

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill, Circuit Judge

Case No.: 2013-CP-23-00994

Jack Edward Earl Parker,Appellant,

v.

The State of South Carolina,Respondent.

BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court below commit an error in granting Respondent's Motion to Dismiss on the grounds that Appellant Parker failed to state facts sufficient to support a cause of action?

COUNTERSTATEMENT OF THE CASE

Appellee commenced this action by filing a Summons and Complaint in the Court of Common Pleas for Greenville County. (R. p. 12-15). Respondent filed a timely Answer to the Appellant's Complaint, setting forth various defenses. (R. p. 16-19). Specifically, Respondent's asserted the affirmative defense that Appellant failed to state a claim upon which relief may be granted and moved to dismiss the case. (R. p. 16-20).

On May 30, 2013, a hearing took place on Respondent's Motion to Dismiss. The Honorable D. Garrison Hill, Circuit Court Judge, issued an Order dated July 15, 2013, granting the Respondent's Motion to Dismiss and dismissing the Appellant's Complaint. (R. p. 1-5).

On or about August 6, 2013, the Appellant filed a Notice of Intent to Appeal Judge Hill's Order dated July 15, 2013.

STATEMENT OF FACTS

In 2001, the Appellant shot and killed Robert Lee Stewart. Appellant was arrested and charged with murder. Appellant was released on bond to await his trial.

In October 2003, Judge Hayes presiding, Appellant Parker was tried for murder. The trial ended in a mistrial. The Appellant was again freed on bond until 2005 when he was retried on the murder charge. In 2005, after the second trial, the Appellant was convicted of murder by a jury and sentenced to life in prison.

On March 14, 2011, the South Carolina Supreme Court ruled that Parker's second prosecution was barred by the double jeopardy clause of the United States Constitution and the South Carolina Constitution. *See State v. Parker*, 391 S.C. 606, 707 S.E.2d 799 (2011). Parker was released from incarceration on April 7, 2011. The decision of the Supreme Court provides a more detailed factual and procedural history of Parker's trials. (R. p. 6-11).

Parker commenced this civil action in February 2013. Parker, by way of his Complaint, alleges that because the 2005 prosecution was precluded by double jeopardy, the resulting incarceration, following his conviction and during the time of his appeal, "was an unconstitutional taking of [Parker's] property rights to which he is entitled to compensation." (R. p. 12-15). Specifically, Parker alleges that he was deprived of liberty, property, employment, family, and privacy in violation of Article I, Sections 3, 12, and 13(A) of the South Carolina Constitution. Parker alleges inverse condemnation. (R. p. 13-14). Parker acknowledges that his claim is not grounded in tort or upon any statute; but rather, it is a constitutional claim for a taking.

ARGUMENT

Standard of Review

A ruling on a Motion to Dismiss for failure to state a claim must be based solely on the allegations as are set forth on the face of the Complaint. It is also appropriate to view the evidence in favor of the plaintiff and to give the plaintiff the benefit of any reasonably deducible inferences. If the allegations of the Complaint do not entitle the plaintiff to relief on any theory of the case, a Motion to Dismiss must be granted. *Brown v. Theos*, 338 S.C. 305, 526 S.E.2d 232 (1999).

Generally, important questions of first impression should not ordinarily be decided on a Motion to Dismiss; it is however, proper to decide even novel issues on a Motion to Dismiss when the dispute is not as to the underlying facts, but rather as to the interpretation of the law. *Madison v. Am. Home Products Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004) (citing *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 551 S.E.2d 263 (2001)). Further, novel questions of law may be decided on a Motion to Dismiss when further development of the record would not aid in resolving the issues. *Id.*

I. THE LOWER COURT CORRECTLY DETERMINED THAT APPELLANT PARKER FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION.

Parker alleges that his incarceration and deprivation of liberty constitute a taking of private property pursuant to South Carolina Constitution Article I, Section 13. The

Respondent contends that the Complaint, even viewed in the light most favorably to Parker, fails to set forth allegations that would amount to a claim under any theory because reversal of a criminal conviction cannot be the basis of any civil claim for a taking.

