THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2014-002575

ROOSEVELT SIMMONS, ...Appellant,

v.

MASE and COMPANY, LLC,
J. AL CANNON, JR., CHARLESTON
COUNTY SHERIFF'S DEPT.,
CHARLESTON COUNTY REVENUE
COLLECTIONS DEPT., and HARRY
LONG,..Respondents.

FINAL BRIEF OF RESPONDENTS J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S DEPT., CHARLESTON COUNTY REVENUE COLLECTIONS DEPT., and HARRY LONG

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STATEMENT OF ISSUES ON APPEAL

I. This Court should affirm the Circuit Court's ruling that it lacked subject matter jurisdiction to overturn Magistrate Court Judgments.

A. Appellant cannot rely on Rule 60(b) as a basis to overturn Magistrate Court judgments.

B. Appellant is procedurally barred from challenging the Magistrate Court judgments through a collateral lawsuit filed in Circuit Court ten years later.

C. Based on Appellants submissions to the South Carolina District Court, Appellants Fourth Count should be dismissed.

D. As all Counts arise from Appellant's claim regarding jurisdiction and invalidation of fees and judgments, the Circuit Court does not have jurisdiction to hear any of Appellants claims in this matter.

II. The Circuit Court correctly dismissed the Fourth Count of Appellant's Second Amended Complaint as Appellant cannot prove a genuine issue of fact as to a Constitutional violation.

A. User Fees are uniformly applied and do not violate Appellant's Equal Protection Rights.

B. Appellant cannot show a genuine issue of material fact as to any constitutional violations of the Sheriff's Office or Deputy Long.

III. Appellant's tort claims were properly dismissed pursuant to the South Carolina Tort Claims Act and applicable case law.

A. Appellant cannot prove a genuine issue of fact as to negligent retention.

B. Appellant cannot prove that a genuine issue of fact exists to prove actual malice.

IV. Appellant's Sixth Count was properly dismissed.

V. Appellant cannot prove a genuine question of fact with regard to liability of Dep. Long.

VI. The Circuit Court correctly held that there was no question of fact and properly granted Respondents' Motion for Summary Judgment.

VII. This Court should affirm the Circuit Court's denial of Appellant's Motion for Partial Summary Judgment, in which he asserted that South Carolina Magistrate Courts do not have jurisdiction to hear cases involving User Fees.

STATEMENT OF THE CASE

This is an appeal from the Charleston County Circuit Court's grant of Summary Judgment to Respondents J. Al Cannon, Jr., Charleston County Sheriff's Office, Charleston County Revenue Collections Dept., and Harry Long (hereinafter collectively referred to as "Respondents"). This case has a long procedural history as Appellant amended his Complaint three times over the course of twenty-two (22) months and because the case spent time in both state and federal courts. The initial Complaint was filed on February 11, 2011, with three causes of action: Invalidating Sheriff's Deed, Invalidation of User Fees and Judgments, and a general civil rights claim regarding the imposition of fees and sale of property. (R. pp. 17-22) The thrust of Appellant's Complaint was that he did not believe that the Charleston County Solid Waste Recycling and Disposal User Fee ("User Fee") applied to him because the county did not pick up his trash. (R. pp. 17-18). Rather, Appellant "contracted with a private trash hauling company licensed by the county to remove his trash..." (R. p. 19). Further, he asserted that he applied for a waiver of the user fee, and the "county's User Fee Department granted Simmons' request for a waiver of the user fee for the initial year and for all years following up to the present." (R. p. 18).

Appellant amended his Complaint on March 23, 2011, to add a cause of action to invalidate judgments for non-owned real property and to add a claim for civil conspiracy. (R. pp. 26-34). In his Amended Complaint, Appellant alleges that "Simmons was not required to pay a user fee under Ordinance Section 10-56 for TMS 138 because the County did not remove any trash from TMS 138. Simmons contracted with a private, approved and licensed solid waste collection company to remove his trash as permitted by Ordinance

Section 10-24." (R. p. 27). Appellant again alleged that the County User Fee Department had granted him a waiver of all user fees. (R. p. 27)

Based on the constitutional violations alleged in the Complaint, the suit was removed to federal court on March 25, 2011. Defendants Sheriff's Office and Charleston County filed an Answer in Federal Court on March 31, 2011. Thereafter, Plaintiff filed a Second Amended Complaint on October 15, 2011. (R. pp. 59-66). In the Second Amended Complaint, Appellant dropped his claim for civil conspiracy and added a tort claim. Appellant admits in his Second Amended Complaint that Charleston County Ordinance Section 10-56 was adopted "to impose user fees upon the owners of real property located in the county for the express purpose of paying the costs of garbage and trash disposal at the county's facilities." (R. pp. 59-60). Yet, Appellant continued to argue that he was not required to pay the user fee because the "Defendant County does not provide any trash removal services" for Appellant. (R. p. 61). Interestingly, Appellant chose to delete his admission that he used a private trash collection company to collect his garbage. This may have been because this Second Amended Complaint was filed after the deposition of Charleston County employees were taken who explained that the User Fee is not specifically for trash collection, but rather for the disposal of solid waste. (R. p. 164). Similarly, Appellant correctly states in his Second Amended Complaint that the Charleston County Auditor's office (as opposed to the User Fee Department) removed the User Fee from his tax bill, which the prior depositions explained was a ministerial function. (R. pp. 170-171).

On November 7, 2011, "Appellant filed a motion to dismiss the Second Amended Complaint on the basis that the District Court did not have subject matter jurisdiction to

consider the validity of a state court judgment and that the civil rights claims were 'inextricably intertwined' with them." Br. of Appellant at 9; (R. p 89). Appellant also asserted that review by the District Court "would require appellate review of those [Magistrate Court] decisions." (R. p. 88).

The Court ultimately granted Appellant's motion to dismiss on February 6, 2012. (R. pp. 6-8). In this Order, the Court outlines Appellant's five causes of action and states that "[a]ll of these causes of action arise from one or more of the Defendants allegedly assessing Plaintiff for various user fees and then obtaining judgment against Plaintiff based on these assessments." (R. p. 6). The Court found that it was prohibited from entertaining a claim to invalidate state court judgments referenced in Counts One, Two, and Three and also stated that "the Court agrees with Plaintiff that the § 1983 claim in Count Four is 'inextricably intertwined' with the challenged state court judgments, and the Court is therefore barred from exercising jurisdiction over this claim as well." (R. p. 8). The District Court declined to exercise jurisdiction over the fifth count and remanded the case back to state court. (R. p. 8).

Once back in state court, Appellant filed a Motion to Amend his Second Amended Complaint to add a cause of action for Inadequacy of Sale price. (R. pp. 103-107). While Appellant discussed in his proposed amendment certain actions taken by the named defendants, Appellant did not specify who this Sixth Count was against. (R. pp. 103-107). Rather, Appellant merely stated that the sale price was grossly inadequate. (R. pp. 103-107).

In July 2012, Respondents filed a Memorandum in Support of Summary Judgment explaining the basis for why the User Fee was a valid fee in general and as it was applied

to Appellant. (R. pp. 163-200). Further, Respondents explained that removal of the User Fee by the Office of the Auditor was a ministerial function, which did not relieve the resident of the duty to pay the User Fee; that the Magistrate Court judgments were valid; that the South Carolina Tort Claims Act shields the County Defendants from liability; that Appellant did not allege a valid constitutional claim; and that there was no genuine issue as to any claim of negligence. (R. pp. 163-200).

Respondents filed an Amended Supplemental Memorandum asserting that the Circuit Court did not have jurisdiction to overturn Magistrate Court judgments in this case; that the unappealed orders of the Magistrate Court became the law of the case; that the Magistrate Court had jurisdiction pursuant to S.C. Code Ann. § 22-3-10; and that Appellant could not succeed on a claim of negligent retention. (R. pp. 454-465).

