

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
Jon Payne,)	Case No(s) : 2018CP2300824
)	
Plaintiff,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
Victoria T. Payne,)	
)	
Defendant.)	
)	

March 28, 2018
 Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

A P P E A R A N C E S:

J. FALKNER WILKES, Esquire
 Attorney for the Plaintiff

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SC Court of Appeals

Teresa B. Johnson, CVR-M-CM,
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EXHIBITS PAGE

NO.

DESCRIPTION

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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 28th day of March, 2018 at approximately 11:07 a.m.)

THE COURT: All right. So we have a magistrate appeal in Jon Payne versus Victoria Payne.

MR. WILKES: Your Honor, I think Mrs. Payne is here.

THE COURT: All right. Very well then.

MR. WILKES: Your Honor, this being an appeal -- I'm not sure -- would you like my client to sit at the table with me?

THE COURT: Sure. Fine. Well enough.

All right. Yes, ma'am.

Yes, sir.

MR. WILKES: Please the Court, Your Honor. I represent Mr. Jon Payne. Mr. Jon Payne is appealing from a magistrate court's restraining order, one of the stalking, harassing restraining orders. This -- just from a procedural standpoint, everything is wrong about this whole order ---

THE COURT: Okay.

MR. WILKES: --- in the case, and so we are seeking to have the order set aside. Of

1 course, obviously, that would allow Mrs. Payne
2 to proceed again, but it would also give
3 Mr. Payne the opportunity to properly defend,
4 under the circumstances. I have specified
5 numerous plause in the whole procedure in my
6 notice of appeal.

7 **THE COURT:** Uh-huh.

8 **MR. WILKES:** But I'll just go to the first
9 one. The most important, just initially, the
10 complaint is required to be properly verified.
11 The complaint is not properly verified. There's
12 no dates. There's no signature of the
13 plaintiff. It's a statutory requirement that it
14 be a verified complaint, just to start
15 initiating the case. So just right off the bat,
16 there's a jurisdictional problem with a
17 defective complaint under the statute.

18 From that, it just gets much better. There
19 was an appearance at the magistrate court
20 level. The parties were before the judge. Now,
21 I've explained to my client, I don't think Your
22 Honor is going to swear anybody in and take
23 testimony ---

24 **THE COURT:** Right.

25 **MR. WILKES:** --- because, as a procedural

1 matter, we're kind of procluded from debating
2 facts of the case.

3 **THE COURT:** Right.

4 **MR. WILKES:** So I'm not -- I'm not -- I
5 can say that the parties are going to disagree
6 as to what actually was said or done or how it
7 was done when it was done, but I know that this
8 Court doesn't sit as the trier of fact. So from
9 the standpoint of this case, I am addressing
10 the procedural and legal issues.

11 So as an initial matter, looking again at
12 the complaint, the complaint alleges a
13 harassment in the first degree. The facts of
14 the complaint don't allege facts that would
15 constitute harassment in the first degree. They
16 allege electronic contact in letters, which is
17 not a first degree harassment, which is what
18 the complaint alleges.

19 So from every aspect, the -- the complaint
20 is defective. And when they went to the
21 magistrate, the magistrate -- this is the basis
22 of this part of the appeal, and I'll just state
23 the facts as I understand them -- the
24 magistrate, rather than conducting the hearing,
25 swearing in witnesses, taking testimony, did

1 whatever he did to essentially ask, are you in
2 agreement or are you going to bother her or
3 whatever he said to have Mr. Payne respond in a
4 way that he really doesn't have any desire to
5 have contact in the future. It's not a problem.
6 So what transpired from that was the magistrate
7 issued an order without any factual findings on
8 the stalking and harassment.

9 If you will look at the order, the order is
10 defective. The order specifically provides that
11 the facts are to be enumerated in the order,
12 which are the underlying factual findings. Just
13 like a guilty plea, there would be a finding of
14 sufficient facts to support a guilty plea to
15 harassment and stalking, for instance ---

16 **THE COURT:** Okay.

17 **MR. WILKES:** --- much in the same way. If
18 you look at the order in this case, the order
19 has absolutely no factual findings. We've
20 raised that in the notice of appeal,
21 specifically, for the magistrate to address.
22 The return of the magistrate says, well, I
23 didn't get that far. And so that's, again, just
24 defective procedure, just from the standpoint
25 that the order is completely improper -- well,

1 I won't say improper -- but the order is
2 completely defective and has absolutely no
3 factual findings.

4 **THE COURT:** Okay.

5 **MR. WILKES:** And it can't hinge factual
6 findings on the complaint. The complaint is
7 defective and the complaint alleges harassment
8 in the first degree. So there's no way to even
9 tell what Mr. Payne has been found offending,
10 as far as the statute goes, factually, because
11 you have to have the facts to distinguish and
12 know what, exactly, offense he has -- or what
13 has been alleged and proven.

