

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2016-1627

RECEIVED
NOV 02 2017
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Civil Action No. 2016-CP-32-263
G. Thomas Cooper, Circuit Court Judge

Jamal Gittens Appellant

vs.

John R. Rakowsky Respondent

FINAL BRIEF OF RESPONDENT JOHN R. RAKOWSKY

A. Johnston Cox, SC Bar # 9081
Jessica A. Waller, SC Bar # 100256
Alonzo J. Holloway, SC Bar # 101755
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

Attorneys for Respondent John R. Rakowsky

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES ON APPEAL	1
I. Did the Circuit Court Properly Dismiss the Act Because of Lack of Proper Service?.....	1
II. Did the Circuit Court Properly Dismiss the Act Because Judge Rakowsky is Entitled to Judicial Immunity?	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	4
I. The Circuit Court Properly Dismissed this Action Because of Lack of Proper Service.	4
A. The Circuit Court’s Grant of Judge Rakowsly’s Motion to Dismiss Should be Affirmed Because Appellant has Failed to Appeal the Issue and it has Become the Law of the Case.....	4
B. To the Extent the Issue is Properly Before the Court, the Circuit Court Properly Dismissed the Action for Lack of Proper Service.	6
II. The Circuit Court Properly Dismissed the Action Because Judge Rakowsky is Entitled to Judicial Immunity.....	7
A. Appellant Has Abandoned the Issue of Judge Rakowsky’s Judicial Immunity and it is Now the Law of the Case.	7
B. The Circuit Court Properly Dismissed this Action Because Judge Rakowsky, as a Municipal Judge, had Jurisdiction to Hear Appellant’s Traffic Case and is Therefore Entitled to Judicial Immunity.....	8
1. Standard of Review.....	8
2. Judge Rakowsky, as a Municipal Judge, had Jurisdiction to Hear Appellant’s Traffic Case and is Therefore Entitled to Judicial Immunity.....	9
CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Short</i> , 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996)	5
<i>Baird v. Charleston Cnty.</i> , 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).....	8
<i>Biales v. Young</i> , 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993)	5, 8
<i>Brown v. Carolina Emergency Physicians, P.A.</i> , 348 S.C. 569, 583, 560 S.E.2d 624, 631 (Ct. App. 2001)	7
<i>Brown v. Evatt</i> , 322 S.C. 189, 193, 470 S.E.2d 848, 850 (1996)	10
<i>Buckner v. Preferred Mut. Ins. Co.</i> , 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970).....	5, 8
<i>Chewning v. Ford Motor Co.</i> , 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001)	9
<i>Dove v. Gold Kist, Inc.</i> , 314 S.C. 235, 237, 442 S.E.2d 598, 600 (1994)	10
<i>Fassett v. Evans</i> , 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005)	6
<i>Gobbi v. Simerman</i> , Op. No. 2006-UP-246, 2006 S.C. App. Unpub. LEXIS 232, at *6 (S.C. Ct. App. May 16, 2006).....	7
<i>Hunt v. S.C. Forestry Comm'n</i> , 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004)	4
<i>I'On, LLC v. Town of Mt. Pleasant</i> , 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000)	6
<i>Jarrell v. Petoseed Co.</i> , 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).....	9
<i>McEachern v. Black</i> , 329 S.C. 642, 648 496 S.E.2d 659 (1998).....	10
<i>O'Laughlin v. Windham</i> , 330 S.C. 379, 382, 498 S.E.2d 689, 691 (Ct. App. 1998)	9, 12
<i>Olson v. Faculty House of Carolina, Inc.</i> , 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003).....	4
<i>Pickens v. Schmitz</i> , 297 S.C. 253, 376 S.E.2d 271 (1989)	10

