THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY OF COMMON PLEAS

The Hon. Kristi Lee Harrington, Circuit Court Judge

Case No.: 13-CP-18-0546

Appellate Case No.: 2014-000141

William McFarland, Appellant,

v.

Sofia Mazell, Michael Mazell,
Pierceton Mazell, and Faith Mazell, Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF THE ISSUES ON APPEAL

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III. Was the Circuit Court's affirmance of the Magistrate's Decision to enter a restraining order against the appellant affected by an error of law or fact?

COUNTER-STATEMENT OF THE CASE

The Statement of the Case provided by appellant William McFarland ("McFarland" or appellant) fails to include a number of critical points. As factual matters, it should be noted the October 22, 2012 Restraining Order, as well as, the February 22, 2013 Amended[1] Restraining Order issued by Magistrate Tera S. Richardson provided that the terms of said orders "were effective to April 12, 2013." (R. 3, 8). This date is critical because by the time that the Circuit Court heard McFarland's appeal, the restraining order at issue had already expired[2]. *Id.* Second, it should be noted that that sometime after the expiration of the restraining order in April of 2013, respondents sold their home next to appellant and moved out of the Live Oak Village subdivision. (R. 69).

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[1] The February 22, 2013 Amended Mutual Restraining Order corrected a typographical error in the original October 22, 2012 Restraining Order directed to Michael and Sofia Mazell which inaccurately listed their address as "105 Oak Village Lane" instead of 107 Oak Village Lane. (R. 9).

[2] Respondents briefed the issue of mootness in their Brief to the Circuit Court and raised said issue during oral argument. (R. 67-69). Appellant was given to 5:00 p.m. of the following day to respond to the issue of mootness but did not serve further briefing. (R. 235-36). The Decision of the Circuit Court to affirm the Magistrate did not address the issue of mootness of the restraining order at issue. (R. 15).

Accordingly, it is a mischaracterization for appellant to identify the parties as "neighbors," when they are presently only former neighbors.

Secondly, as procedural matters, it should be noted that the Magistrate's Return identified a number of instances, in addition to others, showing a history of altercations between the parties. (R 13-14.). The Magistrate further noted that although no arrests were ever made, the police had to be called "on several occasions" to interface between the parties. (R. 13). Additionally, the Magistrate noted that respondents testified to being harassed by McFarland, who had also trespassed on the Mazell property, leading to a further verbal altercation. *Id.* The Magistrate further noted that these altercations were witnessed by other neighbors and one of the responding officers. (R. 14).

After issuance of the restraining order, McFarland filed a Motion for Reconsideration, which was heard on February 1, 2013 and denied by the Magistrate's written order dated March 8, 2013. (R. 41-53, 12). McFarland appealed this decision to the Circuit Court, where said appeal was heard by Circuit Judge Harrington on November 25, 2013. (R. 217-37). In her June 11, 2013 Return to Circuit Court, the Magistrate stated her rationale for entering mutual restraining order as follows: "I ordered a mutual restraining order between both parties because at the time, given the surrounding circumstances, I felt it was best for everyone not to have any contact. The restraining order expired on April 12, 2013." (R. 14). In upholding Magistrate Richardson's original decision, Circuit Judge Harrington's November 25, 2013 Order expressly noted that upon "carefully reviewing the file and finding no error, this Court hereby AFFIRMS The Honorable Tera Richardson's Order." (R. 15).

COUNTER-STATEMENT OF FACTS

In January 2005, respondents Michael and Sofia Mazell, with their young children Pierceton and Faith ("Mazell" or respondents), moved to 107 Oak Village Lane, Summerville, South Carolina, amongst a subdivision of just seven (7) residences. (R. 94). Their adjacent, next door property owner was appellant McFarland, who resides at 105 Oak Village Lane. *Id.* By 2007, a series of confrontations and events began between McFarland and Mazell which culminated on September 25, 2012, when Mazell filed for a temporary restraining order in the Dorchester County Magistrate's Court against McFarland. (R. 96).

