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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA SUPREME COURT**

**APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes III, Master-in-Equity**

Appellate Case No 2014-000636

Mare Baracco,

PETITIONER

vs.

Beaufort County

Respondent

PETITION FOR A WRIT OF CERTIORARI

**Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935
843-592-1062
PETITIONER**

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Arguments:

1. THE LOWER COURT ERRED IN DENYING APPELLANT’S ASSERTION THE
MAGISTRATE COURT LACKED SUBJECT MATTER JURISDICTION OVER
THIS MATTER, AS NO AUTHORITY EXISTS/EXISTED AUTHORIZING
MAGISTRATE JUDGES TO ACT AS ADMINISTRATIVE HEARING OFFICERS
AND/OR PRESIDE OVER ANY TYPE OF APPELLATE JUDICIAL REVIEW,
THEREBY MAKING THEIRS AND ANY SUBSEQUENT ACTIONS VOID

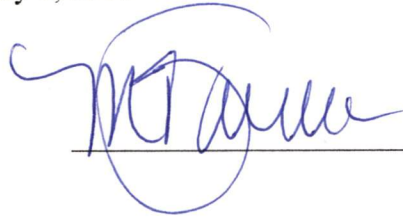
2. THE APPELLANT WAS NOT SUBJECT TO BEAUFORT COUNTY’S ORDINANCE,
AS APPELLANT RESIDED IN THE INCORPORATED MUNICIPALITY OF THE
TOWN OF PORT ROYAL, AND THEY HAD NOT ADOPTED THE COUNTY’S
ORDINANCE UNTIL 2016

3. BCSO AND BEAUFORT COUNTY LACKED JURISDICTION THROUGHOUT THIS
MATTER, RESULTING IN SUBSTANTIAL AND ONGOING VIOLATIONS OF THE
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Certificate of Counsel

Petitioner is Pro Se and certifies the Petition for Re-Hearing was made and finally ruled on by the Court of Appeals on February 1, 2017

A handwritten signature in blue ink is written over a horizontal line. The signature is highly stylized and cursive, appearing to start with a large 'M' and ending with a long horizontal stroke.

CAVEAT: This matter presents legal issues of first impression for this Honorable Court's consideration, which in the interests of justice for the appellant and general public should be heard.

QUESTIONS PRESENTED ON REVIEW:

1. Are South Carolina Magistrate Judges authorized to hear administrative appeals and/or any type of appellate judicial review?
2. Did the Beaufort County Magistrate Court lack subject matter jurisdiction of a resident of a Municipality in an administrative appeal?
3. Was the Appellant afforded all of its right of due process throughout the proceedings?

STATEMENT OF THE CASE:

On July 4, 2012, an incident occurred in the Town of Port Royal involving Appellant's personal property. The Town of Port Royal is a recognized incorporated Municipality in the State of South Carolina and Appellant is a resident of this Municipality. At the time of the incident, the Town of Port Royal had not adopted Beaufort County's Animal Control Ordinance and the Town of Port Royal's Animal Control Ordinance did not provide for any of the provisions and/or penalties as provided for in the Beaufort County Animal Control Ordinance. The Beaufort County Animal Control Ordinance is/was repugnant to the South Carolina Constitution and laws and thus is void. On March 9, 2016, the Town of Port Royal adopted a revised version of the Beaufort County Animal Control Ordinance Article II., Animal Control. Beaufort County Sheriff's Office (BCSO) is a division of the Beaufort County Administration.

On July 5, 2012 BCSO Deputy Brittany Chaplin investigated said incident, interacted with Appellant's personal property, and determined Appellant's personal property was not dangerous. Subsequently, on July 9, 2012, Chaplin, at the direction of a BCSO Staff Sgt [who did not investigate nor interact with Appellant's personal property] served a "Dangerous Animal Notice" on Appellant (ROA pg 92). Said Notice did not contain a Summons or Petition, which would have started this alleged legal process. Nor at the time of service of this "Dangerous Animal Notice" was Appellant served with an Ordinance Violation or any type of ticket or warrant by BCSO and/or any other entity that would also have started this alleged legal process. Deputy Chaplin memorialized in her Supplemental Report that Appellant "...*immediately contacted BCSO to appeal the notice*" (ROA pg 93).