<i>Potter v. Spartanburg Sch. Dist. 7</i> , 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011);	4
<i>Roberson v. S. Fin. of S.C.</i> , 365 S.C. 6, 10, 615 S.E.2d 112, 114-15 (2005)	6
<i>S.C. Dep't of Soc. Servs. v. Mother</i> , 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct. App. 2007)	4
<i>State v. Burton</i> , 356 S.C. 259, 266, 589 S.E.2d 6, 9, n.5 (2003)	5, 8
<i>State v. Colf</i> , 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998)	4
<i>Stump v. Sparkman</i> , 435 U.S. 349 (1978)	9, 10
Statutes	
S.C. Code Ann. § 14-25-5 (Supp. 2016)	10, 11, 12
S.C. Code Ann. § 56-5-1520(G)(3)	2, 3
S.C. Code Ann. § 56-7-10	11
S.C. Code Ann. § 5-7-10 (Supp. 2016)	10, 12
S.C. Code Ann. § 5-7-30	11
S.C. Code Ann. § 5-7-90 (Supp. 2016)	10, 11, 12
Other Authorities	
1975 S.C. Acts (59) 692	10, 12
1980 S.C. Acts 480	10, 12
2005 S.C. Acts 68	12
2012 S.C. Acts 263	10, 12
Art. III. sec. 16, of the South Carolina Constitution	12

Rules

Rule 12(b)(6), SCRCP8, 9, 13

Rule 220(c), SCACR6

Rule 4(d)(1), SCRCP6, 7

Rule 4(d)(8), SCRCP6, 7

STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Circuit Court Properly Dismiss the Act Because of Lack of Proper Service?**
- II. Did the Circuit Court Properly Dismiss the Act Because Judge Rakowsky is Entitled to Judicial Immunity?**

STATEMENT OF THE CASE

On July 24, 2014, Plaintiff, Jamaal Gittens (“Appellant”), was issued a Uniform Traffic Ticket and given a summons to appear in the Town of Lexington Municipal Court for trial upon violation of S.C. Code Ann. § 56-5-1520(G)(3), for speeding in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit. He was inside the Town of Lexington city limits when he was cited. Despite receiving notice of the trial date, Appellant did not appear for the trial and was tried in his absence by Town of Lexington Municipal Judge John Rakowsky (“Judge Rakowsky” or “Respondent”).

On January 25, 2016, Appellant initiated this lawsuit against Judge Rakowsky, claiming he did not have subject matter jurisdiction to hear the case. Judge Rakowsky was not properly served in the matter. Nevertheless, while preserving his improper service argument, Judge Rakowsky served and filed a timely Motion to Dismiss and answered the Complaint on April 29, 2016. (R. pp. 52; 59-62). Appellant also filed a Motion for Summary Judgment on April 27, 2016.

After hearing oral arguments on both motions on June 20, 2016, the circuit court denied Appellant’s Motion for Summary Judgment and granted Judge Rakowsky’s Motion to Dismiss on July 25, 2016. (R. pp. 35-42). Appellant did not file a Motion to Alter or Amend the Judgment. Appellant filed his Notice of Appeal with this Court on August 5, 2016 and filed a proof of service regarding the Notice of Appeal on August 12, 2016.

STATEMENT OF FACTS

On July 24, 2014, Appellant was issued a Uniform Traffic Ticket and given a summons to appear in the Town of Lexington Municipal Court for trial upon violation of S.C. Code Ann. § 56-5-1520(G)(3), for speeding in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit. He was inside the Town of Lexington city limits when he was cited. Despite receiving notice of the trial date, Appellant did not appear for the trial and was tried in his absence.

On January 25, 2016, Appellant initiated this lawsuit against John Rakowsky, claiming that he did not have subject matter jurisdiction to hear the case. Appellant's "proof of service" shows only that he mailed a copy of the Summons and Complaint certified mail addressed to John Rakowsky at the Town of Lexington, address 111 Maiden Lane, Lexington, South Carolina 29072 on March 29, 2016. (R. p. 49). The "proof of service" also demonstrates that a "J. Graham" signed the return receipt. It was not sent delivery restricted and was not signed for by Judge Rakowsky. Judge Rakowsky was never served with the Summons and Complaint. (R. p. 50).

