place --
6 or actually let me back up for a second.

7 Where did y'all hold the meeting
8 exactly?

9 A Oh, in the conference room of the public
10 library.

11 Q Could you describe the conference room
12 to us. Is there a window?

13 A Oh yeah. When you walk into the public
14 library, you -- the conference room they schedule
15 you to have it, is the one directly facing the
16 parking lot of the public library which also offers
17 a view into the Galleria parking lot.

18 Q Okay. Before y'all called the meeting
19 did y'all try to ascertain if any other members

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20 would be coming?

21 A Yes. We were waiting to see if anybody
22 else was going to show up, and we were just simply
23 sitting at the table waiting to see how many members
24 would make the meeting.

25 Q Okay. Did you happen to see the
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1 individual who came in earlier, Heather Capps?

2 A Uh-huh.

3 Q who you later found out her name?

4 A Uh-huh.

5 Q She was wearing some pretty recognizable
6 clothing that day?

7 A That's correct. Some very light lime
8 green pants and summer bag.

9 Q And you I believe -- well, how did you
10 know she was talking to or associated with
11 Ms. Mazell?

12 A Because you could see her standing at
13 Ms. Mazell's car.

14 Q Okay.

15 A We came into the meeting. We looked
16 into the parking lot. We could see her sitting in
17 her vehicle. We noticed her vehicle; we could see
18 her sitting in it. So we sat down waiting, assuming
19 that she was going to come to the meeting. At that
20 time we saw Ms. Capps walk up to her car, and I
21 assume was speaking to her. We were just simply
22 waiting for her to come in, if she was coming or
23 not. I mean it was reasonable for us to assume that
24 she would be there for the meeting.

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25 Q Okay. But you didn't have any knowledge
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1 of why she was there other than for maybe to go to
2 the meeting?

3 A No, I wouldn't know.

4 Q And you wouldn't know. But the
5 individual you saw conversing with her, did she come
6 inside the library?

7 A Yes, she returned to the library. And I
8 saw her walking past the open doors several times
9 where the meeting was. So at that time, after
10 seeing her speaking to Ms. Mazell, I just went up
11 and closed the doors because we were ready to begin
12 our meeting soon anyway, which was the normal
13 procedure to close the doors when you're having a
14 meeting, so...

15 Q Sure. And we heard testimony from
16 Ms. Capps that she was there checking on her
17 daughter?

18 A Right. I wouldn't know.

19 Q But you didn't know any different than
20 that?

21 A No.

22 Q So you yourself or one of the members
23 said what, is Ms. Mazell coming?

24 A Mr. Holcomb asked if we were required to
25 wait any longer, if she were coming.

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1 Q So when Bill went outside it was to
2 ascertain whether or not she was going to be

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3 attending the meeting?

4 A That's right.

5 Q Y'all had that conversation?

6 A That's right. Because last year's
7 meeting Mr. Mazell was late and she was quite
8 concerned, Ms. Mazell, that we weren't holding the
9 meeting to wait for him. So we didn't want that
10 same scenario to occur this year when we were trying
11 to extend the courtesy of waiting.

12 Q Okay. So out of an abundance of caution
13 you went out to ascertain?

14 A Uh-huh.

15 Q Okay. And did you observe what Bill did
16 after he went outside?

17 A Yeah. He stood at the edge of the
18 library parking lot, motioned, are you coming to the
19 meeting. Did this, pointed at the clock
20 (indicating). Because again we would have no other
21 knowledge why she would be sitting in that parking
22 lot at that time. I have no personal details of
23 what her schedule is. And he looked, and he says,
24 know what? I assume he took the picture that we've
25 all seen and he came directly back into the meeting.
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1 Q Did he communicate to you why he took
2 the picture?

3 A Yes. Because we wanted to have proof
4 that she was there and she could have attended the
5 meeting should she have wanted to. Because we've
6 had many problems with them, and at meetings and --

7 Q Okay. So completely harmless,

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reasonable behavior in your opinion?
9 A Absolutely.
10 Q Known your husband a long time?
11 A Yeah. He, he never stepped anywhere to
12 approach her at all.
13 Q Did he approach her from any other point
14 from that vantage point that you observed him
15 approaching?
16 A No. And I had eyes on him at all times.
17 Q Did he step by the car to attempt to
18 take pictures of the daughter?
19 A No. I never saw the daughter.
20 Q Okay.
21 A I did notice, though, as our vantage
22 point from the meeting that she never left her car.
23 She stayed in that car the whole time that we were
24 in the meeting until we left.
25 Q Okay.

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1 THE COURT: Listen. Let me explain to
2 you all, don't feel that I'm rushing you because
3 this is your day in court. You all paid your
4 counsel. This is what you -- I mean what you
5 wanted. You filed it, so you're having your day.
6 Okay?

7 MR. CHARPIA: Thank you, Your Honor.

8 BY MR. CHARPIA

9 Q You've explained and put into context
10 the picture. I appreciate that. That wouldn't be a
11 normal thing that you would have to do for somebody
12 else.

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13 A No.
14 Q Okay. Your husband was covering his
15 bases, in your opinion?

16 A Yes.

17 Q Please answer any questions that
18 Opposing Counsel may have.

19 THE COURT: Thank you. Mr. Jung?

20 MR. JUNG: Thank you.

21 CROSS EXAMINATION

22 BY MR. JUNG

23 Q Ms. McFarland, there's testimony that
24 Mr. Mazell notified you or the board in advance of
25 this September 12th meeting that he wasn't

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1 attending.

2 A That is true.

3 Q So you knew Mr. Mazell was not coming.

4 A I knew Mr. Mazell was not coming; that
5 is correct. But Ms. Mazell, as far as I know, is
6 currently a homeowner at 107 and she could have
7 attended on their behalf.

8 Q Fair. Briefly you testified that you
9 were well aware that Ms. Mazell didn't want any
10 action to be taken when her husband wasn't there
11 from previous meetings.

12 A She is a homeowner on the deed and she
13 can vote and make any actions as any other homeowner
14 in Live Oak Village could do. So no, it's not
15 reasonable for me to assume that she's not able to
16 make those decisions for her husband. So she could
17 have arrived at the meeting on her own.

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18 Q In the past you just testified that --

19 A No, the -- the previous meeting she said
20 he was on his way.

21 Q And that you expressed -- you said
22 that -- you acknowledged her concern that you didn't
23 want to get started when he was not present.

24 A That's correct. But he notified he
25 wasn't going to be present at this meeting. See
113

1 what I'm saying? This is a different scenario. The
2 previous time he was attending; this one he was not.

3 Q That meeting never really took place
4 though, did it? There wasn't enough people. It was
5 only yourself and -- when I say you, McFarland and
6 Mr. Holcombe, that's two out of seven?

7 A I understand your question. But what
8 does that mean whether I was there or not?

9 THE COURT: Normally the person on the
10 witness stand is -- you don't ask questions.

11 THE WITNESS: I understand. I'm sorry.

12 THE COURT: So your question?

13 BY MR. JUNG

14 Q My question was that meeting never took
15 place because of lack of quorum.

16 MR. CHARPIA: Objection, relevance.

17 THE WITNESS: I know. I'm trying to
18 figure out -- yes, I guess that's true.

19 THE COURT: Okay.

20 THE WITNESS: It still wasn't doing --

21 THE COURT: That's fine. You answered
22 it.

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THE WITNESS: Thank you.

MR. JUNG: I have no further questions.

THE COURT: Thank you.

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REDIRECT EXAMINATION

BY MR. CHARPIA

Q Y'all had a meeting that day of some
variety at the library?

A Yes, we did.

Q You didn't have a quorum so you couldn't
vote on anything, but you had a meeting; correct?

A We did have one, a meeting; correct.

Q Everyone was noticed, had opportunity to
attend?

A Absolutely.

Q Let's talk about briefly the -- in the
complaint there was --

MR. JUNG: Your Honor, beyond the scope
of Cross, Your Honor.

THE COURT: I'm sorry?

MR. JUNG: I believe this specific line
of questioning is beyond the line of Cross on
Redirect here.

MR. CHARPIA: Your Honor, I'm trying to
respond to about three hours of stuff. I was giving
him an opportunity as I was taking it, each measure,
down here. I should have been clear. I'm moving on
to my next point with her, and he can have an
opportunity to Cross on that.

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THE COURT: Did you think he rested?
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2 MR. JUNG: No. I believed he offered me
3 the witness to Cross examine.

4 THE COURT: Were you not finished?

5 MR. JUNG: No, I'm done. But I mean I
6 believe he's teething the scope of my Cross. Now
7 it's not -- I don't want to try the Court's
8 patience, but I believe that's the normal rules.

9 MR. CHARPIA: I'm moving on to my next
10 point, and he can ask all the questions he wants.

11 THE COURT: Okay. Fine. That's fine.

12 You heard from officer McClellan today.
13 And he testified that he was the responding officer.
14 Can you tell me a little bit about what happened
15 that day in your own words?

16 A Yes. My husband and I --

17 Q And just for the record, I'm speaking
18 for the alleged incident I believe that alleged
19 trespass I guess on property, I think it was on or
20 about July 11th. Does that seem about right?

21 A Yeah, that's correct. Yeah. No, we
22 were, as was said, we were working in our yard. We
23 were working on doing some cleaning of some drains
24 that we have on our property and the I guess woman
25 who was staying with the Mazells at that time, you
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1 know, said, "what are you doing?" Or, "is there
2 some problem?" And I said, "no." And I continued
3 working with my husband on our property. In moments
4 Sophia Mazell came out, started pacing up and down.
5 And, you know, we were asking her if there was
6 something wrong. Because we couldn't understand why
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7 she would exit her home and pacing while we were
8 working in our yard. We weren't near her yard. It
9 borders, but we were on our property. So she kept
10 pacing back and forth. We did ask her several times
11 what was wrong. She turned around, went back in the
12 house and moments later had walked to the mailbox,
13 came back, having the late notice for the HOA dues,
14 and gave me the finger. And half an hour later an
15 officer showed up.

16 Q Thank you. In the -- in Mazell's
17 Complaint there's reference to some sort of
18 instructions not to speak. Do you recall receiving
19 any notice or instructions never to speak to them?
20 Y'all are neighbors; right?

21 A Yeah. I mean we try not to speak to
22 them. But no, we have not been given any
23 instructions, so to speak, from anyone.

24 Q And we heard earlier from one of their
25 witnesses there was a car wreck or something outside
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1 of the home.

2 A Well, that's correct.

3 Q Okay. And we also heard from Mr. Mazell
4 who stated that he came over to your porch and gave
5 you the business about interfering with, you know,
6 his car; is that accurate?

7 A I don't recall it that way. But it was
8 a very, very difficult night for everyone involved.
9 And the Drummonds had a young daughter who was
10 staying with me because of all this very negative
11 issue that was occurring outside. So I don't recall
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12 being very concerned about Mr. Mazell or Ms. Mazell
13 at all that evening other than the fact that she was
14 screaming "send the drunk to jail." which I thought
15 was completely inappropriate in front of an
16 11-year-old child.

17 Q Given the context and heightened
18 emotions of that evening, if we even take it in
19 light of let's say he did tell you that, would it be
20 in the context of let's calm down?

21 A Yes. Everybody was trying to not be
22 upset. It was a very, very horrible evening.

23 Q Okay. When Ms. Mazell, to use your own
24 words, gave you the finger, you understand -- can
25 you demonstrate that gesture?

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1 A I would prefer not to. I think everyone
2 knows what --

3 THE COURT: Yes. And no, she may not
4 demonstrate it.

5 THE WITNESS: I would not.

6 MR. CHARPIA: I agree it's a horrible
7 thing.

8 BY MR. CHARPIA

9 Q But you understand what it is to extend
10 a finger. That's what she did?

11 A I know what she did. Yes, she did.

12 Q You took that as an aggressive gesture
13 by her?

14 A Yes, and very offensive.

15 Q Did you say anything in response to it?

16 A I've learned there's no point.

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17 Q And can you tell me what a "laugh" sign
18 means?

19 A It's a joke between our neighbors.
20 Mr. Holcombe and ourselves. You know how people do
21 penguins, you know, in their neighborhood, people
22 put penguins in their yard while they're sleeping?
23 sorry. Penguins. Pink flamingos. There's just a
24 "laugh" sign that travels between our yard. It's
25 just a private joke.

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1 Q You lost me on that. So let me just
2 clarify for the court. Do you understand the sign
3 that says live, laugh, love?

4 A It's part of that also.

5 Q Okay. Meant to be for your own
6 enjoyment?

7 A Uh-huh.

8 Q On your own property?

9 A That's right.

10 Q Would it be reasonable for them to take
11 that as a sign for aggression directed towards them?

12 A No. I wouldn't say that --

13 Q Did you put it there for their benefit?
14 It was there for you. You bought it; right?

15 A Yes. It's my property and it's on my
16 property.

17 Q And it's a reasonable expression to put
18 something on there that you enjoy?

19 A Uh-huh.

20 Q Did you ever -- were you instructed by
21 them to take it down at any point?

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22 A Instructed by them?
23 Q Right. I mean did they ever indicate to
24 you that it was a problem?

25 A I guess most recently we received an
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1 e-mail from Mr. Mazell the day after they filed the
2 restraining request against us, he contacted us via
3 e-mail and asked us to remove our property markers
4 which were put there on advice of our counsel
5 because of the disputes with the Mazells and
6 ourselves so we're clearly noticed on where to go
7 and where they're not to go. And our attorney
8 replied back and told them --

9 Q I'm confused Jennifer. Can you explain
10 to me -- we've just heard they're terrified of
11 y'all.

12 A Uh-huh.

13 Q But they contacted you after they filed
14 a restraining order?

15 A The day after.

16 Q Okay. And does that communicate to you
17 somebody who is terrified?

18 A No. And also the fact that if she's
19 terrified of us why would she come out of her home
20 on July 11th and pace up and down her property
21 when we weren't anywhere near her nor did we go to
22 her door or ask her to come outside. She came out
23 on her own. I have no idea why she came outside.

24 Q Just to be clear, y'all do have a long
25 history, and it hasn't been pleasant for either one
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1 of you.
2 A Not at all. Not at all.
3 Q But you've done your best to maintain,
4 you know, at least a tolerance of one another's, you
5 know, behaviors?
6 MR. JUNG: Objection, leading.
7 THE COURT: I'm sorry. Are you going to
8 rephrase?
9 MR. CHARPIA: I can rephrase.
10 BY MR. CHARPIA
11 Q Has there been an ongoing history of
12 animosity between y'all?
13 A Well, it's been very uncomfortable, I
14 have to say. Very uncomfortable.
15 Q And you've gone to reasonable lengths to
16 distance yourself from them, you know, the Mazells?
17 A Yes, you're correct. I do everything
18 possible to avoid any contact with them at all.
19 Q But you're neighbors. You're going to
20 have some incidental contact.
21 A Yes. Right.
22 Q So it wouldn't be unreasonable for you
23 to walk outside the car one day and you see
24 Ms. Mazell across the street?
25 A It happens quite often.

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1 Q All right.
2 MR. CHARPIA: No further questions, Your
3 Honor.
4 THE COURT: Mr. Jung?

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MR. JUNG: Just very briefly.

RE CROSS EXAMINATION

BY MR. JUNG

Q So you think it would be a good idea
that your husband have no further contact with
Ms. Mazell or Mr. Mazell apart from incidental
contact, you agree that's a good thing?

A Absolutely. But I would want the same
from them at this point. I'm very fearful of their
behavior because this is not normal.

Q And you're free to file a complaint.

A I absolutely will be. Thank you.

Q Very good. Are you the one that's
responsible for placing the "laugh" sign on
different parts of your property?

A Yes, I am.

Q And is it true that the "laugh" part,
when you read it, is directed at the Mazells?

A Sometimes. I guess it gets turned
around in the wind. I can't control that.

MR. JUNG: Nothing further.

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MR. CHARPIA: Thank you Jenny.

THE WITNESS: Thank you.

THE COURT: Thank you.

THE WITNESS: Thank you, ma'am.

(At this time the witness, Jennifer McFarland,
is excused from the witness stand.)

MR. CHARPIA: We call Carlton Holcombe.

THE COURT: H-O-L-T-O-N?

THE WITNESS: H-O-L-C-O-M-B-E.

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THE COURT: Okay. Thank you, sir.

Raise your right hand for oath.

whereupon, Carlton Holcombe, having been
first duly sworn, testifies as follows:

THE COURT: Thank you, sir. Please take
your seat and state your name once again for the
record.

THE WITNESS: My name is Carlton
Holcombe. I reside at 104 Village Lane,
Summerville.

THE COURT: Thank you. Answer any
questions Mr. Charpia has for you.

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DIRECT EXAMINATION

BY MR. CHARPIA

Q Thank you for coming today.