Appellant filed a Motion for Partial Summary Judgment as to the first three Counts in his Second Amended Complaint. (R. pp. 111-147). Appellant argued that the Magistrate Court lacked subject matter jurisdiction over a suit to collect a user fee; that any judgments issued from the Magistrate Court were void; and that because the judgments were void, the ensuing Sheriff's Sale and deed were also void. (R. pp. 111-147). Respondents filed an opposition to Appellants Motion on August 14, 2012, refuting Appellant's position that subject matter can be challenged at any time. (R. pp. 410-420). Specifically, Respondents showed that every case relied upon by Appellant dealt with direct appeals or distinguishable facts. (R. pp. 410-413). Respondents also asserted that Appellant failed to file any post-trial motions or appeals once he received notice of the judgments. (R. pp. 413-417). Of note, Appellant confirms in his motion that he received notice of the judgments in August 2009. (R. p. 118). In their opposition, Respondents also asserted

why the Magistrate Court had jurisdiction to hear cases involving User Fees. (R. pp. 417-419). This argument regarding Magistrate jurisdiction was supplemented by memorandum in September 2012. (R. pp. 466-477).

A hearing was held on November 7, 2012. At that hearing, the court heard arguments from both parties, but stopped both parties before arguments were complete. (R. pp. 573-610). The hearing judge denied both parties' motions for summary judgment, but granted Respondent's Motion to Dismiss Deputy Long. (R. p. 598, lines 4-12; p. 602, lines 24-25). Appellant argued that the basis for his constitutional claim and for tort liability against Deputy Long was that Deputy Long acted with malice toward Appellant. (R. p. 602, lines 18-22). The support presented for Appellant's position was one phone call between Deputy Long and Appellant. (R. p. 600, lines 16-20). The hearing judge determined that Appellant had not brought forth sufficient facts to allege malice and granted Respondent Long's Motion to Dismiss. (R. p. 602, lines18-25).

Thereafter, Respondent filed a Motion to Reconsider the denial of summary judgment, and Appellant filed a Motion to Alter or Amend the Order dismissing the Second Amended Complaint as to Defendant Long only. (R. pp. 510-512; pp. 537-543) Appellant did not make any motions to reconsider or to alter or amend the denial of his Motion for Partial Summary Judgment.

The Court heard arguments on March 20, 2013 on both parties' motions. At that hearing, the issue of jurisdiction was argued by both parties. Appellant asserted that he was allowed to bring an independent action challenging Magistrate Court judgments pursuant to Rule 60(b), SCRCP, because of exceptional circumstances. (R. p. 618, line 10-p. 619, line 3). However, the only exceptional circumstances given by Appellant was that

the Magistrate Court allegedly did not have jurisdiction and that Appellant was allegedly not given notice. (R. p. 618, line 10-p. 619, line 3). Because he claimed he did not have notice, Appellant further argued that it would be inequitable to enforce a judgment of which Appellant was unaware. (R. p. 621, line 23-p. 622, line 3). Appellant also argued that because a "suit for user fee is no[t] contained within the specifics items which are contained in that statute [S.C. Code Ann. § 22-3-10]," the Magistrate Court did not have jurisdiction. (R. p. 621, lines 8-10). Finally, Appellant once again argued that based on one phone call between Deputy Long and Appellant, Appellant had proven a question of fact as to malice and an equal protection violation. (R. p. 625, lines 14-21). Appellant's Motion to Alter or Amend was denied and Respondent's Motion to Reconsider was taken under advisement.

On April 2, 2013, the hearing judge's clerk sent an email to the parties advising that Respondents' Motion to Reconsider had been granted. (R. pp. 634-636). The clerk asked Respondents to submit a proposed order, and once the Order was submitted, all parties were asked to submit any proposed changes. (R. pp. 634-636). Appellant submitted his proposed changes by email on April 15, 2013, and the Order was filed on June 21, 2013. Order, June 21, 2013. (R. p. 634; pp.11-15).

On July 10, 2013, Appellant then filed a Motion to Alter or Amend the Order of June 21, 2013, which dismissed his Second Amended Complaint. (R. pp. 556-572). The court entered an order denying Appellant's Motion on October 13, 2014. (R. p. 16).

STATEMENT OF THE FACTS

Appellant owned several pieces of property on Johns Island, including a parcel designated as TMS 282-00-00-138 ("TMS 138"), which had a residential dwelling on it and was therefore, subject to a User Fee. (R. p. 109). For years, Appellant refused to pay

the User Fee based on the mistaken belief that because the County did not collect the trash from his house, he did not have to pay the User Fee. (R. p. 108). Further evidence of Appellant's misunderstanding of the law is with regard to a County-mandated Storm Water Fee. Appellant did not believe he had to pay the Storm Water Fee "[b]ecause I don't feel that I have to pay for an act of God, stop it from raining." (R. p. 108). Appellant's position was that "a user fee, business license fee, storm water bill, none of that pertained to me. So if it don't pertain to me, why should I pay for it." (R. p. 108).

Appellant also contends that he has never used solid waste disposal services, but his own court filings conflict on this issue. Appellant filed an affidavit averring that "I don't have any trash pickup or take any solid waste to the landfill." (R. p. 396). Appellant relies on this statement in his Initial Brief. Br. of Appellant at 28. However, this is in direct contrast to Appellant's other court filings. Namely, in Appellant's initial Complaint and Amended Complaint, he stated that he "contracted with a private trash hauling company to remove his trash." (R. p. 18; p. 27, 29).

Regardless of Appellant's conflicting statements, Appellant was required to pay a User fee established through a county ordinance in 1987 in accordance with S.C. Code Ann. § 44-55-1210. (R. p. 164). The primary purpose of the User Fee is for the disposal of solid waste. (R. p. 164); see also Charleston Cnty., Ordinance 10-53. Further, as is stated in the Solid Waste Disposal and Resource Recovery System ordinance, not having an effective waste disposal system would "create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances." Charleston Cnty. Ordinance 10-54. Further, Ordinance 10-55 states that such a system "improves and benefits such real property by

assuring a source for the disposal of solid waste being generated, or potentially generated on such real property…and such user fees will also benefit owners of real property that do not generate solid waste in that the imposition of such user fees will assist in the alleviation of litter and solid waste…" Charleston Cnty., Ordinance 10-55.

The User Fee is not a tax, but rather a fee to which all residential property owners of Charleston County are subject. (R. p. 164). Although the User Fee is not a tax, it was added to the property tax bills issued by the County in order to save tax payer money on mailing. (R. p. 164). If a resident of Charleston County requested that the User Fee be taken off his property tax bill, the Office of the Auditor would automatically do this as a ministerial function. (R. p. 169-170). However, simply because the User Fee is removed from the property tax bill does not mean that the User Fee is waived for that particular resident. (R. pp. 164-165).; see also Charleston Cnty., Ordinance 10-58 (no ministerial act or omission by the auditor will operate to defeat payment of the annual user fee). Instead, a new property tax bill is generated and the User Fee department is notified so that a separate bill for the User Fee can be sent to the resident. (R. p. 165).

If a county resident asserts that his or her property should not be subject to a User Fee, the Revenue Dept. sends an inspector to the property to determine if a User Fee should apply to the property. (R. p. 165). This particular type of inspection was completed on Appellant's property in 1999, and the Business License/User Fee Department ("Revenue Dept.") inspector determined that Appellant's property was livable and therefore, subject to a User Fee. (R. p. 165). If after such an inspection and determination, a resident still chooses to not pay the User Fee, the Revenue Depart. may choose to institute proceedings to collect the User Fee from the resident. (R. p. 165).

In our current case, Appellant was required to pay User Fees. However, at some point in the 1990's, Appellant discovered that he could request that the User Fee be removed from his tax bill. (R. p. 165). In Appellant's mind, removing the User Fee from the bill meant that he did not have to pay it. (R. p. 165). This was based on Appellant's mistaken belief that the User Fee was for trash pick-up, and since a garbage truck did not come to his house, he did not believe that he was required to pay a User Fee. (R. p. 165). With regard to the process of removing the User Fee from his tax bill, Appellant acknowledges that he went to the Auditor's Office and signed a form which he claimed waived any duty to pay the User Fee. (R. p. 396). This form was an Application for Review and contained no language saying that it was a waiver of the fee or that the resident would not still be responsible for the User Fee. (R. p. 124). Regardless of the fact that Appellant signed this form, Appellant places blame with the Office of the Auditor for not telling him he had to pay the User Fees. (R. p. 396); Br. of Appellant at 40.

As a result of Appellant's misunderstanding of the law, several years of User Fees remained unpaid, and after some time, the Revenue Dept. instituted court proceedings to obtain judgments against Appellant for the unpaid fees. (R. p. 165). After receiving several judgments against Appellant, the Sheriff's Office was contacted in 2009 and asked to assist with enforcing these judgments. Within the Sheriff's Office, Master Deputy Harry Long was given a judgment from 2000 for levy and execution. (R. p. 165; p. 180). At that time, Master Deputy Long had been in charge of the non-commercial judgment division within the Sheriff's Office for approximately two years. (R. p. 166).