Article I, Section 3 of the South Carolina Constitution provides that the privileges and immunities of citizens of the State of South Carolina shall not be abridged without due process of law and that no citizen shall be denied equal protection. Article I, Section 10 of the South Carolina State Constitution provides that citizens will be secure in their persons, houses, papers, and effects, and are protected against unreasonable searches and seizures. Section 10 further provides that no warrant shall be issued without probable cause. *Id.* Article I, Section 12 of the South Carolina Constitution provides “no person shall be subject to the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself.” S.C. Const. Art I, Section 12. Article I, Section 13, Subsection (A) provides that private property shall not be taken for private use without consent of the owner, nor for public use without just compensation first made for the property. S.C. Const. Art. I, Section 13. The constitutional provisions discussed above are separate and distinct sections of Article I and secure different rights. To the extent the plaintiff argues he was improperly tried in 2005 in violation of the double jeopardy clause, that fact does not give rise to and/or allow for any claim for compensation or damages.

Article I is titled Declaration of Rights and is composed of twenty-five (25) sections which set forth in detail the rights afforded under the South Carolina

Constitution. Each section sets forth a specific right bestowed. Section 12 and Section 13 are two distinctively separate sections, established independently of one another to serve different purposes and to confer different rights. Appellant should not be permitted to expand, enlarge, and/or commingle the provisions and rights bestowed in Section 12 with those provided in Section 13. To the extent Parker contends his 2005 trial, conviction, and incarceration violated the double jeopardy clause, that fact alone does not give rise to any claim for compensation and/or damages.

Further, Article I, Section 13 provides for just compensation for citizens whose property is taken from them, and decided cases hold that a citizen's liberty is not the type of property contemplated therein. Further, it is also clear from the wording of Article I, Section 13 that there was no taking of the plaintiff's property in this instance for any "private use" or "public use."

The Appellant advances a creative argument, but there does not appear to be any legal authority and/or legal foundation upon which the Complaint can be construed to entitle the Appellant to relief.

The facts in the Missouri case *Shaw v. City of St. Louis*, 664 S.W.2d 572 (Mo. 1983) are analogous to those alleged here. Mr. Shaw claim that his prosecution, conviction, and imprisonment constituted a wrongful taking, use, and appropriation of his liberty and property. The court interpreted Missouri's State Constitution and its taking clause and held that to state a claim for inverse condemnation the plaintiff must show that property was taken for public use and/or damaged without compensation. Further, the court there noted "a claim for inverse condemnation does not exist for the taking of a

person's liberty." *Citing Hurtado v. United States*, 452 F.2d 951 (5th Cir. 1971) vacated 410 U.S. 578, 93 S.Ct. 1157, 35 L.Ed.2d 508 (1973).

The Appellant has failed to set forth any statutory constitutional provision or case law that can be reasonably interpreted to support the claims that he asserts in his Complaint. Furthermore, the Court should be very cautious and exercise the utmost care whenever it is asked to break new ground with respect to an asserted right or liberty interest under the due process clause. *State v. Dykes*, 744 S.E.2d 505, 506, 403 S.C. 499 (2013). The lower court correctly determined that although Appellant's claims may be of novel impression, it appears the Missouri Court of Appeals provided appropriate and sound analysis of the issue. Furthermore, it does not appear there is any need to further develop the record in this case in order for the Court to decide the motion.

II. APPELLANT HAS FAILED TO SET FORTH FACTS SUFFICIENT TO GIVE RISE TO A TAKINGS CLAIM UNDER SECTION 13 OF THE SOUTH CAROLINA CONSTITUTION, AND IS THEREFORE, NOT ENTITLED TO COMPENSATION.