ARGUMENT

I. The Circuit Court Properly Dismissed this Action Because of Lack of Proper Service.

For the reasons set forth below, the circuit court's order dismissing the action for improper service should be affirmed.¹

A. The Circuit Court's Grant of Judge Rakowsly's Motion to Dismiss Should be Affirmed Because Appellant has Failed to Appeal the Issue and it has Become the Law of the Case.

To the extent Appellant claims the circuit court erred in dismissing the action for improper service, Appellant has abandoned this issue and it is now the law of the case. "An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011); *see also S.C. Dep't of Soc. Servs. v. Mother*, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct. App. 2007) (finding an issue abandoned because the appellant made "a conclusory argument without citation of any authority to support her claim"); *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004) ("Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal."); *State v. Colf*, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (deeming abandoned a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule).

¹ Though it is unclear from Appellant's filings which order he is challenging, Respondent only addresses the circuit court's order dismissing the action because "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003).

Moreover, it is a fundamental rule of law that if a party does not challenge a circuit court's ruling, it is an abandonment of the issue and precludes consideration on appeal. *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). Furthermore, "[a]n unchallenged ruling, right or wrong, is the law of the case and requires affirmance." *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970). Where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case. *Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996). Finally, Appellant's status as a *pro se* litigant does not absolve him of the requirement to comply with South Carolina's procedural and appellate rules and laws. *See State v. Burton*, 356 S.C. 259, 266, 589 S.E.2d 6, 9, n.5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.").

Appellant has not briefed the issue of improper service with any specificity. In fact, the only reference to the circuit court's ruling regarding service is Appellant's single sentence argument which addresses an attorney acting as a competent fact witness. (*See App. Br.* p. 6). Appellant fails to take issue with the circuit court's findings that Appellant failed to serve a copy of the Summons and Complaint upon Judge Rakowsky in compliance with South Carolina law and Rules of Civil Procedure, that he failed to send the Summons and Complaint return receipt requested, restricted delivery to Respondent at his address, and that the Summons and Complaint was not signed for by Respondent. (*R.* pp. 36-37). Thus, Appellant has abandoned this issue on appeal, and the

unappealed ruling is the law of the case. As such, the Court should affirm the circuit court's order granting the motion to dismiss under the law of the case doctrine.²

B. To the Extent the Issue is Properly Before the Court, the Circuit Court Properly Dismissed the Action for Lack of Proper Service.

Appellant's "proof of service" shows only that he mailed a copy of the Summons and Complaint certified mail addressed to John Rakowsky at the Town of Lexington, address 111 Maiden Lane, Lexington, South Carolina 29072. The "proof of service" also demonstrates that a "J. Graham" signed the return receipt. It was not sent delivery restricted and was not signed for by Respondent. (R. p. 50). Respondent has attested that he was never served with the Summons and Complaint. (R. pp. 93-94). This is not proper service upon an individual pursuant to Rule 4(d)(1) and it is not proper service by mail pursuant to Rule 4(d)(8), SCRCP.

Under Rule 4(d)(1), SCRCP, personal service may be made upon an individual "by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein." Service may also be made by certified mail, return receipt requested, and delivery restricted to the addressee. Rule 4(d)(8), SCRCP. There is a presumption of proper service when the rules of civil procedure are followed. *Roberson v. S. Fin. of S.C.*, 365 S.C. 6, 10, 615 S.E.2d 112, 114-15 (2005). However, it is still the plaintiff's burden to show that the court has personal jurisdiction over the defendants. *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005).