When provided with a judgment for levy and execution, Deputy Long first conducts research to determine what property a person owns that would satisfy a judgment. (R. p.

166). In accordance with South Carolina statute, Deputy Long selects property to sell "for the best price that can be got for them." S.C. Code Ann § 15-39-610.

In Appellant's case, the Sheriff's Office first attempted to contact Appellant by letter dated March 3, 2009. (R. p. 166; p. 182). After no response was received, Deputy Long sent a second letter to Appellant on April 1, 2009. (R. p. 166; p. 184). Deputy Long received a response from his second letter in the form of a phone call from Appellant on April 3, 2009. (R. p. 166). In that call, Appellant made statements that Deputy Long perceived as a threat to the Sheriff's Office. Br. of Appellant at 16. Deputy Long decided to flag the property for the protection of others who may get called to the Appellant's property. Id. Thereafter, the Sheriff's Office sent Appellant additional letters advising of the judgment against him on May 11, 2009, and June 18, 2009. (R. p. 166; p. 186; p. 188). Appellant claims that he did not receive any of these letters, but even if he did, he would not have acknowledged them. (R. p. 632, lines 120:8-15). In fact, instead of doing anything with these letters or attempting to return the request for communication, Appellant testified that he ignored official correspondence from the County and treated the notices from the Sheriff's Office as junk mail. (R. p. 631, lines 107:8-109:11 and p. 633, lines 122:16-19).

As was procedure in the Sheriff's Office, Deputy Long conferred with his superior officer in July 2009 about this matter and about proceeding with an execution against property. (R. p. 166). In a further effort to contact Appellant, Long's superior officer, Lt. McCray, also called Appellant to discuss the situation with him, but Appellant hung up on McCray. (R. p. 166). Based on his research of property owned by Appellant, as confirmed by tax records, Long found two pieces of real property and three motor vehicles, all of

which were more than seventeen years old. Based on the information he found, Long made a discretionary decision to proceed against TMS-498. (R. p. 166). Deputy Long personally served notices on Appellant at his residence that his property was going to be sold. (R. p. 166; p. 194). Appellant acknowledges that he received notice from the Sheriff's Office on August 26, 2009. (R. p. 396); Br. of Appellant at 17. Yet, Appellant did nothing with this notice. He did not contact Deputy Long or anyone from the County. (R. p. 632, lines 118:11-119:19). Appellant claims that he did not receive any notice of the actual sale of his property, but he also asserts that even if he had known about it, "I wouldn't have gone." (R. p. 632, lines 119:20-120:7).

The sale of Appellant's property was properly noticed and auctioned off at a Sheriff's Sale on November 4, 2009. (R. p. 166). Two bidders were present, and the property was sold to the highest bidder, Mase and Company. (R. p. 166).

ARGUMENT

Standard of Review

"In reviewing a motion for summary judgment, the appellate court applies the same standard of review as the trial court under Rule 56 (c), SCRCP." Companion Prop. & Cas. Ins. Co. v. Airborne Exp., Inc., 369 S.C. 388, 390, 631 S.E.2d 915, 916 (Ct. App. 2006). Under Rule 56, SCRCP, "[s]ummary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Bayle v. S. Carolina Dep't of Transp., 344 S.C. 115, 119, 542 S.E.2d 736, 738 (Ct. App. 2001). The trial court should look at all pleadings, depositions, affidavits, and other material facts in the light most favorable to the non-moving party to determine if there are any legitimate legal issues that should allow the case to process past the Motion for Summary Judgment.

"In determining whether any triable issues of fact exist, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. at 119-20, 542 S.E.2d at 738.

I. This Court should affirm the Circuit Court's ruling that it lacked subject matter jurisdiction to overturn Magistrate Court Judgments and deny Appellants argument that he can bring an independent action under Rule 60(b), SCRCP.

A. Appellant cannot rely on Rule 60(b), SCRCP, as a basis to overturn Magistrate Court judgments.

Appellant filed a lawsuit in 2011 and asked the Circuit Court to overturn Magistrate Court judgments that were more than ten years old. The Circuit Court correctly held that "[Appellant] has never filed any motions regarding the Magistrates Court judgments nor appeals of the Magistrates Court judgments once he had notice of the same. Therefore, he is procedurally barred from challenging those judgments in a collateral action in Circuit Court now." (R. p. 113).

Appellant asserts that because Circuit Courts are courts of general jurisdiction, he can bring a lawsuit at any time to challenge a Magistrate Court judgment. Br. of Appellant at 20-21. Appellant argues that Rule 60(b), SCRCP, supports his position and relies on three main arguments. First, Appellant asserts that the Rule allows him to bring this type of independent action. Second, Appellant asserts that Respondents can point to nothing which limits the time for bringing a collateral attack pursuant to Rule 60(b), SCRCP. Third, Appellant asserts that an equitable analysis should be applied to overturn a ten-year old Magistrate Court judgment and the ensuing sale of property. Id. at 20-21.

1. Independent action/collateral attack under Rule 60(b), SCRCP

Appellant cites T v. T, 378 S.C. 127, 662 S.E.2d 413 (Ct. App. 2008) to support his position that he can bring an independent action under Rule 60(b), SCRCP. Br. of Appellant at 21. Appellant argues that the T v. T case proves that a court can set aside "a prior paternity judgment" under Rule 60(b). Id. However, the Court in T v. T did not set aside any prior "judgments" as Appellant suggests. Rather, the Court of Appeals remanded a case involving a divorce decree to the family court so that the factual record could be further developed. Id.

The Court in T v. T discussed Rule 60(b), SCRCP, and stated that the Rule recognized "two potential independent action attacks on a judgment, order or proceeding: 1) one based on such rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake or 2) one based in equity for fraud upon the court." T v. T, 378 S.C at 135, 662 S.E.2d at 417. Because the case dealt with paternity ("something so fundamental as the identity of a biological parent"), the welfare of children, and an agreement that may have been induced by fraud, the court found that the case presented exceptional circumstances warranting further factual development by the family court. Id. at 139-140, 662 S.E.2d at 419-20. Again, the Court of Appeals remanded the case to the family court, but did not overturn a prior judgment. Id.

Our current case does not involve "such rare, special, exceptional or unusual circumstances" that would warrant relief. Rather, it involves a person who did not think he should have to pay a fee assessed by the county. Nowhere in his initial brief or court filings does Appellant discuss what circumstances make this case so "rare, special, exceptional or unusual" to allow an independent action ten years after a judgment is

entered. The only circumstances alluded to in oral argument were that the Magistrate Court allegedly did not have jurisdiction and that Appellant claims he never received any notice. (R. p. 618, line 10-p. 619, line 3). These are not "such rare, special, exceptional or unusual circumstances" to warrant an independent action under Rule 60(b), SCRCP. Further, Appellant, even after receiving notice of the judgments in 2009, did nothing to appeal them or contest them directly. Additionally, Appellant's own testimony that he ignored mail from the Sheriff and County should prevent him from using lack of notice as an exceptional circumstance to allow an independent action.

2. Time Limits on bringing independent action/collateral attack under Rule 60(b), SCRCP.

Appellant has asserted that an independent action under Rule 60(b) is not subject to any time limits. (R. p. 620, lines 12-17). While Appellant asserts that no case law exists to limit the time for bringing such an action, Appellant has brought forth no cases that affirmatively state that a collateral attack of a Magistrate Court judgment can be brought in Circuit Court ten years after the judgment was entered.

Because no case law has been cited establishing time limits for an independent action/collateral attack, it is helpful to look at limits that have been established for motions filed under Rule 60(b). Rule 60(b), SCRCP, states that a motion under this rule "shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." One of Appellants allegations in this matter is that the judgments entered against him were the result of "mistake, inadvertence and neglect and should be vacated." (R. p. 62). This ground is covered by Rule 60(b)(1) and according to the Rules of Civil Procedure, a motion must be brought within one year. While Appellant claims that he had problems with his mail,

Appellant admits that he personally received notice of judgments against him in August 2009. (R. p. 396); Br. of Appellant at 17. Yet Plaintiff waited until February 2011 to file any claim or lawsuit. (R. pp. 17-22). Therefore, applying time limits for motions, any claim by Plaintiff for mistake, inadvertence, or neglect should be time barred.

