

THE STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER-IN-EQUITY

Appellate Case No. 2017-000555

Mare Baracco,

Appellant,

vs.

Beaufort County,

Respondent.

REPLY TO RESPONDENT'S RESPONSE TO APPELLANT'S
MOTION FOR AN ORDER STATING ALL LOWER COURT LACKED PERSONAL,
PROCEDURAL AND/OR SUBJECT MATTER JURISDICTION OVER APPELLANT

Mare Baracco
1006 Madrid Avenue
Port Royal, South Carolina 29935
(843) 592-1062
Pro Se Appellant

Mary Bass Lohr
Howell, Gibson & Hughes PA
PO Box 40
Beaufort SC 29901
843-522-2400/522-2429 (fax)
mlohr@hghpa.com
Counsel for Respondent

RECEIVED

JUL 25 2017

S.C. SUPREME COURT

Appellant, Mare Baracco, hereby files this Reply to Respondent's Response dated July 19, 2017, received July 21, 2017. Respondent's Attorney, Mary Bass Lohr, asked this Court specifically to accept her letter as a Response to Appellant's *Motion for an Order stating all Lower Courts lacked personal, procedural and/or subject matter jurisdiction over Appellant*. Such a response is without legal foundation and should be totally and wholly disregarded by the Court. It should not be a part of the record and this Court should communicate that to Attorney Lohr. The proper procedure, pursuant to the Rules, require the real party in interest to this proceeding, to wit, a Beaufort County Official with knowledge of the proceedings, submit a responsive affidavit properly and duly executed under oath. **(Exhibit 1)**

The Appellant filed this Motion because of corroborating statements, made by the Respondent in related litigation, that affirms the Appellant's Writ of Certiorari. At the June 22, 2017 hearing in the Beaufort County Court of Common Pleas the Respondent said in oral argument this matter on appeal to the South Carolina Supreme Court is an appeal to the Magistrate. This is precisely what the Appellant has pled, and pleads, before every court, to include the South Carolina Supreme Court, that this case was (a) conducted as an appeal to the magistrate; (b) it is, and was, administrative in nature; (c) Beaufort County lacked personal, procedural and/or subject matter jurisdiction over the Appellant; and (d) her acquittal November 8, 2012 by the Town of Port Royal Municipal Court for an Animal-at-Large ticket should have ended the matter. The Respondent has subsequently validated the Appellant's assertions in both written and transcribed admissions as follows:

- The Respondent stated before the South Carolina Court of Appeals and also the Beaufort County Court of Common Pleas this matter *is an appeal to the Magistrate* [emphasis added]. **(Exhibit 2, Page 2, lines 9-10)**