On July 10, 2012, Appellant went to BCSO to challenge said "Dangerous Animal Notice". Appellant was directed by BCSO, specifically Lt. Jerome Spencer, to appeal their Administrative Decision to the Beaufort County Magistrate's Court as a Civil Matter. Appellant did not file a formal notice of an appeal or pay any filing fees to the Beaufort County Magistrate Court for the purpose of the Magistrate presiding over said civil matter appeal. Nor, at any time, did Appellant ever file a motion for a hearing on an injunction/revocation of issuance of a "Dangerous Animal Notice". Instead, Lt. Jerome Spencer directed Appellant to write a letter of the civil matter appeal of their Administrative Decision to, specifically, Magistrate Court Judge Rod H. Sproatt. Appellant prepared this letter and delivered it to Lt. Spencer (ROA pg 101). Spencer told Appellant BCSO Deputy Brittany Chaplin would hand-deliver the letter to Magistrate Court Judge Sproatt. Judge Sproatt then issued a Summary Court Summons July 18, 2012 advising Appellant that a Bench Trial (not an appeal hearing) had been scheduled for August 8, 2012.

August 8, 2012, Magistrate Court Judge Joseph Kline presided over the appeal of a civil matter regarding the Beaufort County Administrative Decision. Beaufort County's Attorney did not appear, nor represent Beaufort County nor BCSO at this Appeal Hearing in this civil matter. Instead, BCSO Deputy Chaplin represented Beaufort County and BCSO at the Appeal Hearing in this Civil matter, in direct violation of the laws of the State of South Carolina. At the beginning of this Civil Appeal hearing, Magistrate Court Judge Joseph Kline stated: "*At this time we are continuing with Beaufort County Session of Animal Control Court, today being August the 8th, 2012. At this time, we will entertain an **appeal hearing.***"

On August 13, 2012, Magistrate Court Judge Joseph Kline issued a "Ruling" as to Appellant's Civil Appeal.

On August 15, 2012, Appellant filed an appeal of Magistrate Court Judge Kline's "Ruling" to the Beaufort County Circuit Court. Again, Appellant did not pay any fees to appeal this civil matter to the Beaufort County Circuit Court.

On August 20, 2012, Magistrate Court Judge Kline filed a return to Appellant's Appeal, with said Return erroneously stating the Appellant had "filed a motion for a hearing on an injunction/revocation of issuance of a "Dangerous Animal Notice".

On December 28, 2012, Beaufort County Master-In-Equity Judge Dukes reversed Judge Kline's Appellate "Ruling" and remanded it to the lower court (ROA pg 11). Instead of a new Appeal Hearing as to this Civil matter, as ordered by Master-In-Equity Dukes (ROA pg 19, lines 19-24) Magistrate Court Judge Richard Brooks issued a "Rule to Show Cause Hearing Magistrate Summons" on Appellant, which did not contain an actual Motion for a Rule to Show Cause Motion, nor Affidavits in Support thereof (ROA pg 95).

On March 12, 2013, Judge Brooks presided over the rehearing of the Appeal of the Civil matter regarding the Beaufort County Administrative Decision as to Appellant's personal property being dangerous. At said Appeal Hearing, Judge Brooks stated the hearing was a "rule to show cause on an issuance of a Dangerous Animal Notice" by Beaufort County. Whereupon Beaufort County Attorney Joshua Gruber corrected him and stated it was *an appeal of the determination made by an officer* (ROA pg 61).

On March 13, 2013, Judge Brookes issued an "Order Rule to Show Cause Re: Beaufort County Ordinance 14-35". In said Order, Judge Brooks erroneously states the matter came before the Court on a Motion seeking revocation of a "Dangerous Animal Notice" (ROA pg 10). No such motion was filed by Appellant. Despite being told by the Beaufort County Attorney this matter was not a Rule to Show Cause and that it was an appeal of an Administrative Decision, the Judge continuously referred to the matter as being a Rule to Show Cause.