With regard to 60(b)(4) involving a claim that a judgment is void, motions must be brought within a "reasonable time." Rule 60(b), SCRCP. One Court of Appeals case addressed the reasonable time requirement as it applied to motions brought pursuant to Rule 60(b)(4) and held that a motion under this section was untimely when filed less than four years after the judgment was entered. McDaniel v. U.S. Fidelity and Guaranty Co. 324 S.C. 639, 642-44, 478 S.E.2d 868, 870-71 (Ct. App. 1996). In our current case, no motions were filed and instead a lawsuit was filed not one year or four years, but more than ten years after the judgment was entered. This cannot be considered "reasonable time" under any circumstances, and Appellant's claims under Rule 60(b)(4) should be considered untimely.

Regardless of whether Appellant asserts that his claims in this matter are independent actions, collateral attacks, motions for relief from default, or some other cause of action, Appellant has not brought forth any specific cases or law that would allow a collateral attack under Rule 60(b) in these circumstances. Rather, South Carolina case law read together with Rule 60(b) indicate that this type of collateral attack is improper and that Appellant did not timely file this action. For those reasons, the Circuit Court's holding that it lacked jurisdiction should be upheld.

3. Principles of equity do not support Appellant.

Appellant asserts that he is entitled to relief under Rule 60(b) based on an equitable analysis. The Court in T v. T discussed equitable considerations to be applied with regard to Rule 60(b). In citing favorably an Eighth Circuit case, the Court of Appeals provided the following considerations for equitable relief under Rule 60(b):

> The indispensable elements of such a cause of action are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law.

T v. T, 378 S.C. at 135, 662 S.E.2d at 417 (citing Nat'l Sur. Co. v. State Bank of Humboldt, 120 F. 593 (8th Cir. 1903). The T v. T Court also held that equitable defenses are available in these types of actions. Id.

Attendant on an equitable analysis is the equitable maxim that "one who seeks equity must do equity." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011). This maxim is reiterated in the fourth requirement in the above equitable analysis, and in our current case, is fatal to Appellant's claim for equitable relief under Rule 60(b). Appellant asserts that it would be "inequitable under all the circumstances to enforce those judgments in the way in which it was enforced here." (R. p. 621, line 23-p. 622, line3). The basis of this equitable argument is that Appellant claims to not have received notice of these judgments. (R. p. 621, line 23-p. 622, line3). However, Appellant admitted in his deposition multiple times that he would ignore official correspondence from the County and the Sheriff's Office. (R. p. 631, lines 107:8-109:11;

p. 632, lines 118:7-10; and p. 632, line 121:23- p. 633, line 122:19). This is evident in the following excerpt from Appellant's deposition:

> Q. And so you think if you received any kind of Magistrate Court summons, you may have ignored it because it came from Judge Gerard?
> A. Yes.
> Q. Now, let's see here. When Deputy Long came to you, what did you all talk about?
> A. We didn't talk about nothing, but he passed me the summons and I took it out of his hand, and I was outside working. I put it in the house, and when I come in that evening, I looked at it and come to find out it was from the Small Claims Court for a user fee. So it rings a bell that they already took the user fee off, why are they serving you a summons?
> Q. Okay. So you think he served you with a summons from Small Claims Court?
> A. On account of the user fee. I thought it was from the Small Claims Court. But when I got in there and looked at it, it was from a business license user fee. I don't have a business license. I'm not using anything. And the user fee had already been removed from my tax bill.
> Q. So what did you do after that?
> A. I leave it alone.
> Q. Did you try and contact Deputy Long and ask him about it?
> A. No.
> Q. Did you try and contact the User Fee Department?
> A. I done went to the head of the County and I thought that was sufficient.
> Q. When you say the head of the County, who are you talking about?
> A. The Charleston County Auditor's Office.
> Q. But after Deputy Long came to your house and served you, did you go back and talk to anyone with the auditor's department?
> A. No.

(R. p. 632, lines 118:7-119:18)

When Deputy Long did not receive any responses to the multiple letters he sent (aside from one phone call), Deputy Long personally served Appellant with the notice of judgments and the sale of Appellant's property. (R. p. 166). What did Appellant do with this notice? Nothing. (R. p. 632, lines 118:11-119:18). Appellant did not contact the

Magistrate Court, did not contact anyone from the County, and did not follow-up with the Sheriff's Office. (R. p. 632, lines 118:11-119:18). Instead, Appellant continued believing that laws and ordinances did not apply to him and continued ignoring official correspondence.

Now Appellant asks the Court to ignore his own negligence and overturn judgments against him based on equitable principles. The Court should not do this. Namely because Appellant's basis for the equitable relief—i.e. not being aware of any judgments—was in large part, if not solely, due to Appellant's own fault and negligence in ignoring official correspondence from government agencies. Therefore, he did not act with equity and should not be entitled to seek equitable relief.

B. Appellant is procedurally barred from challenging the Magistrate Court judgments through a collateral lawsuit filed in Circuit Court ten years later.

Appellant also claims that the Magistrate Court lacked jurisdiction to hear cases involving non-payment of user fees, and therefore, the Magistrate Court judgments are without effect. Appellant has attempted to challenge these Magistrate judgments through a collateral lawsuit filed in Circuit Court, seeking to have the Circuit Court overturn all the judgments, some of which are more than ten years old. In addition to Appellant not being allowed to bring this type of action under Rule 60(b), SCRCP, Appellant also is procedurally barred from bringing this type of action pursuant to Court Rules and case law. Further, Appellant has not cited any precedent that allows him to bring a collateral lawsuit challenging judgments.

1. **The proper way to challenge a court's judgment is through post-trial motions or direct appeals.**

Respondents have shown that pursuant to Court Rules and case law, the Circuit Court did not have jurisdiction to overturn the Magistrate Court judgments. (R. pp. 400-404). South Carolina Code Ann. § 22-3-1000 provides that for Magistrate Court Judgments, post-trial motions must be made within five days and appeals must be made within thirty days. The South Carolina Magistrate Court Rules conform to the statute. See Rule 18(a) and 19(b), SCRMC.

The South Carolina Court of Appeals has addressed the time requirements for appealing Magistrate Court judgment in the case of Town of Hilton Head Island v. Godwin, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006); (R. pp. 414-415). The Godwin case dealt with a conviction for criminal domestic violence in which the defendant was tried in his absence. Godwin, 370 S.C. at 222, 634 S.E.2d at 60. While there was evidence that Godwin received notice of his conviction in 1995, it was undisputed that Godwin received notice in 2003. Id. at 225, 634 S.E.2d at 61. Yet, Godwin waited seven months to take any action to contest or appeal the conviction in magistrate court. Id. at 222, 634 S.E.2d at 60. The Court of Appeals held based on the delay by Godwin, the Circuit Court was without jurisdiction to overturn Godwin's conviction. Id. at 225, 634 S.E.2d at 61.

In Godwin, the Court of Appeals relied on Brewer v. South Carolina Highway Dep't, 261 S.C. 52, 198 S.E.2d 256 (1973). The Brewer case also dealt with a Magistrate Court judgement for a defendant tried in his absence. Id. at 54-55, 198 S.E.2d at 256-57; (R. p. 416). However, in Brewer, once notice was received of the judgment, a motion for a new trial was filed the following day. Id. The Court of Appeals held that although Brewer did not take action within five days or thirty days after the judgment was entered, he had

timely filed his motion as he filed it one day after he actually received notice of the judgment. Brewer, 261 S.C. at 55-56, 198 S.E.2d at 257. The Brewer Court relied on the case of O'Rourke v. Atlantic Paint Co., 91 S.C. 399, 74 S.E. 930, 932 (1912), which held that "the only remedy of a party against whom a judgment is rendered is either to appeal, or make a motion for a new trial, and appeal in case such motion is refused."