A You're welcome.

Q Are you -- describe very briefly, are
y'all neighbors?

A Yes. My property line actually borders
the McFarlands' and the Mazells'.

Q Okay. Ever have any problems with the
Mazells?

A No.

Q Okay. How do you know the McFarlands?
Y'all are neighbors, as you said. But do y'all hang
out?

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20 us -- explain to the Court what y'all were --
21 A Well, Bill came in and joined us. That
22 lady was sort of passing around that door, so we
23 went and closed the doors. They were propped open.
24 And Bill said, Jenny, Sophia is out in the parking
25 lot. And we looked out the window and we could see
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1 Sophia in her vehicle. It was a good distance away,
2 but we could see her sitting by the light out there.
3 And we talked about it and Bill had told me that
4 Mike had sent him an e-mail and said he wasn't
5 coming. But we seen Sophia sitting out there and he
6 said, "I'm going to go out there and see if she's
7 coming to the meeting or not."

8 Q That was a logical assumption; correct?

9 A I would think so.

10 Q I mean you're there for a Homeowners
11 Association, her car is there; so y'all made a
12 logical assumption that she was there to attend the
13 meeting; is that correct?

14 MR. JUNG: Counsel, I mean I just object
15 to leading. Counsel seems to be testifying.

16 MR. CHARPIA: I'll rephrase.

17 THE COURT: Thank you.

18 BY MR. CHARPIA

19 Q What reason did you believe she was
20 there in the parking lot?

21 A The only reason I could know was for the
22 meeting.

23 Q Okay. And did you observe Bill approach
24 her in an aggressive manner?

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25 A No. Actually he was across the -- right
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1 at the edge of the library parking lot and he didn't
2 go very far over there.

3 Q Okay. So he maintained an appropriate
4 buffer between the two?

5 A I would say he was maybe 50, 75 yards.

6 Q Okay. Pretty good distance?

7 A Uh-huh.

8 Q Okay. Did he make any gestures towards
9 her at all?

10 A From what I could tell, of course his
11 back was to us, all we seen was his hands go out.

12 Q Sure.

13 A And I think he pointed to his watch.

14 Q Okay. What did you interpret that to
15 mean?

16 A Are you coming? It's past time.

17 Q Okay. All right. Did you observe him
18 take a photo of her?

19 A Now again his back was to me. But he
20 came in and told us that he took a photo just to
21 prove she was there.

22 Q Okay. Any idea why he would have taken
23 the photo?

24 A We were --

25 THE COURT: I think that was just asked
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1 and answered.

2 THE WITNESS: You want me to answer it?

3 THE COURT: You've already answered it.
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4 THE WITNESS: Okay.

5 BY MR. CHARPIA

6 Q In your opinion, was it taken solely to
7 prove that the meeting was transpiring and she had
8 an opportunity to attend?

9 A Yes.

10 Q Okay. Let me switch gears for just a
11 moment. Oh, did you ever see her daughter with her
12 at all?

13 A No.

14 Q Okay. Let me switch gears. I don't see
15 this in the Complaint. But they did say earlier
16 that there was some incident that took place with a
17 boat. Do you recall this incident?

18 A Right. Well, a little bit.

19 Q Tell us what happened.

20 A My door bell rang. Michael came up the
21 steps and he was telling me about his boat.

22 Q Who is Michael?

23 A Mazell.

24 Q Okay. And?

25 A And he was telling us about the boat and
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1 he was going to be there and park it for a while and
2 something of this nature. I don't know exactly.
3 It's been three years ago, but I guess we hadn't
4 talked about it in the three years.

5 Q Okay. Where was the boat parked?

6 A It was parked actually in the -- right
7 in front of the -- between Michael's house and our
8 house.

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9 Q Okay. And did you -- were you present
10 during the exchange that Mr. Michael Mazell
11 referenced early in his testimony concerning his
12 interaction with Mr. McFarland regarding the boat?

13 A Yes.

14 Q What happened?

15 A Bill had came up the steps to talk to
16 Mike about parking the boat in the subdivision and
17 actually had a copy of the covenant saying -- I
18 didn't know what it said. But I know what the
19 covenants say. The covenants say that you can't
20 park boats there.

21 Q Did -- did he raise his voice with him?
22 was he ugly to him?

23 A I think that both of them got hot a
24 little bit. I don't think it was -- but I think
25 both of them got a little hot under the collar.

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1 Q Did he call him fat?

2 A Not from where I was at.

3 Q Okay. well, did he appear to be doing
4 his duties as HOA president?

5 A Bill takes his duties of HOA president
6 seriously.

7 Q Okay. I think we know that.

8 A Okay. And he was doing what he
9 perceives his duty as president of the HOA.

10 Q Okay. And he doesn't draw a salary to
11 do it, does he?

12 A You would think he would, but no, he
13 doesn't.

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14 Q Okay. He's there acting on his official
15 capacity, is your testimony?

16 A That's what -- yes.

17 Q Okay. And what did he do in response to
18 that when he was presented with the knowledge that
19 it was parked?

20 A I sort of went back in the house. There
21 was a little heat going on. So I'm not sure if the
22 boat left there that day or that night. I don't
23 really remember.

24 Q Do you know if he had a sick son or
25 anything?

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1 A Mike said in his testimony he told me
2 that, but I don't recall that. He could possibly
3 have said that.

4 Q Okay. Are you on the HOA board?

5 A Yes, I am. Or was at that time.

6 Q What was your title?

7 A I was board member.

8 Q Were you ever an elected officer?

9 A I was -- I was secretary, I think.

10 Q Okay. Tell us about the easement and
11 the covenant restrictions. It's been brought in
12 that there was some dispute over a trespass issue.
13 Can you clarify where that pipe is?

14 A Sure. We have -- had a drainage problem
15 on -- it's actually on my property but it's in the
16 easement of the property that actually serves the
17 drainage on the street that serves my driveway,
18 McFarland's and the Mazell's driveway. And so at a
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19 board meeting we took a vote, and I think it was
20 2009 board meeting, that we wanted -- we went out
21 and got prices to put drainage there. And the City
22 had actually said that that area that's on Mazells'
23 and actually on my property, back of my property and
24 side of Mazells' is in a drainage easement. And the
25 City had agreed to put that piping in there as long

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1 as we paid for the materials.

2 Q Okay.

3 A So after we approved the expenditure,
4 and the board did, I think it was almost unanimous
5 everybody voted for that, for that expenditure, is
6 that we contacted the City, and that gentleman that
7 was here, actually the guy that was actually
8 installing the pipe, and we were there on the
9 Mazells' property as board members, and on my
10 property as board members because the pipe was on my
11 property as the easement.

12 Q Sure. Was it not completely allowable,
13 generally understood that you could be on each
14 others' property for the purpose of investigating
15 the storm issue and this easement?

16 A Yes, sir.

17 Q Everybody knew that?

18 A That's correct.

19 Q Okay. And was Bill helpful? Excuse me.
20 Mr. McFarland helping head up that process?

21 A Actually they took to go about the
22 working of getting the cost and everything together,
23 yes.

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24 Q Okay. This, in her Complaint Ms. Mazell
25 references a drain. Tell us about the drain.

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1 A The drain I think that's being talked
2 about, there's some confusion about what I just
3 spoke about, the drainage on the easement area was
4 one thing. But there's a drainage, kind of a
5 drainage ditch that's along close to the property
6 line between the Mazells' and the McFarlands'.

7 Q Okay. Is it sitting on one property
8 over the other? Is part of it on the McFarlands',
9 part of it on their --

10 A Well, all I can tell you is where the
11 property stake is, it looks like most of the
12 concrete is on -- concrete drainage ditch is on the
13 McFarlands'. I don't know what their property line
14 goes all the way down there. But if you look at
15 the -- I think I seen a picture of the stake there.
16 You can see that the property drainage ditch starts
17 on the McFarlands' land.

18 Q Okay. And that's the picture that's
19 entered into evidence earlier?

20 A I think so.

21 Q During the process of this improvement
22 to the property over an easement construction
23 process, what's called that, was there any surveying
24 done?

25 A You mean surveyed by the City or
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1 whatever?

2 Q Anybody.

3 A We actually had the survey done when we
4 bought the house in '08, and the property line's
5 there. McFarlands had this state surveyor come in
6 and have a survey done to see what the property
7 lines were.

8 Q Did they put funny little strings down
9 or anything marking the property?

10 A They put those strings down for a
11 purpose; and the purpose was we -- I actually gave
12 an easement on my property that wasn't in the
13 original plot plan for the city -- for the
14 homeowners to have to run the drainage pipe from the
15 center of the street all the way to the back where
16 the city would pick it up. And the Homeowners
17 Association agreed to pay for that. We put that
18 string up there so we would not go on the Mazells'
19 property so when the contractor came in we wouldn't
20 damage any of their property. That's what the
21 string was there for.

22 Q Everybody knew that?

23 A As far as I know.

24 Q Only. Anybody on occasion, to your
25 knowledge, remove those strings?

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1 A Yeah, removed several times.

2 Q By whom?

3 A I couldn't tell you. They'd be gone the
4 next morning.

5 Q Okay. Any idea?

6 A It would be speculation. But the only

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7 person that had any reason to do that would be, I
8 guess, the Mazells.

9 Q Okay. Any complaints filed on that do
10 you know?

11 A Not as I know.

12 Q Okay. Do you have any no trespass
13 against the Mazells right now?

14 A We --

15 Q Against the landscaper?

16 A Against the landscaper, yes, that's
17 correct.

18 MR. CHARPIA: No further questions.
19 Please answer any questions he may have.

20 THE DEPONENT: Thank you.

21 CROSS EXAMINATION

22 BY MR. JUNG

23 Q Mr. Holcombe, you testified that you
24 were in the conference room inside the library
25 waiting I guess for this meeting to occur and you
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1 observed Mr. McFarland I guess through a window in
2 that library go out to the parking lot in the
3 adjacent Galleria; is that your testimony?

4 A Actually, if you will look at that
5 picture that's there you could see that the -- the
6 road bumps where the picture is being taken from is
7 actually the road bumps between the Galleria and the
8 parking garage -- I mean the --

9 Q And how far -- am I correct, though,
10 you're inside a library in a conference I guess with
11 a glass window obviously?

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12 A Yes, sir.

13 Q Okay. And how far did Mr. McFarland

14 travel from, from where you were sitting, to go

15 speak to Ms. Mazell? How far away was he from you

16 as a crow flies?

17 A I'd say maybe 30 steps, 40 steps.

18 Q Thirty steps. And he was, in your

19 testimony, then, 75 yards from Ms. Mazell when he

20 spoke to her?

21 A I think about that, yes.

22 Q That's about right?

23 A That's what I think. I said 50 to 70.

24 Q Okay. And of course you said before,

25 just confirm that, you didn't hear anything, you

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1 didn't see anything because his back was turned to

2 you, talking about Mr. McFarland.

3 A That's correct. And I was inside the

4 building.

5 Q Right. Okay. And he shared with you

6 that he wanted to go out and take photographs of

7 Ms. Mazell to prove that she was in another parking

8 lot?

9 A No. What my testimony said, he went out

10 there to see if she was coming. And then when he

11 came back in he said, "I took a picture to show that

12 she was here."

13 Q All right. I just want to know what he

14 told you not what you would speculate as to what his

15 intentions are. He told you that I'm going to go

16 out and photograph of her?

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17 A No.
18 Q He didn't say that?
19 MR. CHARPIA: Objection, question asked
20 and answered.
21 MR. JUNG: Cross Examination.
22 THE COURT: Yes, answer.
23 A I told you that I said that he went out
24 there to ask her if she was going to come to the
25 meeting. When he came back he said, "I took a
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1 picture when I was out there to prove that she was
2 here."
3 Q Uh-huh. All right. And you testified
4 earlier that you never saw Ms. Mazell take her
5 daughter inside the Galleria.
6 A No, did not.
7 Q Okay.
8 A Didn't know she was there.
9 Q You didn't know she was there, except
10 for what Mr. McFarland told you?
11 A He didn't tell me she was there, the
12 daughter.
13 Q Oh, you're talking about the daughter.
14 Yes, sir.
15 Now, you testified that you were present
16 on the Mazell's property with Mr. McFarland in
17 regard to the Town and the surveying and the storm
18 drain; is that right?
19 A That's correct.
20 Q Did you notify Mr. Mazell that you were
21 going to be on his property?

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22 A He knew I was going to be there because
23 he voted for the drainage through his easement.

24 Q Right. But did you -- excuse me, sir.

25 Did you personally notify him that you all were
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1 going to be on his property on a particular day?

2 A No.

3 Q And was he on the property on that
4 particular day?

5 A Was who on the property?

6 Q Mr. Mazell.

7 A Was he on the property?

8 Q Was he with you all when you were out
9 there on his property with the storm?

10 A No. We was on the easement.

11 Q Right. I mean the easement can be on
12 another person's property.

13 A Right. It is on his property.

14 Q It is on his property. Thank you.

15 MR. JUNG: I have no further questions.

16 THE COURT: Thank you. Mr. Charpia?

17 MR. CHARPIA: No, Your Honor. Thank

18 you.

19 THE COURT: Thank you, sir.

20 (At this time, the witness, Carlton Holcombe,
21 is excused from the witness stand.)

22 MR. CHARPIA: Your Honor, just one
23 second. Your Honor, just one moment. I ask the
24 Court's indulgence.

25 THE COURT: That's fine.

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1 MR. CHARPIA: Your Honor, the Defense
2 rests. And I'll renew my earlier motion to dismiss
3 for lack of (inaudible) met by the plaintiff.

4 THE COURT: Mr. Jung.

5 MR. JUNG: Your Honor, for the same
6 reasons, you know, I redirect that there was ample
7 evidence to proceed for determination. We have
8 further witness that I'm going to ask one question
9 of.

10 MR. CHARPIA: They've already rested.
11 I'm going to object to that.

12 MR. JUNG: It's a rebuttal witness, Your
13 Honor.

14 THE COURT: First of all, are you
15 finished with your --

16 MR. JUNG: Oh, with me my -- yes, Your
17 Honor. I know I haven't done a very good job. I
18 would redirect the elements of the statute that
19 shows intentional, purposeful contact with another
20 person for no legitimate purpose. Your Honor,
21 there's ample evidence of a pattern of intimidation,
22 harassment that has certainly and would cause a
23 reasonable person to feel intimidated and I would
24 submit that the Defense Motion should be denied.

25 THE COURT: I'm going to deny your
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1 motion, Mr. Charpia.

2 MR. CHARPIA: Okay.

3 THE COURT: Okay. Now --

4 MR. JUNG: As a matter of housekeeping,
5 Your Honor, my purpose would be to call Ms. Mazell
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6 in rebuttal as to the allegation that was heard on
7 the defense's case in chief as to whether or not she
8 ever initiated the middle finger gesture toward the
9 McFarlands, and that was my only question.

10 MR. CHARPIA: I believe she testified
11 earlier that she made no contact with them
12 whatsoever. So I believe the Court's already heard
13 it.

14 MR. JUNG: You stipulate to that, thank
15 you. No further questions.

16 THE COURT: Anything in closing? Yes,
17 Your Honor.

18 PLAINTIFFS' CLOSING STATEMENTS

19 MR. JUNG: Your Honor, this is a case
20 for harassment. I believe that Your Honor has heard
21 grounds to satisfy not only a finding that the
22 defendant has more likely than not engaged in
23 harassment in the first degree, which is essentially
24 a pattern of intentional, substantial and
25 unreasonable intrusion into the private life of the
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1 targeted person that serves no legitimate purpose
2 and would cause the person or a reasonable person in
3 his position to suffer a mental or emotional
4 distress.

5 First degree harassment, Your Honor, is
6 when a person is on notice that, you know, that
7 their, that their contact is not wanted,
8 essentially. And we have that here, Your Honor, in
9 the No Trespass document that was received into
10 evidence. We have it in that Mr. Mazell has
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11 repeatedly asked Mr. McFarland to simply leave us
12 alone, do not talk to my wife, do not harass my
13 wife, do not harass my family. So I believe that
14 that would satisfy the basis of first degree
15 harassment.

16 Your Honor heard testimony from the code
17 enforcement gentleman that the McFarlands venture
18 onto the property of Mr. and Mrs. Mazell when
19 they're not present. We heard that from
20 Mr. Holcombe, that they venture onto the property
21 when they're not present. There's evidence that
22 there's dumpings out there. There's evidence that
23 they dug in the yard. There's evidence that they've
24 approached Ms. Mazell and her daughter, taken
25 photographs. They gestured to them "come on, come
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1 on." There may be different accounts as to how
2 close this person was. But the testimony of
3 Ms. Capp was very clear that, you know, that her
4 daughter could see Mr. McFarland approaching, taking
5 photographs; that this had an affect on the emotions
6 of both her daughter and Ms. Mazell; and the fact
7 that Ms. Mazell was not doing anything to avail
8 herself of proximity to Mr. McFarland.
9 Mr. McFarland took it upon himself to approach
10 Ms. Mazell knowing that her husband wasn't going to
11 be attending any meeting. They didn't have any
12 indication that Ms. Mazell was going to substitute
13 herself. He came onto that -- approached her for
14 the purpose of essentially causing her distress. We
15 see that from the signs that they place. We've seen
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16 it from their approaching whenever Ms. Mazell comes
17 out of the house, they go through exaggerated
18 gestures. And all that is essentially not in
19 dispute.