A. INVERSE CONDEMNATION GENERALLY

South Carolina courts recognize a cause of action for inverse condemnation when the government takes private property for public use. *Quality Towing Inc. v. City of Myrtle Beach*, 340 S.C. 29 (2000), 530 S.E.2d 369; *See South Carolina State Hwy. Dep't v. Moody*, 267 S.C. 130, 136, 226 S.E.2d 423, 425 (1976). Appellant's right to recovery in an inverse condemnation case is premised upon the ability to show that he suffered a taking. *Carolina Convenience Stores, Inc. v. City of Spartanburg* (S.C.App. 2012) 398 S.C. 27, 727 S.E.2d 28, rehearing denied, certiorari granted. To state a claim for inverse condemnation, a plaintiff must demonstrate the following elements: (1) affirmative

conduct of a government entity, (2) the conduct effects a taking, and (3) the taking is for a public use. *Carolina Chloride, Inc. v. South Carolina Dept. of Transp.*, 391 S.C. 429 (S.C. 2011), 706 S.E.2d 501.

Appellant appears to allege that the affirmative conduct of a government entity in this case was his incarceration resulting from the jury's guilty verdict in the second trial in 2005. Appellant alleges that the incarceration was a "taking" of his "liberty, property, employment, family and privacy." (R. p. 25-66). Appellant further alleges that said taking was obviously for public use because "[w]hat more of a public use can there be than the State seizing one's person, confining him and requiring his servitude at pennies on the hour." (R. p. 25-66).

B. LIBERTY, PROPERTY, EMPLOYMENT, FAMILY AND PRIVACY ARE NOT "PRIVATE PROPERTY" IN THE CONTEXT OF AN ARTICLE I, SECTION 13(A) TAKINGS CLAIM; THEREFORE, THERE WAS NO "TAKING" WHICH WOULD ENTITLE APPELLANT TO JUST COMPENSATION.

Property, in its constitutional sense, includes personal property. *South Carolina State Highway Dept. v. Smith*, 253 S.C. 639 (S.C. 1970), 172 S.E.2d 827. The doctrine that private property, whether real or personal, may be taken for public use, upon just compensation to the owner, has long been recognized in this State. *Id.* The term "private property" is not clearly defined in the context of the takings clause; however, the legal precedence establishes that the just compensation clause of the South Carolina Constitution has historically been used in order to prevent the taking of one's ownership rights to and/or associated with real property.

In fact, upon information and belief, every case the Appellant cites in support of his argument involves one's ownership rights to and/or associated with real property. For instance, *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005), was brought by a landowner against the city alleging an inverse condemnation claim that the city and county conspired to retain National Historic Landmark (NHL) status of his land by flagging his tax records to prevent a conveyance.

Quality Towing Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000), was brought by a towing service operator who sued the city, in order to challenge the validity of an ordinance imposing certain conditions and maximum rates wrecker service could charge for tows of unauthorized vehicles from private property.

Appellant cites *Horry County v. Ins. Reserve Fund*, 344 S.C. 493 (2001), 544 S.E.2d 637, 150 Oil & Gas Rep. 471, which was a declaratory judgment action brought by the County to determine if the Insurance Reserve Fund had a duty to indemnify the county for sinkhole and flooding damage caused to neighboring properties as result of county's mining operation. *Id.* This is a case concerning the rights associated with real property and land ownership, and is clearly distinguishable and not applicable.

Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 572 S.E.2d 306, 352 S.C. 95 (2002), was an action brought by a towing company against the Department of Public Safety, alleging an inverse condemnation claim after it was removed from the Department's wrecker rotation list. *Id.* The court held that "the inverse condemnation claim must fail because there is nothing to suggest that there was a taking for a public use," and the towing company was not entitled to recover damages. *Id.* at 309.

Appellant goes on to cite *Gray v. South Carolina Dep't of Highways and Public Transp.*, 311 S.C. 144, 427 S.E.2d 899, which is an inverse condemnation action concerning a service station on leased property.

Appellant has not cited any statute, case law, or legal authority to support his creative argument, that Appellant's incarceration was a "taking" pursuant to Article I, Section 13 for which he would be entitled to just compensation.

Upon information and belief, every case upon which Appellant relies, concerns rights associated with real property, and are therefore inapplicable to this case. Appellant has failed to set forth any case law and/or legal authority analogous to the facts presented in this action. Appellant has further failed to set forth facts sufficient to give rise to any cause of action; therefore, the lower court's Order should be affirmed.