The form Complaint and Motion for a restraining order provided by the Magistrate Court to *pro se* filers provided space for the plaintiff to list three instances of alleged harassment, and respondents identified three instances in their handwritten Complaint. (R. 17-18. At the October 12, 2012 hearing, Mazell presented testimony from six witnesses,[3] detailing a pattern of multiple instances[4] of McFarland's harassment of the respondents since 2007. These incidents included the following events:

1. An incident occurring on September 11, 2012, whereby McFarland approached Sofia Mazell and her young children, photographed them and yelled

[3] The Index to the October 12, 2012 Hearing Transcript fails to identify Robert McDonald as one of the appellants' witnesses. (R. 158).

[4] During the October 12, 2012 hearing on Mazell's application for a restraining order, appellant's counsel made no objection that testimony of other instances and events of alleged harassment beyond the three alleged events listed on the Complaint and Motion form were received into evidence by the Magistrate. (R. 88-216).

directed that they should accompany him – all in violation of previous direction that McFarland not have contact with or speak to Sofia Mazell (R. 95-96, 112-113);

2. A September 20, 2012 "Worthless Check Arrest and Criminal Prosecution" initiated by McFarland against Sofia Mazell which the First Circuit Solicitor's Office later dismissed unfounded and which, upon discovery, was later repudiated by the other two members of HOA Board of Directors on whose authority McFarland purported to act (R. 13-134, 143, 154-56);

3. Verbal attacks upon Mazell by McFarland because Mazell reported a second hit and run motor vehicle accident to Mazell's vehicle by a neighbor who a personal friend of McFarland, leading McFarland to be placed upon "No Trespass Notice" with respect to Mazell (R. 121, 125);

4. Multiple incidents of physical trespasses by McFarland on the Mazell property in violation of previous "No Trespass Notice," including McFarland's digging of holes and dumping of yard waste on the Mazell property (R. 129-30, 158);

5. McFarland's calling the police and threatening the arrest of Michael Mazell in front of his young son because Mazell had to temporally leave a trailered boat parked outside the Mazell residence in response to discovery that Mazell's daughter had been taken to hospital (R. 122-24);

6. McFarland's surreptitious filming of the Mazell family from behind a tree while the Mazell family was in their own back yard (R. 134);

7. McFarland's repeated uses of a leaf blower between 6:00 a.m. and 7:00 a.m. on weekend mornings every time that the Mazell children had an outdoor camping sleepover in their adjacent back yard (R. 134-35);

8. McFarland's intentional spraying of water from a garden hose at the Mazell Shih-tzu dog through a fence separating the properties (R. 119);

9. McFarland's refusal to honor repeated requests from Michael Mazell that appellant have no contract or words with either his wife or children (R. 97, 101, 119-122, 135, 156-57); and

10. McFarland's expression of loud exaggerated, false laughter whenever Sofia Mazell went into yard to garden and placing signage with the word "LAUGH" in such a manner that the only person capable of viewing said sign was Mazell (R. 98, 122, 146).

At the October 12, 2012 hearing, McFarland moved to dismiss the Complaint at the close of Mazell's case in chief, arguing that there was "insufficient evidence ... to meet the burden" for a restraining order. (R. 163). Upon the denial of that motion, McFarland's counsel called four witnesses: wife Jennifer McFarland, neighbor Carlton Holcombe, a police officer and code compliance officer for the Town of Summerville. (R. 164-205). Most significantly, appellant William McFarland was not called and did not testify on his own behalf or otherwise at the October 12, 2012 hearing. *Id.*

STANDARD OF REVIEW

In an appeal of a Circuit Court decision which reviewed a Magistrate's decision, Section 18-7-170 of the South Carolina Code of Laws governs the standard of review. *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001). Section 18-7-170 provides:

> "Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not

affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

Id. This Court has noted that Section 18-7-170 affords the "Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses." *Rogers v. State of South Carolina*, 358 S.C. 266, 269, n.1, 594 S.E.2d 278, 279, n.1 (Ct. App. 2004).