14 From the standpoint of the magistrate's
15 return, which doesn't address any issue,
16 essentially there's no -- the magistrate does
17 not say yes, it was prop -- the complaint was
18 properly verified, doesn't say it was properly
19 sworn, doesn't say that, and therefore, it is
20 not. The magistrate does not address the
21 failure to find specific facts, other than to
22 say, well, I just didn't get that far.

23 So the next thing that we allege is --

24 **THE COURT:** He's saying that there's
25 consent.

1 **MR. WILKES:** He's saying that there is
2 consent, but the problem is -- the question is
3 what -- how can he say that without putting in
4 that return and saying what is consent based
5 on. He can't just say there's consent, because
6 that's the whole contention is what happened
7 was not, Mr. Payne, I'm advising you that you
8 are essentially, I'm going to say, pleading
9 guilty because these are criminal offenses too
10 -- defined in the restraining order, it's a
11 little different because it's more of a civil
12 thing -- but still, you're pleading guilty to
13 harassment or stalking or whatever, and these
14 are the facts that support that. Do you
15 understand that? Do you understand that you can
16 have a trial, you could have an attorney? Do
17 you understand the consequences of the plea?

18 Now, when the judge says, and he puts in
19 his return, I told him if he did it again, he'd
20 get in trouble, but that's not the advisement
21 for entering into this type of arrangement. He
22 did not advise Mrs. Payne -- Mr. Payne of the
23 consequences of this as a condition to entering
24 into what he thinks was an agreement -- the
25 judge thinks was an agreement. The judge didn't

1 do any of this beforehand. He simply waits
2 until he says, okay, well, here it is. Gives
3 him an order and says, if you violate it again,
4 you're in trouble. Instead of setting forth the
5 necessary requirements to accept -- if there
6 was -- the judge thought there was an
7 agreement, then he has to tell him the serious
8 consequences of his actions if he is agreeing
9 to enter into a stalking and harassment sort of
10 -- we'll call it conviction. Same thing.

11 **THE COURT:** He -- was he, in fact,
12 convicted of anything? Or did he just enter
13 into a --

14 **MR. WILKES:** Well, yes, he was. If you
15 look at the -- what happens -- we use the word
16 conviction because we're dealing with crimes,
17 but what is under the restraining order, if you
18 look at the restraining order, the restraining
19 order says that you have committed stalking,
20 harassing as described herein. And it says, has
21 committed the following acts, which constitute
22 harassment in the first and second degree of
23 stalking and there's a code. I'm looking at
24 number 7 on the order.

25 **THE COURT:** Uh-huh.

1 **MR. WILKES:** So it's not saying you've
2 been found -- you know, you've been found to
3 have committed harassment or stalking. It says
4 you have committed the following acts. There's
5 not -- there's no finding of facts as to the
6 specific acts. It's not included in the order,
7 the specific facts.

8 Judge, what the magistrate did was just
9 say, are y'all going to disagree here? Do we
10 have to go through a whole, big thing or will
11 you just stay away from her? Well, that -- if
12 he says, well, I don't really have any desire
13 to, you know, to have that contact. The
14 magistrate go, well, then we -- then, here,
15 I'll fix this and whips out the order and says,
16 if you do this again, you'll get in trouble.

17 That is not a sufficient basis for a
18 magistrate to say he's in agreement with
19 anything, because there's no finding as to he
20 understands his rights, he understands what he
21 is being found to have committed, what
22 offensive -- and they are criminal statutes, so
23 they are very specific. There's nothing in
24 there that says the judge made a finding that
25 anything occurred to support this order. It

1 would be like a guilty plea -- having a guilty
2 plea and saying, okay, we'll just say you're
3 guilty without going through the colloquy with
4 the defendant to make sure they understand
5 their rights, the Court understands the acts
6 alleged, and do the acts actually match the
7 action that they're finding has been offended.

8 But in this case, specifically, the order
9 does not find the acts, you know, the statutes
10 that are violated. It says the following acts
11 have been committed which constitute a
12 violation. There's nothing --

13 **THE COURT:** I gotcha.

14 **MR. WILKES:** -- there's been no finding.

15 **THE COURT:** I understand.

16 **MR. WILKES:** So just from the standpoint
17 -- and he contests and would contest and
18 continues to contest that his actions would
19 constitute the statutory requirements to meet a
20 restraining order. He should be entitled to a
21 fair hearing on that ---

22 **THE COURT:** Okay.

23 **MR. WILKES:** --- and an opportunity to be
24 heard. The reason that that is important is
25 because this has far-reaching consequences. It

1 subjects him to criminal penalties; it has
2 prohibitions under 18 U.S.C. 922; and it can
3 have all kinds of unintended consequences if he
4 were to want to go to a, say, retirement home
5 -- veteran's retirement home. The first thing
6 that they would do is say, do you have -- have
7 you ever been convicted or found to have
8 committed stalking, harassing? Those are just,
9 kind of, preliminary red flags for all kinds of
10 things in life. So there's just tremendous
11 consequences to this order that he should have
12 the ability to fairly defend.