**C. IN THE CONTEXT OF SECTION 13(A), APPELLANT'S
"PROPERTY" RIGHTS ARE NOT ABSOLUTE AND MAY BE
LIMITED OR RESTRICTED WHEN THE PUBLIC WELFARE
DEMANDS.**

Pursuant to *Quality Towing Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000), just compensation is required in the case of the exercise of eminent domain but not for the loss by the property owner which results from the constitutional exercise of the police power. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). An individual's privilege to use property freely is always subject to a legitimate exercise of the police power under which new burdens and restrictions may be imposed when the public welfare demands. *Id.* Thus, even if it is assumed for the sake of argument that Appellant's liberty were deemed "private property" in the takings context, Appellant's "property" rights are not absolute and may be limited or restricted when the

public welfare demands, i.e., when one poses a serious danger or threat to the safety of the public. For instance, the court in *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 476 S.E.2d 477 (1996), held that an ordinance precluding citizens from keeping wild animals within 200 feet of other residences within town limits was in the public's best interest and a valid exercise of police power, *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 476 S.E.2d 477 (1996); *See also, Nicchia v. New York*, 254 U.S. 228, 41 S.Ct. 103, 65 L.Ed. 235 (1920); (citing, *Sentell v. New Orleans and Carrollton R.R. Co.*, 166 U.S. 698, 17 S.Ct. 693, 41 L.Ed. 1169 (1897)). The Supreme Court held in *Sentell* that a state in a bona fide exercise of its police power, may interfere with private property, and even order its destruction for the welfare and comfort of its citizens. Property in dogs is of an imperfect or qualified nature and dogs may be subjected to peculiar and drastic police regulation by the state without depriving their owners of any federal right).

If public welfare demands restrictions and/or limitations of property rights to protect citizens from wild animals, one would think that protecting the public by incarcerating one convicted of murder would surely constitute a valid exercise of the state's police power. Therefore, even if Appellant's rights were "taken" they were done so under the exception, and in accordance with the state's police power to limit and regulate as public welfare demands.

III. LEGAL PRECEDENCE STRONGLY FAVORS STRICT INTERPRETATION OF THE TAKINGS CLAUSE, AND THE COURT SHOULD USE EXTREME CAUTION BEFORE EXPANDING AND/OR ENLARGING THE SCOPE OF "PRIVATE PROPERTY."

Appellant states that “[h]ere, the question presented is whether the rights taken fall within the scope of the South Carolina Constitutional takings clause,” which appears to be an issue of first impression in South Carolina. [Appellant’s Informal Brief, page 8.] “As such, it is important to begin the analysis with an understanding of the relationship between the U.S. Constitution and South Carolina’s Constitution. While some protections may be similar between South Carolina’s constitution and the U.S. Constitution, ‘[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution.’” Appellant’s Informal Brief, page 9, citing *State v. Easler* 327 S.C. 121, 131 n 13, 489 S.E.2d 617, 625 n. 13 (1997); see also, *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991). Appellant is obviously suggesting that the Court should change and/or expand existing law.

A. STATE V. EASLER

Appellant cites *State v. Easler*, 327 S.C. 121, 489 S.E.2d 617, (1997), in support of his argument that this Court should expand the takings clause and include liberty, employment, family, and privacy as “private property.” *Easler* involved two questions: 1. Were statements *Easler* made to police taken in violation of *Miranda v. Arizona*? 2. Did *Easler*’s convictions for reckless homicide/felony DUI causing death, and ABHAN/felony DUI causing great bodily injury violate the prohibition against double jeopardy? *State v. Easler*, 327 S.C. 121. Ultimately, the issue in *Easler* was whether Article I, section 12 of the South Carolina Constitution affords *Easler* greater protection than that provided by the Fifth Amendment. *State v. Easler*, 327 S.C. 121, 130-31, 489

S.E.2d 617, 622 (1997). *Easler* had nothing to do with Article I, Section 13 and is irrelevant to this action.