² Moreover, because Appellant has abandoned his challenge to the circuit court's dismissal for lack of service, improper service is an additional sustaining ground upon which this Court can affirm the circuit court's order of dismissal. See *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (noting that the respondent - the "winner" in the lower court - may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court); see also Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

The rules are clear — service by certified mail alone, without restricting delivery or attaching a return receipt, is not sufficient to satisfy Rule 4(d)(8), SCRPC. *See Gobbi v. Simerman*, Op. No. 2006-UP-246, 2006 S.C. App. Unpub. LEXIS 232, at *6 (S.C. Ct. App. May 16, 2006) (noting that because the plaintiff failed to comply with the service requirements of Rules 4(d)(1) or 4(d)(8), SCRPC, and dismissal of the action without prejudice was proper). There is ample, unchallenged support in the record in this regard, and as such, the circuit court’s ruling should be affirmed. *See Brown v. Carolina Emergency Physicians, P.A.*, 348 S.C. 569, 583, 560 S.E.2d 624, 631 (Ct. App. 2001) (recognizing that the findings of the circuit court on factual issues arising on a motion to quash service of process for lack of jurisdiction are binding on the appellate court unless wholly unsupported by the evidence or controlled by error of law); *see also Gobbi*, 2006 S.C. App. Unpub. LEXIS 232, at *6 (“There is ample evidence in the record to support the trial judge's decision to dismiss the action without prejudice.”).

II. The Circuit Court Properly Dismissed the Action Because Judge Rakowsky is Entitled to Judicial Immunity.

For the reasons set forth below, the circuit court’s order dismissing the action because Judge Rakowsky is entitled to judicial immunity should be affirmed.

A. Appellant Has Abandoned the Issue of Judge Rakowsky’s Judicial Immunity and it is Now the Law of the Case.

To the extent Appellant claims the circuit court erred in dismissing the action based upon Judge Rakowsky’s judicial immunity, Appellant has abandoned this issue and it is now the law of the case.

It is a fundamental rule of law that if a party does not challenge a circuit court’s ruling, it is an abandonment of the issue and precludes consideration on appeal. *Biales v.*

Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). Furthermore, “[a]n unchallenged ruling, right or wrong, is the law of the case and requires affirmance.” *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970). Finally, Appellant’s status as a *pro se* litigant does not absolve him of the requirement to comply with South Carolina’s procedural and appellate rules and laws. *See State v. Burton*, 356 S.C. 259, 266, 589 S.E.2d 6, 9, n.5 (2003) (“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”)

Appellant has not addressed the ultimate issue in this appeal – whether Judge Rakowsky was entitled to judicial immunity. While Appellant’s brief is replete with references to the Constitution, standing, and jurisdiction, he fails to address why the circuit court erred in holding that Judge Rakowsky is entitled to judicial immunity.³

B. The Circuit Court Properly Dismissed this Action Because Judge Rakowsky, as a Municipal Judge, had Jurisdiction to Hear Appellant’s Traffic Case and is Therefore Entitled to Judicial Immunity.

For the reasons set forth below, the circuit court’s order dismissing the action should be affirmed because Judge Rakowsky, acting as a municipal judge, is entitled to judicial immunity.

1. Standard of Review.

Generally, a ruling on a motion to dismiss under Rule 12(b)(6), SCRPC, must be based solely on the allegations contained in the complaint. *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). “Viewing the evidence in favor of the plaintiff,

³ While the circuit court’s order notes that judicial immunity will not apply where one acts without subject matter jurisdiction, Appellant’s failure to address judicial immunity abandons a crucial – in fact the crucial – conclusion in this matter and the appellate rules regarding abandonment and preservation required him to do so.

the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." *Chewing v. Ford Motor Co.*, 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001) (quoting *Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998)). "Judicial immunity affords absolute immunity from suit." *O'Laughlin v. Windham*, 330 S.C. 379, 382, 498 S.E.2d 689, 691 (Ct. App. 1998) (citing *Stump v. Sparkman*, 435 U.S. 349 (1978)). "In other words, judicial immunity, if applicable, acts as a bar to suit, not just as an ultimate bar to relief[,] and . . . a finding of judicial immunity renders a complaint alleging judicial misconduct meritless." *Id.* at 382-383, 498 S.E.2d at 691.