- The Respondent confirmed before the South Carolina Court of Appeals this matter was: *In fact, this case is an appeal to the magistrate's court of an administrative decision pursuant to Beaufort County Code of Ordinances 14-35.* (Exhibit 3).
- The Respondent stated in their Writ Reply “*Baracco was ticketed for a violation town ordinance [Town of Port Royal Animal Control] 3-53 for allowing the animal to run at large.*” (Exhibit 4). The Respondent further acknowledged “*...the Petitioner was found not guilty in the Town of Port Royal's Municipal Court.*”, thus underscoring Appellant's contention that at no time could Appellant be subjected to Beaufort County's ordinance for Animal Control. Further, at the time of the alleged incident the Town of Port Royal's Animal Control Ordinance did not contain any provisions for alleged dangerous animals or contain any contracts with Beaufort County to adopt their ordinance. Confirmation of this fact was published in the last paragraph of a November 9, 2012 Beaufort Gazette article about the Appellant's acquittal, where it was reported *Port Royal Town Council “discussed creating a dangerous-animal ordinance but postponed any action.”* (Exhibit 5).
- The Respondent stated in oral argument in the Beaufort County Court of Common Pleas that “*Appellant was ticketed with a violation of a Beaufort County Ordinance regarding a dangerous animal.*” Respondent further stated to said court: “*...she appealed that to the magistrate's court. That issue is up on appeal at the Supreme Court right now.*” (Exhibit 6, Lines 8-16). **Appellant was never ticketed, nor received any ticket, from Respondent.** Respondent refers to two (2) case numbers – **the Town of Port Royal Case Number for the Animal at Large Ticket: 12-01444 (Port Royal Police Department) and Beaufort County Sheriff's Case Number 20120709-508.** These case numbers are referenced on the only document issued to the Appellant by the Respondent: *a county created form* (Exhibit 7), which was not a sufficient document to compel her to act in any fashion, (other than out of complete fear of police and government procedures resulting in the loss of her personal property, excessive fines and her personal freedoms), because (1) she was not subject to Beaufort County Ordinances; (2) Beaufort County lacked any type of jurisdiction over her or her personal and real property; (3) this County created form lacked meaningful procedural due process; (4) it lacked a standard of proof requirement; (5) it failed to properly advise the process by which to contest it; (6) it failed to provide for a fair impartial hearing; (7) all fees and costs incurred the Respondent knew would be an erroneous deprivation if she was not able to pay them; (8) it imposed unrealistic and unreasonable conditions within a very limited time frame upon Appellant's personal and real property prior to any meaningful evidentiary procedural hearing; (9) this form required Appellant to purchase duplicative insurance coverage, which was not provided in Respondent's Ordinance; (10)

subjected Appellant and her personal and real property to conditions dictated by Beaufort County in a very limited time period and which failure to comply would subject her to criminal penalty in the amount of \$1,092.50 and/or the seizure of her property; (11) subjected Appellant and her property to conditions not provided by State Law; (12) subjected her to a fine in excess of the limitations of either a magistrate or municipal court; and (13) all of which violated her rights to proper due process and the protections afforded her and her personal and real property under the Ordinances of the Town of Port Royal, laws of the State of South Carolina, and the Constitutions of the State of South Carolina and United States.

Based on all of the above, and the matters addressed in Appellant's aforesaid, Appellant hereby requests this Honorable Court issue an Order dismissing this matter with prejudice as Respondent lacked personal, procedural and/or subject matter jurisdiction over her and her personal and real property at any time prior to and subsequent to the incident giving rise to this case.

Respectfully submitted, this the 24th day of July, 2017.



Mare Baracco
1006 Madrid Avenue
Port Royal South Carolina 29935
(843) 592-1062
Pro se Appellant.

Authorities ii

AUTHORITIES

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OTHER AUTHORITIES

- Exhibit 1 – Letter from Respondent Mary Bass Lohr July 19, 2017
- Exhibit 2 – Pages 1 and 2, June 22, 2017 Transcript
- Exhibit 3 - Letter to Court of Appeals dated December 9, 2013
from Respondent Mary Bass Lohr
- Exhibit 4 – Port Royal Animal at Large Ticket
- Exhibit 5 – Beaufort Gazette article of November 9, 2012
- Exhibit 6 – BCSO Form Notice
- Exhibit 7 – Page 2 of June 22, 2017 Transcript

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* Certified Mediator

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TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: mlohr@hghpa.com
WRITER'S DIRECT: 843-522-2428

July 19, 2017

Hon. Daniel E. Shearhouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

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

Dear Hon. Shearhouse:

Please take this letter as a response to *Appellant's Notice of Motion and Motion Motion for an Order Stating All Lower Courts Lacked Personal, Procedural and/or Subject Matter Jurisdiction over Appellant* with regard to the above referenced matter. The Appellant's motion goes to merits of the appeal and the matter is currently pending before the Court on a Petition for Certiorari. Therefore, I do not believe this Motion is appropriate for the Court's consideration and does not require a response at this time. These matters can certainly be addressed should the Court decide to grant the Appellant's Petition for Certiorari.