The Court determined that Article I, section 12 of the S.C. Constitution is essentially identical to the Fifth Amendment and, on its face, confers no greater rights than the federal constitution. The Court recognized that state courts “may” afford more expansive rights under state constitutional provisions than those conferred federally; however, the Court in *Easler* declined to do so. In its opinion, the Court explicitly stated “we decline extend broader protection under our state constitution than that afforded under the federal constitution.” *State v. Easler*, 327 S.C. 121 at 132.

The Appellant presents a creative argument; however, it is one completely unsupported by precedent. Respondent respectfully submits that contrary to Appellant’s allegations, the “Court must exercise the utmost care whenever it is asked to break new ground with respect to an asserted right or liberty interest.” *State v. Dykes*, 403 S.C. 499, 505 (2013), 744 S.E.2d 505, 509.

B. EMINENT DOMAIN HISTORICALLY

Furthermore, in the eminent domain context, South Carolina courts have adhered to a strict interpretation of the constitutional provision. *Riley v. Charleston Union Station Co.*, 71 S.C. 457, 51 S.E. 485 (1904); *Bookhart v. Central Electric Power Co-operative, Inc.*, 219 S.C. 414, 65 S.E.2d 781 (1951). For instance, as stated in *Edens et al. v. City of Columbia et al.*, 228 S.C. 563, 571, 91 S.E.2d 280, 283 (1956): “Our controlling decisions are to the effect that ‘public use’ means just that and private property cannot be taken except for public use, without the consent of the owner.” The true meaning of

Article I, Section 13 [Formerly §17 of Article I] is that before the owner of the property to be condemned is finally deprived of his property, proper provision shall have been made for his first being paid therefor. *City of Spartanburg v. Belk's Dept. Store of Clinton*, 199 S.C. 458 (S.C. 1942), 20 S.E.2d 157.

The restrictive view of the power of eminent domain expressed by the framers of our constitution and the courts of this State is indicative of a high regard for private property in the context of ownership rights associated with real property. Accordingly, South Carolina courts have refrained from expanding the rights conferred in Article I, Section 13. Historically, the strict interpretation of this provision strongly disfavors Appellant's contention that Section 13 should be broadened to include liberty, employment, family, and privacy as "private property."

Courts have deliberately refused to expand the scope of the provisions of the South Carolina Constitution. The historical interpretation adopted by the courts is in stark contradiction to Appellant's argument that the provisions of Article I, Sections 10, 12, and 13(A) should be commingled to make up a claim. Rather, the twenty-five (25) sections of Article I were established as twenty-five (25) separate and distinct sections, independent of one another to serve different purposes and to confer different rights. Respondent respectfully submits that this Court should use the utmost caution and decline to manipulate the rights conferred in Sections 10, 12, and 13 of Article I of the South Carolina Constitution to manufacture a claim.

IV. APPELLANT HAS FAILED TO SET FORTH FACTS SUFFICIENT TO GIVE RISE TO A DEPRIVATION OF ANY RIGHTS CONFERRED IN ARTICLE I.

A. RIGHT TO PRIVACY

Appellant alleges that his incarceration deprived him of his constitutional right to privacy. Article I, Section 10 provides: “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated...” S.C. Const. Art. I, Section 10. Appellant cites *Singleton v. State*, 313 S.C. 75 (1993), 437 S.E.2d 53, which was the first time the court based its holding on the right to privacy. The Court in *Singleton* held that the state’s constitutional right of privacy would be violated if the state were to sanction forced medication of defendant who was found incompetent to be executed solely to facilitate execution. *Id.* The Court held that an inmate must be free from unwarranted medical intrusions and can only receive forced medication where an inmate is dangerous to himself or to others, and then only when it is in inmate’s best medical interest. *Id.* It is important to note that the right to privacy would be violated if the State were to sanction forced medication solely to facilitate execution; however, the right to privacy is not necessarily violated when the medication is in the inmate’s best medical interest. *Id.* In other words the Court determined that the right to privacy would be violated if an incompetent inmate was forced to take medication “for the sole purpose of getting him well enough to execute.” Thus, even when the court used the right to privacy, it did so narrowly. *Singleton v. State*, 313 S.C. 75, 90 (1993), 437 S.E.2d 53, 62.

