

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2020-CP-23-01669
Appellate Case No. 2020-001182

Sean Eric Roach Respondent,

v.

Lee C. Yarborough Appellant.

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S
MOTION TO DISMISS APPEAL

Respondent, Sean Eric Roach, by and through his undersigned counsel, hereby submits this Memorandum of Law in Support of Respondent's this Motion to Dismiss Appeal in the above-captioned matter. The grounds for the motion are that the appeal is moot because the underlying Restraining Order from the Magistrate's Court, which was subsequently vacated by the Circuit Court on July 24, 2020, would have expired by its own terms on March 9, 2021, exactly one year after its issuance. Appellant failed to take any action to seek expedited review of this matter or to obtain a stay or supersedeas from the Circuit Court. The exact day that the final briefs in this case are due to be filed, the underlying restraining order would have expired by its own accord; accordingly, this appeal (even if successful) could not have any practical legal effect upon the parties with respect to

the injunction in question.

This is an appeal from the Circuit Court's Order of July 24, 2020, vacating the Magistrate Judge's granting of a Restraining Order on March 9, 2020, in favor of Appellant against Respondent under the Harassment and Stalking Statute, S.C. Code Ann. § 16-3-1700 *et seq.* The Circuit Court held a hearing on this matter virtually via WebEx on July 22, 2020, with the consent of all parties. A true and accurate copy of the Circuit Court's Order is attached hereto as Exhibit A.

Appellant served her Notice of Appeal on August 21, 2020, 28-days after the Order in question. Appellant's counsel did not order the transcript of the appeal hearing of July 22, 2020, until August 27, 2020 (not expedited). Appellant's counsel failed to furnish the undersigned counsel of record with copies of all correspondence from the Court reporter, including the delivery of the completed transcript, as required by Rule 207(a), SCACR.

On November 2, 2020, Appellant's counsel requested a 30-day extension to file Appellant's initial brief and designation of matter to be included in the record on appeal, until Monday, December 7, 2020, which the Court granted by Order of November 10, 2020. Respondent received Appellant's initial brief and designation on December 10, 2020, along with a Certificate of Service indicating that the documents were served by regular mail on December 7, 2020. Pursuant to Rules 208(a), 210, and 211, SCACR, Respondent's initial brief and designation is due on January 6, 2021; Appellant's initial reply brief is due on January 18, 2021; the Record on Appeal is due on February 17, 2021; and the final briefs are due on March 9, 2021, the exact same day that the original restraining order would have expired by its own terms had the Circuit Court not vacated it. A true and accurate copy of the Magistrate Court's Restraining Order of March 9, 2020, expiring on March 9, 2021, one year from its issuance, is attached hereto as Exhibit B.

This appeal is moot because the Court of Appeals cannot possibly change the legal status of the parties with respect to the restraining order post-March 9, 2021, even if the Court were to rule immediately upon receiving the parties' final briefs, without oral argument.

The South Carolina Supreme Court has long recognized that "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing court to grant effectual relief." Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). The Mathis case involved an appeal by the South Carolina State Highway Department from the lower court's order revoking the suspension of the respondent's driver's license and reinstating respondent's driving privileges after his license was suspended the Department for a period of one year almost two years after his initial conviction for driving under the influence of intoxicating liquor. By the time the appeal was heard by the South Carolina Supreme Court in the March 1973 term, respondent already would have been entitled to have his license returned under the original suspension. Accordingly the Court ruled that the issues on appeal had been rendered "moot and academic." Id. at 346, 195 S.E.2d at 714.

In the recent case of South Carolina Coastal Conserv. League v. Dominion Energy S.C., Inc., Op. No. 27994, ___ S.C. ___, ___ S.E.2d ___, 2020 WL 5405398 (Step. 9, 2020), the South Carolina Supreme Court relied on Mathis to hold that an appeal from a Public Service Commission order setting rates for an electric utility to purchase solar and other renewable energy from producers was moot because the rates in question had expired by the time the appeal was heard. Dominion Energy, 2020 WL 5405398, at * 4 ("The rates have expired. If we were to reverse the PSC, our ruling would have no effect on the only remaining appellant. The only effect our decision could have

would be that a non-party to this appeal would earn additional revenue of \$15.”).