20 Essentially what also occurred, and I
21 think was very important is, is that once again the
22 Mazells again initiate police conduct to say, look,
23 these people are continuing to come upon us.
24 They're trespassing on us. They've been told by the
25 officer not to speak to me, not to speak to my
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1 family, to have no contact with me. What do they
2 do? They file a complaint for false arrest,
3 basically to have Ms. Mazell arrested, knowing that
4 there's no basis for that, knowing that the Mazells
5 have been trying to pay their bill. So what do they
6 do? They cause the law enforcement to cause
7 distress to Ms. Mazell is essentially what's going
8 on here.

9 This has gone beyond a simple
10 neighborhood dispute -- well I don't like you and
11 you don't like me, well let's just have nothing to
12 do with each other. If that were the case, we
13 wouldn't be here. What we're here for is that they
14 cannot let things be. They continually interject
15 themselves into Ms. Mazell's life because they know
16 it's going to upset her. That's the purpose of it.

17 One thing Ms. McFarland said that I
18 agree with is that her husband ought not to be
19 involving himself at all with these folks. She
20 agreed with me on Cross Examination that there
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21 should be essentially an order to prevent him from
22 doing so. And she informed Your Honor that "we'll
23 be seeking of those, too." Well, I'll submit Your
24 Honor can kill two birds with one stone and join
25 this man from having any proximity to Ms. Mazell,
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1 Mr. Mazell or his family, except as in conduct where
2 it's unavoidable.

3 But the intentional harassment that has
4 occurred here doesn't serve any legitimate purpose.
5 It's intentional, it's purposeful and it's
6 essentially designed to cause the emotional distress
7 which Your Honor heard from Ms. Mazell, you heard
8 from Ms. Capp, that that's what occurs when they do
9 the things that they do.

10 The reason I think this Order is
11 important that we issue is we don't want to have
12 anything further happen that might give -- we don't
13 know what's going to happen. But what we do know is
14 that this man should have nothing to do with these
15 people or his family. If they cross each other on
16 the street, fine. But not the kind of stuff that's
17 been going on here. Because this is the kind of
18 thing that there's a public interest in preventing
19 this from happening. We need a prophylactic measure
20 here to prevent this man from doing something.

21 Further, and it is affecting this woman,
22 and it ought not to, Your Honor, the standard for
23 harassment which Your Honor is entitled to issue an
24 order also includes second degree harassment, which
25 is essentially the same conduct of as first degree

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1 harassment but it's without prior order. It's just
2 where there's no basis, there's no reasonable,
3 legitimate reason for them to be having any contact.
4 And, Your Honor, I submit that what you've heard for
5 the last three hours is that case, that there is no
6 reason that this man ought to be having any contact
7 with this woman or her family. And I ask Your Honor
8 to issue an order to prevent what will hopefully be
9 the last so that we have no further incidence so
10 that the last of this conduct has occurred and it
11 won't occur in the future. Thank you, Judge.

12 THE COURT: Mr. Charpia?

13 DEFENDANT'S CLOSING STATEMENTS

14 MR. CHARPIA: Thank you, Your Honor. I
15 appreciate your patience with us today. This is the
16 longest restraining order meeting I've ever had
17 ever.

18 I'm going to head on a very important
19 point that he brought up, and it's a reasonableness
20 component. I feel that we have undercut every
21 single element and every single factual thing that's
22 been presented. If this was a football line and
23 they had to get to the 51, they hadn't even made it
24 out of their end zone. And every single time you
25 heard from us, whether it be on Cross Examination or
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1 through our supporting witnesses, you've heard a
2 reasonable explanation. We were here when we were
3 supposed to be here, okay? We were acting on the

4 best interest of the Homeowners Association in its
5 official capacities. All of these alleged
6 incidences occurred in that role, Your Honor. We --
7 today, if you issue a restraining order, we'll be
8 sending a dangerous precedent, very dangerous
9 precedent. We'll be telling those who take the
10 no-pay jobs who work hard for trying to improve
11 their subdivision that it's not okay to enforce
12 covenants and restrictions or face prosecution by
13 somebody who is running through personal issues that
14 we've heard of, okay? Your Honor, you heard from my
15 witness today that places him in reasonable
16 proximity of the individual. We've heard the
17 circumstances of why the photograph was taken.
18 Purely documentation not intended to harass or harm
19 or even on the most sliding scale of things. You
20 also heard from the responding officer on the
21 complaint that was filed. She wasn't listed as the
22 suspect, okay? That's -- that's -- we can't debate
23 that. It was done. She was listed, okay? She
24 listed that as one of the three main reasons in her
25 complaint, and we shot it down.

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1 The library incident, they're there for
2 a Homeowners Association meeting properly noticed.
3 We heard from them that they had run-ins with them
4 in the past where the meeting wasn't called on time
5 and they were upset. Doing a little bit of due
6 diligence, trying to protect the interest of all the
7 homeowners, they noticed them and went outside. And
8 everybody thought it was reasonable to be there.

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9 And all he was doing, ascertaining, okay, are you
10 coming to the meeting, okay? Completely reasonable
11 under the circumstances and completely within the
12 realms of excuse given the fact that they're trying
13 to have a Homeowners Association meeting.

14 And, Your Honor, I would like to say
15 that in regards to the worthless check that was
16 written, still haven't gotten payment of it and it
17 hasn't been produced to the Court. I know that
18 wasn't one of the main counts why we're here. But
19 I'll also remind the Court that the Solicitor's
20 Court can't be charged with restraining orders or
21 violations as she intends in this report that she
22 made. And, Your Honor, I would say if he was acting
23 in his official capacity to try to collect
24 Homeowners Association dues, and they received
25 proper notice of it and didn't pay it, okay, he

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1 turned it over to investigation; they didn't find
2 anything, okay? You know it's completely reasonable
3 and again within the respective duties that he's
4 required to do, fiduciary duties that he has. He
5 has to do these things, okay? And we would just ask
6 the Court to look at this reasonably and not set a
7 dangerous precedent for those that may disagree with
8 the Homeowners Association, okay?

9 "Live, laugh, learn," we've all seen the
10 sign on somebody else's house. You can make a
11 mountain out of a mole hill on anything that you
12 have. If you don't like somebody you view it as
13 something that's directed at them personally.

14 Obviously, Judge, it was for their own personal
15 enjoyment.

16 We would just ask that the Court also
17 review this reasonably, as my client tried to do.
18 And we maintain he's a victim in this just as much
19 as they're claiming to be. We would ask that
20 they -- that there's not sufficient evidence to
21 grant the motion. We would ask you to dismiss this
22 action with prejudice. Thank you, Your Honor.

23 THE COURT: Court is in recess until I
24 return with my ruling. During the meantime there
25 are facilities out in the hallway if you all need to
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1 utilize those.

2 (At this time there is a brief break in the
3 proceeding.)

4 RULING

5 THE COURT: Just briefly before I state
6 my ruling, I'm sure none of you all wanted to even
7 be here for this. And it's sad. It's very
8 unfortunate that in today's world we have neighbors
9 who can't get along. When I remember growing up,
10 you know, my neighbors would have a key to our
11 house; they would pick me up from school sometimes
12 when my parents asked one of them to. And you
13 really need each other, you know. And it's just sad
14 and it's unfortunate that you all have ended up
15 here. And you know, to put myself in your place,
16 you know, it's -- I'm sure it's difficult for both
17 of you to feel that you know you have neighbors who
18 you can't get along with. Because a lot of times

19 you really need each other, especially in
20 unfortunate situations. Like, excuse me, like a
21 hurricane or something, you know, that's the time
22 you really pull together and work together. And you
23 know, I hope that one day that you all will be able
24 to do that as mature adults. Because you both have
25 children, and I'm sure they're older, but still --

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1 well, no, yours are young. I think you said their
2 ages. And you don't want them to see, but you know
3 it's -- as I stated, it's just kind of unfortunate.

4 what I'm going to do is issue a mutual
5 restraining order. And hopefully this will work.
6 You know, just don't speak to each other. I -- as
7 far as the McFarlands being of the position or
8 having the position on the Homeowners Association
9 board, I really -- I don't have anything to do with
10 that. I mean that's -- that's your position and you
11 have to do it, but you can do so in a mature manner.
12 I guess it's just mailing whatever it is that needs
13 to be mailed. But as far as personal contact, of
14 course, direct contact, I'm ordering you all not to
15 have any contact with each other. Not even through
16 first, second, third parties. Don't go to the
17 neighbor or a neighbor's friend, or a cousin or
18 someone who may be visiting and say this or say that
19 because that only makes things worse. So no first,
20 second, third-party contact. If you're out in the
21 street, you're in Wal-Mart, just go the other way.
22 Or if you feel you want to leave and go to another
23 Wal-Mart, then do so.

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And of course if this Order is violated
25 then you all would be lured into court, back into
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1 court. And I know I don't want that. So I really
2 wish you all well with this and the best of luck and
3 that you just -- you handle yourselves accordingly
4 as you are as mature adults and handle business the
5 way you need to handle your business, even if it
6 means getting a mediator, just do that if you have
7 to. Good luck.

8 MR. JUNG: Thank you very much, Your
9 Honor.

10 MR. CHARPIA: Thank you, Judge.

11 THE COURT: You're welcome.

12 (Whereupon, the proceeding is concluded.)
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1 CERTIFICATE
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I HEREBY CERTIFY that the foregoing
transcript has been transcribed by me, Judy W.
Galuppo, to the best of my ability and is a true and
accurate record of the proceedings.

Judy W. Galuppo
Court Reporter/Notary Public
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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) CASE NO.: 2013-CP-18-00546

WILLIAM MCFARLAND,)
)
) APPELLANT,)
)
) vs.) TRANSCRIPT OF RECORD
)
)
SOFIA MAZELL, MICHAEL MAZELL,)
)
PIERCETON MAZELL, AND FAITH)
MAZELL,)
)
)
) RESPONDENTS.)
)

November 12, 2013

St. George, South Carolina

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE.

A P P E A R A N C E S:

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Official Court Reporter
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EXHIBITS

None.

1 **CLERK:** Judge, this is William McFarland versus Sofia
2 Mazell. It's a civil appeal.

3 **THE COURT:** Are there any matters before the Court
4 that have resolved themselves and it's merely just an
5 issue we can put on the docket? This is going to take
6 longer.

7 **MR. DAIGLE:** I'm not sure I ---

8 **THE COURT:** I wasn't talking to you. I was talking
9 to the audience.

10 **MR. DAIGLE:** Oh, I'm sorry.

11 (NO RESPONSE.)

12 **THE COURT:** Okay. Thank you.

13 All right. Counsel, if you'll state your name for
14 the record and the party you represent?

15 **MR. DAIGLE:** Your Honor, my name is Jason Daigle. I
16 represent William McFarland, the appellant in this case.

17 **THE COURT:** Counsel?

18 **MR. JUNG:** Oh, I apologize, Your Honor. Brad Jung
19 for the defendants -- excuse me, for the
20 plaintiff/respondents, Michael and Sofia Mazell.

21 **THE COURT:** All right. And what are we doing here
22 today, Mr. Daigle?

23 **MR. DAIGLE:** We are appealing a decision by the
24 magistrate court in granting a restraining order against
25 William McFarland. And actually, she granted a mutual

1 restraining order for the defendant against the plaintiff
2 and the plaintiff against the defendant in the magistrate
3 court matter.

4 **THE COURT:** All right. I'll be happy to hear from
5 you.

6 **MR. DAIGLE:** May it please the Court?

7 **THE COURT:** Yes, sir.

8 **MR. DAIGLE:** By way of brief background, Your Honor,
9 this case stems from two next-door neighbors at the Live
10 Oak -- I can't remember the name of the neighborhood, but
11 it's a gated community in Summerville. They were
12 next-door neighbors at the time, and there's really no
13 getting around the fact they just don't get along and
14 frankly don't like each other.

15 In October of 2012, Sofia Mazell and Michael Mazell,
16 Pierceton Mazell, and Faith Mazell, who are their two
17 minor children, filed a restraining order against William
18 McFarland in magistrate court over there on Deming Way.
19 There were three -- she did it under the two statutes,
20 16-3-1700, the harassment/stalking statute, and then were
21 seeking a restraining order under 16-3-1750.

22 I've got copies of those, if you would like them, but
23 as you are well aware, those are criminal statutes and
24 very serious statutes, but of course, there is a civil
25 remedy, which is the restraining order for the magistrate

1 to hear.

2 In Mrs. Mazell's -- or actually the Mazells'
3 Complaint, there -- there were three incidences noted on
4 the Complaint. The first one occurred on September 20th.
5 It had to do with a bad check letter that Mrs. Mazell got
6 from the -- it was either the solicitor's office or the --
7 I believe it was the Ninth Circuit Solicitor's Office --
8 excuse me, the First Circuit Solicitor's Office.

9 The second one was an issue where Mrs. Mazell was in
10 a public parking lot, and Mr. McFarland took a picture of
11 her, or actually of the -- of her vehicle. I've got a
12 copy of that picture, as well, if you would like to see
13 that.

14 And the last one was the McFarlands' -- Bill --
15 William McFarland and his wife were at or near the
16 property line, and Mrs. Mazell left her home to come speak
17 to them, and they asked her some questions. Based on
18 that, they have issued -- they requested a restraining
19 order.

20 That hearing occurred, I believe, in October of 2012.
21 The reconsideration hearing was done in February of 2012.
22 That reconsideration was denied in March of 2012. I filed
23 the appeal, and here we are today.

24 As the Court is sitting as a -- as the circuit court
25 today is sitting as a court of appeals, it has a little

1 broader -- broader sight of this case. Specifically,
2 South Carolina Code 18-7-170, upon hearing the appeal, the
3 appellate court, which is this court, shall give judgment
4 according to the justice of the case.

5 They can do that based on errors of fact or law, and
6 that case is -- that -- that statute is interpreted by
7 Hatfield versus Gilcrest, which is 538 S.E. 2d 268. The
8 court quotes that and then says -- basically gives the --
9 the appellate court, the circuit court, a broad view to
10 appeal the -- the magistrate court's decision.

11 Based on that, it is our contention that the
12 magistrate in this case just got the case wrong. The --
13 she misapplied the facts to the law and misapplied the law
14 to the facts.

15 Based on the three issues that were in the Complaint,
16 there is no possible way that a magistrate, or any judge,
17 could find that those constituted harassment or stalking
18 as defined by the statute. And I can read you the
19 requirements for harassment and stalking, but I feel
20 you're very well-versed in what that -- what that entails.
21 And, frankly, there's just nothing that rises to that
22 level.

23 Now, the -- the -- if we can look specifically to
24 each one of these instances, there -- the first one was
25 the check. There was a bad check, and there's no -- at

1 worst -- at worst, it was a misunderstanding between Bill
2 McFarland, the President of the HOA, and Michael Mazell,
3 who is a resident, non-Board member, trying to pay his HOA
4 dues.

5 There was some issue of when the check was picked up,
6 why wasn't it picked up. It languished for a month or so.
7 Mr. McFarland finally got the check, and then Mr. Mazell
8 canceled the check. And all Mr. McFarland knows is that
9 he had a bad check in his hand.

10 They went to the advocate's office at the Ninth
11 Circuit Solicitor's -- the First Circuit Solicitor's
12 Office and were sent to the sheriff's department. And the
13 sheriff, or I don't know, maybe the solicitor's office,
14 sent a letter to Sofia Mazell or to the Mazells.

15 And she is using that as something that rises to the
16 level of harassment and stalking. That's not what the
17 harassment and stalking statute deals with.

18 The harassment and stalking statute is very, very
19 serious. And, in fact, the definitions are -- are clear
20 in what this is. It's harassment -- excuse me, it means a
21 pattern of intentional, substantial, unreasonable
22 intrusion into the private life of a targeted person that
23 serves no legitimate purpose and causes that person, and
24 would cause a reasonable person in his position, to suffer
25 mental or emotional distress, and it goes on to give a few

1 more definitions.

2 One thing we need to understand here, this is not a
3 plaintiff -- excuse me, this is not an eggshell plaintiff
4 case. This is not a hyper-sensitive plaintiff case. This
5 is a reasonable person standard that this -- that this
6 statute applies to.