On a subsequent appeal of a circuit court's appellate decision from a magistrate's judgment, the Court of Appeals "will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to a sustain the judgment and there are no facts that show the affirmance was influenced by an error or law." *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984). However, the Court of Appeals "will not grant that presumption where ... it clearly appears that the Circuit Court applied an erroneous standard of review and failed to accord the contested facts the scrutiny which Section 18-7-170 contemplates." *Id.*

ARGUMENT

I. The Restraining Order at Bar has Expired; Therefore, Appellant's Appeal is Moot and should be Dismissed.

In this case, the express terms of the Magistrate's Amended Restraining Order dated February 22, 2013 against appellant provided: "The terms of this Order shall remain in effect until April 12, 2013." *Id, see* Return, p. 2 ("This restraining order expired on April 12, 2013") (R. 14). As a general rule of South Carolina jurisprudence,

an appellate court "only considers cases presenting a justiciable controversy." *Sloan v. Friends of the Hunley*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute which is contingent, hypothetical or abstract." *Id.*

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event rendered any grant or effectual relief impossible for the reviewing court. If there is no actual controversy, this Court will not decide moot or academic questions." *Seabrook v. Knox*, 369 S.C. 191, 631 S.E.2d 907, 910 (2006), *see also*, *Collins Music Co. v. IGT*, 365 S.C. 544, 549, 619 S.E.3d 1, 3 (Ct. App. 2006) (A matter becomes moot when some event occurs making it impossible to grant effectual relief); *Curtis v. State of South Carolina*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001)("Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable."). Indeed, with respect to injunctions such as found in the restraining order applicable in this appeal, "the rule that an appellate court limits its review to the issues necessary to a proper disposition of the appeal and will not consider immaterial or moot questions, **applies when reviewing decrees and orders relating to injunctions**." *Id*, 549 S.E.2d at 597 (Emphasis supplied).

Applying these well established principals to the case at bar, it is clear that the expiration of the restraining order after April 12, 2013 rendered the appellant's objections to the merits of said restraining order moot. This Court cannot go back and vacate, modify or uphold a restraining order, which by its own terms, expired over a

year ago and no longer has any effect. The fact that the restraining order was still in effect when appellant first appealed to the Circuit Court is immaterial and does not alter the fact no restraining order is presently in existence nor was it in existence when appellant's appeal was heard by Circuit Court. Since there is no justiciable controversy presently between the parties over said restraining order, Mazell respectfully submits that this appeal is moot and should be dismissed.

Respondents recognize that South Carolina law acknowledges three exceptions to the mootness doctrine. First, if the issue raised is capable of repetition but evading review, an appellate court may take jurisdiction over an issue otherwise moot. *Curtis v. State*, 345 S.C. at 596. Second, "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* Third, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the court cannot give effective relief in the present case." *Id.*

Considering these exceptions to the issues in the present appeal, it cannot be denied that the matters existing between Mazell and McFarland as of October of 2012 were only particular, material and relevant to those specific individual persons. Consequently, such issues and matters are not capable of repetition such that this Court properly ought to establish a rule of law applicable to either Mazell or McFarland in particular or to other persons in general. This is especially true in consideration that Mazell and McFarland are no longer neighbors and do not reside in the same subdivision. It is doubly true in consideration that the grounds for a restraining order

between two individuals always depend upon the particular facts and circumstances of existing between such persons. When such persons come before a Magistrate, it is important that the Magistrate have discretion to weigh the testimony and circumstances of the particular case situation before the Magistrate. A Magistrate's discretion should be given sufficient latitude so that appropriate relief can be fashioned to avoid further not only harassment but also more serious consequences which might occur in the absence of a restraining order. Therefore, there is no justification to issue a rule of law to govern future applications for restraining orders based upon the particular facts and circumstances which existed between Mazell and McFarland leading to October 2012.