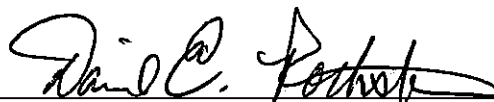
Similarly, in the case of South Carolina Retirement Sys. Inv. Comm’n v. Loftis, 402 S.C. 382, 741 S.E.2d 757 (2013), the South Carolina Supreme Court determined that a request for mandamus requiring respondent to authorize funding with a particular investment fund was rendered moot because at the time of oral argument, the funding of the investment had already occurred. Id. at 384, 741 S.E.2d at 758.

Under the well-established doctrine of mootness, this appeal should likewise be dismissed because nothing the Court of Appeals could do in this case would affect the legal status of the parties with respect to the vacated Restraining Order, which would have nonetheless expired of its own terms before this appeal could even be heard. If Appellant were sincerely interested in preserving the protections of the Restraining Order pending further appeal, she should have petitioned the Circuit Court for a stay of its order or supersedeas or should have requested expedited review of this case or an emergency injunction from an appellate court judge. Instead of acting with urgency and dispatch, Appellant’s counsel delayed filing the appeal and ordering the transcript until towards the end of the deadline and actually requested a 30-day extension to serve and file Appellant’s initial brief an designation three days before the original deadline expired.

For all of the foregoing reasons, Respondent respectfully requests that the Court dismiss Appellant’s appeal as being moot.

* * *

December 10, 2020



David E. Rothstein, SC Bar No. 66295

Rothstein Law Firm, PA

1312 Augusta Street

Greenville, SC 29605

drothstein@rothsteinlawfirm.com

(864) 232-5870

Attorney for Respondent

Exhibit A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	
)	
Sean Eric Roach,)	Case No. 2020-CP-23-01669
)	
Appellant-Defendant,)	
)	
vs.)	ORDER
)	
Lee Yarborough,)	
)	
Respondent-Plaintiff.)	
_____)	

This matter came before the Court upon Appellant Sean Roach's Appeal from a Magistrate's Court Restraining Order and was heard by WebEx on July 22, 2020 with consent of all parties and with a Court Reporter. Participating in the hearing were David Rothstein for Appellant and Wesley Few for Respondent Lee Yarborough.

This appeal arises out of a proceeding in Magistrate's Court which resulted in a Restraining Order issued on March 9, 2020 against Appellant. The Respondent had filed a Rule to Show Cause and the Magistrate held a hearing on December 2, 2019 and issued his first Restraining Order which, on appeal, was remanded back for a new hearing. A second hearing was held on March 9, 2020 resulting in the Restraining Order from which this appeal has been taken. Appellant's Notice of Appeal asserts numerous grounds for vacating the Magistrate's Order: (1) failure to grant Appellant's Motion to Dismiss; (2) failure of Respondent to meet her burden; (3) failure of Magistrate's Order to list specific acts of harassment; (4 & 5) order not supported by the testimony; and (6) improperly issued Order for Federal Firearms Prohibition without proper finding.

On a civil appeal, Circuit Court must “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 part, as to any or all the parties and for errors of law or fact.” S.C. Code §18-7-170. As confirmed by the Court of Appeals, the Circuit Judge, sitting in an appellate capacity has 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. *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp*, 280 S.C. 232 (S.C. App. 1984).

The Court has reviewed all materials filed with the Court, legal briefs and a transcript of the Magistrate's proceedings. The Magistrate filed his return to the Appeal with a 2 page document labeled as "Answer to Civil Appeal." In this Answer, the Magistrate does not summarize any of the testimony or evidence presented nor the basis of his findings. The Magistrate's Answer states that "due to the preponderance of evidence, it is my opinion, that a restraining order was needed to keep all parties from contacting each other." (emphasis added). Furthermore, the Answer states that he issued a "Restraining Order that is to remain in place until March 31, 2020." In reviewing the portions of the transcript cited by the Appellant's attorney, it appears that the parties have a significant dispute over Appellant's termination from employment and certain actions taken by Appellant towards the business, which is being litigated in Federal Court. As reviewed by this Court, the testimony does not support a finding of harassment 1st or 2nd degree or stalking—which is required for the Magistrate to issue this Restraining Order. The Magistrate indicated that the basis for the Restraining Order was "harassment" (Item #7); however, the Order does not designate 1st Degree or 2nd Degree harassment. The testimony from