7 The next issue we have is -- oh, there's also -- the
8 harassment/stalking also has legitimate purpose. Mr.
9 McFarland, in the original hearing stated that the
10 legitimate purpose in going to the Ninth -- the First
11 Circuit Solicitor's Office is that he had a bad check. He
12 was the President of the HOA, and he needed his
13 homeowner's dues. He didn't know what to do with it, so
14 that's what -- what people do when they have a bad check.

15 The next issue that the Mazells use is this picture
16 that Mr. McFarland took of Mrs. Mazell in her car, and
17 I've got a copy of that picture if the Court would like to
18 see it. The -- this was at an HOA meeting, a properly
19 noticed HOA meeting, that the Mazells knew about. They
20 know when it was going to be. They knew where it was
21 going to be. It was at the Dorchester County Public
22 Library.

23 Most -- not most, some of the homeowners were in the
24 library. Mrs. Mazell was parked in -- in her minivan, or
25 her SUV, whatever it is, out in the parking lot adjacent

1 to the library. She wasn't coming in. She knew about the
2 meeting. She didn't come in, and Mr. McFarland, as
3 President, took a picture of her car to prove she was
4 there and could have come if she wanted to, because they
5 didn't have a quorum for the HOA.

6 Not only that, there was a legitimate -- first of
7 all, that -- that clearly doesn't rise to the level of
8 harassment or stalking. There was a legitimate purpose
9 for it, because he was the HOA President. He needed a
10 quorum at the HOA meeting. He took a picture to prove
11 that she could have come, if she wanted to.

12 And if you look at 16-3-1700, Section (G), this
13 section does not apply to words or conduct protected by
14 the constitution of this state or the United States.

15 Taking a picture of someone in public is protected
16 free speech under the First Amendment. There is U.S.
17 Supreme Court law on that, and there is South Carolina
18 Supreme Court on that. You can do it, period. It -- it
19 is a protected act under the U.S. Constitution.

20 **THE COURT:** Not in every instance, Counsel.

21 **MR. DAIGLE:** Not in every instance. And this
22 particular type of instance, there's no question that that
23 is a protected act. She was -- she had no -- she had no
24 expectation of privacy under the Fourth Amendment. She
25 was sitting in a public parking lot with her window down

1 talking to somebody, and we have a picture that shows
2 that.

3 Mr. McFarland took that picture from at least a
4 hundred and fifty feet away. It's probably more than
5 that. I'm erring on the conservative side.

6 The -- the last issue here is an incident that
7 occurred at or near the property line between these two
8 homes. They are directly next-door neighbors. They share
9 a property line.

10 The McFarlands were outside working at or near the
11 property line, and Mrs. McFarland left her home -- excuse
12 me, I apologize, Mrs. Mazell left her home, came down,
13 approached the plaintiffs -- approached the appellants.
14 The appellants spoke to her, asked her what she was doing,
15 asked her why she wasn't talking, and then Mrs. Mazell
16 went back into her home. That's the other issue that they
17 are using as the basis for the harassment and stalking.

18 Now, there are some -- in the hearing on this matter,
19 the original hearing on this matter, counsel for the
20 Mazells said, well, it's not just based on these three
21 things, it's based on a ton of other things and that we
22 somehow waived our right under -- under the Baker versus
23 Port City Steel that says that if you do not -- if you
24 fail to produce testimony of an available material witness
25 who is within some degree of control of the party may be

1 inferred that that testimony of such witness as presented
2 would be adverse to the party who failed to call the
3 witness.

4 It's basically saying that we waived our right to
5 those defenses, because we didn't produce anybody. First
6 of all, the magistrate improperly considered anything not
7 in this Complaint.

8 This is -- there was no discovery in this case.
9 There was no depositions. There's no written discovery,
10 no nothing. All we know when we show up are these three
11 incidences, and we brought witnesses. We had testimony
12 prepared to explain these away, and it was properly done.

13 There were other -- other issues that were -- that we
14 did not know about until we even got into the hearing.
15 And not only that, the -- this Baker case, this is -- this
16 is a circuit court case. This is a wrongful death circuit
17 court case where they have the benefit of depositions.
18 They have the benefit of subpoenas. They have the benefit
19 of discovery.

20 That wasn't the case here. You can't waive something
21 you don't know about prior to the hearing, if you're
22 hearing it at the hearing for the first time. And the
23 magistrate improperly considered anything that wasn't
24 here, that wasn't in this Complaint.

25 There were three incidences. If she wanted to put

1 more on there, you know what they have? They have more
2 paper that she could have, but she didn't. And she gets
3 -- the plaintiffs, the respondents/plaintiffs get there
4 and try to say that there is more than just this and that
5 we somehow waived our defense to it by -- by not ---

6 **THE COURT:** All right, Counsel, what do you want me
7 to do?

8 **MR. DAIGLE:** I want you to overturn the magistrate's
9 decision as improperly granted. She -- it was an abuse of
10 discretion granting it, in the first place, and she
11 improperly applied the facts and the law to the case.

12 And, additionally, it is clear how little she
13 thought, the magistrate that is, of -- of this case. And
14 I've got a transcript of the hearing. She never once
15 actually found that Mr. McFarland was harassing anybody.
16 She never found Mr. McFarland was stalking anybody.

17 She merely said that it's just better that you don't
18 talk. It's better that you avoid each other.

19 And that's abundantly clear in her Return in this
20 case where she got several of the facts a little -- a
21 little confused. That's not the part I'm worried about.
22 The last paragraph of her Return: In my findings, I
23 ordered a mutual restraining order between both parties
24 because at the time, given the surrounding circumstances,
25 I felt it was best for everyone not to have any contact.

1 Not that there was harassment, not that there was
2 danger, not that there was stalking, it was just best.
3 These people weren't getting along, and she -- and she
4 felt like she needed to do something. But in doing
5 something, she granted a quasi criminal judgment against
6 Mr. McFarland, and it's an abuse of discretion to do so.

7 And not only that, but the statute says that these
8 restraining orders have to be issued for at least a year.
9 She issued hers for six months, again, showing how little
10 she thought of this.

11 The statutes are very, very serious. They are very
12 -- they are criminal statutes that involve stalking,
13 harassment, and violence, and sexual misconduct in some
14 instances. None of that was ever brought up in the
15 original order -- excuse me, in the original hearing. And
16 it is a complete abuse of discretion for her to grant a
17 restraining order based on the three extraordinarily
18 minor, and easily explainable, incidences in their
19 Complaint.

20 THE COURT: All right. Thank you.

21 Mr. Jung?

22 MR. JUNG: May it please the Court, Your Honor? May
23 I initially submit a Memorandum that I filed this morning?

24 THE COURT: You can. I won't have time to read it.

25 MR. JUNG: Well, just for the record, then, Your

1 Honor.

2 THE COURT: All right. Thank you.

3 MR. JUNG: I appreciate it.

4 Initially what I think is a huge element that hasn't
5 been discussed is the issue of mootness. This restraining
6 order in question expired on April the 12th of 2013.

7 There is no restraining order currently in place.

8 THE COURT: Mr. Daigle, what are we doing here, then?

9 MR. DAIGLE: The -- the restraining order, in and of
10 itself, isn't the issue. The fact that there is a
11 judgment, a finding, a quasi criminal finding against Mr.
12 McFarland in a court of law is the issue here.

13 He travels internationally. He does business
14 internationally, and if there's a criminal or quasi
15 criminal finding against him, that could impair his
16 ability to make a living, to travel, to do what he needs
17 to do.

18 MR. JUNG: Counsel makes an argument, but there's no
19 evidence of that, Your Honor. This is a civil restraining
20 order. The statute provides for civil restraining orders.

21 If anyone were to look up a case and says Mazell
22 versus McFarland, I don't know how that would be construed
23 as a criminal Complaint.

24 THE COURT: Mr. Jung, do you agree that the appeal
25 was timely filed?

1 **MR. JUNG:** The appeal was timely filed, but it
2 subsequently became moot by the expiration of the
3 judgment. There is nothing Your Honor can go back and
4 modify, remand, or anything. It's gone. It doesn't exist
5 anymore.

6 And I briefed this issue, Your Honor. There is no
7 justiciable controversy for the Court to rule upon. And
8 under the rule of our law in South Carolina, an injunction
9 becomes moot if there's nothing further for the Court to
10 do on the issue.

11 **THE COURT:** Mr. Jung, statutorily won't it appear --
12 will it appear anywhere in the records that a restraining
13 order was issued against the defendant?

14 **MR. JUNG:** I don't know. I assume, Your Honor, that
15 if anyone looks up ---

16 **THE COURT:** Mr. Daigle?

17 **MR. JUNG:** --- the case records, they'll find it.
18 Excuse me.

19 **MR. DAIGLE:** As far as I know, the magistrate keeps
20 the file, and if someone goes and searches for it, then
21 they can find it. There's a ---

22 **THE COURT:** And that's what you're concerned about.

23 **MR. DAIGLE:** Correct.

24 **MR. JUNG:** Can I just address that one point, Your
25 Honor?

1 **THE COURT:** Yes.

2 **MR. JUNG:** If -- if that becomes -- if you look at
3 the rule of law of mootness, there are three exceptions.
4 One is a matter of great public importance that could be
5 capable of repetition. The third point says that if it
6 was somehow a collateral issue to the parties in some
7 other proceeding.

8 Now, if he's going to take the position that because
9 a restraining order issued once against me, that would be
10 essentially the exception swallowing the rule of mootness.
11 Because if anytime somebody that was once a party to a
12 previous proceeding and has since become moot because of
13 it, it no longer is a justiciable controversy. If they
14 can say well, that's a collateral issue to me, because it
15 might damage my reputation, then, isn't that the exception
16 swallowing the rule? I submit it is, Your Honor.

17 And I don't believe that Counsel has made any basis
18 here, apart from an attorney offering some kind of an
19 attorneys' argument that, well, my client rather not have
20 it be known in some record in the magistrate's court that
21 I was once the subject of a restraining order. That is
22 the fact, Your Honor, ---

23 **THE COURT:** I think his position is that his client
24 was the subject of a restraining order that shouldn't have
25 been issued in the first place, and ---

1 MR. JUNG: Well, ---

2 THE COURT: --- that because that issue should not
3 have been issued in the first place, that he would like it
4 removed from his record.

5 MR. JUNG: Well, and I believe ---

6 THE COURT: Is that correct, Mr. Daigle?

7 MR. DAIGLE: That's correct, Your Honor.

8 THE COURT: Thank you.

9 MR. JUNG: Let me address the merits, then, and I'd
10 just ask Your Honor to take ---

11 THE COURT: Let me -- let's do it this way. I'm
12 going to review your Brief. Is there anything else that
13 you wish to add to your Brief at this time?

14 MR. JUNG: Well, it's in my Brief, but I think the
15 most important thing that we haven't heard here today is
16 that Mr. McFarland was under multiple no contact orders.
17 He was under trespass orders from the Summerville Police
18 Department, and what he did was ignore those rulings.

19 I submit that's not really my responsibility to make
20 the record on as the respondent, but if you take a look at
21 the record, which I think Your Honor ought to if you're
22 going to make a ruling decision on the merits, ---

23 THE COURT: What was the restraining order? What was
24 the basis of the restraining order?

25 MR. JUNG: That he have no contact with Mrs. Mazell

1 or the children or Mr. Mazell, that they simply do not
2 speak to each other.

3 THE COURT: Okay.

4 MR. JUNG: And he repeatedly violated that.

5 THE COURT: Why did the magistrate issue the
6 restraining order, because of the bad check incident and
7 the photo?

8 MR. JUNG: No, because of a pattern of things, Your
9 Honor. My client ---

10 THE COURT: What was the pattern?

11 MR. JUNG: It started from 2007, a pattern of
12 harassment, and it's all in the record, Your Honor. So I
13 have briefed these issues on the merits. We argued this
14 point.

15 You know, I did not have the benefit of the record at
16 the time that we submitted a motion for -- you know, we
17 addressed the motion for reargument. The magistrate
18 upheld her previous ruling.

19 The magistrate had a three-hour hearing. I would say
20 maybe eight to ten witnesses were called.

21 At the end of the day, the magistrate found that Mr.
22 McFarland's conduct was unreasonable, that it served no
23 legitimate purpose, and it was designed to cause emotional
24 infliction -- emotional distress on Mrs. Mazell. And
25 because of that, the judge felt it would be best if the

1 parties just simply lived up to the previous orders of the
2 police in Summerville, that they just leave each other
3 alone.

4 She issued a restraining order, and I submit that
5 restraining order is moot, Your Honor, and I would be
6 happy to submit further proceedings to address this issue.
7 But I believe Your Honor ought to take a look at the
8 record and the previous Briefs that have been filed on
9 this case if you're going to rule on the merits. Thank
10 you.

11 THE COURT: Mr. Daigle, have you received a copy of
12 the Respondents' Brief on Appeal?

13 MR. DAIGLE: Your Honor, I received it just before
14 the hearing.

15 THE COURT: All right.

16 MR. DAIGLE: And I don't know if ---

17 THE COURT: I'm going to give you until 5:00 o'clock
18 today to address any issues that are raised within that
19 Brief. You'll have my ruling within ten days.

20 Good luck to you all. Thank you.

21 MR. DAIGLE: Your Honor, does your record have a copy
22 of my Motion to Reconsider before the magistrate court?

23 THE COURT: Yes.

24 MR. DAIGLE: Okay.

25 THE COURT: But if you have a copy, I'll be more than

1 happy to take it so I can make notes on it.

2 MR. DAIGLE: Your Honor, if I may? Can I have until
3 5:00 o'clock tomorrow? I've got another hearing at 2:00
4 o'clock here today, and I won't be going back to my office
5 until after that hearing.

6 THE COURT: I prefer to have it the sooner the
7 better, because I like to ---

8 MR. DAIGLE: And I -- I can have it to you by 5:00
9 o'clock tomorrow. I just don't know if I'm going to be
10 back in the office today.

11 THE COURT: The sooner you get it to me, the sooner
12 that I can rule, because I'd like to complete my matters
13 before I leave Dorchester. Okay?

14 MR. DAIGLE: I will do my best.

15 THE COURT: All right. Thank you.

16 MR. JUNG: Thank you, Judge.

17 THE COURT: Thank you.

18 (END OF REQUESTED TRANSCRIPT OF RECORD.)
19
20
21
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23
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25

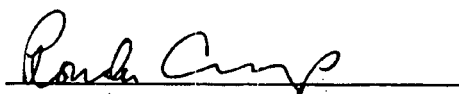
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Dorchester County, South Carolina, on the 12th day of
November, 2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 30, 2014



Ronda T. Cummings, CVR-M
Official Court Reporter



SUMMERVILLE POLICE DEPARTMENT
NOTICE OF TRESPASS

CASE NUMBER

09-018709

EVENT	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE	
	Lime oak village 107 Oak Village Ln						29405		
	INCIDENT DATE	24 HR CLOCK	DATE	24 HR CLOCK	DISPATCH DATE/TIME	24 HR CLOCK	DISPATCH TIME	DEPART TIME	LOCATION NO.
	3-4-09	1600			3-4-09	1528	1512	1620	SWSL

COMPLAINANT NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
Mayell - Michael K.	Ag	DSOU	W	M	45	N		
ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.				
16, ...	SC	SC		SWSL				

TO - SUBJECT LISTED BELOW:

You are hereby advised pursuant to Section 16-11-620 of the South Carolina Code of Laws as amended (1976), not to return to the property listed above. Your failure to comply with this notice may result in your arrest. If convicted you will be subject to fines and / or imprisonment.

This notice is valid for your lifetime, unless specified below.

SUBJECT NO. 1	☒ SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	☐ RUNAWAY	McFarland William	W	M	45	N		5'11"	190	BRN	BRN
	☐ WANTED	FACIAL HAIR SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.									
	☐ WARRANT										
	☐ ARREST	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.					
	☐ JAIL	SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE TIME OF OFFENSE		DATE TIME OF ARREST			
☐ SUMMONS	DRUGS YES ☐ NO ☐ UNK. ☐ TYPE		TOTAL # ARRESTED								

COMMENTS / LIMITATIONS

NOT Enter Complainant's Property	
McFARLAND Represented Himself as HOA President	
+ wife as Treasurer	

This notice is at my request, I have received a copy.

I have received a copy of this notice.