However, should the Court require a further, more detailed response to the Appellant's motion, Beaufort County will be happy to provide such a response upon instruction from the court.

With kindest regards, I am

COPY

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

Mary Bass Lohr
MBL/ad

cc: Ms. Mare Baracco ✓

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1 THE COURT: This is your motion to dismiss?

2 MS. LOHR: Yes, Your Honor.

3 THE COURT: Glad to hear from you. Give me the
4 factual background.

5 MS. LOHR: Yes, sir. May it please the Court. My
6 name is Mary Lohr. I'm here today on behalf of Beaufort
7 County. This is a part of a series of ongoing litigation.

8 Ms. Baracco was ticketed with a violation of a
9 Beaufort County ordinance regarding a dangerous animal. She
10 appealed that to the magistrate's court. That issue is up on
11 appeal at the Supreme Court right now.

12 THE COURT: How do you appeal to the magistrate's
13 court?

14 MR. BROWN: That's a big issue.

15 MS. LOHR: That's the issue that the Supreme Court
16 has in front of them right now.

17 THE COURT: Okay.

18 MS. LOHR: There was an order -- for our purposes
19 today, there was an order issued by the magistrate's court
20 saying that she had -- that the animal was dangerous and that
21 she needed to take certain precautions and that while this
22 matter was under appeal, those precautions needed to
23 continue. Okay?

24 So we were at the Court of Appeals on that issue.
25 The County was successful in its appeal. It's now petitioned

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Beaufort, South Carolina 29901-0040
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DAVID S. BLACK
MARY BASS LOHR
THOMAS A. BENDLE, JR.

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

WILLIAM T. YOUNG III

JAMES S. GIBSON, JR *
Of Counsel

* Certified Mediator

December 9, 2013

Ms. V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: The State of South Carolina vs. Mare Baracco
Civil Action No.: 2013-CP-07-00918
Our File No: 11369 MBL

Dear Ms. Allen:

Please find enclosed a copy of my Notice of Appearance on behalf of Beaufort County. I wanted to bring to your attention two related issues which I believe require the Court's attention. Initially, I believe that this case has been erroneously captioned "The State vs. Mare Baracco". This designation is, to my mind, inappropriate in as much as this is not a criminal case and The State is not a party. In fact, this case is an appeal to the magistrate's court of an administrative determination pursuant to Beaufort County Code of Ordinances 14-35, which I have attached for your review along with the order of the circuit court from which this appeal arises. I believe the proper party in this matter would either be Beaufort County or Beaufort County Animal Control as opposed to "the State." Moreover, as you can see the issue before the court is the classification of an animal owned by the Appellant as a "dangerous animal" pursuant to Beaufort Code of Ordinances Section 14-35, and does not involve any criminal penalty or sanction. Therefore, I would respectfully request that the Court reconsider its designation of this appeal as a Criminal Appeal and correct the caption in this matter to accurately reflect the proper nature of the case and appropriate parties in interest. If you have any questions, please do not hesitate to contact me at your convenience.

COPY

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

Mary Bass Lohr
MBL/ad
Enclosure

cc: Ms. Mare Baracco
Josh Gruber
Ms. Salley W. Elliott

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Form S-438
Rev. 9/10

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Port Royal VERSUS
FIRST NAME Marie MIDDLE NAME Baracco LAST NAME

STREET AND NO. 1006 Madrid Ave. CITY Port Royal, SC STATE SC ZIP CODE 29935

STATE LICENSED SC DRIVER'S LICENSE NO. 011385879 CDL YES NO DRI. LIC. CLASS D

VEH. LIC. NO. STATE MAKE OF VEH YEAR COMM. VEH. AUTO 16 PSGR. VEH. COMB. HAZ. MT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Grimslay STREET AND NO. 700 Paris Ave