Second, there is no "important public interest" presented in review of the restraining order that issued against McFarland. First and again, the disputes between Mazell and McFarland were particular and important to them only. There is no evidence in the record, much less contention from appellant, that the prior restraining order against McFarland has any prospective or current effect. In short, disputes between person – to the extent that one seeks a restraining order – should be decided on their individual, particular merits and not by reference to what was or was not justified to address what had and was transpiring between Mazell and McFarland.

Last, there are no "future events" or "collateral issues" to McFarland from the expired restraining order that justifies further review. In attempt to create grounds for this exception, McFarland's counsel argues that McFarland, as a businessman, is "frequently checked out" by potential customers. (Respondent's Brief, p.11). As a preliminary matter, McFarland declined opportunity to testify at the October 12, 2012 hearing, and no such testimony or evidence was received to establish an evidentiary

basis for counsel's assertion that McFarland was, is or will be affected by the previous restraining order when "checked out" by potential customers. Therefore, appellant's argument about the potential adverse effects to McFarland's reputation with potential customers is being raised for the first time on appeal after the conclusion of the October 12, 2012 hearing and should not be considered or credited at all in this appeal.

Nonetheless, McFarland cannot be heard to claim that the existence of public records, indicating that he once was a defendant in an action for a restraining order or even the subject of a restraining order, thereby creates "collateral consequences" that meet or equal the degree necessary to justify an appellate court ruling upon an otherwise moot order. If the existence of a public record or any inferences that could be drawn from a public record of someone having been a party to a civil action was sufficient to constitute "collateral consequences," the mootness doctrine would be entirely swallowed by the exception because, absent an order sealing a case, there will always be a public record of the names of parties to a lawsuit and events to said lawsuit, and, in such case, no order would ever be moot if any party can claim future prejudice from association to previous lawsuit and the public records noted therein.

Accordingly, Mazell respectfully submits that none of the three exceptions to the mootness doctrine applies to the issues on this appeal and that the expiration of the Amended Restraining Order on and after April 12, 2013 has rendered moot the issues raised on this appeal, which may be properly dismissed.

II. The Evidence Submitted at the Evidentiary Hearing Met the Statutory Requirements of Harassment in the First or Second Degrees.

In his previous Motion for Reconsideration and appeal to the Circuit Court, McFarland argued that evidence received during the October 12, 2012 hearing was insufficient to justify the statutory requirements under S.C. Code. Ann. § 16-3-1750 for issuance of a restraining order against a person engaged in harassment in either the first or second degree (S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B), respectively). However, upon examination of the facts presented to the Magistrate and Circuit Court, it is clear that the Magistrate was justified entering a restraining order against McFarland upon a finding of his harassment of Mazell.

To constitute harassment, it is a predicate for a person to have engaged in "a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause the person in his position to suffer mental or emotional distress" for either first or second degree harassment. S.C. Code Ann. §§ 16-3-1700(A) and 16-3-1700(B). Relevant to this case, first degree harassment is committed when the above intentional, substantial and unreasonable intrusion into another's life, which serves no legitimate purpose and causes reasonable mental or emotional distress, occurs after "visual or physical conduct is "initiated, maintained or repeated **after a person has been provided oral or written notice that the contact is unwarranted or after the victim has filed an incident report with a law enforcement agency**.". S.C. Code Ann. § 16-3-1700(A)(2) (Emphasis added).

At the October 12, 2012 hearing, Mazell demonstrated that prior to the events set forth in the Complaint, McFarland had been received oral notice from the

Summerville Police Department not to speak to Mazell. (R. 121, 124). Michael Mazell also testified that he repeatedly told McFarland, "Bill, do not speak to my wife. Do not speak to my children." (R. 124, 121). It was further established that McFarland had been given a March 9. 2009 Notice of Trespass by the Summerville Police Department, directing him not to enter the Mazell property. (R. 30).