COMPLAINANT SIGNATURE

SUBJECT SIGNATURE or REFUSED

RECORDS DIVISION USE ONLY: 1 ☐ ENTERED INTO CAD / RMS						2 ☐ INVOLVEMENTS CREATED		3 ☐ ENTERED BY: (INITIALS)	
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER			DATE	UNIT NUMBER		
Forth A	3-4-09	140	LT. J.L. PAYTON			03-05-2009	LR		

RECORDS COPY (White)

COMPLAINANT COPY (Yellow)

SUBJECT COPY (Pink)

AGENCY I.D.
SC 0180200

INCIDENT REPORT
SUMMERVILLE POLICE DEPARTMENT

"EXHIBIT B"

CASE NUMBER

12-062978

NCIC

INQ ENTD

INCIDENT TYPE Intimidation (13C)		COMPLETED ☒ YES ☐ NO	FORCED ENTRY ☐ YES ☒ NO	PREMISE TYPE 18- Galleria Shopping Center	UNITS ENTERED	TYPE VICTIM ☒ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Orgn ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) Galleria Shopping Center, 975 Bacons Bridge Road				ZIP CODE 29485	WEAPON TYPE None	
INCIDENT DATE 09/11/2012	24 HR CLOCK 1635	DATE 09/13/12	24 HR CLOCK 1113	DISPATCH DATE/TIME 1119	DEPART TIME 1215	LOCATION NO. SESL
COMPLAINANT NAME (LAST, FIRST, MIDDLE) See Victim		DATE OF BIRTH	RELATIONSHIP TO SUBJECT #1 AQ	RESIDENT J S O U	RACE W	SEX F
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
VICTIMS NAME (LAST, FIRST, MIDDLE) Mazell, Sofia R.		DATE OF BIRTH 07/15/1971	RELATIONSHIP TO SUBJECT #1 AQ	RESIDENT J S O U	RACE W	SEX F
HEIGHT 504	WEIGHT 146	HAIR Bm	EYES Bm	AGE 42	ETH N	DAYTIME PHONE 261-7080
ADDRESS 107 Oak Village Lane		CITY Summerville	STATE SC	ZIP CODE 29483	LOCATION NO. SWSL	
VISIBLE INJURY VICT #1 ☐ YES ☒ NO ☐ EXPLAIN		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO ☐				
VICTIM # 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐ DRUGS ☐ YES ☒ NO ☐ UNK. ☐		TYPE:				
TWO-WAY VEH. ☐ ONE-WAY VEHICLE ☐ DETECTIVE/PLASMIT ☐ OTHER ☐		ALONE ☐ ASSISTED ☐				
J - This Jurisdiction S - State O - Out of State U - Unknown						
☒ SUSPECT NAME (LAST, FIRST, MIDDLE) McFarland, William		RACE W	SEX M	AGE 48	ETH N	DATE OF BIRTH 11/17/1964
PHONE OR DRIVERS LICENSE NUMBER 851-3076		HEIGHT/WEIGHT 511 190				
ADDRESS 105 Oak Village Lane		CITY Summerville	STATE SC	ZIP CODE 29483	LOCATION NO. SWSL	
SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐				
DRUGS YES ☐ NO ☒ UNK. ☐		DATE TIME OF OFFENSE				
TOTAL # ARRESTED		DATE TIME OF ARREST				

R/O (Reporting Officer) met with Mazell in the lobby of the Summerville Police Department in reference to being harassed by McFarland. Mazell stated that on September 11, 2012 at approximately 16:35 hours, while in the parking lot of the Galleria Shopping Center, McFarland walked by her and was taking pictures of her. Mazell further stated that McFarland was making hand gestures for her to walk toward him which she felt was intimidating. According to Mazell, she has a past history with McFarland and is afraid that he may harm her. Mazell completed a voluntary statement form which she signed and was provided with a copy. Mazell also was given a victim notification form and explained the courtesy summons process. R/O attempted to make contact with McFarland, but was unsuccessful.

ADMINISTRATIVE INFORMATION	PHOTOGRAPHS TAKEN ☐ YES ☒ NO	GPS Location (if for future use) LATITUDE LONGITUDE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
TYPE (GROUP)				
STOLEN				TOTAL VALUE
DAMAGED				
BURNED				
RECOVERED				
SEIZED				
SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☐ YES ☒ NO	☐ ACTIVE ☒ ADM CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY				
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
J. Forsythe	09/13/2012	L-60	L.T. J.L. Patten S.P.O.	09/11/2012
M. Gregory	09/13/2012	L-41	FOLLOW-UP INVESTIGATION ☐ YES ☒ NO	04/14/12
SCIBRS: B				

AGENCY I.D.
SC 018:200

SUPPLEMENTAL INCIDENT REPORT
TOWN OF SUMMERVILLE POLICE DEPARTMENT

CASE NUMBER
1 2 - 0 4 7 5 2 1

NOIC
INV. ENTD.

☒ ORIGINAL REPORT
☐ MODIFIES ORIGINAL

☐ SUPPLEMENTAL REPORT
☐ CASE STATUS CHANGE

☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS

☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 2 PAGES.

☐ COMPLAINTANT
☐ VICTIM #
☐ SUBJECT #
☐ RUNAWAY
☐ WANTED
☐ WARRANT
☐ ARREST
☐ JAIL
☐ SUMMONS

NAME (LAST, FIRST, MIDDLE)
Mcfarland, William

VICTIM RELATIONSHIP TO SUBJECT
#1 OK #2 #3

RESIDENT RACE SEX AGE D.O.B. ETH
Q S O U W M 48 11-17-64 N

HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
511 190 Blk Bro

ADDRESS CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE
105 Oak Village Lane Summerville SC 29483 SWSL (843) 851-3076

VICTIM NO. VISIBLE INJURY: ☐ NO ☐ YES COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES

EXPLAIN: ☐ NO ☐ YES

USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK

☐ TWO-MAN VEHICLE ☐ DETECTIVE / PLASMIT ☐ ALONE ☐ ASSISTED

☐ COMPLAINTANT
☐ VICTIM #
☐ SUBJECT #
☐ RUNAWAY
☐ WANTED
☐ WARRANT
☐ ARREST
☐ JAIL
☐ SUMMONS

NAME (LAST, FIRST, MIDDLE)
Holiday, Marilyn Diane

VICTIM RELATIONSHIP TO SUBJECT
#1 PA #2 #3

RESIDENT RACE SEX AGE D.O.B. ETH
J S O U W F 61 08-09-51 N

HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
506 130 Bro Blue

ADDRESS CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE
1834 Venada Trail Murfreesboro TN 37128 OUT Unknown

VICTIM NO. VISIBLE INJURY: ☐ NO ☐ YES COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES

EXPLAIN: ☐ NO ☐ YES

USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK

☐ TWO-MAN VEHICLE ☐ DETECTIVE / PLASMIT ☐ ALONE ☐ ASSISTED

William stated he walked up the property line and asked Sofia several times what was wrong, but she refused to respond, and left the area. William stated he went back to doing yard work. Jennifer stated before Sofia contacted the SPD, she went walking to her mail box, which is located in the middle of the neighborhood. Jennifer stated while Sofia was walking back to her residence, she looked over at Jennifer and extended her middle finger in a negative gesture towards her. Jennifer stated she felt like she is being harassed by Sofia. Jennifer and William were given a copy of this case number and asked to contact SPD if they had any further questions or information regarding this incident. Upon regaining contact with Sofia, she stated she did not extend her middle finger towards Jennifer at any time. Holiday stated she was with Jennifer and did not observe her extend her middle finger towards Jennifer. Jennifer did not state if Holiday was with Sofia when she extended her middle finger at her, but did state Sofia received a letter today stating she is past due on her homeowner's fees. Jennifer stated her husband, William, is the president of the homeowner's association. Sofia was given a copy of this case number and asked to contact SPD if she had any further questions or information regarding this incident.

PHOTOGRAPHS TAKEN ☐ YES ☒ NO

GPS Location (For future use) LATITUDE LONGITUDE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS TYPE VIN AND / OR LICENSE NO. BOAT HULL NO. AND / OR REG. NO.

☐ STOLEN ☐ VEHICLE

☐ RECOVERED ☐ GUN

☐ FOUND ☐ BOAT

☐ TOWED ☐ LICENSE PLATE

☐ SUSPECT ☐ SECURITIES / BONDS, STOCKS

☐ VICTIM ☐ ARTICLE

SERIAL AND / OR OWNER APPLIED NO. STATE

YEAR OF REGISTRATION YEAR OF EXPIRATION YEAR MAKE TYPE

MODEL STYLE COLOR BRAND NAME CALIBER

MIC NO. DENOMINATION ISSUER SECURITIES DATE

MISCELLANEOUS

TYPE (GROUP) TOTAL VALUE

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

SUBJECT IDENTIFIED ☒ YES ☐ NO

SUBJECT LOCATED ☒ YES ☐ NO

☐ ACTIVE ☒ NOW CLOSED ☐ UNFOUNDED

☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18

☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION

REPORTING OFFICER(S) DATE UNIT NUMBER APPROVING OFFICER DATE UNIT NUMBER

J. McClellan 07-11-2012 L-84

7-12-12 16

7-12-12 15

SCIBRS:

72

Solicitor's Worthless Check Unit

1st Judicial Circuit



David M. Pascoe, Jr.
Solicitor

September 20, 2012

140 N. Main St., Suite 102
Summerville, SC 29483
843-871-2640

Sophia Mazell
107 Oak Village Lane
Summerville, SC 29483

NOTICE OF WORTHLESS CHECK ARREST AND CRIMINAL PROSECUTION

Your check, draft or instrument number 9326, drawn on First Federal Bank and issued on June 2, 2012 to Live Oak Village HOA in the amount of \$1,000.00 has been dishonored.

In order to avoid arrest and criminal prosecution, you must now pay the amount of the check, plus collection charges provided by law before September 30, 2012. The total amount now due is \$1,171.00.

Payment in the form of a MONEY ORDER OR BANK CASHIER'S CHECK must be made payable to SOLICITOR'S CHECK UNIT and mailed to the Solicitor's Check Unit, 140 N. Main St., Suite 102, Summerville, SC 29483.

Do NOT contact the Payee or Merchant who took this check about this check. You MUST handle this matter through the Solicitor's Worthless Check Program. Attempts to intimidate or influence the payee WILL result in additional Felony Charges.

It is in your best interest to take care of this matter immediately.

Sincerely,

Stacey Cook

Stacey Cook, Worthless Check Coordinator

Detach and Return with Payment

Name: Sophia Mazell Case #: D-14523 Date: _____

Make payable to: Solicitor's Check Unit for \$1,171.00

Money Order or Cashier Check #: _____

Send a stamped self-addressed envelope with payment in order to have your check returned to you by mail.

Person ID #: 7109

Dorchester County

Mail To

Solicitor's Check Unit
140 N. Main St., Ste 102
Summerville, SC 29483

NO Personal Checks

Solicitor's Case #: D-14523

P.3.

100 Oak Village Lane
Summerville, SC 29483
September 30, 2012

Mr. William McFarland, President
& Board of Director
Mrs. Jennifer McFarland, Treasurer
105 Oak Village Lane
Summerville, SC 29483

Dear Mr. President:

It has come to our attention that certain actions taken by you without approval from the Board of Directors may have placed the Live Oak Village Homeowners Association in legal jeopardy.

In early June a Board of Director was given a check for their homeowner's association dues by Ms. Sophia Mazell, residing at 107 Oak Village Lane, Summerville, SC. I placed this check in an envelope and sent it via Certified Mail on June 14, 2012 to the Live Oak Village Homeowners Association mail box at 106 Oak Village Lane, Summerville, SC. (See attached receipt). This certified letter was never delivered due to a policy related by you that certified mail cannot be delivered to 106 Oak Village Lane, Summerville, SC because there is no physical location. Shortly thereafter, in an e-mail to you, I indicated I would go to the Post Office and sign for the Certified Letter. You never responded to my offer. The certified letter was retrieved from the Post Office by the HOA member at 107 Oak Village Lane on July 12, 2012 and returned to me. I then placed the unopened certified mail envelope in a Priority Mail envelope and sent it to you at 105 Oak Village Lane, Summerville, SC, your home address, with Delivery Confirmation on July 20, 2012. (See attached) The United States Post Office indicates this Priority Mail envelope was delivered to you on July 21, 2012 at 10:14 am. Therefore, the annual dues payment for 107 Oak Village, Summerville, SC was in your or your wife's, the HOA Treasurer, possession as of July 21, 2012 and was not deposited into the Live Oak Village Homeowners bank account.

Along with the Annual Live Oak Village Homeowners Association meeting notice, sent to 107 Oak Village Lane, Summerville, SC on or about September 1, 2012, you or your wife included a late fee assessment. This late fee assessment was neither discussed with nor approved by the Board of Directors. The unopened certified mail envelope sent June 14, 2012 should have been considered timely payment and not subject to any late fees. At this point it is unclear as to why the annual dues assessment for 107 Oak Village Lane was not deposited in a timely manner.

This matter is further compounded by a complaint issued by the Solicitor's office against Ms. Sophia Mazell, 107 Oak Village Lane, Summerville, SC for issuing a "worthless check" on or about September 20, 2012. Failure to deal with the annual dues payment check for 107 Oak Village Lane in a reasonable and timely manner has placed the Live Oak Village Homeowners Association in legal jeopardy based on your and or your wife's individual actions not in conformance with HOA rules and policies. Additionally, the failure of any officer in the Live Oak Village Homeowners Association to fulfill their duties potentially also places all members of the association in legal jeopardy. The actions or inactions by you or your wife to deposit an

annual dues payment in a timely manner are not actions consistent with the duties of the President, Board of Director and Treasurer of the HOA. Therefore, we, as Board of Director members do hereby renounce these actions and affirm these actions were not taken on behalf of the Live Oak Village Homeowners Association. The Live Oak Village Homeowners Association is not responsible for any consequences, legal or otherwise, that may arise from these actions. We, as Board of Director members, do hereby request the resignation of you as President and Board of Director and your wife, Jennifer McFarland, Treasurer effective immediately.

Respectfully,



David Hannemann, Secretary and Board of Director



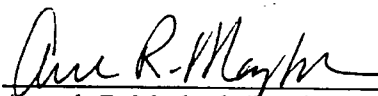
Thomas Morris, Jr., Board of Director

cc: Mr. Norbert Cummings
Mr. & Mrs. Michael Knight
Mr. & Mrs. Carlton Holcombe
Mr. & Mrs. Michael Mazell
Ms. Kathleen Greene

CERTIFICATION

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by all parties and not any other material.

Respectfully submitted,



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amanda@maybanklaw.com
Attorneys for Appellant William McFarland

May 30, 2014

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Roy P. Maybank
Amanda R. Maybank
Marshall A. Earhart

EMAIL:
amanda@maybanklaw.com

April 8, 2015

Honorable Jenny Abbott Kitchings
SC Court of Appeals
Clerk of Court
P.O. Box 11629
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:

Pursuant to SCACR 208(b)(7), I bring the following supplemental citation to the Court's attention. The citation is the attached order issued by the circuit court and filed March 13, 2015, in the case of Live Oak Village Homeowners Assoc. Jennifer McFarland, Carlton Holcombe, and Ute Holcombe v. Thomas Morris, David Hanneman, Sofia Mazell and Michael Mazzell/Thomas Morris and David Hanneman v. William McFarland, Case No. 2012-17-2583.

This citation is an order that grants summary judgment on and dismisses all claims brought by Hanneman and Morris for accounting, indemnity, conversion of HOA Funds, breach of fiduciary duty, and negligence against the Live Oak Homeowners Association, Plaintiffs and William McFarland.

This citation is pertinent to the "Worthless Check Investigation" discussed in both Appellant and Respondents' briefs, which involved the contested testimony and

\\MAINSERVER\Litigation Files\104-Auto-Owners\104.145 Mazell v. McFarland\Appeal\Correspondence\L-Ct Appeals
(Supp Citation).docx

evidence from Hanneman and Morris alleging that Mr. McFarland acted improperly with regard to his duties on the HOA Board, as well as the mischaracterization that Mr. McFarland was removed from the HOA Board.

This issue is discussed on pages 7 and 8 of Appellant's Brief and the following pages in Respondent's Brief: page 4, sub paragraph 2; page 13, footnote 6; page 16 first paragraph; and page 16, footnote 7. The citation is also pertinent certain pages on the Record on Appeal; pages 26-27, pages 142-145, and page 147.

Should you have any questions about the enclosed, please feel free to give me a call.

