

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 12 2016

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

App. Case No. 2015-002297

John Doe,

Appellant,

v.

Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

Motion For the Court's Clarification

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

For substantial justice affecting substantial rights, appellant respectfully submits this motion for the reasons set forth below.

Facts

The underlying matter involves an Ohio LLC's a.k.a. Granuaile LLC's violation of the local government's prior order enforcing compliance with the ordinances regarding impervious surface limitations (see attached). Granuaile LLC's violation of the local government's order for compliance resulted in foreseeable damage to neighboring properties. Damages include, but are not limited to, pooling of wrongful stormwater run-off with contaminants and wastewater collecting and standing under homes and in rear areas where children and pets play and live. The record reflects a BZA hearing was held at the request of property owners. After that hearing, pursuant to S.C. Code Section 6-29-820, notice of appeal with request for mediation was timely served and filed within thirty days. Respondent's counsel acknowledged appellant's hearing in the attached correspondence but relied on a tortured, even frivolous, interpretation of the statute and pursued dismissal in an untenable manner. In particular, respondent denied basic notice to the other side and failed to provide the required notice at the

address listed on the Charleston County Circuit Court website for service, the same address listed on the Charleston County Circuit Court Cover Sheet for service. It is fair to say that respondents themselves would want notice. The record reflects respondents knew, should have known, and/or calculated that the other side would not receive actual notice. The record reflects respondents made misrepresentations and/or material omissions to the lower court upon which the lower court relied. The lower court and the appellant are prejudiced thereby. This appeal followed.

I. Irregular handling, lack of accountability, and/or confiscation of unearned fees by the clerk's office is not authorized by Rule 240(i), SCACR.

Upon return from this year's Annual Meeting of the American Bar Association in San Francisco, Appellant was surprised to find the attached correspondence from the clerk's office dated July 29, 2016, regarding the motion served and filed on June 23, 2016. Specifically, that correspondence provides, "We are returning your filing to you pursuant to Rule 240(i), SCACR." Appellant respectfully submits that the clerk's office of the Court of Appeals (COA) misconstrued Rule 240(i), SCACR, and confiscated unearned fees as documented in that correspondence. The filing fee was

submitted pursuant to Rule 240, SCACR, and was deposited on or about June 30, 2016. See attached copy of check. Because the clerk's office unreasonably failed to forward the motion to the Court of Appeals for its consideration, the fees are unearned. Clarification is respectfully requested for this matter of public importance, capable of repetition, and capable of evading judicial review. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

II. With all due respect to the clerk's office, Rule 240(i), SCACR, is inapplicable and does not legalize irregular handling, lack of accountability, and/or confiscation of unearned fees by the clerk's office.

Appellant respectfully submits that the plain language of Rule 240(i), SCACR, establishes that Rule 240(i), SCACR, is inapplicable. Specifically, Rule 240(i), SCACR, expressly applies to petitions for rehearing and appellant submitted a motion, not petition for rehearing:

RULE 240(i), SCACR:

(i) Rehearing. The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.

Petitions for rehearing ordinarily request rehearing of an issue decided in a prior order, which is not the case herein.

The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9.

The focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al.*, *Appellate Practice in South Carolina*, (2002), p. 4. Appellate jurisdiction requires that material included in the Record on Appeal be presented to and ruled upon by the lower court. Rule 210(c), SCACR. See Affidavit entered May 9, 2016, herein. Because respondent's so-called supplemental material wrongfully seeks to include pending matters not ruled upon by the lower court, the jurisdictional prerequisite has not been met. Jurisdiction can and should be raised. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998). The clerk's office has not shown and cannot show that this issue has been decided herein; as such, Appellant's motion is not a petition for rehearing and Rule 240(i), SCACR, is inapplicable.

Even assuming there was a question as to whether the same issue had been decided previously, it is respectfully submitted that any interpretation

of the law is a matter for the court, not an unelected, government employee of the clerk's office, unauthorized by our cherished State Constitution, unauthorized by statutory law, and unauthorized by our elected officials in the State legislature. Rule 240(i), SCACR, does not authorize confiscation of unearned fees by the clerk's office.

III. Moreover, with all due respect to the clerk's office, the COA's Order dated May 13, 2016, does not legalize irregular handling, lack of accountability, and/or confiscation of unearned fees by the clerk's office.