13 The way this came down is just -- it's --
14 it lacked the findings of fact and it lacked
15 the Court going through and making sure he
16 understood what was about to happen as far as
17 issuing a court order.

18 **THE COURT:** Anything, briefly, you'd like
19 to say, ma'am?

20 **MRS. PAYNE:** Yes, Your Honor, if I could.
21 My understanding of South Carolina law,
22 admittedly, is no way as near as -- my
23 understanding of -- my understanding of
24 harassment is that it's an unwelcome intrusion
25 into someone else's life that would cause a

1 reasonable person distress and serves no
2 legitimate purpose. That was my understanding
3 of the South Carolina statute and definition of
4 harassment, and that's why I sought a
5 restraining order.

6 I went to court. My understanding was that
7 this gentleman was served the paperwork and he
8 was informed that he could have counsel
9 present. We appeared in the judge's chambers.
10 This was not in a courtroom; it was in the
11 judge's chambers. And he very clearly
12 explained, you have one of two options: we can
13 go into the courtroom and we can have a
14 hearing, you can present the evidence that you
15 have -- he was speaking to me, as well. Not
16 just to Mr. Payne, but also to me -- or you can
17 just agree to the terms of the restraining
18 order, no hearing. You can agree not to contact
19 each other, me, as well, and you can leave
20 here. Those are your options.

21 **THE COURT:** Is the restraining order
22 mutual?

23 **MR. WILKES:** No, not at all.

24 **THE COURT:** Okay.

25 **MR. WILKES:** May I interrupt just for one

1 second? I have to. If I may interrupt just to
2 make one point.

3 **THE COURT:** Sure. Go ahead.

4 **MR. WILKES:** Again, this is kind of the
5 way of testifying to her version of what she
6 recalls ---

7 **THE COURT:** I gotcha.

8 **MR. WILKES:** --- versus his.

9 **THE COURT:** I gotcha. I gotcha.
10 Go ahead.

11 **MRS. PAYNE:** He just told you what
12 happened at a hearing he wasn't even at, so ---

13 **THE COURT:** Okay. All right.

14 **MRS. PAYNE:** --- I was going to tell you
15 what happened at a hearing I was at.

16 **MR. PAYNE:** I was there too, by the way.

17 **THE COURT:** I think I've got -- I think
18 I've got --

19 **MRS. PAYNE:** This is the first time I ever
20 been at an event like that. I was told, here is
21 your option going forward. What would you like
22 to do? It was a quite -- probably a 25, 30-
23 minute event, in which it was repeatedly stated
24 do you want to have -- and when either one of
25 us tried to talk about the evidence that we

1 had, the judge redirected both of us and said,
2 we're not going to talk about the evidence. If
3 we're going to do that, we're going to have a
4 hearing. This is not the place for that, to
5 both of us. Either you agree to it or we have a
6 hearing. We decided to agree with it.

7 And he was told repeatedly, as I was, I
8 could have an attorney present, if I wanted to,
9 as could he. He said no, he had no problem with
10 it, and we left and that was the end of that.

11 **THE COURT:** Thank you. All right. Here's
12 what I'm going to do, I'm going to take a look
13 at this, in light of what you all have told me
14 here today. I'll issue a decision pretty
15 shortly though. All right.

16 **MR. WILKES:** Thank you, Your Honor.

17 **THE COURT:** Thank you.

18 **MR. PAYNE:** May I say something? Am I
19 allowed to?

20 **THE COURT:** You're -- only if your
21 attorney says it's okay. Thank you.

22 **MR. PAYNE:** Can I ask you one thing, Your
23 Honor?

24 **MR. WILKES:** No.

25 **MR. PAYNE:** I want to ask her --

1 **MR. WILKES:** No.

2 **MR. PAYNE:** What --

3 **THE COURT:** I can't talk to you unless
4 Mr. Wilkes says I can.

5 **MR. PAYNE:** Well, I just --

6 **MR. WILKES:** I can't stop him.

7 **THE COURT:** All right. Go ahead.

8 **MR. PAYNE:** If we just prove that the
9 judge made mistakes, the charges are still
10 there. I'll just have to go through it again.

11 **THE COURT:** I got you.

12 **MR. PAYNE:** Without going into detail,
13 they are totally baseless, false, fraudulent,
14 slanderous. Okay. But I don't want to -- if I
15 have to prove it, I will. But I'd rather not
16 have to go through that, that's why I wanted to
17 get --

18 **THE COURT:** Thank you. Thank you.

19 **MR. PAYNE:** -- and I disagree with
20 everything she said.

21 **THE COURT:** I understood. You know what? I
22 thought maybe that you did. All right. Thank
23 y'all.

24 (Proceedings conclude at approximately 11:20 a.m.)

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 17th day of July, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B Johnson

Circuit Court Reporter