Sincerely,


Amanda R. Maybank

ARM/tgw
Enclosure
cc: William B. Jung, Esquire

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1802583

CERTIFIED COPY

Live Oak Village
Homeowners Association
Carlton Holcombe

Jennifer McFarland
Ute Holcombe
Sofia Mazell

David Hannemann
Michael Mazell

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☒ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order, (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

3/13/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on 3/13/2015, and a copy mailed first class or placed in the appropriate attorney's box on 3/13/2015, to attorneys of record or to parties (when appearing pro se) as follows:

Peter Brandt Shelbourne 131 E. Richardson Ave.
Summerville, SC 29483
Jason Alan Daigle 25 Calhoun Street Suite 400 Charleston,
SC 29401

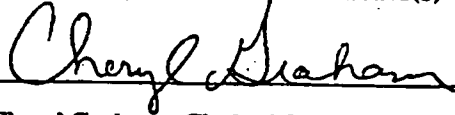
William B. Jung 1156 Bowman Rd. Ste. 200 Mt. Pleasant,
SC 29464
Lydia Pruitt Davidson/Lydia Pruitt Brooks/Leonard
Krawcheck 9 State Street Charleston, SC 29401
Morgan S. Templeton/William ("Trey") Wharton Watkins
Jr./Katherine Anne Stanton PO Box 1200 Charleston, SC
29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

*A filed copy of attached order was also emailed to all counsel
on 3/13/2015

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)


Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS
ASSOCIATION, INC., JENNIFER MCFARLAND,
CARLTON HOLCOMBE AND UTE HOLCOMBE

PLAINTIFFS

v.

THOMAS MORRIS, DAVID HANNEMANN, SOFIA
MAZELL AND MICHAEL MAZELL

DEFENDANTS

THOMAS MORRIS AND DAVID HANNEMANN

THIRD PARTY PLAINTIFFS

v.

WILLIAM MCFARLAND

THIRD PARTY DEFENDANT

IN THE COURT OF THE COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE No: 2012-CP-18-2583

ORDER GRANTING SUMMARY
JUDGMENT

CERTIFIED
2015 MAR 13 AM 9:38
CLERK OF COURT
DORCHESTER COUNTY

This matter is before the court on motion of Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant William McFarland (collectively referred to as the "Live Oak Parties") for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on Defendants'/Third-Party Plaintiffs', Thomas Morris and David Hannemann (collectively referred to as "Defendants"), counterclaims and third-party claims. After considering the written briefs and hearing oral arguments on January 29, 2015, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' counterclaims and third-party claims. This judgment is based on the following findings:

1. Live Oak Parties have provided an accounting current through the date of the oral

arguments;

2. Defendants lack standing to bring the conversion cause of action;
3. The Live Oak Parties have complied with any right of indemnification Defendants may have;
4. Defendants are unable to prove any damages related to any of their causes of action.

Background

The parties to this action live in a seven home gated community in Summerville, South Carolina known as Live Oak Village. There were certain disputes between the parties as residents of the neighborhood and as officers and/or directors of the Live Oak Village Homeowners Association. These disputes lead to the Live Oak Parties, save William McFarland, filing a complaint against Defendants. Defendants subsequently filed counterclaims as well as third-party claims against William McFarland. Defendants' counterclaims and third-party claims set forth five causes of action: Breach of Fiduciary Duty, Negligence/Negligence *Per Se*, Conversion, Accounting, and Indemnification.

Standard

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). "In ruling on a motion for summary judgment, the evidence and the inferences which

can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.”

Id.

“When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted.” Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Bradley v. Doe, 374 S.C. 622, 649 S.E.2d 153 (Ct.App.2007). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003). “The nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005).

Law and Analysis

I. Accounting

During the course of this litigation the Live Oak Parties have provided an accounting to Defendants. The Live Oak Parties have agreed to continue to provide Defendants with an on-going accounting as new relevant documents may become available, and the Live Oak Parties are hereby ORDERED to do so.

There is no question of fact related to the Accounting cause of action. Any judgment or verdict for this cause of action will be duplicative to what the Live Oak Parties have already provided and have been ordered to continue to provide. Therefore, the Court grants the Live Oak Parties Motion for Summary Judgment on Defendants’ Accounting cause of action.

Nothing in this order should be interpreted to bar Defendants from instituting another lawsuit against the Live Oak Parties' should future accountings indicate wrongdoing on the part of the Live Oak Parties.

II. Indemnity

Defendants have claimed a right to indemnity based on the Bylaws of the Association and the South Carolina Nonprofit Corporations Act, S.C. Code Ann. §§ 33-31-101, *et seq.* (the "Act").

The Covenants and Restrictions of the Association only allow for indemnity to be awarded to the Developer or the Association itself. The By-laws of the Association only allow for indemnity to be awarded to the Declarant or the Association itself. Defendants are not developers or declarants. Therefore, Defendants are not entitled to indemnity under the Covenants and Restrictions or the By-laws.

The Act indicates that only the corporation itself, in this case Live Oak Village Homeowners Association, Inc., has the authority to indemnify. Therefore, Defendants are not entitled to indemnification under the Act as to Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and/or William McFarland. Live Oak Village Homeowners Association, Inc. has already indemnified Defendants by purchasing liability insurance for its officers and directors using Association funds. Therefore, any duty the Association may have to indemnify Defendants has been met.

Based on the testimony of Defendants it is apparent that there is no evidence of damages related to their indemnification cause of action. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Accounting cause of action.

III. Conversion of HOA Funds

Conversion is defined as the unauthorized assumption in the exercise of the right of

ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). To establish the tort of conversion, the [Defendants] must establish either title to or right to the possession of the personal property. Crane v. Citicorp Nat'l Servs., Inc., 313 S.C. 70, 72, 437 S.E.2d 50, 52 (1993) (superseded by statute on other grounds).

Defendants have alleged that the Live Oak Parties have converted HOA funds for their own uses. Defendants are suing in their personal capacity for the conversion of funds that do not belong to them. Defendants cannot establish a right of ownership over the funds or a right to possession of the HOA funds as required to bring an action for conversion.

Based on the testimony of Defendants it is apparent that they can present no evidence that the Live Oak Parties converted any funds to their own uses. It is also apparent from their testimony that Defendants can present no evidence of damages related to their conversion cause of action. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Conversion cause of action.

IV. Breach of Fiduciary Duty

To establish a claim for breach of fiduciary duty, the [Defendants] must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the [Defendants] by the [Plaintiffs], and (3) damages proximately resulting from the wrongful conduct of the [Plaintiffs].

It is apparent from Defendants' testimony that the damages being alleged are speculative and conjectural in nature. It is also apparent from Defendants' testimony that Defendants have no evidence of concrete or particularized damages related to their Breach of Fiduciary Duty cause of action. Additionally, Defendant Morris can present no evidence that the Live Oak Parties breached any duty. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Breach of Fiduciary Duty cause of action.

V. Negligence and Negligence *Per Se*

"In a negligence action, a [Defendant] must show the (1) [Plaintiffs] owe a duty of care to the [Defendants], (2) [Plaintiffs] breached the duty by a negligent act or omission, (3) [Plaintiffs'] breach was the actual and proximate cause of the [Defendant's] injury, and (4) [Defendants] suffered an injury or damages." Sabb v. S.C. State Univ., 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002). "Liability encompasses all elements of a negligence claim, including damages proximately caused by the alleged negligence." Hinds v. Elms, 358 S.C. 581, 585, 595 S.E.2d 855, 857 (Ct.App.2004).

It is apparent from Defendants' testimony that Defendants have no evidence of concrete or particularized damages related to their Negligence and Negligence *Per Se* cause of action. Additionally, Defendant Morris can present no evidence that the Live Oak Parties breached any duty of care. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Negligence and Negligence *Per Se* cause of action.

THEREFORE, the Court finds that the Live Oak Plaintiffs have provided an accounting to Defendants. The Court grants Summary Judgment as to the Accounting cause of action and ORDERS the Live Oak Parties to continue to provide Defendants with an on-going accounting as new relevant documents become available.

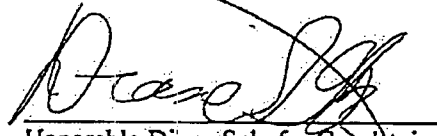
The Court finds that Defendants may not seek indemnity against Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and/or William McFarland. The Court finds that Live Oak Village Homeowners Association, Inc. has satisfied any indemnity obligation to it may have to Defendants by purchasing liability insurance for its officers and directors using Association funds. The Court finds that Defendants have no damages related to their Indemnity cause of action. The Court grants Summary Judgment as to the Indemnity cause of action.

The Court finds that Defendants may not bring a cause of action for the conversion of HOA funds in their individual capacity. The Court finds that there is no evidence that the Live Oak Parties converted any HOA funds. The Court finds that Defendants have no damages related to their Conversion Cause of Action. The Court grants Summary Judgment as to the Conversion cause of action.

The Court finds that Defendants have no damages related to their Breach of Fiduciary Duty Cause of Action. The Court finds that Defendant Morris has presented no evidence that the Live Oak Parties breached any fiduciary duty they may have had. The Court grants Summary Judgment as to the Breach of Fiduciary Duty cause of action.

The Court finds that Defendants have no damages related to their Negligence and Negligence *Per Se* Cause of Action. The Court finds that Defendant Morris has presented no evidence that the Live Oak Parties breached any duty of care they may have had. The Court grants Summary Judgment as to the Negligence and Negligence *Per Se* cause of action.

IT IS THEREFORE ORDERED that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiffs', Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant's William McFarland Motion for Summary Judgment is GRANTED. This order shall not limit the ability of these parties to bring a subsequent action if evidence presents itself in the future.


Honorable Diane Schafer Goodstein
First Judicial Circuit

Dorchester, South Carolina
This 12 day of March, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Appellate Case No.: 2014-000141

William McFarland.....Appellant,

v.

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

FINAL BREIF OF APPELLANT WILLAIM MCFARLAND

Amanda R. Maybank, Esquire
MAYBANK LAW FIRM, LLC
P.O. Box 12579
Charleston, SC 29422
(843) 766-8101
amanda@maybanklaw.com
Attorneys for Appellant William McFarland

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S.C. Code Ann. §16-3-1700	5, 6, 7, 9, 10, 11
S.C. Code Ann. §16-3-1750(E)	10
S.C. Code Ann. §18-7-170	5

STATEMENT OF ISSUES ON APPEAL

- I. THE RESTRAINING ORDER ISSUED AGAINST APPELLANT WAS IMPROPER AND SHOULD BE VACATED.**
- II. THE ISSUE OF MOOTNESS IS NOT APPLICABLE.**

STATEMENT OF THE CASE

This appeal stems from a dispute between residents of the same neighborhood. On September 25, 2012, the Respondents, (hereinafter "the Mazells"), filed a motion for a restraining order against the Appellants, (hereinafter "Mr. McFarland"), based on stalking and/or harassment. On October 12, 2012, the matter was heard by the magistrate. Following the hearing, the Magistrate issued a "Mutual Restraining Order." On October 22, 2012, Mr. McFarland timely filed a Motion for Reconsideration. The motion was heard on February 1, 2013, and an order denying reconsideration was issued on March 8, 2013.

On March 26, 2013, McFarland filed a Notice of Appeal with the Circuit Court. On November 12, 2013, the Circuit Court heard arguments on the appeal, and issued an order affirming the magistrate's order on December 10, 2013. Notice of Appeal to this Court was filed on January 13, 2014.

STATEMENT OF THE FACTS

McFarland and Respondents are residents of the same neighborhood, and in fact, live next door to one another. At the time, Mr. McFarland was the president of the neighborhood's homeowners association, ("HOA"), and two of the three alleged incidents in the complaint can be connected with HOA matters. (R. pp. 220, 223). In September of 2012, the Respondents filed a motion for a restraining order against McFarland alleging harassment pursuant to S.C. Code Ann. §16-3-1700(a) and stalking under §16-3-1700 (B) or (C). Specifically, the motion alleged three incidents. The first involved a dispute over a check written by Respondent to the HOA, which was cancelled prior to presentment. The second incident involved a photograph taken by Mr. McFarland with his cell phone of Respondent while in a parking lot outside an HOA meeting. The third involved an incident in which the Respondent and Mr. McFarland exchanged words while on a shared property line. (R. pp. 223, 224, 226). While it is clear that the parties are not friendly with one another, none of the incidents contained in the complaint rise to the level to meet the statutory definition of "Harassment" or "Stalking." As such, the restraining order should not have been issued.

ARGUMENT

- I. **THE RESTRAINING ORDER ISSUED AGAINST APPELLANT WAS IMPROPER IN THAT NONE OF THE INSTANCES MEET THE DEFINATION OF STALKING OR HARRASSMENT AS DEFINED BY S.C. CODE ANN. § 16-3-1700.**

When acting in appellate capacity pursuant to S.C. Code Ann. §18-7-170, the circuit court has a broad scope of review. However, 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 judgment of the magistrate and there are no facts that show

the affirmance was influenced by an error of law. *Hadfield v. Gilchrist*, 343 S.C. 88 (S.C. Ct. App. 2000). However, the Court may reverse if there are errors of law. *Id.* In this case, both the magistrate and circuit court erred in holding that the three incidents alleged in the complaint satisfy the definitions of either “stalking” or “harassment.” As such, the restraining order was improperly issued.

“Harassment” is defined as “a pattern of intentional, substantial and unreasonable intrusion into the private life of a targeted person that causes the person and would cause a reasonable person in his position to suffer mental distress.” S.C. Code Ann. §16-3-1700(A). The code continues to describe examples of stalking as, “(1) following the targeted person; (2) visual, physical, verbal, written or electronic contact that is initiated, maintained, or repeated after a person has been provided notice that the contact is unwanted; (3) surveillance of or the maintenance of a presence near the targeted persons residence, place of work, school or another place regularly occupied by the targeted person, and (4) vandalism and property damage.”

“Stalking” is defined as a pattern of words, conduct, written or electronic that is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person’s position to fear:

- (1) Death of the person or a family member;
 - (2) Assault upon the person or a member of his family;
 - (3) Bodily injury to the person or a member of his family;
 - (4) Criminal sexual contact on the person or a member of his family
 - (5) Kidnapping of the person or a member of his family; or
 - (6) Damage to the property of the person or a member of his family
- S.C. Code Ann. §16-3-1700(B).

Respondent presented no evidence in the complaint or in the subsequent testimony that would satisfy any of the above elements of stalking. The only possible section upon which the restraining order could be issued is S.C. Code Ann. §16-3-1700(A). This section requires a person to show “. . . a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose . . .” Each alleged incident is discussed below, and accordingly, the Respondent failed to show that the alleged “intrusion” constituted a pattern as defined by S.C. Code Ann. §16-3-1700(D).

A. September 20, 2012 – Worthless Check Investigation

As stated above, Respondents alleged that the Defendant somehow engaged in stalking and/or harassment as defined by S.C. Code Ann. §16-3-1700 as a result of the First Circuit Solicitor’s Office sending a letter concerning a worthless check. (R. p. 54).

Initially, the contact with Respondent was initiated by the First Circuit Solicitor’s Office, and did not involve visual or physical contact by McFarland. S.C. Code Ann. §16-3-1700 does not contemplate contact by third-parties. The letter received by the Respondents was from the First Circuit Solicitor’s Office and only referenced a dishonored check to “Live Oak Village HOA,” who is not a party to this action.

Not only does this alleged incident not involve visual or physical contact by McFarland, but McFarland also had a legitimate purpose as contemplated by S.C. Code Ann. §16-3-1700. Mr. McFarland, as HOA board president was seeking to deposit HOA dues when he presented the check for payment. While there is a dispute about when or how the check was received by McFarland on July 21, and why there was a delay in presentment, what is clear is that Mr. Mazell stopped payment on the check on July 27, 2012. (R. p. 136, lines 1-4). Yet, Respondent was emailing Mr. McFarland on September 5, 2012, 40 days after the stop payment was issued,

that his check for HOA dues check had not cleared. There is nothing improper about Mr. McFarland's actions in reporting the check to the worthless check division after receiving the email informing him that the Respondent's check had not yet cleared, and accordingly presenting the check for payment.

The subsequent letter from the worthless check division does not meet the criteria or the definition of harassment and/or stalking, nor does it constitute an intrusion into the private life of Respondents.

B. September 12, 2012 – Cell phone picture of Respondents' vehicle

The Respondents alleged that she was taking her daughter to dance, when Mr. McFarland approached her vehicle and began taking pictures of her. (R. p. 95, lines 10-25). However, a review of the transcript, including the testimony of Respondent's own witness, reveals otherwise.

This incident took place in a parking lot outside the public library where a duly noticed meeting of the HOA was scheduled, a meeting at which Respondent knew that Mr. McFarland would be present at this location at that specified time. Respondent even admitted that she had notice of the meeting and knew that Mr. McFarland would be at this location during this time frame. (R. p.103, lines 10-24).

As explained, by Mrs. McFarland's testimony, she and Mr. McFarland were present at the library for a meeting. (R. p. 175, lines 13-18). After dropping Mrs. McFarland off at the door, Mr. McFarland had to park in the adjacent parking lot as the library parking lot was full. (R. p.176, line 17-22). According to both Mrs. McFarland and Respondent's witness, the adjacent parking lot (where Respondent was parked), is used as overflow parking when the library lot is full. (R. p. 116, lines 2-10; R. p. 192, lines 15-25).