DATE OF TRIAL 07 25 20 12 TIME OF TRIAL 6:00PM CITY Port Royal STATE SC ZIP CODE 29935

VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO. 3-53

OWNER OF VEHICLE Animals at large DATE OF ARREST 07 04 20 12

ADDRESS OF OWNER DATE OF VIOLATION 07 04 20 12

BAIL DEPOSITED [Signature] NAME OF ARRESTING OFFICER Puryear RANK AFC

PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

COUNTY	<u>SFT</u>	NUMBER	<u>07</u>
BADGE	<u>316</u>	TROOP	<u>06</u>
D A Y	1 2 3 4 5 6 7	T I M E	1 2 3 4 5 6 7
TIME OF VIOLATION	<u>0930</u>	WEATHER	<u>clear</u>
DISTANCE IN FEET FROM INTERSECTION OF _____ AND _____			
MILES	N 1	E 2	S 3 W 4
HWY NO.	CITY		
Lat	"		
Long	"		
OFFENSE CODE	<u>94</u>	B.A. LEVEL	<u>[Signature]</u>

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET

39533 FY

VIOLATOR'S COPY

Bond: \$1,092.50

8/8/12

Clerk of Court: 843-986-2229

DOCKET NO.

IN PORT ROYAL

Owner not guilty in dog attack

In July, Mare Baracco's dog, Bodie, a Rhodesian ridgeback mix, bit a Chihuahua-poodle mix, causing fatal injuries.

By ERIN MOODY
emoody@beaufortgazette.com
843-706-8184

A Port Royal resident has been found not guilty of letting her dog run loose during a July incident that resulted in the death of another dog.

A jury of six acquitted Mare Baracco in proceedings before Municipal Court Judge Ned Tupper.

Baracco was charged by Port Royal police after her dog, Bodie, a Rhodesian ridgeback mix, bit Zoey, a Chihuahua-poodle mix, causing fatal injuries.

"This is not an incident where you have a dog running around the neighborhood, wreaking havoc, mauling children. This is a one-time offense," Baracco's attorney Kimberly Smith said.

On the morning of July 4, Sally Germer and Buddy Brown walked their two small dogs on leashes past Baracco's Madrid Avenue home, where Bodie and another dog were in the yard. The dogs started barking at each other, according to testimony from witnesses and the police report. The gate to Baracco's yard opened, Bodie bit Zoey, and Zoey died the next day at Port Royal Veterinary Hospital.

Please see DOG on 7A

Smith seeks

Solicitor to fight former c

By PATRICK DONOHUE
pdonohue@beaufortgazette.com
843-706-8152

A month after successfully lobbying a federal judge to terminate her federal probation, former Beaufort County Clerk of Court Elizabeth Smith is asking a state judge to do the same.

However, 14th Duffie Stone isn't her request, saying public's trust and niency.

Smith's attorney Charleston, filed a ing Circuit Court

DOG

Continued from 1A

At issue was whether the incident occurred on Baracco's property or outside the fence on public property.

Brown testified the incident occurred outside the gate. He said Bodie "crashed" through the gate so fast he was unable to remove Zoey from harm's way before the larger dog bit.

Baracco said she was inside her home when the dogs started barking, and she watched the events unfold through windows. She came outside as the altercation came to a head and maintained that Zoey's injury occurred on her property.

Baracco, Brown and Germer were the only witnesses called.

Baracco also is appealing a "dangerous dog" designation by Beaufort County Animal Control. Her attorney, Smith, said a hearing has not been scheduled.

Owners of dangerous animals

must find it "a nuisance animal at best or a dangerous animal at worst." After the incident, Port Royal Town Council discussed creating a dangerous-animal ordinance but postponed any action.

After hearing testimony in August, Judge Joseph Kline ruled Bodie's aggressive behavior led to the death of Zoey, so the court

Follow reporter Erin Moody at twitter.com/EyeonPortRoyal.