In our current case, Appellant is challenging Magistrate Court judgments from the years 2000-2009. However, Appellant has never filed any motions or appeals of the Magistrate Court judgments once he had notice of the same. The question of why nothing has ever been filed in Magistrate Court was posed to Appellant at oral arguments. (R. p. 619, lines 4-11). Appellant's reason for never filing post-trial motions or direct appeals was because he wanted to bring other actions as well. (R. p. 619, lines 4-11). This is not a valid reason for not following established court rules to challenge court judgments/rulings. Instead of filing a challenge in Magistrate Court or filing a direct appeal, Appellant waited more than seventeen months after he admits he received notice of judgments against him to file a collateral lawsuit in the Court of Common Pleas. Therefore, the Circuit Court correctly ruled that Appellant is procedurally barred from challenging those judgments.

2. Appellant cannot cite any case that supports his position that he can file a collateral lawsuit to challenge subject matter jurisdiction.

Appellant has cited no specific case law that allows him to file the subject suit more than ten years after a judgment has been rendered. Appellant asserts that the cases he cites hold that "issues related to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by this court on our own motion." Bunkum v. Manor Properties, 321 S.C. 95, 100, 467 S.E.2d 758, 761 (Ct. App. 1996)

(direct appeal from denial of motion for preliminary injunction and dealing with order of reference to a master in equity). However, all of the cases cited in Appellant's Circuit Court filings dealt with direct appeals of matters to the appellate courts or have facts that are not applicable to the present case. (R. pp. 410-411).

In his Appellate brief, Appellant provides three cases that he asserts rely on Bunkum for the position that subject matter jurisdiction can be collaterally attacked. Br. of Appellant at 22-23. However, once again, all of these cases deal with direct appeals. See Ness v. Eckerd Corp., 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002) (direct appeal of decision by Circuit Court judge to vacate his own order); Brown v. Greenwood Sch. Dist. 50 Bd. Of Trustees, 344 S.C. 522, 544 S.E.2d 642 (Ct. App. 2001) (direct appeal of denial of jury trial); Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998) (direct appeal from Circuit Court judgment).

Appellant has claimed that the above-cited case law supports the proposition that "the law is clear that the lack of subject matter jurisdiction can be a basis for vacating an earlier judgment." (R. p. 120). However, none of the cases cited by Appellant hold that he can file the subject collateral lawsuit and raise the issue of subject matter jurisdiction of a Magistrate Court at any time whatsoever, even ten or twenty years after a judgment has been rendered.

In our current case, though, Appellant is not making a direct appeal of the 2000 Magistrate Court judgment, and in fact, he never directly appealed the Magistrate Court judgment. Instead, Appellant filed the subject lawsuit, which he is improperly attempting to use as an appeal. This is evident from Appellant's filings in Federal Court in which Appellant admitted that review of the Magistrate Court judgments would require "appellate

review." (R. p. 88). This is improper, and the Circuit Court correctly ruled that it does not have subject matter jurisdiction to hear Appellant's case.

3. The Magistrate Court had concurrent jurisdiction with the Circuit Court and once the Magistrate Court judgment was filed with the Circuit Court, it became an order of the Circuit Court.

To the extent Appellant's argument is that the judgment in this case is void solely because it is a Magistrate Court judgment, that argument is invalid under South Carolina case law. First, case law interpreting Magistrate Court jurisdiction establishes that Magistrate Courts have concurrent jurisdiction with the Court of Common Pleas. Specifically, South Carolina case law has found that actions for injury to a person, which is outlined in S.C. Code Ann. § 22-3-10 (2), falls under the concurrent jurisdiction of both the Magistrate Court and the Court of Common Pleas. Rhodes v. Wilmington, 6 S.C. 385, 387 (1875). Therefore, Appellant is incorrect in asserting that the Circuit Court, as a court of general jurisdiction, is the only court where an action for unpaid user fees could be brought.

Second, once the Transcript of Judgment was filed in the Circuit Court, which is a court of general jurisdiction, it became an order of the Circuit Court. Love v. Dorman, 91 S.C. 384, 74 S.E. 829, 830 (1912); (R. p. 180). The South Carolina Supreme Court has confirmed this:

> The transcript, when filed, "shall be a judgment of the circuit court," which is a court of record and general jurisdiction and takes equal rank, or rather is a judgment of the circuit court, and as long as it continues to be a judgment of the circuit court, must be treated as other judgments of the circuit court are treated. It cannot be attacked collaterally, but only in a direct proceeding in the cause; that is, by a motion in the cause to set it aside.

Love, 74 S.E. at 830 (emphasis added).

In our current case, a Transcript of Judgment, issued by the Charleston County Magistrate Court, was filed with the Court of Common Pleas on September 19, 2000. (R. p. 180). This judgment was the basis for the execution and levy against Appellant's property. (R. p. 139). Because the Magistrate Judgment was filed with the Court of Common Pleas, the judgment became a judgment of the Circuit Court that could not be attacked by a collateral proceeding. Love, 91 S.C. at 830; O'Rourke, 74 S.E. at 932. It could only be attacked by post-trial motions or direct appeals. Id.

Appellant readily admits that the subject lawsuit is a collateral attack on a Magistrate Court judgment. Br. of Appellant at 20. To the extent Appellant bases this argument solely on the fact that it was a Magistrate Court judgment, his argument must fail. The Transcript of Judgment was filed with the Circuit Court, which made it a judgment of the Circuit Court. Appellant did not file any motions or appeals and now cannot cite any case law that allows a collateral attack of such a Magistrate Court or Circuit Court judgment. Rather the above-cited cases hold that such a collateral attack is improper.

C. Based on Appellant's submissions to the United States District Court for the District of South Carolina, Appellant's Fourth Count should be dismissed.

Appellant contends that his Fourth Count should not be dismissed for lack of jurisdiction as it is separate and distinct from the first three Counts. Br. of Appellant at 25-26. This contention is in stark contrast to what Appellant filed in his federal court pleadings and how the federal court ruled. In his Motion to Dismiss filed in Federal Court, Appellant stated to the court that "[t]o the extent that the Section 1983 claim in the Fourth Count relies upon the invalidity of the Magistrate Court judgment, it is inextricably intertwined

with the counts which the Court cannot entertain jurisdiction. . . and thus also beyond this Court's jurisdiction." (R. p. 89).

The District Court granted Appellant's Motion and held that it was prohibited from entertaining a claim to invalidate state court judgments referenced in Counts One, Two, and Three and also stated that "the Court agrees with [Appellant] that the § 1983 claim in Count Four is 'inextricably intertwined' with the challenged state court judgments, and the Court is therefore barred from exercising jurisdiction over this claim as well." (R. p. 8). Count Four included claims that the allegedly invalid user fee was arbitrarily enforced against Appellant and that the execution of the allegedly invalid judgment was arbitrary. Appellant did not contest this ruling by the court nor did he ask the court to amend or alter its ruling.

The District Court essentially held that if the Appellant could not prove his first three Counts, his fourth Count must also fail. This issue was raised to the court at the hearing on Respondents' Motion to Reconsider and the court agreed. (R. p 614, lines 3-20). Therefore, because the Circuit Court correctly held that Appellant cannot prove a genuine issue of material fact as to the first three Counts, the dismissal of his "inextricably intertwined" Fourth Counts was also properly dismissed.

D. As all Counts arise from Appellant's claim regarding jurisdiction and invalidation of fees and judgments, the Circuit Court does not have jurisdiction to hear any of Appellants claims in this matter.

The Circuit Court held that "every cause of action brought by [Appellant] in this case necessarily flows from the underlying Magistrates Court judgments." (R. p. 13). This is similar to the language used by the District Court, in which it held that "[a]ll of these

causes of action arise from one or more of the Defendants allegedly assessing [Appellant] for various user fees and then obtaining judgment against [Appellant] based on these assessments." (R. p. 6). Appellant did not object to this language in the Order of remand.

Appellant's primary claim in this case is that the Magistrate Court lacked subject matter jurisdiction, which led to invalid judgments, which led to the Sheriff's Office getting involved, which led to the allegedly improper sale of Appellant's property. Therefore, every claim in this case arose from Appellant's claim of invalid judgments issued from the Magistrate Court. Therefore, the Circuit Court correctly ruled that "[b]ecause this Court does not have jurisdiction to overturn the underlying Magistrate Court judgments, this court does not have jurisdiction regarding any of [Appellant's] claims in this matter and all claims are dismissed with prejudice." (R. p. 13).

II. The Circuit Court correctly dismissed the Fourth Count of Appellant's Second Amended Complaint as Appellant cannot prove a genuine issue of fact as to a Constitutional violation.