After seeing Respondent in the parking lot from the library conference room, Mr. McFarland went outside to ascertain whether Respondent was coming to the meeting. (R. p.178, lines 1-2). In the past, Respondents had expressed concern about attendance at the meetings. (R. p. 179, lines 6-11). Mr. McFarland did take a photograph to document that Respondent was present at the library and could have attended the meeting to prevent any future claim by Respondents that they were not given proper notice of the meeting. (R. p. 179, lines 1-6; p. 61-62).

Again, this action by Mr. McFarland does not meet the definition of harassment and/or stalking. Moreover, Mr. McFarland had a legitimate purpose in 1) being at the library for the duly notice HOA meeting, and 2) documenting via the photograph that Respondent was present in the area and could have attended the meeting, to prevent any future claim to the contrary.

C. July 11, 2012 – dispute at the mutual property line

This incident occurred after Respondent approached Mr. McFarland at their mutual property line and was “repeatedly asked questions by the McFarlands.” (R. p. 97, lines 5-8; p. 109, lines 10-11). Again, S.C. Code Ann. §16-3-1700, does not contemplate such a situation. In this incident, the Respondent left her home, walked across her yard and approached Mr. McFarland on the shared property line. Mr. McFarland clearly has a “legitimate purpose” to be present on his own property. Even the complaint that Respondent demanded from the police department lists Respondent, Mrs. Mazell, as the “subject” and Mrs. McFarland as the “victim.” (R. p. 63)).

As with the previously described instances, none rise to the circumstances encompassed by S.C. Code Ann. §16-3-1700, nor does the behavior of either party meet the statutory

definition of harassment or stalking¹. Instead, we see a pattern in which Respondent has continually and intentionally put herself in situations in which she knew Mr. McFarland would be present.

II. THE ISSUE OF MOOTNESS IS NOT APPLICABLE.

The fact that the restraining order has since expired should not prevent a court from overturning an improperly granted order from a lower court. As it stands, there now is a court record that Mr. McFarland was subject to an order involving stalking and harassment, even though, Respondent failed to prove that any of the incidents rose to the level of behavior contemplated by S.C. Code Ann. §16-3-1700, or even met the statutory definition of stalking and/or harassment.

To the extent the court considers the issue moot, the situation meets the exceptions as outlined in *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2nd 591 (S.C. 2001). In the civil context, there are three general exceptions to the mootness doctrine. “First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review.” *Id.* “Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” *Id.* “Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” *Id.* (internal citations omitted).

In the present case, exceptions one and two are satisfied by the fact that 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. Allowing the restraining order to

¹ Additionally, the order is defective on its face as it does 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.”

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.

The third exception is met in that this order, even though expired, will affect future events and have collateral consequences for Mr. McFarland. Mr. McFarland is in business, and is frequently "checked out" by potential customers. (R. p. 43). He also travels internationally. Having a restraining order on record for stalking and/or harassment can both affect his ability to travel internationally and the ability to develop new customers if they become aware of this order.

Accordingly, while the restraining order is expired, it is not a moot issue. It still is a court record which can have long term affects on Mr. McFarland and could encourage others to engage the court system for petty disagreements that are not contemplated by S.C. Code Ann. §16-3-1700.

CONCLUSION

The restraining order was improperly issued as the behavior described by all parties involved did not rise to the level contemplated by S.C. Code Ann. §16-3-1700, nor did the behavior meet the definitions of stalking and/or harassment as defined by the code. A reading of the transcript and the record demonstrates that the order was improperly issued. Accordingly, the lower court should be reversed and the order vacated.

Respectfully Submitted,

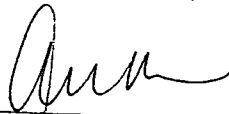


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The undersigned certifies that this Final Brief complies with Rule 211(b) of the SCACR.

June 13, 2014



Amanda R. Maybank

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Appellate Case No.: 2014-000141

William McFarland.....Appellant,

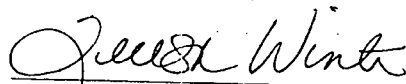
v.

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

PROOF OF SERVICE

I certify that on June 13, 2014 I have served a copy of the Final Brief of Appellant William McFarland by hand delivering same addressed to Respondents' attorney as set forth below:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY OF COMMON PLEAS

The Hon. Kristi Lee Harrington, Circuit Court Judge

Case No.: 13-CP-18-0546

Appellate Case No.: 2014-000141

William McFarland,

Appellant,

v.

Sofia Mazell, Michael Mazell,
Pierceton Mazell, and Faith Mazell,

Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF THE ISSUES ON APPEAL

- I. Is judicial review of the Amended Restraining Order against appellant rendered moot by the expiration of said order on April 12, 2013?
- II. Was the Circuit Court's affirmance of the Magistrate's Decision to enter a restraining order against the appellant based upon sufficient testimony?
- III. Was the Circuit Court's affirmance of the Magistrate's Decision to enter a restraining order against the appellant affected by an error of law or fact?

COUNTER-STATEMENT OF THE CASE

The Statement of the Case provided by appellant William McFarland ("McFarland" or appellant) fails to include a number of critical points. As factual matters, it should be noted the October 22, 2012 Restraining Order, as well as, the February 22, 2013 Amended¹ Restraining Order issued by Magistrate Tera S. Richardson provided that the terms of said orders "were effective to April 12, 2013." (R. 3, 8). This date is critical because by the time that the Circuit Court heard McFarland's appeal, the restraining order at issue had already expired². *Id.* Second, it should be noted that that sometime after the expiration of the restraining order in April of 2013, respondents sold their home next to appellant and moved out of the Live Oak Village subdivision. (R. 69).

¹ The February 22, 2013 Amended Mutual Restraining Order corrected a typographical error in the original October 22, 2012 Restraining Order directed to Michael and Sofia Mazell which inaccurately listed their address as "105 Oak Village Lane" instead of 107 Oak Village Lane. (R. 9).

² Respondents briefed the issue of mootness in their Brief to the Circuit Court and raised said issue during oral argument. (R. 67-69). Appellant was given to 5:00 p.m. of the following day to respond to the issue of mootness but did not serve further briefing. (R. 235-36). The Decision of the Circuit Court to affirm the Magistrate did not address the issue of mootness of the restraining order at issue. (R. 15).

Accordingly, it is a mischaracterization for appellant to identify the parties as "neighbors," when they are presently only former neighbors.

Secondly, as procedural matters, it should be noted that the Magistrate's Return identified a number of instances, in addition to others, showing a history of altercations between the parties. (R. 13-14.). The Magistrate further noted that although no arrests were ever made, the police had to be called "on several occasions" to interface between the parties. (R. 13). Additionally, the Magistrate noted that respondents testified to being harassed by McFarland, who had also trespassed on the Mazell property, leading to a further verbal altercation. *Id.* The Magistrate further noted that these altercations were witnessed by other neighbors and one of the responding officers. (R. 14).

After issuance of the restraining order, McFarland filed a Motion for Reconsideration, which was heard on February 1, 2013 and denied by the Magistrate's written order dated March 8, 2013. (R. 41-53, 12). McFarland appealed this decision to the Circuit Court, where said appeal was heard by Circuit Judge Harrington on November 25, 2013. (R. 217-37). In her June 11, 2013 Return to Circuit Court, the Magistrate stated her rationale for entering mutual restraining order as follows: "I ordered a mutual restraining order between both parties because at the time, given the surrounding circumstances, I felt it was best for everyone not to have any contact. The restraining order expired on April 12, 2013." (R. 14). In upholding Magistrate Richardson's original decision, Circuit Judge Harrington's November 25, 2013 Order expressly noted that upon "carefully reviewing the file and finding no error, this Court hereby AFFIRMS The Honorable Tera Richardson's Order." (R. 15).

COUNTER-STATEMENT OF FACTS

In January 2005, respondents Michael and Sofia Mazell, with their young children Pierceton and Faith ("Mazell" or respondents), moved to 107 Oak Village Lane, Summerville, South Carolina, amongst a subdivision of just seven (7) residences. (R. 94). Their adjacent, next door property owner was appellant McFarland, who resides at 105 Oak Village Lane. *Id.* By 2007, a series of confrontations and events began between McFarland and Mazell which culminated on September 25, 2012, when Mazell filed for a temporary restraining order in the Dorchester County Magistrate's Court against McFarland. (R. 96).

The form Complaint and Motion for a restraining order provided by the Magistrate Court to *pro se* filers provided space for the plaintiff to list three instances of alleged harassment, and respondents identified three instances in their handwritten Complaint. (R. 17-18. At the October 12, 2012 hearing, Mazell presented testimony from six witnesses,³ detailing a pattern of multiple instances⁴ of McFarland's harassment of the respondents since 2007. These incidents included the following events:

1. An incident occurring on September 11, 2012, whereby McFarland approached Sofia Mazell and her young children, photographed them and yelled

³ The Index to the October 12, 2012 Hearing Transcript fails to identify Robert McDonald as one of the appellants' witnesses. (R. 158).

⁴ During the October 12, 2012 hearing on Mazell's application for a restraining order, appellant's counsel made no objection that testimony of other instances and events of alleged harassment beyond the three alleged events listed on the Complaint and Motion form were received into evidence by the Magistrate. (R. 88-216).

directed that they should accompany him – all in violation of previous direction that McFarland not have contact with or speak to Sofia Mazell (R. 95-96, 112-113);

2. A September 20, 2012 "Worthless Check Arrest and Criminal Prosecution" initiated by McFarland against Sofia Mazell which the First Circuit Solicitor's Office later dismissed unfounded and which, upon discovery, was later repudiated by the other two members of HOA Board of Directors on whose authority McFarland purported to act (R. 13-134, 143, 154-56);

3. Verbal attacks upon Mazell by McFarland because Mazell reported a second hit and run motor vehicle accident to Mazell's vehicle by a neighbor who a personal friend of McFarland, leading McFarland to be placed upon "No Trespass Notice" with respect to Mazell (R. 121, 125);

4. Multiple incidents of physical trespasses by McFarland on the Mazell property in violation of previous "No Trespass Notice," including McFarland's digging of holes and dumping of yard waste on the Mazell property (R. 129-30, 158);

5. McFarland's calling the police and threatening the arrest of Michael Mazell in front of his young son because Mazell had to temporally leave a trailered boat parked outside the Mazell residence in response to discovery that Mazell's daughter had been taken to hospital (R. 122-24);

6. McFarland's surreptitious filming of the Mazell family from behind a tree while the Mazell family was in their own back yard (R. 134);

7. McFarland's repeated uses of a leaf blower between 6:00 a.m. and 7:00 a.m. on weekend mornings every time that the Mazell children had an outdoor camping sleepover in their adjacent back yard (R. 134-35);

8. McFarland's intentional spraying of water from a garden hose at the Mazell Shih-tzu dog through a fence separating the properties (R. 119);

9. McFarland's refusal to honor repeated requests from Michael Mazell that appellant have no contact or words with either his wife or children (R. 97, 101, 119-122, 135, 156-57); and

10. McFarland's expression of loud exaggerated, false laughter whenever Sofia Mazell went into yard to garden and placing signage with the word "LAUGH" in such a manner that the only person capable of viewing said sign was Mazell (R. 98, 122, 146).

At the October 12, 2012 hearing, McFarland moved to dismiss the Complaint at the close of Mazell's case in chief, arguing that there was "insufficient evidence ... to meet the burden" for a restraining order. (R. 163). Upon the denial of that motion, McFarland's counsel called four witnesses: wife Jennifer McFarland, neighbor Carlton Holcombe, a police officer and code compliance officer for the Town of Summerville. (R. 164-205). Most significantly, appellant William McFarland was not called and did not testify on his own behalf or otherwise at the October 12, 2012 hearing. *Id.*

STANDARD OF REVIEW

In an appeal of a Circuit Court decision which reviewed a Magistrate's decision, Section 18-7-170 of the South Carolina Code of Laws governs the standard of review. *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001). Section 18-7-170 provides:

"Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not

affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

Id. This Court has noted that Section 18-7-170 affords the "Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses." *Rogers v. State of South Carolina*, 358 S.C. 266, 269, n.1, 594 S.E.2d 278, 279, n.1 (Ct. App. 2004).

On a subsequent appeal of a circuit court's appellate decision from a magistrate's judgment, 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 judgment and there are no facts that show the affirmance was influenced by an error or law." *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984). However, the Court of Appeals "will not grant that presumption where ... it clearly appears that the Circuit Court applied an erroneous standard of review and failed to accord the contested facts the scrutiny which Section 18-7-170 contemplates." *Id.*

ARGUMENT

I. The Restraining Order at Bar has Expired; Therefore, Appellant's Appeal is Moot and should be Dismissed.

In this case, the express terms of the Magistrate's Amended Restraining Order dated February 22, 2013 against appellant provided: "The terms of this Order shall remain in effect until April 12, 2013." *Id.*, see Return, p. 2 ("This restraining order expired on April 12, 2013") (R. 14). As a general rule of South Carolina jurisprudence,

an appellate court "only considers cases presenting a justiciable controversy." *Sloan v. Friends of the Hunley*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute which is contingent, hypothetical or abstract." *Id.*

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event rendered any grant or effectual relief impossible for the reviewing court. If there is no actual controversy, this Court will not decide moot or academic questions." *Seabrook v. Knox*, 369 S.C. 191, 631 S.E.2d 907, 910 (2006), *see also*, *Collins Music Co. v. IGT*, 365 S.C. 544, 549, 619 S.E.3d 1, 3 (Ct. App. 2006) (A matter becomes moot when some event occurs making it impossible to grant effectual relief); *Curtis v. State of South Carolina*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable."). Indeed, with respect to injunctions such as found in the restraining order applicable in this appeal, "the rule that an appellate court limits its review to the issues necessary to a proper disposition of the appeal and will not consider immaterial or moot questions, **applies when reviewing decrees and orders relating to injunctions.**" *Id.*, 549 S.E.2d at 597 (Emphasis supplied).

Applying these well established principals to the case at bar, it is clear that the expiration of the restraining order after April 12, 2013 rendered the appellant's objections to the merits of said restraining order moot. This Court cannot go back and vacate, modify or uphold a restraining order, which by its own terms, expired over a

year ago and no longer has any effect. The fact that the restraining order was still in effect when appellant first appealed to the Circuit Court is immaterial and does not alter the fact no restraining order is presently in existence nor was it in existence when appellant's appeal was heard by Circuit Court. Since there is no justiciable controversy presently between the parties over said restraining order, Mazell respectfully submits that this appeal is moot and should be dismissed.

Respondents recognize that South Carolina law acknowledges three exceptions to the mootness doctrine. First, if the issue raised is capable of repetition but evading review, an appellate court may take jurisdiction over an issue otherwise moot. *Curtis v. State*, 345 S.C. at 596. Second, "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* Third, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the court cannot give effective relief in the present case." *Id.*

Considering these exceptions to the issues in the present appeal, it cannot be denied that the matters existing between Mazell and McFarland as of October of 2012 were only particular, material and relevant to those specific individual persons. Consequently, such issues and matters are not capable of repetition such that this Court properly ought to establish a rule of law applicable to either Mazell or McFarland in particular or to other persons in general. This is especially true in consideration that Mazell and McFarland are no longer neighbors and do not reside in the same subdivision. It is doubly true in consideration that the grounds for a restraining order

between two individuals always depend upon the particular facts and circumstances of existing between such persons. When such persons come before a Magistrate, it is important that the Magistrate have discretion to weigh the testimony and circumstances of the particular case situation before the Magistrate. A Magistrate's discretion should be given sufficient latitude so that appropriate relief can be fashioned to avoid further not only harassment but also more serious consequences which might occur in the absence of a restraining order. Therefore, there is no justification to issue a rule of law to govern future applications for restraining orders based upon the particular facts and circumstances which existed between Mazell and McFarland leading to October 2012.

Second, there is no "important public interest" presented in review of the restraining order that issued against McFarland. First and again, the disputes between Mazell and McFarland were particular and important to them only. There is no evidence in the record, much less contention from appellant, that the prior restraining order against McFarland has any prospective or current effect. In short, disputes between person – to the extent that one seeks a restraining order – should be decided on their individual, particular merits and not by reference to what was or was not justified to address what had and was transpiring between Mazell and McFarland.

Last, there are no "future events" or "collateral issues" to McFarland from the expired restraining order that justifies further review. In attempt to create grounds for this exception, McFarland's counsel argues that McFarland, as a businessman, is "frequently checked out" by potential customers. (Respondent's Brief, p.11). As a preliminary matter, McFarland declined opportunity to testify at the October 12, 2012 hearing, and no such testimony or evidence was received to establish an evidentiary

basis for counsel's assertion that McFarland was, is or will be affected by the previous restraining order when "checked out" by potential customers. Therefore, appellant's argument about the potential adverse effects to McFarland's reputation with potential customers is being raised for the first time on appeal after the conclusion of the October 12, 2012 hearing and should not be considered or credited at all in this appeal.

