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

S.C. 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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER**

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Record on Appeal.....Attached

Final Brief of Appellant.....Attached

Final Brief of Respondent.....Attached

**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**

Mare Baracco, Appellant,

v.

Beaufort County, South Carolina, Respondent.

Appellate Case No. 2014-000636

Appeal From Beaufort County
Marvin H. Dukes, III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-487
Submitted November 1, 2016 – Filed November 23, 2016

DISMISSED IN PART, AFFIRMED IN PART

Mare Baracco, of Port Royal, pro se.

Mary Bass Lohr, of Howell, Gibson & Hughes, P.A., of
Beaufort, for Respondent.

PER CURIAM: Mare Baracco appeals the circuit court's order of October 16, 2013, and the subsequent order denying her Rule 60(b), SCRCR motion for relief from judgment. On appeal, Baracco argues (1) Beaufort County (the County) lacked jurisdiction to issue a citation against her for an ordinance violation; (2) the magistrate's and circuit courts did not have jurisdiction over the matter; (3) the County engaged in improper ex parte communication with the magistrate and the

town of Port Royal administration; (4) the magistrate violated her due process rights and right to an administrative hearing; (5) the magistrate erred in failing to dismiss her claims because the claims were not civil in nature; (6) issuance of the citation violated her due process rights; and (7) the County's actions constituted fraud, a "sham legal process," barratry, and pollution of the administration of justice. We dismiss in part and affirm in part pursuant to Rule 220(b), SCACR.

Initially, we dismiss Baracco's appeal from the October 16, 2013 order because Baracco failed to timely serve the notice of appeal pursuant to Rule 203 of the South Carolina Appellate Court Rules. *See* Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty . . . days after receipt of written notice of entry of the order or judgment."). Although Baracco first appealed from the October 16, 2013 order on November 12, 2013, that appeal was dismissed. Baracco served her second appeal from the order on March 25, 2014, along with her appeal from the order denying her Rule 60(b) motion. Because a Rule 60 motion does not toll the time for serving a notice of appeal, Baracco's second appeal from the October 16, 2013 order was untimely served. *See Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 5, 518 S.E.2d 56, 59 (Ct. App. 1999) (noting that a Rule 60 motion "d[oes] not toll the time for the filing and service of [a] notice of appeal"); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (explaining service of the notice of appeal is a jurisdictional requirement and the appellate courts have no authority to extend the time in which parties must serve the notice of intent to appeal).

As to Baracco's appeal from the order denying her Rule 60(b) motion, we find the circuit court did not abuse its discretion. *See Tri-Cty. Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (noting that a Rule 60(b) motion is addressed to the sound discretion of the trial court and this court will not disturb the trial court's decision absent an abuse of discretion). First, Baracco failed to show fraud or misconduct by the County. *See* Rule 60(b) ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . fraud, misrepresentation, or other misconduct of an adverse party . . ."); *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct. App. 2008), *aff'd*, 395 S.C. 85, 716 S.E.2d 887 (2011) ("A party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essential to entitle him to relief."). Second, any other issues Baracco alleges arising out of the order denying her motion are meritless because those issues were not properly suited for a Rule 60(b) motion. *See* Rule 60(b) (allowing a court to relieve a party from a final judgment only for (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly

discovered evidence; (3) fraud, misrepresentation, or other misconduct by an adverse party; (4) a void judgment; or (5) satisfaction, release, or discharge, or vacation of the judgment or when the judgment is no longer equitable).¹

DISMISSED IN PART, AFFIRMED IN PART.²

HUFF and SHORT, JJ., and MOORE, A.J., concur.

¹ To the extent Baracco argues the County's counsel violated the rules of professional conduct, this court lacks the authority to rule on that issue. *See In re Tullis*, 375 S.C. 190, 191, 652 S.E.2d 395, 395 (2007) ("The authority to discipline attorneys and the manner in which the discipline is given rests *entirely* with th[e] South Carolina Supreme] Court." (emphasis added)).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

Mare Baracco, the Appellant herein, moves this Honorable Court, pursuant to the South Carolina Rules of Civil Procedure, in reference to the Order of the Court dated November 23, 2016, for a Rehearing on **Subject Matter Jurisdiction** [emphasis added] as follows:

The Appellant contends this is a threshold issue that must be determined in every case, to properly establish whether the Court has jurisdiction over the dispute. **Subject Matter Jurisdiction** is the power of a 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 that a court does is void, *ab initio*. *Coon v Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) ("a judgment of a court without subject-matter jurisdiction is void").

Magistrate Courts are courts of limited jurisdiction (SC Code Sections 22-3-540; 22-3-10; and 22-3-20) without administrative review powers or jurisdiction in civil cases (exceptions not applicable here) where the State is a Party. The fact the Beaufort County Sheriff's Office filed their action against the Appellant and designated themselves as *The State of South Carolina* determined this case from the onset as *The State* being the moving Party in criminal cases.¹ This case was docketed in the Beaufort County Magistrate's Court as a criminal case and captioned

¹ However, this was also flawed as it could not have been a criminal matter as initially heard by the Beaufort Magistrate Court, as neither a Uniform Traffic Ticket nor a Warrant were ever served by Beaufort County Sheriff's Office (BCSO) upon the Appellant. The Appellant was acquitted in the Port Royal Municipal Court as to the Criminal Ordinance Violation as to the charge of "animal at large." This BCSO's "Notice" was issued (without subject matter jurisdiction) pursuant to the Port Royal Municipal Court case. Given the Appellant was acquitted in a criminal hearing by the Town of Port Royal, she could not be tried again as a criminal defendant by Beaufort County in *The State of South Carolina vs. Mare Baracco*, as it would constitute **Double Jeopardy**.