In this lawsuit, Appellant's first three Counts assert that the User Fees, Magistrate Court judgments and the sale of his property should be invalidated. Appellant's Fourth Count flows from these allegations and is "inextricably intertwined" with the first three Counts. (R. p. 8). Appellant essentially claims in his Fourth Count that the invalid user fee was arbitrarily applied to him because he did not receive trash collection. Further, he claims that Deputy Long arbitrarily enforced an invalid judgment against him. (R. p. 64). As Appellant has not and cannot prove that the user fees were invalidly applied nor arbitrarily enforced, Appellant cannot prove a genuine question of fact regarding his alleged constitutional violations.

A. User Fees are uniformly applied and do not violate Appellant's Equal Protection Rights.

Appellant concedes that "the user fee is imposed against all owners of real property in Charleston County [and] that the fee is the same for all residential property." Br. of Appellant at 26. These two concessions defeat an equal protection claim regarding the User Fee itself. See Skyscraper Corp. v. Cnty. of Newberry, 323 S.C. 412, 475 S.E.2d 764 (1996) (holding county solid waste disposal fee ordinance does not violate equal protection). However, Appellant bases his equal protection argument on an incorrect understanding of the purpose of User Fees. Appellant quotes a statute stating that user fees can be levied "against persons for whom services are provided." Br. of Appellant at 26. Appellant then argues that he does not receive any services, which in his mind is garbage collection. (R. pp. 61-62). Therefore, he claims he is not treated the same as everyone else. Br. of Appellant at 26-28.

The services provided by the User Fee are not for garbage collection. (R. p. 164); see also Charleston Cnty., Ordinance 10-53. The Ordinance is to provide for disposal of solid waste. Id. Further, as is stated in the Solid Waste Disposal and Resource Recovery System ordinance, not having an effective waste disposal system would "create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances." Charleston Cnty., Ordinance 10-54. Further, the system created by the ordinance benefits all property owners, whether the owner generates waste or not. Charleston Cnty., Ordinance 10-55. Finally, Ordinance 10-66 specifically states that the annual user fees are only for the receipt and disposal of waste, and every landowner has a duty to properly dispose of waste.

Charleston Cnty., Ordinance 10-66. Providing a system for waste disposal available to all property owners is in line with the purposes outlined in Ordinance 10-54.

In his brief, Appellant relies on case law and ordinance language that mentions "special benefit" or "services provided." Br. of Appellant at 26-28. He claims that he does not receive any special benefit and that no services are provided to him because "he does not receive any solid waste disposal services or use any county facilities for solid waste collection recycling." Id. at 33. Essentially, Appellant is claiming that he does not get trash collection and chooses not to use county facilities for trash disposal. However, Appellant lives in the county and cannot dispute that he benefits from having a county wide trash disposal system in place. He also cannot dispute that he benefits from the prevention of public health hazards, water and air pollution and adverse effects on property values.

Appellant's own admissions in this case prove further why a User Fee must be applied uniformly and cannot be based on unverifiable statements. Namely, Appellant claims that he did not generate solid waste within the meaning of the Ordinance and South Carolina case law. Id. at 28. Appellant argues that because he has made this statement, he should not have ever been required to pay a User Fee. Yet, Appellant made contradictory statements in not one, but two filed pleadings. In both his Complaint and Amended Complaint, Appellant admitted that he contracted with a private trash collection company to remove solid waste that he generated on his property. (R. p. 18; pp. 26, 28).

In order for Appellant to succeed on an his equal protection theory, Appellant would have to prove that if a resident does not personally believe that he benefits from a User Fee, he does not have to pay the User Fee. To take that position one step further, Appellant would have to prove that requiring that same resident to pay a User Fee is a

constitutional violation. This argument is illogical, and in our current case, Appellant cannot prevail as the "personal belief" Appellant relies upon here is a misunderstanding of the purpose of a User Fee. This is an incorrect position, but at a minimum, it cannot support an equal protection claim.

The constitutionality of the User Fee has already been addressed by the South Carolina Supreme Court in Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 475 S.E.2d 764 (1996). In that case, the Court held that the imposition of a User Fee did not violate Equal Protection if applied uniformly. Further, "[t]he party attacking an ordinance bears the burden of proving its unconstitutionality beyond reasonable doubt." Id. at 417, 475 S.E.2d at 766. Appellant has already admitted that the User Fee was applied uniformly and he cannot base his constitutional claim on an incorrect understanding of the purpose of a User Fee. Further, Appellant cannot prove that the Ordinance and its application to Appellant were unconstitutional beyond reasonable doubt.

B. Appellant cannot show a genuine issue of material fact as to any constitutional violations of the Sheriff's Office or Deputy Long.

Appellant disagrees with the process Deputy Long used to enforce the judgment against him. However, Appellant's disagreement with the process does not create a question of fact concerning arbitrary enforcement. Appellant alleges that Deputy Long had ill will toward Appellant which created motive to arbitrarily sell his real property. Br. of Appellant at 28-30. What is the basis for this motive? According to Appellant, it was one heated phone call with Deputy Long that caused Long to "blue flag" his property and caused Long to act with ill will and malice toward Appellant. (R. p. 600, lines 6-23; p. 625, lines 14-23). First, Appellant denies that this conversation ever even happened. (R. p. 396). Therefore, Appellant should not be able to rely on this allegation to support a

constitutional claim. Second, Deputy Long worked in the judgment division of the Sheriff's Office for almost two years before his telephone conversation with Appellant. Deputy Long was charged with the duty of executing judgments against debtors every day, which meant he dealt with unhappy people on a regular basis. To argue that one conversation with an unhappy citizen is grounds for an equal protection violation defies common sense and should not be allowed here. Further, Appellant was sent five letters regarding the judgments and personally served with notice of the property sale. (R. p. 166). This provides further support that Deputy Long was not acting with ill will or malice and that Appellant cannot establish a genuine issue of fact as to whether a constitutional violation occurred.

Appellant next contends that Deputy Long arbitrarily picked real property over other personal property owned by Appellant. Br. of Appellant at 29-30. Appellant lists several pieces of property he owned that could have been sold to satisfy the judgments. Id.; (R. p. 397). Appellant references farm equipment and gives the values for the same. Id.; (R. p. 397). However, Appellant brought forward no documents or records to show actual ownership of these pieces of equipment. Appellant did not provide any public records or tax records showing ownership of these pieces of property or anything that would have put Deputy Long on notice that Appellant owned these pieces of property. Rather, the only way that Deputy Long could have known about the property that Appellant alleges to have owned would be to contact Appellant directly, which he did on multiple occasions.

When Appellant refused to respond to any communication from the Sheriff's Office, Deputy Long determined that the sale of land was his best option for satisfying the

multiple judgments against Appellant. The statute governing judicial sales does not give any precise method for these sales, and there is no case law interpreting this statute and sales conducted under it. Rather, the statute states that a "sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken or so much thereof as shall be sufficient to satisfy the judgment for the best price that can be got for them." S.C. Code Ann. § 15-39-610.

Appellant has not shown a genuine issue of fact as to Deputy Long arbitrarily enforcing the judgment against Appellant. His only evidence to support this claim is a list of property he alleges to have owned in 2009. (R. p. 397). However, this list was provided in August 2012—two and a half years after the property was sold and more than three years after Deputy Long tried multiple times to contact Appellant about the judgment. Appellant disagrees with which property Deputy Long chose to sell to enforce judgments, but admittedly did nothing to mitigate this issue prior to the sale of his property. Because Appellant has made unsupported allegations of arbitrary enforcement, his constitutional claims against Long should be dismissed.

III. Appellant's tort claims were properly dismissed pursuant to the South Carolina Tort Claims Act and applicable case law.

A. Appellant cannot prove a genuine issue of fact as to negligent retention.

Respondents raised in their Circuit Court filings the fact that Appellant cannot succeed on a negligent retention theory because he cannot prove a sufficient nexus between any of Deputy Long's prior disciplinary issues and the harm he claims in this case. (R. pp. 461-464); see also Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (Ct. App. 2005) (requiring a sufficient nexus between prior acts and ultimate harm caused for a successful negligent retention claim). Appellant makes only one reference to an allegation of

negligent retention in his Second Amended Complaint at paragraph 35: "Defendant Sheriff's Department was negligent in retaining defendant Long as an employee prior to the time he undertook work on the Simmons judgment." (R. p. 65). Appellant makes no allegations regarding negligent hiring.