2. Judge Rakowsky, as a Municipal Judge, had Jurisdiction to Hear Appellant's Traffic Case and is Therefore Entitled to Judicial Immunity.

Despite Appellant's confusing assertions to the contrary, Judge Rakowsky is entitled to judicial immunity because he acted within his subject matter jurisdiction to hear the case against Appellant. As such, he is immune from suit and the circuit court properly dismissed this action pursuant to Rule 12(b)(6).⁴

As noted above, *supra*, judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances. However, it is not without limitations, and will not be applied in certain exceptions. *Id.* at 385, 498 S.E.2d at 692. The first exception and the one at issue in the case *sub judice* is that judicial immunity ceases to exist if the judge acts in the "clear absence of all jurisdiction." *Id.* (quoting *Stump*, 435 U.S. at 357 (1978)).

⁴ In support of his argument, Appellant fails to cite South Carolina law, instead citing to the laws of other states and inapplicable federal law. While case law from other jurisdictions may be persuasive, they are not binding on this Court.

"Subject matter jurisdiction is the power of a court to 'hear and determine cases of the general class to which the proceedings in question belong.'" *McEachern v. Black*, 329 S.C. 642, 648 496 S.E.2d 659 (1998) (quoting *Brown v. Evatt*, 322 S.C. 189, 193, 470 S.E.2d 848, 850 (1996) and *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237, 442 S.E.2d 598, 600 (1994)). The question, then, for purposes of judicial immunity, is "whether at the time [the judge] took the challenged action he had jurisdiction over the subject matter before him," and, in answering that question, "the scope of the judge's jurisdiction must be construed broadly" *Stump*, 435 U.S. at 356. Thus, the exception to judicial immunity will apply only if "there is *clearly* no jurisdiction over the subject-matter . . . [and] the want of jurisdiction is known to the judge" *Id.* at 357 (emphasis added).

The South Carolina General Assembly created the Municipal Court System and vested it with the subject matter jurisdiction to hear and decide traffic cases and certain other misdemeanors. *See* 1980 S.C. Acts 480; 1975 S.C. Acts (59) 692, and 2012 S.C. Acts 263; *see also Pickens v. Schmitz*, 297 S.C. 253, 376 S.E.2d 271 (1989) (finding that municipal court had proper subject-matter jurisdiction to hear traffic violation case resulting in a DUI conviction).

These Acts were then ratified and codified by the General Assembly as S.C. Code Ann. § 5-7-10 (Supp. 2016), S.C. Code Ann. § 5-7-90 (Supp. 2016) and S.C. Code Ann. § 14-25-5 (Supp. 2016), respectively. Indeed, Section 5-7-10 of the South Carolina Code states,

The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters. The powers of a municipality shall be liberally construed in favor of the municipality and

the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities.

Additionally, Section 5-7-90 of the South Carolina Code, entitled "Trial of persons charged with violations of ordinances of municipality or laws of State," states,

The municipal judge or judges of a municipality shall speedily try all persons arrested and incarcerated with violations of the ordinances of the municipality or the laws of the State within their jurisdiction in a summary manner without a jury unless jury trial is demanded by the accused. Trial must be held within ten days after the arrest or at a time scheduled by the court, in which event the trial is deferred. The municipal judge shall have the same power as a magistrate to compel the attendance of witnesses and require them to give evidence upon the trial before them of any person for the violation of ordinances of the municipality or the laws of this State subject to S.C. Code Ann. § 5-7-30.

Finally, Section 14-25-5 of the South Carolina Code, entitled "Establishment of municipal courts by ordinance; facilities for courts; use of magistrate court by municipality," states,

(a) The council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction. The ordinance shall provide for the appointment of one or more full-time or part-time judges and the appointment of a clerk.