The attached correspondence from the clerk's office dated July 29, 2016, provides, "We are returning your filing to you pursuant to ... this Court's order dated May 13, 2016." The attached Court of Appeals Order dated May 13, 2016, in pertinent part, provides, "This Court will not accept any further motions from Appellant stemming from the order of February 3, 2016." It is respectfully submitted that the plain language of the Appellant's motion served and filed on June 23, 2016, makes clear that it does not stem from that February 3, 2016, Order. As such, the clerk's office misapprehended and misconstrued it. Even assuming there was a question, it is respectfully submitted that interpretation is a matter for the court, not an

unelected, government employee, unauthorized by our cherished State Constitution, unauthorized by statutory law, and unauthorized by our elected officials in the State legislature and in any event, the May 13, 2016, Order does not authorize confiscation of unearned fees by the clerk's office. That erroneous, if not self-serving, interpretation by the clerk's office ignores the founding principles for government of the people, by the people, and for the people and ignores the incentive for the clerk's office to confiscate unearned fees with lack of transparency evading judicial review. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

IV. Further, with all due respect to the clerk's office, the Appellant's motion served and filed on June 23, 2016, includes a jurisdictional challenge which is a matter for the Court, not the clerk's office.

Appellant's motion filed June 30, 2016, includes a jurisdictional challenge which has not been decided herein and therefore, cannot be a rehearing. Moreover, jurisdiction can be raised at anytime. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998). It is respectfully submitted that jurisdiction is a matter for the court, not for an unelected, government employee, unauthorized by our cherished State Constitution, unauthorized by statutory law, and unauthorized by our elected officials in the State legislature and in any event, the May 13, 2016, Order does not authorize confiscation by the clerk's office of unearned fees.

V. Additionally, with all due respect to the clerk's office, the Appellant's motion served and filed on June 23, 2016, raises due process and deprivation of meaningful opportunity to respond issues which affect final determination of the appeal and thereby, comply with Rule 240(i), SCACR.

Rule 240(i), SCACR, provides as follows:

RULE 240(i), SCACR:

(i) Rehearing. The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.


By inference, denial of due process and/or denial of meaningful opportunity to respond necessarily affect final determination. Such objections are properly considered before final determination as there may be no adequate remedy after final determination. In any case, it is respectfully submitted that interpretation of the law is not properly included in the ministerial duties of the clerk's office. Likewise, confiscation of unearned fees is not properly included in the ministerial duties of the clerk's office. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S.

Const. amend. I, IV, V, VII, and XIV.

CONCLUSION

It is fair to say that the State Constitution and our elected officials in the State legislature mandate even-handedness and fundamental fairness by the clerk's office of the Court of Appeals. Irregularities, lack of accountability, confiscation of unearned fees, deprivation of meaningful opportunity to be heard, and/or denial of due process by the clerk's office do not comport with even-handedness and fundamental fairness. For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully requests that this Court grant this motion with abeyance pending clarification.

Respectfully submitted,


C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

CHARLESTON COUNTY Auditor

Peter Tecklenburg

- MAIN MENU
- EXIT

Parcel ID
5231200058

Sub-Division
FORT MOULTRIE

Tax District
23, Town of Sullivan's Island

Legal Description :LT 10 AREA F

Acreage High : 0 Marsh : 0 Swamp : 0 Water : Total : 0

Jurisdiction : CNTY-ASSESSR

Property Address :1607 POE AVE

Mailing Address : 3 HIDDEN VLY, ROCKY RIVER- OH, 44116-1143

Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Deed	Deed Date	Sale Date	Sale Price
-	-	GRANUAILE LLC	-	R624-643	05/07/2007	04/30/2007	

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PRATT-THOMAS | WALKERATTORNEYS AT LAW
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CHARLESTON, SC 29403PO DRAWER 22247
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JOHN P. LINTON, JR.
Email: jpl@p-tw.com
Direct: (843) 727-2252

June 25, 2015

Dr. Cynthia Holmes
Post Office Box 187
2061 Middle Street
Sullivan's Island, SC 29482-0187**RECEIVED**

SEP 12 2016

SC Court of Appeals

Dear Dr. Holmes:

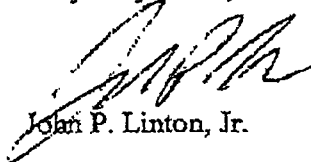
I am in receipt of your two letters to Larry Dodds, Town Attorney for the Town of Sullivan's Island, indicating that you are requesting mediation with respect to the BZA appeal involving permit # 2014-2899. Our firm is currently handling an appeal to the Charleston County Circuit Court which is related to permit # 2014-2899. That appeal was filed by J. Doe and is Civil Action Number 2015-CP-10-0775. That being the case, Mr. Dodds asked that we respond to your letter concerning the same BZA decision.