Negligent retention claims involve two elements: "knowledge of the employer and foreseeability of harm to third parties." Doe v. ATC, Inc., 367 S.C. at 206, 624 S.E.2d at 450 (citing Di Cosala v. Kay, 450 A.2d 508, 516 (N.J. 1982). The ATC court explained that,

> [t]hese elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.

Id.

Appellant cannot show facts necessary to prove that the Sheriff's Office was negligent in retaining Deputy Long. Appellant bases his allegations of negligent retention on several unrelated disciplinary infractions Deputy Long received several years before he began working in the judgment division of the Sheriff's Office. (R. pp. 406-407).

Appellant must prove a "nexus or similarity between the prior acts and the ultimate harm caused." ATC 367 S.C. at 206, 624 S.E.2d at 450. The ultimate harm Appellant alleges is that "Defendant Long exhibited hostility toward Simmons and with malice and intent to injure Simmons, caused a levy to be placed against real property owned by Simmons which resulted in a sale and loss of Simmons interest in the property." (R. p. 65). None of the prior disciplinary infractions have a nexus or similarity to the alleged ultimate harm to Appellant.

Further, Appellant cannot prove that the Sheriff's Office had knowledge sufficient to be held liable for negligent retention. Deputy Long began working in the Judgment Division in 2007. (R. p. 463). For the two years prior, there is no evidence of disciplinary infractions. (R. p. 463). During his employment with the Judgment Division, Deputy Long received no disciplinary infractions and his evaluations show that he was exceeding expectations in his job duties. (R. p. 463).

In Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011), summary judgment was granted in favor of the employer on Kase's claims of negligent retention. That case involved an employee being convicted of assaulting Kase after an automobile accident. The records showed that among multiple other disciplinary infractions, the defendant employee had actually been convicted of assault in his past. The Court of Appeals held that even though the prior assault conviction was essentially identical to the assault after the subject automobile accident, there was no reason for Employer to foresee the type of harm caused. Id. at 62, 707 S.E.2d at 459. Importantly, neither the trial court nor the Court of Appeals placed any weight on the long list of disciplinary infractions Employee had.

In our current case, Appellant cannot point to any prior conduct with a sufficient nexus to the alleged harm he received. Appellant claims that Deputy Long acted with ill will and as support for this, he has cited Long's prior disciplinary infractions. However, none of these disciplinary infractions raise a question of fact concerning whether the Sheriff's Office should have foreseen the alleged wrongful actions of Long. See id.

Based on the decisions in ATC and Kase, Respondents assert that Appellant cannot state a factual issue concerning negligent retention, and therefore, the Circuit Court correctly dismissed any claim for negligent retention against the Sheriff's Office.

In Appellant's Brief, he also argues that there is a question of fact as to negligent retention because the Sheriff's Office did not follow its own disciplinary policies and because its evaluation policy was flawed. Br. of Appellant at 32, 41-42. Appellant did not make this argument at either hearing, but even so, the Sheriff's Office would be immune from these claims pursuant to S.C. Code Ann. § 15-78-60, which states: "The governmental entity is not liable for a loss resulting from ... (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies...." Further, the Sheriff's Office would be entitled to discretionary immunity under S.C. Code Ann. § 15-78-60(5). Therefore, Appellant cannot show that there is any genuine issue of fact as to the tort liability of the Sheriff's Office.

B. Appellant cannot show that a genuine issue of fact exists to prove actual malice.

Appellant argues that one heated phone call proves a material question of fact as to Deputy Long acting with malice. Even though Appellant denies that this phone call ever occurred, Appellant relies on this one call to prove that Defendant Long acted with ill will or acted recklessly or wantonly in regard to executing on the judgment against Appellant. Br. of Appellant at 34-36; (R. p. 396). This is a baseless argument that was correctly disregarded by the Circuit Court. Further, it is refuted by the multiple letters and communications made with Appellant in an attempt to have him talk with the Sheriff's Office. (R. p. 166). However, Appellant ignored all attempts to contact him. Instead, he now attempts to manufacture a claim for malice based on one phone call.

Further, after Appellant refused to return any phone calls or correspondence from the Sheriff's Office regarding the judgments against him, Appellant claims in his lawsuit

that Deputy Long could have sold other property. Appellant claims that Deputy Long should have known about Appellant's personal property, but Appellant took absolutely no affirmative steps to contact Deputy Long about the judgments or about this other personal property he alleges to have owned. See Section II.B. supra. Instead, Appellant continued with the misconception that User Fees, Storm Water Fees, etc. do not apply to him and continued to ignore official correspondence from the Sheriff's Office. Now, Appellant asks this Court to disregard his own actions and instead find that Deputy Long's alleged misunderstanding of what property Appellant owned amounted to actual malice. This should not be allowed, and the Circuit Court's grant of Summary Judgment should be upheld.

The Circuit Court correctly ruled that there is no genuine issue of fact as to malice in this case and that the Sheriff's Office, including Deputy Long, was subject to multiple exceptions to the waiver of immunity provided by S.C. Code Ann. § 15-78-60. (R. p. 13-15).

IV. Appellant's Sixth Count was properly dismissed.

Appellant asserts that his Sixth Count for inadequacy of sale price was not considered by the court and should not have been dismissed. However, the presence of the Sixth Count was brought to the attention of the Court by both Respondent and Appellant prior to the Court issuing its Order. (R. p.12; pp. 634-636). Further, Appellant's Sixth Count arises from the exact same facts and circumstances that give rise to all of the other claims in this case. Namely, that the Sheriff's Sale was improper and the sale should be voided.

With regard to claims arising from the sale of the property itself, the Circuit Court has correctly held that any claims against the Sheriff's Office would be subject to the immunities prescribed by the Tort Claims Act. Specifically, any claims against the Sheriff's Office involving the sale of Appellant's property would fall under the following exceptions to the waiver of immunity: S.C. Code Ann. § 15-78-60 (3), (5), (11), and (23). (R. pp. 13-14). Appellant's Sixth Claim is for inadequacy of sale price, which is directly related to the sale conducted by the Sheriff's Office. (R. pp. 513-515). Because the Sixth Count arises from the exact same set of facts and circumstances as Appellant's other claims and because it is directly related to the sale of the property, the same immunities apply for all County Defendants. (R. p. 13-14).

V. Appellant cannot prove a genuine question of fact with regard to liability of Deputy Long.

No genuine issue of fact exists to support a theory of tort liability or constitutional liability against Deputy Long. In support of this argument, Respondent craves reference to Sections II.B. and III, supra, and incorporates those sections herein.

VI. The Circuit Court correctly held that there was no question of fact and properly granted Respondents' Motion for Summary Judgment.

A. Validity of User Fee

Appellant repeats his prior arguments in Section VI. A of his Appellate Brief: (1) the user fee was taken off his tax bill, so he should not have been required to pay it; (2) Appellant did not receive "any benefit from the County Solid Waste facilities;" (3) Appellant never received notice of any judgments. Br. of Appellant at 40-41. Appellant contends that these arguments present a genuine question of fact. However, based on Respondents' arguments made in Section I, supra, which Respondents wish to incorporate

in this current section, these arguments are without merit and Appellant cannot prove a material question of fact.

B. Retention of Long

Appellant argues that a genuine question of fact exists as to whether the Sheriff's Office followed its own policies in retaining Deputy Long and that this creates a genuine issue of fact. Br. of Appellant at 41-42. However, Appellant cannot establish a question of fact on this basis as the Sheriff's Office would be immune from these claims pursuant to S.C. Code Ann. § 15-78-60, which states: "The governmental entity is not liable for a loss resulting from ... (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies..." Therefore, Appellant cannot show that there is any genuine issue of fact as to the tort liability of the Sheriff's Office.

As further support for Respondents' position in this section, Respondents wish to incorporate Section III.A., supra.

C. Malice

Respondents wish to incorporate Section III.B., supra, in response to Appellant's argument regarding a genuine issue of fact as to malice.

VII. This Court should affirm the Circuit Court's denial of Appellant's Motion for Partial Summary Judgment, in which he asserted that South Carolina Magistrate Courts do not have jurisdiction to hear cases involving User Fees.