At the October 12, 2012 hearing, it was also demonstrated that despite oral and written no contact orders from the Summerville Police Department and repeated entreaties from Michael Mazell, McFarland continued to defy these warnings by having intentional contact with Sofia Mazell and her children designed to frighten and upset Mrs. Mazell and her young children. (R. 101). Reference is made to the September 11, 2012 incident in which McFarland approached Sofia and Faith Mazell from an adjacent property, began photographing them, further approached them when they began walking away from him, yelling "Come on, come on," as they tried to get away from him. (R. 95-96, 112-13). A neutral witness, Heather Capps, testified that this unjustified contact made both Mrs. Mazell and her daughter noticeably emotionally distraught. (R. 114-16). Mrs. Mazell also testified that she has sought counseling due to stress resulting from her interactions with McFarland and his treatment of her. (R. 101-02).

On July 11, 2012, Mazell called the Summerville Police Department after McFarland followed Sofia Mazell along the property line, questioning her about what was wrong several times as she attempted to leave McFarland's presence. (R. 169-70). This resulted in another Summerville Police Complaint being initiated by Mazell against McFarland. (R. 170). Further testimony established that McFarland regularly dumped

his yard waste on the Mazell property and regularly trespassed onto Mazell's property, digging holes and walking the Mazell property with others when Mazell was not at home. (R. 129-30, 158).

There was additional evidence that McFarland repeatedly expressed loud fake laughter from his back porch when he saw Sofia Mazell in her backyard. McFarland also admitted to having a sign with the word, "Laugh," turned toward the Mazell property and placed at the Mazell/McFarland property line, so that only Mazell would be able to read the writing on said sign[5]. (R. 98, 146). Further, there was evidence that McFarland has gone so far as to spray water with a garden hose over the fence dividing the property at the Mazell dog minding its own business in the Mazell backyard. (R. 119). Finally, there is the incident where McFarland caused baseless criminal charges to be initiated against Sofia Mazell for stopping payment on a check for Mazell's HOA dues that McFarland had refused to cash or acknowledge receiving. (R. 13-134, 143, 154-56). These charges[6] were dismissed by the First Judicial Circuit Solicitor with deep apologies for having taken misinformation from McFarland at its face value. (R. 133).

As set forth above, second degree harassment is found from "intentional, substantial and unreasonable intrusion" into another's life, which "serves no legitimate purpose" and "causes and would cause a reasonable person to suffer mental or emotional distress." S.C. Code Ann. § 16-3-1700(B). Second degree harassment

[5] On cross-examination, Jennifer McFarland admitted that Mazell were the only people who could read the "LAUGH" signed but claimed that the wind must have turned the sign toward them. (R. 190).

[6] The utter lack of justification for the filing of a criminal complaint against Sofia Mazell by McFarland was cited by HOA Board of Director David Hannemann as cause for himself and the other BOD director to remove McFarland from his position on the BOD. (R. 143-45).

includes any "verbal, written, or electronic contact that is initiated, maintain or repeated." *Id.* The misconduct of McFarland directed against Mazell that was proven at the October 12, 2012 hearing meets the statutory requirements of both first and second degree harassment under South Carolina law. Pursuant to S.C. Code Ann. § 16-3-1750(A), a Magistrate Court has jurisdiction to restrain an individual who has engaged in first or second degree harassment.

In sum, the testimony and evidence heard by the Magistrate showed that there had been a pattern of "intentional, substantial and unreasonable intrusion" into the Mazell's lives by McFarland, which "serves no legitimate purpose" and "causes and would cause a reasonable person to suffer mental or emotional distress." S.C. Code Ann. § 16-3-1700(B). The Magistrate relied upon this finding to conclude that "at the time, given the surrounding circumstances, ... it was best for everyone not to have any contact." (R. 14). There was ample evidentiary support for the Magistrate's finding. Indeed, even appellant's wife, Jennifer McFarland, acknowledged on direct examination by husband's counsel that there was a history of "animosity" between her husband and the Mazells. (R. 189). Further, on cross examination, Mrs. McFarland conceded it "absolutely" was a "good idea" that the parties have no further direct contact with each other. (R. 190). Ironically, now on appeal, McFarland argues that it was wrong for the Magistrate to have issued restraining order notwithstanding his wife's testimony that the animosity between her husband and the Mazells justified neither party having further contact with the other.