On April 10, 2013, Appellant appealed this "Ruling" to the Beaufort County Circuit Court. Again, Appellant paid no fees to file the appeal of this civil matter.

On April 17, 2013, despite the filing of an appeal of his "Ruling", Judge Brooks issued a Magistrate Summons (ROA pg 96) which summoned Appellant *"to be prepared to show cause, if any, why the dog subject to the Order should not be remanded to the custody of the Beaufort County Animal Control until such time as you are in compliance with the requirements for keeping a dangerous animal OR Judge Brooks' Order is reversed on Appeal."* Again, no Petition, Motion, Affidavit or any other type document was filed and served with said Magistrate Summons. On May 2, 2013, a hearing was held as to this matter. No actual written filed Order was ever served upon Appellant.

On October 4, 2013, Beaufort County Master-In-Equity Marvin Dukes presided over Appellant's Appeal. On October 14, 2013, Judge Dukes ruled that "*in an **Administrative Appeal**, the court may not substitute its judgment for the judgement of the agency as to the weight of the evidence on questions of fact. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced.... S.C. Code Ann. Section 1-23-380(5)*" (ROA pg 8).

ARGUMENT:

The lower court erred in denying Appellant's assertion the Magistrate Court lacked subject matter jurisdiction over this matter. Subject matter jurisdiction is the power of the court to hear and determine a case. *Hamilton v. Fulgam*, 385 S.C. 632, 637, 686 S.E.2d 683, 685 (2009). Accordingly, "subject matter jurisdiction cannot be waived or conferred by consent" of the litigants. Further, subject matter jurisdiction can be challenged at any time throughout the proceedings. Without subject matter jurisdiction, anything the court does is void, *ab initio*. *Coon v. Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) ("a judgement of court without subject matter jurisdiction is void").

In accordance with Article V, Section 4 of the South Carolina Constitution, the Supreme Court shall make rules governing the administration of all the courts of the State. Magistrate Courts are courts of limited jurisdiction (S.C. Code Sections 22-3-540; 22-3-10; and 22-3-20). No authority exists authorizing magistrate judges to act as Administrative Hearing Officers and/or preside over any type of appellate judicial review.

Therefore, the Beaufort County Magistrate Court lacked subject matter jurisdiction in this matter as no authority exists/existed authorizing magistrate judges to act as Administrative

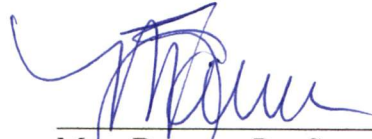
Hearing Officers and/or preside over any type of appellate judicial review. Since no such authority existed, any and all actions of the Beaufort County Magistrate and subsequent actions of the Master-In-Equity are void, *ab initio*. As is replete throughout the documentation contained in the Record on Appeal and other court documents, this was an ***Administrative Appeal(s)*** before the Beaufort County Magistrate(s), who lacked authority to preside over any type of appellate review. Therefore, said Beaufort County Magistrates lacked subject matter jurisdiction, thus making their actions and the subsequent actions of the Master-In-Equity void, *ab initio*. Further, the Town of Port Royal did not adopt Beaufort County's Animal Control Ordinance until March 2016, affirming Appellant's repeated assertions she was not subject to Beaufort County's ordinance at the time of the incident.

The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced.... S.C. Code Ann. Section 1-23-380(5). Appellant's substantial rights have been prejudiced by the actions of the Beaufort County and the Beaufort County courts, Magistrate, etc.

CONCLUSION:

This Court should grant this Petition for Writ of Certiorari to correct the multiple legal irregularities and omissions of Appellant's essential and substantial rights by Beaufort County and the Beaufort County Magistrates courts, in the interests of justice and to right a wrong for the Appellant and general public at large, and Waive any and all costs or fees of the Appellant in these proceedings in the interests of justice because this matter is one of first impression that is in need of clarity for the general public.

Respectfully submitted,



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March 1, 2017

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PROOF OF SERVICE

I certify I have served the Petition for Writ of Certiorari on the Respondent by depositing copies in the United States Mail, postage prepaid, March 1, 2017, addressed as follows:

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