Nonetheless, McFarland cannot be heard to claim that the existence of public records, indicating that he once was a defendant in an action for a restraining order or even the subject of a restraining order, thereby creates "collateral consequences" that meet or equal the degree necessary to justify an appellate court ruling upon an otherwise moot order. If the existence of a public record or any inferences that could be drawn from a public record of someone having been a party to a civil action was sufficient to constitute "collateral consequences," the mootness doctrine would be entirely swallowed by the exception because, absent an order sealing a case, there will always be a public record of the names of parties to a lawsuit and events to said lawsuit, and, in such case, no order would ever be moot if any party can claim future prejudice from association to previous lawsuit and the public records noted therein.

Accordingly, Mazell respectfully submits that none of the three exceptions to the mootness doctrine applies to the issues on this appeal and that the expiration of the Amended Restraining Order on and after April 12, 2013 has rendered moot the issues raised on this appeal, which may be properly dismissed.

II. The Evidence Submitted at the Evidentiary Hearing Met the Statutory Requirements of Harassment in the First or Second Degrees.

In his previous Motion for Reconsideration and appeal to the Circuit Court, McFarland argued that evidence received during the October 12, 2012 hearing was insufficient to justify the statutory requirements under S.C. Code Ann. § 16-3-1750 for issuance of a restraining order against a person engaged in harassment in either the first or second degree (S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B), respectively). However, upon examination of the facts presented to the Magistrate and Circuit Court, it is clear that the Magistrate was justified entering a restraining order against McFarland upon a finding of his harassment of Mazell.

To constitute harassment, it is a predicate for a person to have engaged in "a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause the person in his position to suffer mental or emotional distress" for either first or second degree harassment. S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B). Relevant to this case, first degree harassment is committed when the above intentional, substantial and unreasonable intrusion into another's life, which serves no legitimate purpose and causes reasonable mental or emotional distress, occurs after "visual or physical conduct is **initiated, maintained or repeated after a person has been provided oral or written notice that the contact is unwarranted or after the victim has filed an incident report with a law enforcement agency.**" S.C. Code Ann. § 16-3-1700(A)(2) (Emphasis added).

At the October 12, 2012 hearing, Mazell demonstrated that prior to the events set forth in the Complaint, McFarland had been received oral notice from the

Summerville Police Department not to speak to Mazell. (R. 121, 124). Michael Mazell also testified that he repeatedly told McFarland, "Bill, do not speak to my wife. Do not speak to my children." (R. 124, 121). It was further established that McFarland had been given a March 9, 2009 Notice of Trespass by the Summerville Police Department, directing him not to enter the Mazell property. (R. 30).

At the October 12, 2012 hearing, it was also demonstrated that despite oral and written no contact orders from the Summerville Police Department and repeated entreaties from Michael Mazell, McFarland continued to defy these warnings by having intentional contact with Sofia Mazell and her children designed to frighten and upset Mrs. Mazell and her young children. (R. 101). Reference is made to the September 11, 2012 incident in which McFarland approached Sofia and Faith Mazell from an adjacent property, began photographing them, further approached them when they began walking away from him, yelling "Come on, come on," as they tried to get away from him. (R. 95-96, 112-13). A neutral witness, Heather Capps, testified that this unjustified contact made both Mrs. Mazell and her daughter noticeably emotionally distraught. (R. 114-16). Mrs. Mazell also testified that she has sought counseling due to stress resulting from her interactions with McFarland and his treatment of her. (R. 101-02).

On July 11, 2012, Mazell called the Summerville Police Department after McFarland followed Sofia Mazell along the property line, questioning her about what was wrong several times as she attempted to leave McFarland's presence. (R. 169-70). This resulted in another Summerville Police Complaint being initiated by Mazell against McFarland. (R. 170). Further testimony established that McFarland regularly dumped

his yard waste on the Mazell property and regularly trespassed onto Mazell's property, digging holes and walking the Mazell property with others when Mazell was not at home. (R. 129-30, 158).

There was additional evidence that McFarland repeatedly expressed loud fake laughter from his back porch when he saw Sofia Mazell in her backyard. McFarland also admitted to having a sign with the word, "Laugh," turned toward the Mazell property and placed at the Mazell/McFarland property line, so that only Mazell would be able to read the writing on said sign⁵. (R. 98, 146). Further, there was evidence that McFarland has gone so far as to spray water with a garden hose over the fence dividing the property at the Mazell dog minding its own business in the Mazell backyard. (R. 119). Finally, there is the incident where McFarland caused baseless criminal charges to be initiated against Sofia Mazell for stopping payment on a check for Mazell's HOA dues that McFarland had refused to cash or acknowledge receiving. (R. 13-134, 143, 154-56). These charges⁶ were dismissed by the First Judicial Circuit Solicitor with deep apologies for having taken misinformation from McFarland at its face value. (R. 133).

As set forth above, second degree harassment is found from "intentional, substantial and unreasonable intrusion" into another's life, which "serves no legitimate purpose" and "causes and would cause a reasonable person to suffer mental or emotional distress." S.C. Code Ann. § 16-3-1700(B). Second degree harassment

⁵ On cross-examination, Jennifer McFarland admitted that Mazell were the only people who could read the "LAUGH" sign but claimed that the wind must have turned the sign toward them. (R. 190).

⁶ The utter lack of justification for the filing of a criminal complaint against Sofia Mazell by McFarland was cited by HOA Board of Director David Hannemann as cause for himself and the other BOD director to remove McFarland from his position on the BOD. (R. 143-45).

includes any "verbal, written, or electronic contact that is initiated, maintain or repeated."

Id. The misconduct of McFarland directed against Mazell that was proven at the October 12, 2012 hearing meets the statutory requirements of both first and second degree harassment under South Carolina law. Pursuant to S.C. Code Ann. § 16-3-1750(A), a Magistrate Court has jurisdiction to restrain an individual who has engaged in first or second degree harassment.

In sum, the testimony and evidence heard by the Magistrate showed that there had been a pattern of "intentional, substantial and unreasonable intrusion" into the Mazell's lives by McFarland, which "serves no legitimate purpose" and "causes and would cause a reasonable person to suffer mental or emotional distress." S.C. Code Ann. § 16-3-1700(B). The Magistrate relied upon this finding to conclude that "at the time, given the surrounding circumstances, ... it was best for everyone not to have any contact." (R. 14). There was ample evidentiary support for the Magistrate's finding. Indeed, even appellant's wife, Jennifer McFarland, acknowledged on direct examination by husband's counsel that there was a history of "animosity" between her husband and the Mazells. (R. 189). Further, on cross examination, Mrs. McFarland conceded it "absolutely" was a "good idea" that the parties have no further direct contact with each other. (R. 190). Ironically, now on appeal, McFarland argues that it was wrong for the Magistrate to have issued restraining order notwithstanding his wife's testimony that the animosity between her husband and the Mazells justified neither party having further contact with the other.

As a final point of law, as discussed between counsel and the Magistrate in post-hearing argument, McFarland neither submitted an opposition Affidavit nor

testified at the hearing to rebut the evidence offered against him despite attending the proceedings and receiving a previous continuance to retain counsel. (R. 35, 72-73, 164-215. Under well established South Carolina evidence law, "the general rule in civil cases [is] that when a party 'fails to produce testimony from an available, material witness who is within some degree of control of the party, it may be inferred that the testimony of such witness, if presented, would be adverse to the party who failed to call the witness.'" *Baker v. Port City Steel Erectors, Inc.*, 261 S.C. 469, 475, 200 S.E.2d 681 (1973). While McFarland's unwillingness to testify in rebuttal to the evidence presented at the October 12, 2012 hearing "cannot be treated as independent evidence of a fact otherwise unproven", it "can be considered in determining the credibility or probative force of the evidence presented." *Id* at 476, citing, *Collins v. Merrimack Mutual Fire Ins. Co.*, 210 S.C. 207, 42 S.E.2d 67 (1947) and 29 Am. Jur. (2d), Evidence, Sections 187 and 188 ("[T]he inference has the effect only of authorizing the jury to give greater weight to the evidence of the adverse party, or to give less weight to the evidence of the party who had failed to call the witness, than it might otherwise have done.").

III. Appellant Cites No Error of Law or Fact That Affected the Circuit Court's Decision to Uphold the Magistrate's Issuance of a Restraining Order.

McFarland's argument why the amended restraining order was improper is largely based on factual claims, unsupported by the record, which purportedly would justify a different result than that reached by the Circuit Court and Magistrate. For example, McFarland claims he has a "legitimate purpose" as a HOA Board Member in instituting a worthless check prosecution against Sofia Mazell. Respondent's Brief at 7. However, there is not a shred of evidentiary support for McFarland's alleged actual

motivation in referring his neighbor, Sofia Mazell, to the Office of the First Circuit Solicitor for criminal prosecution was concern over his alleged fiduciary duties to the HOA Board of Directors. Quite the opposite was the testimony received from witnesses who actually testified at the October 12, 2012 hearing. David Hannemann, a member of the HOA Board of Directors, testified that McFarland lacked the requisite authorization from the Board to initiate worthless check prosecution, considering that Mazell had timely delivered a check⁷ for their HOA dues which McFarland refused to acknowledge or cash in timely manner. (R. 142-45; see also, September 30, 2012 Letter to Wm. McFarland from David Hannemann and Thomas Morris, Jr. (R. 242-43).

Appellant's next argument focuses on supposed "legitimate purposes" that McFarland had in approaching and photographing Sofia Mazell and beckoning her to accompany him to a HOA meeting for which no one besides McFarland and one other neighborhood resident⁸ was in attendance. What appellant fails to mention is the fact that McFarland was already under multiple directions from the police and Michael Mazell not to have any contact, verbal or physical, with Sofia Mazell. (R. 101, 119, 156). Second, appellant fails to mention that Sofia was in a different of area the parking lot serving a dance academy, not near the library where McFarland was attempting to hold a HOA meeting. (R. 112). Third, appellant fails to mention that Mazell had already written McFarland to advise that Michael Mazell could not attend

⁷ Appellant's Brief cites that Mazell emailed McFarland about his HOA payment after Mazell had stopped payment on said check. Respondent's Brief at 8. Mazell testified he did this because although his check had not cleared at the time, McFarland had sent him a receipt indicating that his dues were paid, and he was trying to alert McFarland to this fact his check had not cleared. (R. 136-37). Instead of acknowledging Mazell or asking him for a new check, McFarland took it upon himself without authority from the Board to file a worthless check prosecution against his next door neighbor.

⁸ There are a total of seven (7) individual residences in the Live Oak Village HOA.

that meeting and consequently, neither Michael nor Sofia Mazell would be attending the HOA meeting. (R. 103-04).

A witness to this incident, Heather Capps, testified that McFarland's approaching and photographing of Sofia Mazell and beckoning to her that she follow him caused Sofia Mazell to have direct noticeable emotional distress. (R. 115-16). Sofia Mazell also testified that as a result of the many incidents complained of McFarland she lived in fear of McFarland, who had affected her emotional well being and caused her to seek counseling. (R. 102)

Finally, McFarland argues that one particular trespass he made on the Mazell property on July 11, 2012 was again motivated by a "legitimate reason." Initially, it is a fact that McFarland had been on "No Trespass Notice" not to be on Mazell's property since 2009. (R. 30). Second, it is very clear that he repeatedly failed to honor this Notice. (R. 101). Michael Mazell and Robert McDonald, an employee from the Stormwater Management Department for the Town of Summerville, both testified that McFarland would come onto the Mazell property without permission when Mazell was not present. (R. 128, 158-59). The multiple ongoing trespasses by McFarland also included dumping yard waste onto and digging holes on the Mazell property. (R. 128-30, 158).

Although Appellant's Brief makes no attempt to address this evidence, it argues that a July 11, 2012 trespass incident along the McFarland/Mazell property line had a "legitimate purpose." Appellant's Brief at 9-10. Again, both of the witnesses for appellant who were actually questioned about the July 11, 2012 by his counsel – Police Officer James McClellan and neighbor Carlton – denied they had any personal

knowledge of the events at issue. (R. 170, 172-73, 199-201). More importantly, the testimony of Mike Mazell and Robert McDonald about McFarland's multiple trespasses was uncontroverted. (R. 128-30, 158-59). Accordingly, McFarland's argument to purportedly justify his multiple trespasses upon the Mazell property is not supported by any evidence in record. In fact, the actual evidence amply supports the finding that McFarland was continuing to trespass upon the Mazell property. These continuing trespasses in violation of a "No Trespass Order" certainly justified issuance of a restraining order against McFarland.

In sum, there is absolutely no evidentiary support for appellant to claim that the Circuit Court or the Magistrate misapprehended the full factual circumstances surrounding either (i) the HOA Meeting, (ii) the matter of the worthless check prosecution or (iii) any of the many McFarland trespasses onto Mazell property, including the July 11, 2012 event. There is likewise no basis to claim that the Magistrate or Circuit Court misapprehended of any particular aspect of the many events showing a pattern of harassment by McFarland or that said alleged misapprehension was material to the decision to enter a restraining order against Mazell. *E.g., Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984).

Without evidence that the court below failed to accord the facts showing a pattern of harassment of Mazell by McFarland, it cannot be credibly argued that the Magistrate or Circuit committed a material error in determining the facts or made any error of law with respect to issuing a restraining order against the appellant. Accordingly, the Circuit Court's affirmance of Magistrate's issuance of a restraining order is "entitled to the presumption that judgment was made upon the merits where the

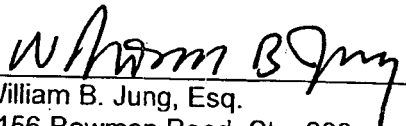
testimony is sufficient to sustain the judgment and there are no facts that show the affirmance was influenced by an error or law." *Id.*

Conclusion

For the aforementioned reasons, respondents respectfully submit that this Court should dismiss this appeal as moot or otherwise affirm the decision of the Circuit Court. In the event the judgment of the court below is affirmed, respondents further pray that this Court allow respondents their costs, including an attorney's fee, in accordance with Rule 222 of the SCACR.

Dated: June 6, 2014

Respectfully submitted,



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(843) 416-1104

Attorney for the Respondents

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

RECEIVED
AUG 21 2015
BY: *16w*

William McFarland, Appellant,

v.

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

Appellate Case No. 2014-000141

Appeal From Dorchester County
Kristi Lea Harrington, Circuit Court Judge

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

APPEAL DISMISSED

Amanda R. Maybank and Jason A Daigle, of Maybank
Law Firm, LLC, of Charleston, for Appellant.

William B. Jung, of William B. Jung, Esq., LLC, of Mt.
Pleasant, for Respondents.

PER CURIAM: On September 25, 2012, Sofia, Michael, Pierceton, and Faith Mazell filed a complaint and motion for a restraining order against William McFarland for harassment and stalking. On October 12, 2012, the magistrates

court held a hearing and issued a restraining order effective until April 12, 2013. Thereafter, the circuit court affirmed the magistrates court's order. McFarland now appeals to this court, arguing the circuit court erred in affirming the restraining order. Because the restraining order expired on April 12, 2013, we find a ruling on the issues pending before this court will have no practical effect on the parties. Accordingly, we dismiss¹ the appeal as moot. See *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("An appellate court will not pass on moot and 2015controversy."); *id.* ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." (internal quotation marks and citation omitted)).

APPEAL DISMISSED.

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Appellate Case No.: 2014-000141

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

RECEIVED

SEP 01 2015
SC Court of Appeals

William McFarland.....Appellant,

v.

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

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

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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.

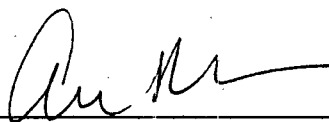
Additionally, holding that the restraining order is moot and not reviewing the underlying issue surrounding its issuance can invite abuse. By the very nature and language of the statute, S.C. Code Ann. §16-3-1700 et al, contemplates criminal actions for harassment and stalking and are not meant to be 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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August 31, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Appellate Case No.: 2014-000141

RECEIVED

SEP 01 2015

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

SC Court of Appeals

William McFarland.....Appellant,

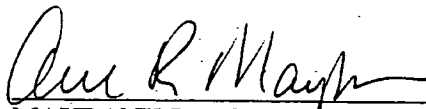
v.

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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BY: *AKR*

The South Carolina Court of Appeals

William McFarland, Appellant,

v.

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

Appellate Case No. 2014-000141

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon Jr C.J.
Thomas C. Hoff J.
H B We J.

Columbia, South Carolina

cc:

Amanda R. Maybank, Esquire
Jason Alan Daigle, Esquire
William B. Jung, Esquire
The Honorable Kristi Lea Harrington

FILED

September 17, 2015