The Court further recognized that “[a]n inmate in South Carolina has a very limited privacy interest when weighed against the State’s penological interest; however,

the inmate must be free from unwarranted medical intrusions. *Id.* at 61. South Carolina recognizes an express right to privacy; however, it does so narrowly.

Privacy interests exist where: 1) a person has exhibited an actual (subjective) expectation of privacy; and 2) that expectation is one that society is prepared to recognize as reasonable. *See, Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d. 576 (1967) (J. Harlin, concurring). Respondent respectfully submits that the Fourth Amendment protects individual rights to privacy, but its protection is not available to all members of society under all circumstances. *See, e.g., Coolidge v. New Hampshire*, 403 U.S. 443, 489 (1969).. For instance, the Fourth Amendment protections against unreasonable searches and seizures, does not apply to pretrial detainees and inmates convicted of a crime. *Bell v. Wolfish*, 441 U.S. 520 (1979).

Appellant was incarcerated after a trial by jury that found him guilty of murder beyond a reasonable doubt. His expectations and right to privacy were limited accordingly; however, any such limitations of his right of privacy were therefore reasonable and the result of his criminal conviction. Furthermore, the narrow holding in Singleton simply does not apply here, since Appellant is not incompetent, scheduled to be executed, nor faced with the possibility of unwarranted medical intrusion.

A. CONSTITUTIONAL INTERPRETATION OF THE RIGHT TO PRIVACY

Furthermore, in support of his argument to expand the scope of the takings provision, Appellant states that “[e]specially important in this analysis is South Carolina’s explicit constitutional right to privacy which the Plaintiff contends was taken during his incarceration. One can contemplate no greater deprivation of privacy than

prison.” (R. p. 21-33). Appellant cites Article I, Section 10 of the South Carolina Constitution which mirrors the Fourth Amendment and provides “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated.” S.C. Const. Art. I, Section 10.

Appellant cites *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007), which again, has nothing to do with Article I, Section 13. Instead, *State v. Weaver* is a Fourth Amendment search and seizure case and the interpretation of the state’s equivalent, Article I, Section 10. *Id.* According to Appellant, the South Carolina Supreme Court in *Weaver*, “held that by articulating a specific prohibition against unreasonable invasions of privacy, the people of South Carolina have indicated a higher level of privacy protection than the federal Constitution.” (R. p. 21-33).

The Court in *Weaver* relied on the explicit language of Section 10 in determining the existence of an express right of privacy; however, there is no such language in Article I, Section 13. *Id.* (R. p. 21-33). Appellant appears to contend that the Court should adopt inconsistent interpretations of the provisions depending on which furthers his creative, unsupported arguments. Contrary to Appellant’s inconsistent interpretations, Respondent respectfully submits that the Court should continue to interpret the provisions of these sections the same way it has consistently, throughout, and in doing so, the Court preserves the specific individual rights and purposes set forth in Article I’s Declaration of Rights.

V. THE FACTS ALLEGED DO NOT GIVE RISE TO A DEPRIVATION OF APPELLANT’S LIBERTY INTERESTS.

A. FAMILY

Appellant alleges that he was deprived of his familial relations as a result of his incarceration. Appellant contends that he was unable to manage children and they were eventually separated and placed into the custody of Florida child welfare officials.

The Supreme Court has firmly established a parent's fundamental right "to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). However, that right is not absolute. "A state has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse. Because of the complicated balance between parents' rights to raise their children and a State's interest in protecting its minor citizens, the right to familial integrity is 'amorphous' in many cases." *Martin v. Saint Mary's Dep't Soc. Servs.*, 346 F.3d 502 (4th Cir. 2003) (internal citations omitted).