As a final point of law, as discussed between counsel and the Magistrate in post-hearing argument, McFarland neither submitted an opposition Affidavit nor

testified at the hearing to rebut the evidence offered against him despite attending the proceedings and receiving a previous continuance to retain counsel. (R. 35, 72-73, 164-215. Under well established South Carolina evidence law, "the general rule in civil cases [is] that when a party 'fails to produce testimony from an available, material witness who is within some degree of control of the party, it may be inferred that the testimony of such witness, if presented, would be adverse to the party who failed to call the witness.'" *Baker v. Port City Steel Erectors, Inc.*, 261 S.C. 469, 475, 200 S.E.2d 681 (1973). While McFarland's unwillingness to testify in rebuttal to the evidence presented at the October 12, 2012 hearing "cannot be treated as independent evidence of a fact otherwise unproven", it "can be considered in determining the credibility or probative force of the evidence presented." *Id* at 476, *citing, Collins v. Merrimack Mutual Fire Ins. Co.,* 210 S.C. 207, 42 S.E.2d 67 (1947) *and* 29 Am. Jur. (2d), Evidence, Sections 187 and 188 ("[T]he inference has the effect only of authorizing the jury to give greater weight to the evidence of the adverse party, or to give less weight to the evidence of the party who had failed to call the witness, than it might otherwise have done.").

III. Appellant Cites No Error of Law or Fact That Affected the Circuit Court's Decision to Uphold the Magistrate's Issuance of a Restraining Order.

McFarland's argument why the amended restraining order was improper is largely based on factual claims, unsupported by the record, which purportedly would justify a different result than that reached by the Circuit Court and Magistrate. For example, McFarland claims he has a "legitimate purpose" as a HOA Board Member in instituting a worthless check prosecution against Sofia Mazell. Respondent's Brief at 7. However, there is not a shred of evidentiary support for McFarland's alleged actual

motivation in referring his neighbor, Sofia Mazell, to the Office of the First Circuit Solicitor for criminal prosecution was concern over his alleged fiduciary duties to the HOA Board of Directors. Quite the opposite was the testimony received from witnesses who actually testified at the October 12, 2012 hearing. David Hannemann, a member of the HOA Board of Directors, testified that McFarland lacked the requisite authorization from the Board to initiate worthless check prosecution, considering that Mazell had timely delivered a check[7] for their HOA dues which McFarland refused to acknowledge or cash in timely manner. (R. 142-45; *see also*, September 30, 2012 Letter to Wm. McFarland from David Hannemann and Thomas Morris, Jr. (R. 242-43).

Appellant's next argument focuses on supposed "legitimate purposes" that McFarland had in approaching and photographing Sofia Mazell and beckoning her to accompany him to a HOA meeting for which no one besides McFarland and one other neighborhood resident[8] was in attendance. What appellant fails to mention is the fact that McFarland was already under multiple directions from the police and Michael Mazell not to have any contact, verbal or physical, with Sofia Mazell. (R. 101, 119, 156). Second, appellant fails to mention that Sofia was in a different of area the parking lot serving a dance academy, not near the library where McFarland was attempting to hold a HOA meeting. (R. 112). Third, appellant fails to mention that Mazell had already written McFarland to advise that Michael Mazell could not attend

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[7] Appellant's Brief cites that Mazell emailed McFarland about his HOA payment after Mazell had stopped payment on said check. Respondent's Brief at 8. Mazell testified he did this because although his check had not cleared at the time, McFarland had sent him a receipt indicating that his dues were paid, and he was trying to alert McFarland to this fact his check had not cleared. (R. 136-37). Instead of acknowledging Mazell or asking him for a new check, McFarland took it upon himself without authority from the Board to file a worthless check prosecution against his next door neighbor.

