

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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OCT 26 2015

Unpublished Opinion No. 2015-CP-427
Submitted April 1, 2015 – Filed August 19, 2015 **S.C. SUPREME COURT**
Appellate Case No.: 2015-002144

William McFarland..... Petitioner

v.

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

**REPLY TO RETURN OF RESPONDENTS MAZELL
TO PETITION FOR A WRIT OF CERTIORARI**

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Byrd v. Irmo High Sch., 321 S.C 426, 468 S.E.2d 861 (1996).....1, 2

Curtis v. State, 345 S.C. at 596.....1

See S.C. Code Ann. § 16-3-1700(A), and 16-3-1700(B).....2, 3

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 17, 2015

I. ARGUMENT

1. RESPONDENT MISAPPREHENDS THE CAPABLE OF REPETITION YET EVADING REVIEW EXCEPTION TO THE MOOTNESS DOCTRINE.

In the return, the Respondent cites to *Curtis v. State*, 345 S.C. at 596, and states that the capable of repetition yet evading review exception to the mootness doctrine is not applicable because Respondents and the McFarland are no longer neighbors and do not reside in the same subdivision, therefore, the situation is not capable of repetition. (Return p.8). This argument ignores the holding in *Byrd v. Irmo High Sch.*, 321 S.C 426, 468 S.E.2d 861 (1996).¹

In *Byrd*, the Court specifically built upon its holding in *Curtis*, supra, and held that when 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. Therefore, the fact that the Respondents no longer live in the same neighborhood is not a deciding factor in the analysis.

Second, the Court has held that 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. *Curtis*, 345 S.C. 557, 568, 549 S.E.2d at 596.

¹ The Appellant disagrees with several factual inaccurate statements contained in the "counter statement of facts. Appellant has not addressed each in this return as the Appendix speaks for itself.

Here the issue does affect Mr. 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.

This case falls into the very exception recognized by *Bryd*. The nature and effective time-period of a restraining order is limited, whereas, the appellate process takes years to complete.

As such, the Court should grant certiorari and review the restraining order at issue in this case.

2. Respondent Improperly States that there is No Error of Law in the Circuit Court's Order Upholding the Issuance of the Restraining Order.

As discussed in detail in the petition for rehearing, the restraining order was improper as Respondent presented no evidence in the complaint or in the subsequent testimony that would satisfy any of the elements on which the issuance of the restraining order could be granted. *See* S.C. Code Ann. § 16-3-1700(A), and 16-3-1700(B).

As discussed in detail in the petition for a writ of certiorari, none of the alleged incidents rose to the circumstances encompassed by S.C. Code Ann. §16-3-1700, nor did the behavior of either party meet the statutory definition of harassment and stalking.

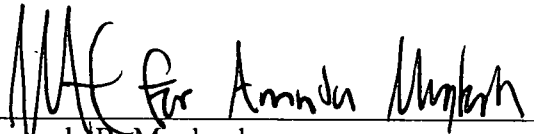
The very nature and language of S.C. Code Ann. § 16-3-1700 et al contemplates criminal actions for harassment and stalking, and are not intended to be used by neighbors, (now former), who are not getting along or dislike the actions of the homeowners association. As, there is no evidence of harassment or stalking, the Court should grant the petition for a writ of certiorari and

review the restraining order.

CONCLUSION

The restraining order at issue in this case falls into the capable of repetition yet evading review exception of the mootness doctrine. Moreover, the restraining order was improperly issued as none of the incidents met the definition of stalking or harassment as defined by S. C. Code Ann. 16-3-1700. As such, Mr. McFarland respectfully requests the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "AMC for Amanda Maybank". The signature is written over a horizontal line.

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October 23, 2015

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PROOF OF SERVICE

I certify that on October 23, 2015 I have served a copy of Appellant William McFarland's Reply to Return of Respondents Mazell to Petition for a Writ of Certiorari by placing same in the U.S. Mail with the appropriate postage affixed and addressed to the following:

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