The State of South Carolina vs. Mare Baracco (2012-CV-07-10401536). At the same time, the Town of Port Royal (the Municipality where Appellant resides), also docketed the same matter *Town of Port Royal vs. Mare Baracco*, as a criminal case. At the initial hearing of this case, *The State of South Carolina* proceeded first as the prosecuting entity in this criminal case and failed to prove its case as it was remanded for a new trial. At the **March 12, 2013 Retrial**, Respondent was aware the Appellant had been acquitted by the Port Royal Municipal Court. Therefore, on the actual date of the retrial of this case, this same matter was changed for the first time from a Criminal Matter to a **Civil Action Appeal**, (ROA Page 60), the court transcript:

THE COURT: "Mare Baracco. And this is civil case number 2012-CV-07-10401536, and for the State we have Mr. Josh Gruber . . ." (ROA page 61, page 4, lines 10-12).

THE COURT: . . . "All right. Is there anything else we need to address before we proceed?"

MR. GRUBER: No, Your Honor. I'd just put on the record, as we discussed in chambers, I believe this matter arises as more of an appeal of a determination by the officer, and as such, the appellant would bear the burden of proving this matter and would, therefore, go first." (ROA page 61, page 4, lines 18 - 25).

Therefore, the Appellant contends she was never afforded an *actual retrial* of the initial proceedings in this case as ordered by the Court, as Respondent was aware it would have constituted **Double Jeopardy**. Respondent has never had subject matter jurisdiction over the Appellant based on several reasons, including, but not limited to, it has never formally conformed any of its documents nor served proper documentation as required by a Court (i.e. Summons and Complaint, Warrant, Uniform Traffic Ticket, Uniform Ordinance Violation) prior to any of these trials; thereby affording Appellant proper notice to prepare her case(s).

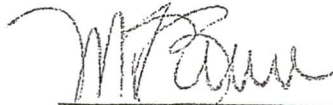
In fact, the Respondent filed a Motion with this Honorable Court to have "Beaufort County" substituted as the proper party in this matter when it was questioned by this Honorable Court as to this case being a criminal case or civil matter, thus supporting the Appellant's

assertions. Further, it was the Beaufort County Sheriff's Office (BCSO), the self-determined State Agency, whose "Notice" the Appellant contested, not Beaufort County, never Beaufort County. The "Notice" was pursuant to a Beaufort County Ordinance, which the Town of Port Royal had not adopted.

The Appellant raised the issue of lack of subject matter jurisdiction repeatedly in the Motion 60 Hearing (ROA Index 6- Transcript dated February 21, 2014; Page 14; lines 22-25; Page 16; lines 19-24; Page 20; lines 19-24; Page 27; lines 13-20; Page 31, lines 3-22; Page 35; lines 24-25; Page 36; lines 1-25; Page 37; lines 1-14.) Appellant repeatedly raised the issue of lack of jurisdiction throughout her Appeal to this Honorable Court. Appellant again raises lack of subject matter jurisdiction in this case.

WHEREFORE, The Appellant prays this Court grants this Motion, finds in favor of the Appellant, and reverses/dismisses this case with prejudice, and orders such other relief as is just and proper.

Respectfully submitted, this the 6th day of December 2016.



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Authorities ii

AUTHORITIES

SC Code Sections 22-3-540; 22-3-10; and 22-3-20

Hamilton v. Fulgam, 385 S.C. 632, 637, 686 S.E. 2d 683 685 (2009)

Coon v Coon, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005)



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JAMES S. GIBSON, JR *
Of Counsel

* Certified Mediator

December 9, 2016

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Mare Baracco vs. Beaufort County, South Carolina
Civil Action No.: 2014-000636
Our File No: 11369 MBL

Dear Ms. Kitchings:

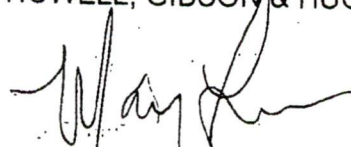
Please take this letter as Beaufort County's response to the Petition for Rehearing. A careful review of the Petition for Rehearing served by Ms. Baracco shows that the Appellant has raised no issues on rehearing not previously addressed in the original briefing of this matter. Thus, pursuant to Rule 240(e), SCRAP, this Defendant does not intend on filing a formal return to the Appellant's Petition for Rehearing. However, should the court require such a filing, Beaufort County would be happy to provide one.

Please do not hesitate to contact me should you have any question or comment regarding any matter set forth herein.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.



Mary Bass Lohr
MBL/ad

cc: Ms. Mare Baracco
Allison Collins Coppage
Joshua A. Gruber

The South Carolina Court of Appeals

Mare Baracco, Appellant,

v.

Beaufort County, South Carolina, Respondent.

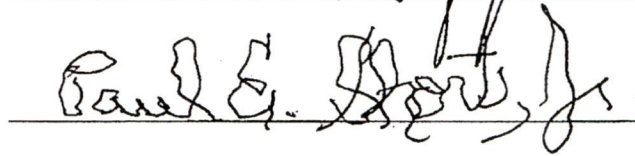
Appellate Case No. 2014-000636

ORDER

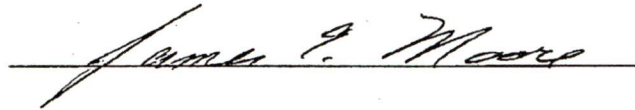
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc: Mare Baracco
Mary Bass Lohr, Esquire
The Honorable Marvin H. Dukes, III

FILED

February 1, 2017