Furthermore, the rights of a natural, noncustodial parent against those of the state as custodial caretaker is an interesting, although, unfortunately for Parker, not entirely settled area of the law. Parker points the Court to *Hooper v. Rockwell*, 513 S.E.2d 358, 334 S.C. 281 (S.C. 1999), where the Court held that (1) the mother had to timely appeal any orders of family court regarding custody of her children or treatment plan that she wished to challenge; (2) emergency protective custody statute is constitutional; (3) evidence supported termination of parental rights; and (4) evidence supported finding that adoption by foster parents was in children's best interests. *Id.*

Appellant has failed to set forth facts sufficient to give rise to a constitutional deprivation of his liberty interest in the care and custody of his children. The Hooper case

which Appellant relies clearly recognizes that Courts have uniformly concluded “that, while parents have a constitutionally protected liberty interest in the care and custody of their children, that right is not absolute.” *Id.* Furthermore, Hooper makes no mention of Article I, Section 13 of the South Carolina Constitution nor does it even suggest that such facts give rise to a takings claim.

B. EMPLOYMENT

Appellant has further failed to set forth facts sufficient to give rise to a constitutional claim concerning his employment. Rather, Appellant relies on mere conclusory statements without citing any case law, statute, or legal authority to support his alleged claim.

VI. APPELLANT IS NOT ENTITLED TO THE RELIEF REQUESTED.

Appellant does not allege a state tort claim nor a violation of any federally protected right. Rather, Appellant’s claim is based solely on an alleged unconstitutional taking that did not occur. Accordingly, the damages Appellant requests are not recoverable in this action.

VII. WRONGFUL INCARCERATION

Appellant Parker, by his own admission, “shot and killed Robert Lee Stewart in 2001.” [Appellant’s Informal Brief] Parker was arrested, charged with murder, and released on bond to await trial. Parker’s first trial took place in 2003 and resulted in a mistrial. Parker was again freed on bond until 2005 when he was retried on the murder charge. In 2005, after the second trial, Appellant Parker was convicted of murder by a jury and sentenced to life in prison.

Parker appealed his conviction. The South Carolina Court of Appeals affirmed the plaintiff's conviction in the 2005 trial, which resulted in an appeal to the South Carolina Supreme Court. The South Carolina Supreme Court ruled that because the solicitor in the first trial, in 2003, had goaded the defendant into moving for a mistrial, the prosecution in 2005 was barred under the double jeopardy clauses. Thus, Parker's conviction was ultimately overturned on procedural grounds; however, it is significant to note that Parker, by his own admission murdered a man, and it is undisputed that he was found guilty beyond a reasonable doubt by a jury of his peers.

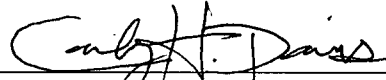
Although the conviction was ultimately overturned, the Appellant's incarceration was reasonable and lawful, and any error by the trial judge in the Appellant's criminal trial does not make his incarceration unlawful or a violation of his rights.

Ultimately, what happened here is that the Appellant's conviction of murder was reversed based on an alleged error of law when the trial judge in his second murder trial did not dismiss the case on the ground of double jeopardy. To accept the Appellant's position would seemingly suggest that any time a trial judge makes an error of law in a procedural ruling then a possible claim could be asserted for an unconstitutional taking. That simply does not make sense. The Appellant's position in this appeal is therefore, neither logical nor is it supported by any applicable law.

CONCLUSION

In view of the arguments made and authorities set forth above, the Respondent, State of South Carolina, respectfully requests that the judgment of the court below be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carly Harter Davis", is written over a horizontal line.

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September 20, 2014
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill, Circuit Judge

Case No.: 2013-CP-23-00994

Jack Edward Earl Parker,Appellant,

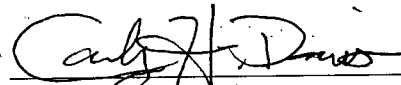
v.

The State of South Carolina,Respondent.

CERTIFICATE OF COUNSEL

The undersigned, Carly Harter Davis, hereby certifies that the Brief of
Respondent complies with Rule 211(b) SCACR.

Respectfully submitted,



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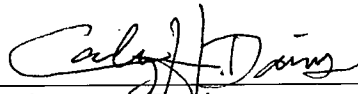
The State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I certify that on September 20, 2014, I served the Final Brief of Respondent on the Appellant by placing copies of the same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below:

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