Appellant has set forth several arguments for his position that the Magistrate Court did not have jurisdiction over judgments for unpaid User Fees. A large part of Appellant's argument is that the User Fee is a tax and should be collected just like a tax. Br. of

Appellant at 44-45. This argument is in contradiction to our own Supreme Court, which has explained that a User Fee for managing solid waste is not a tax. See Skyscraper Corp., 323 S.C. at 415-16, 475 S.E.2d at 765-66 (distinguishing between a user fee and a tax). Further, Appellant incorrectly argues that the Solid Waste Ordinance treats the User Fee as a tax. Specifically, Appellant argues that the Ordinance directs that User Fees are to be collected in the same way as taxes and therefore, the Magistrate Court does not have jurisdiction. Br. of Appellant at 44-45. Appellant cites to Ordinance Section 10-56, but this section deals with including User Fees on property tax statements. Charleston Cnty., Ordinance 10-56. Appellant is improperly attempting to equate mailing out bills to enforcing payment of unpaid User Fees. For these reasons, Appellant's jurisdictional arguments based on the User Fee being a tax are incorrect, and his Motion for Summary Judgment was properly denied.

Appellant also argues that certain South Carolina code sections show that the Magistrate Court did not have jurisdiction. Appellant cites to S.C. Code Ann. § 4-9-30 (14), which gives counties the specific power to enact ordinances and to enforce those ordinances "in courts created by the general law including the magistrates' courts of the county." S.C. Code Ann. § 4-9-30 (14); Br. of Appellant at 44-45. Appellant argues that the last sentence of this code section, "No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law...", supports his position. S.C. Code Ann. § 4-9-30 (14); Br. of Appellant at 45. Appellant then argues that Section 4-9-30 (14) conflicts with two other code sections: S.C. Code Ann. § 44-55-1230, which provides a criminal penalty for

non-compliance with the ordinance and S.C. Code Ann. § 22-3-10, which provides for concurrent jurisdiction in Magistrates Court. Br. of Appellant at 45.

Appellant's argument is flawed for two reasons. First, Appellant misinterprets the last sentences of Section 4-9-30 (14), and this is evident by the Terpin case cited by Appellant. Section 4-9-30 (14) stands for the proposition that the general purpose of an ordinance cannot conflict with the general purpose of a South Carolina Code section. In Terpin v. Darlington County Council, the Supreme Court found that an ordinance regulating the sale of fireworks conflicted with S.C. Code Ann. § 23-35-10, et seq., which specifically deals with the sale of fireworks. Terpin v. Darlington County Council, 286 S.C. 112, 114, 332 S.E.2d 771, 773 (1985). The Supreme Court therefore found that the ordinance was invalid. Id.

Appellant here does not argue that the Solid Waste Ordinance is invalid. Rather, Appellant appears to argue that under the Terpin case, no collection effort can be brought for unpaid User Fees. Appellant argues that the provisions of S.C. Code Ann. § 44-55-1230 constitute the only means to collect user fees. However, this code section deals with charging someone with a misdemeanor and fining them up to $100 or up to thirty days in jail. The Terpin case does not support Appellant's argument and S.C. Code Ann. § 44-55-1230 does not restrict collection actions in the Magistrate Court. For this reason, the Ordinance in question and Section 4-9-30 (14) do not conflict with the general law.

The second reason Appellant's argument regarding Section 4-9-30 (14) is flawed is his reading of S.C. Code Ann. § 22-3-10. Appellant contends first that in order for the Magistrate Court to have jurisdiction, the specific subject matter of the suit must be listed in one of the subsections of S.C. Code Ann. § 22-3-10. (R. p. 621). However, this is

refuted by two cases that Appellant relies upon to support his position. In T v. T, 378 S.C. at 133, 662 S.E.2d at 416, the Court of Appeals explained that "[s]ubject matter jurisdiction refers to a court's powers to hear and determine cases of the general class or category to which proceedings in question belong." Id. citing Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). The Court of Appeals did not limit jurisdiction to specific categories of cases as Appellant argues should be done.

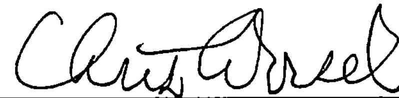
Further, in Rock Hill Body Co. v. Rainey, 294 S.C. 426, 365 S.E.2d 228 (Ct. App. 1987), the Court of Appeals held that Magistrate Courts could hear cases within their general jurisdiction, even if they did not fit into one of the categories outlined in S.C. Code Ann. § 22-3-10, so long as the subject matter was under the jurisdictional limit. (R. pp. 418-419). This is in line with the Court's holding in T v. T that subject matter jurisdiction is appropriate if a court handles the general type of case before it. T v. T, 378 S.C. at 133, 662 S.E.2d at 416.

In applying these cases and the statutes to our current case, the Magistrate Court had jurisdiction to hear these types of judgments. The 2000 judgment was seeking $144.00. That was well within the jurisdictional limit of the Magistrate Court. Further, it was a suit for damages, which was within "the general class or category" of cases heard in Magistrate Court. Further, S.C. Code Ann. § 22-3-10 does provide jurisdiction for recovery of unpaid user fees. S.C. Code Ann. § 22-3-10 (2) states that "Magistrates have concurrent civil jurisdiction in the following cases: ... (2) in actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed seven thousand five hundred dollars." If a resident refuses to pay the user fees, then the rights of Charleston County have been injured, and the County may seek redress in

Magistrate Court pursuant to S.C. Code Ann. § 22-3-10(2). This is supported by S.C. Code Ann. § 4-1-10, which states "Each county is a body politic and corporate for the following purposes: (1) To sue and be sued..." Id. Therefore, the Magistrate Court had subject matter jurisdiction to hear suits involving non-payment of user fees, the judgments entered against Appellant were valid, and the ensuing execution of those judgments was valid.

CONCLUSION

For all the reasons stated herein as well as for all the reasons stated in Respondents' Circuit Court filings, Respondents respectfully request that this Court affirm the Order of the Charleston County Circuit Court granting Respondent's Motion for Summary Judgment, that this court affirm the Circuit Court's denial of Appellant's Motion for Partial Summary Judgment, that this court affirm the Order of the Circuit Court granting Respondent Long's Motion to Dismiss, and that this Court dismiss all issues filed in the current Appeal.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2014-002575

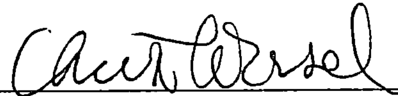
ROOSEVELT SIMMONS, ...Appellant,

v.

MASE and COMPANY, LLC,
J. AL CANNON, JR., CHARLESTON
COUNTY SHERIFF'S DEPT.,
CHARLESTON COUNTY REVENUE
COLLECTIONS DEPT., and HARRY
LONG,..Respondents.

CERTIFICATE OF COUNSEL

I certify that the Final Brief filed on behalf of Respondents J. Al Cannon, Jr., Charleston County Sheriff's Dept., Charleston County Revenue Collections Dept., and Harry Long herein complies with Rule 211(b).



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Charleston, South Carolina
March 25, 2016

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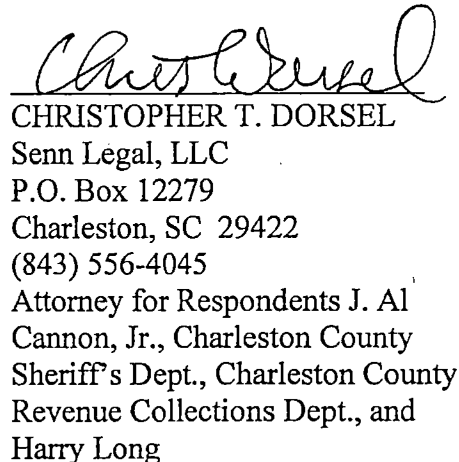
RESPONDENTS J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S DEPT., CHARLESTON COUNTY REVENUE COLLECTIONS DEPT., and HARRY LONG'S PROOF OF SERVICE

I certify that I have served copies of Respondents J. Al Cannon, Jr., Charleston County Sheriff's Dept., Charleston County Revenue Collections Dept., and Harry Long's Final Brief by depositing a copy of each in the United States Mail, postage prepaid, on March 25th, 2016 addressed to attorneys of record Edward A. Bertele, 1812 Pierce Street, Charleston, South Carolina 29492 and Wendy J. Keefer, Keefer & Keefer, LLC, 1643B Savannah Highway, Suite 226, Charleston, South Carolina 29492.



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