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STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF BEAUFORT)	Case No. 2017-CP-07-00389
_____)	
MARE BARACCO,)	
)	
Plaintiff,)	
)	
VS.)	Transcript of Record
)	
BEAUFORT COUNTY,)	
)	
Defendant.)	DATE: June 22, 2017
_____)	

B E F O R E:

THE HONORABLE LAWTON McINTOSH

A P P E A R A N C E:

JAMES ARTHUR BROWN, JR.
Attorney for the Plaintiff

MARY BASS LOHR
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 THE COURT: This is your motion to dismiss?

2 MS. LOHR: Yes, Your Honor.

3 THE COURT: Glad to hear from you. Give me the
4 factual background.

5 MS. LOHR: Yes, sir. May it please the Court. My
6 name is Mary Lohr. I'm here today on behalf of Beaufort
7 County. This is a part of a series of ongoing litigation.

8 Ms. Baracco was ticketed with a violation of a
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23 continue. Okay?

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25 The County was successful in its appeal. It's now petitioned

This is an Official Notice

Section 14-35 of the Beaufort County Ordinance States:

"Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals.

The animal described below has hereby been declared dangerous. You are required by law to comply with the following requirements within seventy-two (72) hours of:

Date / Time July 9, 2012 / 2:30 PM
Species: Canine Breed: Rhodesian Ridge Back mix
Name: Bodi Age: 3yrs Gender: M
Description: Red w/ white chest
Owner / Address / Location of Animal: Mare Baracco
1006 Madrid Avenue, Port Royal SC 29935

Requirements:

(1) The dangerous animal shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel appropriate to the size of the animal. All pens or structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure floor (such as concrete) attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal. The pen or run area must be clearly marked as containing a dangerous animal and must be designed to prevent the entry of the general public, including children, and to prevent the escape or release of the animal.

(2) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(3) The dangerous animal must not go outside its kennel or pen unless the animal is securely leashed and muzzled with a leash no longer than six feet in length and under the actual physical control of a person 18 years of age or older. Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(4) The person owning, keeping, sheltering or harboring the animal must register the animal with the Beaufort County Animal Shelter within the required seventy-two hour timeframe and provide proof of liability insurance of at least fifty thousand dollars insuring or securing the owner for personal injuries inflicted by the dangerous animal. The Beaufort County Animal Shelter will issue Dangerous Animal tags which must be displayed on the animal's collar at all times. The dangerous animal must also display its current rabies tag on its collar at all times. The person owning, keeping, sheltering or harboring the dangerous animal shall have an identification microchip implant placed under the animal's skin by a licensed veterinarian within the required seventy-two hour timeframe.

Signing under duress; app

Receipt left with: [Signature] Date 7/9/12

Deputy: Lcp B. Chaplin Date 7-9-12

Penalties:

Failure to comply with these requirements within seventy-two (72) hours of the date and time listed on this notice will result in the responsible party being fined in the amount up to \$1092.50. The dangerous animal will be removed from the premises and secured at the Beaufort County Animal Shelter in accordance with Section 14-35 of the Beaufort County Ordinance pending the decision of the Court.

Reasons for declaration of dangerousness: Reference case # 12-01444 (PRPD) and 20120709-508 (BCSC) involving an animal attack which the victim's K9 died.

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 2017-000555

RECEIVED

JUL 25 2017

S.C. SUPREME COURT

Mare Baracco,

Appellant

vs.

Beaufort County

Respondent

PROOF OF SERVICE

I certify I have served a copy of the Appellant's Reply to Respondent's Response to Notice of Motion and Motion for an Order Stating All the Lower Courts Lacked Personal/Procedural and/or Subject Matter Jurisdiction Over Appellant by depositing a copy of the same in the United States Mail, postage prepaid, July 24, 2017, addressed as follows:

Mary Bass Lohr
Howell, Gibson & Hughes PA
PO Box 40
Beaufort SC 29901
843-522-2400/522-2429 (fax)
mlohr@hghpa.com
Counsel for Respondent