The BZA held a hearing on the appeal of permit # 2014-2899 on April 10, 2014 and issued a Final Order on May 8, 2014 (mailed May 9, 2014). In response to your request, the BZA held a rehearing on September 11, 2014 and issued a Final Order on the rehearing on January 8, 2015 (mailed January 12, 2015).

Your request for mediation of this matter does not meet the requirements of the applicable South Carolina statute. Under South Carolina Code Section 6-29-820(B), the property owner whose land is the subject of a decision of the board of appeals may appeal a decision of the board of zoning appeal by filing, within thirty days of the mailing of the board of zoning appeals decision, a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina code section 6-29-825.

Your letter requests do not comply with the above statute in several ways. For example, it is not timely, it is not filed with court as a notice of appeal accompanied by a request for mediation, and it does not appear to be requested by the owner of the property that was the subject of the BZA. According to the Charleston County records, James P. Walsh, not Dr. Cynthia Holmes, is the owner of the property that was the subject of the permit and BZA (1607 Poe Ave, Sullivan's Island, South Carolina). Therefore, because your requests are not proper under the applicable statute, the Town will not be providing tentative dates and mediators as you request in your letters to Mr. Dodds.

Very truly yours,



John P. Linton, Jr.

JPL/cam

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 29, 2016

Cynthia Holmes
PO Box 187
Sullivan's Island SC 29482

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SC Court of Appeals

Re: John Doe v. Board of Zoning Appeals
Appellate Case No. 2015-002297

Dear Ms. Holmes:

The Court received your motion entitled "Motion for Leave to File and Other Relief" We are returning your filing to you pursuant to Rule 240(i), SCACR, and this Court's order dated May 13, 2016. No further action will be taken.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jay A. Kitchens".

CLERK

cc: John Phillips Linton, Jr., Esquire
George Trenholm Walker, Esquire

The South Carolina Court of Appeals

John Doe (Cynthia Holmes), Appellant,

v.

Board of Zoning Appeals (BZA) and Town of Sullivan's
Island (S.I.), S.I. Zoning Administrator, and S. I.
Building Dept., Individually and In Official Capacity,
Respondents.

Appellate Case No. 2015-002297

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SC Court of Appeals

ORDER

Respondents' motion to correct the record on appeal and for leave to file a supplemental record on appeal is granted.

We decline to entertain Appellant's request for panel review of our March 8, 2016 order. This court will not accept any further motions from Appellant stemming from our February 3, 2016 order granting Respondents' motion for an extension, and our clerk's office is instructed to return any such motions to Appellant.


FOR THE COURT *A.C.J.*

Columbia, South Carolina

cc:
Cynthia Holmes
John Phillips Linton, Jr., Esquire
George Trenholm Walker, Esquire

FILED
5/13/16 

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

App. Case No. 2015-002297

John Doe,

Appellant,

v.

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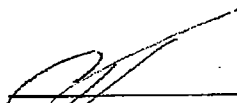
Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

PROOF OF SERVICE

I certify that I have timely served the foregoing on the Respondents on this date by deposit in the United States Mail, postage prepaid, addressed to Respondents' attorney of record at 16 Charlotte St., Charleston, SC 29403.

Dated 9/12/16


C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

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SC Court of Appeals

Re: Doe v BZA et al
App. Case No. 2015-002297

Dear Jenny:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

- 1) The filing fee,
- 2) Seven copies,
- 3) Proof of Service and a copy, and
- 4) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

cc: Respondent's Counsel

FAX COVER SHEET

From: C. Holmes
PO Box 187
Sullivans Island, SC 29482-0187
843.883.3010

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SC Court of Appeals