



a result of its investigation, DSS filed an action in the Laurens County Family Court seeking an Ex Parte Order in the Interest of KAG, Case Number 2015-DR-30-0510. An Ex Parte Order was granted on August 18, 2015 giving DSS emergency protective custody of minor KAG. See Ex Parte Order signed August 18, 2015 (filed August 19, 2015) A probable cause hearing was held the next day before The Honorable Joseph C. Smithdeal, Presiding Judge of the Family Court, Eighth Judicial Circuit. Judge Smithdeal held that, to-wit:

"Based upon [Judge Smithdeal's] examination of the file and the pleadings and a review of the evidence presented, [Judge Smithdeal found] that the South Carolina Department of Social Services (hereinafter the Department) ... made a prima facie showing as required by S.C. Code § 63-7-710 that probable cause did exist for the Court to take the minor child into emergency protective custody and continue[d] to exist for the minor child to remain in the physical and legal custody of the Department because there [was] probable cause to believe, based on the evidence presented by the Department that returning the minor child to the home would seriously endanger the child's physical safety or emotional well being, among other things. "

A final hearing was scheduled in October 2015, but prior to the hearing, the South Carolina Department of Social Services agreed to dismiss the Family Court case involved in this matter. The reason for pursuing this litigation against the Plaintiffs Tucker and Gilbert, as well as the reason for dismissing this action was set forth in the Second Affidavit of Mindy Miyares dated April 20, 2016. See Order of the Family Court filed December 15, 2015. Plaintiffs requested a reconsideration of Judge Smithdeal's ruling. A hearing was held before Judge Smithdeal on March 3, 2016, in which the



Plaintiffs were in attendance in the courtroom and were allowed to explain their position in the Family Court matter. After hearing all arguments, Judge Smithdeal stated as follows, to-wit:

"But without anything more, Mr. Tucker and Ms. Gilbert, I am going to deny respectfully, your Motion for Reconsideration. I find that the -- according to the Order, according to what you -- I have heard your testimony or your statements, I have heard the statement of the Department of Social Services and based on that, I find that the Order -- the underlying order was appropriate under the circumstances. Okay?"

Mr. Tucker: Yes, sir.

The Court: All right. Any questions?

Mr. Gilbert: No.

Mr. Tucker: No, Your Honor."

The Order denying the Motion for Reconsideration was confirmed in writing by Judge Smithdeal on April 2, 2016 and filed on April 12, 2016 with the Clerk of Court of Laurens County. No appeal was filed in regard to Judge Smithdeal's Order Denying the Motion for Reconsideration and the time for appeal of Judge Smithdeal's Order has lapsed.

It appears to the Court that the Plaintiffs are attempting to appeal the Order of Family Court Judge Smithdeal, even though the time for appeal has lapsed, by bringing this action in the Court of Common Pleas for Laurens County.

Article V, Paragraph 11 created the Circuit Court system in the State of South Carolina when it stated, to-wit:

“The Circuit Court shall be a general trial court with regional jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, . . .”

In the case of South Carolina Department of Mental Health et. al. vs. State of South Carolina, (390 S.E.2d 185, 301 S.C. 75) our Supreme Court stated, to-wit:

“The Family Court is a statutory court created by the Legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute.”

Sections 63-3-510 and 530 establish that the Family Court has exclusive jurisdiction to hear matters such as were heard by Judge Smithdeal and to make a ruling and a final determination in this case which was done. The final Order of Judgment Smithdeal concerning the Motion for Reconsideration was not appealed, and the time to appeal has lapsed. Judge Smithdeal’s Order is the law of this case.

I have reviewed the Memorandums and supporting documentation in support of the parties. There has been no evidence submitted by the Plaintiffs to support any of their allegations set forth in either the Complaint or Amended Complaint.

It is the opinion of this Court that this Court does not have jurisdiction to hear this matter, but even if this Court has jurisdiction in this matter, based upon my review of the Court file, the Plaintiffs have failed to meet their burden of proof of establishing any evidence to support their claims as set forth in the Complaint and Amended Complaint. Jurisdiction lies exclusively in the