[8] There are a total of seven (7) individual residences in the Live Oak Village HOA.

that meeting and consequently, neither Michael nor Sofia Mazell would be attending the HOA meeting. (R. 103-04).

A witness to this incident, Heather Capps, testified that McFarland's approaching and photographing of Sofia Mazell and beckoning to her that she follow him caused Sofia Mazell to have direct noticeable emotional distress. (R. 115-16). Sofia Mazell also testified that as a result of the many incidents complained of McFarland she lived in fear of McFarland, who had affected her emotional well being and caused her to seek counseling. (R. 102)

Finally, McFarland argues that one particular trespass he made on the Mazell property on July 11, 2012 was again motivated by a "legitimate reason." Initially, it is a fact that McFarland had been on "No Trespass Notice" not to be on Mazell's property since 2009. (R. 30). Second, it is very clear that he repeatedly failed to honor this Notice. (R. 101). Michael Mazell and Robert McDonald, an employee from the Stormwater Management Department for the Town of Summerville, both testified that McFarland would come onto the Mazell property without permission when Mazell was not present. (R. 128, 158-59). The multiple ongoing trespasses by McFarland also included dumping yard waste onto and digging holes on the Mazell property. (R. 128-30, 158).

Although Appellant's Brief makes no attempt to address this evidence, it argues that a July 11, 2012 trespass incident along the McFarland/Mazell property line had a "legitimate purpose." Appellant's Brief at 9-10. Again, both of the witnesses for appellant who were actually questioned about the July 11, 2012 by his counsel – Police Officer James McClellan and neighbor Carlton – denied they had any personal

knowledge of the events at issue. (R. 170, 172-73, 199-201). More importantly, the testimony of Mike Mazell and Robert McDonald about McFarland's multiple trespasses was uncontroverted. (R. 128-30, 158-59). Accordingly, McFarland' argument to purportedly justify his multiple trespasses upon the Mazell property is not supported by any evidence in record. In fact, the actual evidence amply supports the finding that McFarland was continuing to trespass upon the Mazell property. These continuing trespasses in violation of a "No Trespass Order" certainly justified issuance of a restraining order against McFarland.

In sum, there is absolutely no evidentiary support for appellant to claim that the Circuit Court or the Magistrate misapprehended the full factual circumstances surrounding either (i) the HOA Meeting, (ii) the matter of the worthless check prosecution or (ii) any of the many McFarland trespasses onto Mazell property, including the July 11, 2012 event. There is likewise no basis to claim that the Magistrate or Circuit Court misapprehended of any particular aspect of the many events showing a pattern of harassment by McFarland or that said alleged misapprehension was material to the decision to enter a restraining order against Mazell. *E.g.*, *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984).

Without evidence that the court below failed to accord the facts showing a pattern of harassment of Mazell by McFarland, it cannot be credibly argued that the Magistrate or Circuit committed a material error in determining the facts or made any error of law with respect to issuing a restraining order against the appellant. Accordingly, the Circuit Court's affirmance of Magistrate's issuance of a restraining order is "entitled to the presumption that judgment was made upon the merits where the

testimony is sufficient to sustain the judgment and there are no facts that show the affirmance was influenced by an error or law." *Id.*

Conclusion

For the aforementioned reasons, respondents respectfully submit that this Court should dismiss this appeal as moot or otherwise affirm the decision of the Circuit Court. In the event the judgment of the court below is affirmed, respondents further pray that this Court allow respondents their costs, including an attorney's fee, in accordance with Rule 222 of the SCACR.

Dated: June 6, 2014

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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The Hon. Kristi Lee Harrington, Circuit Court Judge

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William McFarland, Appellant,

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RESPONDENTS' CERTIFICATION OF COMPLIANCE WITH SOUTH CAROLINA APPELLATE COURT RULE 211(b)

I, William B. Jung, Esq., counsel for the respondents, certify that respondent's Final Brief complies with the provisions of S.C. Appellate Court Rule 211(b).

Dated: June 6, 2014

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