(b) Any municipality establishing a municipal court pursuant to the provisions of this chapter shall provide facilities for the use of judicial officers in conducting trials and hearings and shall provide sufficient clerical and nonjudicial support personnel to assist the municipal judge.

(c) Any municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situated upon approval by the governing body of the county.

Furthermore, S.C. Code Ann. § 56-7-10 of the South Carolina Code states,

The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. This ticket will be designed by the department and approved by the Attorney General.

Despite these clearly crafted code sections vesting Judge Rakowsky with subject matter jurisdiction to dispose of the charge against Appellant, Appellant appears to claim, though his argument is confusing at best, that these statutory provisions have no force and effect because they do not contain enacting clauses as required by Art. III. sec. 16, of the South Carolina Constitution. However, the Acts under which code sections 5-7-10, 5-7-90 and 14-25-5 were promulgated *do* contain enacting clauses as required by the South Carolina Constitution. *See* 1980 S.C. Acts 480; 1975 S.C. Acts (59) 692, 2012 S.C. Acts 263, and 2005 S.C. Acts 68. There is no requirement in our Constitution or elsewhere requiring an enacting clause appear in the text of every code section.

As the circuit court properly found, and in light of the enumerated statutes above, Judge Rakowsky, as an acting municipal judge presiding over a traffic ticket case, is entitled to judicial immunity. Because the circuit court properly found Judge Rakowsky was entitled to judicial immunity, it also correctly concluded that Appellant's complaint is meritless and Judge Rakowsky is immune from suit as a matter of law. *See O'Laughlin, supra.* The circuit court's order dismissing this action was proper and should be affirmed.

CONCLUSION

The circuit court properly dismissed this action. Respondent was not properly served in this matter and there is ample factual support in the record to support the circuit court's finding in this regard. Moreover, Appellant has abandoned this issue and it is consequently the law of the case and /or an additional sustaining ground requiring affirmance. Additionally, Judge Rakowsky, acting as a municipal judge, had subject matter jurisdiction to hear and rule upon Appellant's traffic case and therefore, is entitled to judicial immunity. Thus, the circuit court properly dismissed this action pursuant to Rule 12(b)(6), SCRPC because judicial immunity is a complete bar to suit and Appellant cannot, as a matter of law, pursue a cause of action against Judge Rakowsky. Based upon the foregoing, Judge Rakowsky respectfully requests that the circuit court's order be affirmed.

GALLIVAN, WHITE & BOYD, P.A.

By: 

A. Johnston Cox, SC Bar # 9081
Jessica A. Waller, SC Bar # 100256
Alonzo J. Holloway, SC Bar # 101755
PO Box 7368
Columbia, SC 29202
jcox@gwblawfirm.com
jwaller@gwblawfirm.com
aholloway@gwblawfirm.com
(803) 779-1833

Attorneys for Respondent John R. Rakowsky

November 2, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2016-1627

RECEIVED

NOV 02 2017

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Civil Action No. 2016-CP-32-263
G. Thomas Cooper, Circuit Court Judge

Jamal Gittens.....Appellant

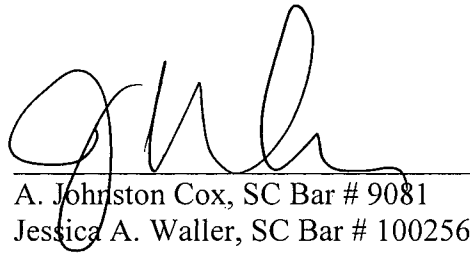
vs.

John R. RakowskyRespondent

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Brief of Respondent John R. Rakowsky complies with Rule 211(b), SCACR and the August 13, 2007, Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in the Appellate Court Filings," as amended by the April 15, 2014, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

[SIGNATURE PAGE TO FOLLOW]



A. Johnston Cox, SC Bar # 9081
Jessica A. Waller, SC Bar # 100256
Alonzo J. Holloway, SC Bar # 101755
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

Attorneys for Respondent John R. Rakowsky

November 2, 2017