the Respondent primarily dealt with some postcards which were sent to 3rd parties and targeted the business where Appellant previously worked and did not appear to target the Respondent (although one of the postcards did identify Respondent). On cross examination by Appellant's counsel at the hearing, Respondent specifically denied that Appellant had engaged in any of the acts outlined in the statute. (The Court realizes that the statutory language was not intended to be all inclusive). In addition, the Restraining Order applied to other individuals who were not parties to this action. The Court is also concerned with certain documents which were contained in the Magistrate's file and filed with the return. The documents in question are: (1) what appears to be a 4 page report from a private investigator; and, (2) a 1 page document which appears to be a note to the private investigator from the Respondent. These documents are filled with hearsay statements and assert serious allegations against the Appellant. Even though this was in the Magistrate's file and possibly considered by the Magistrate, their existence was not revealed to Appellant nor his counsel until these documents were filed with the Clerk of Court in connection with this appeal. The inability of the Appellant to review the matter and have his attorney cross examine its author is highly prejudicial to Appellant. Furthermore, this Court finds that several items attached to the Complaint were not properly before the Court. Also of concern is the fact that the initial Restraining Order appears to have been issued *ex parte* after the Magistrate had given Appellant two weeks to retain a lawyer. Although the statutory scheme for Restraining Orders allows for an *ex parte* proceeding, this would not be proper after the Appellant had appeared and given a 2 week extension. That initial Order went up on appeal and was remanded back for a new hearing. Even though the standard is preponderance of evidence in this matter, it almost seems as though Appellant had a presumption against him from the start and a very difficult burden to overcome. The parties are involved in litigation in Federal Court

and the Magistrate's Court should not be used to gain some unfair advantage. Based on the testimony and evidence, this Court finds that the Respondent failed to meet her burden in establishing harassment or stalking and, therefore, vacates the Restraining Order dated March 9, 2020. Further, the Court grants Appellant's request to have the records destroyed as provided by S.C. Code §16-3-1760 (E) 30 days after receipt of this Order.

Since the Restraining Order is being vacated on the grounds set forth above, the Court did not find it necessary to address the other issues raised on appeal.

It is so Ordered.

Signature of Judge Perry H. Gravely to follow.



Greenville Common Pleas

Case Caption: Sean Eric Roach VS Lee Yarborough

Case Number: 2020CP2301669

Type: Order/Vacate Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-07-23 15:06:52 page 5 of 5

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE MAGISTRATE COURT

Lee Yarborough

PLAINTIFF(S)

RESTRAINING ORDER

Vs

2019OR2310100014
CIVIL CASE NUMBER

Sean Eric Roach

DEFENDANT(S)

DEFENDANT IDENTIFIERS				
SEX *	RACE *	DOB*	STATE	WEIGHT
M	W	7/10/1971	South Carolina a	180
EYES	HAIR	HEIGHT		
Blue	Gray/Dark Mixed	6'2"		

And/or on behalf of minor family member(s) or other protected persons: (List name)

Minor Children

Hubert Yarborough, Victim's Husband

Braxton Cutchin, Victim's Father

Relationship to Plaintiff:

Former Employee

Defendant's Address

CAUTION:

*Indicates required information for entry into NCIC

Weapon Involved

Weapon Present on Defendant's Property

Access to weapons

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, Defendant has been provided with reasonable notice and opportunity to be heard. Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

That the above named Defendant be restrained from committing further acts of abuse or threats of abuse.

That the above named Defendant be restrained from any contact with the Protected Person as set forth on the attached pages.

The terms of this order shall be effective until

March 9

2021

WARNINGS TO DEFENDANT:

This order shall be enforced in any county of South Carolina and by the courts of any state, District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

State and federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922).

Only the Court can change this order.

For Additional Information Call:

864-271-5210
Sheriff Phone Number

864-467-4645
Clerk of Court Phone Number

After the filing of a complaint and motion for a Restraining Order on March 9, 2020 the Court held a hearing on at 10:00 AM. After hearing the evidence, and examining the affidavits and verified pleadings, the Court has determined that the plaintiff has/ has not proved by a preponderance of evidence the need for issuance of a Restraining Order.

The Court makes the following findings of fact: (Check all that apply)

- 1. The Plaintiff lives in Greenville County, SC.
- 2. The Defendant lives at 34 Douglas Ave which is in Greenville County, SC.
- 3. The Defendant is employed at _____ which is located at _____.
- 4. The Defendant :
 - is a current or former spouse of the victim
 - is a current or former intimate partner of the minor child's parent (minor child is protected person)
 - is a parent of the victim
 - cohabits or previously cohabited with the victim
 - has a child/children in common with the victim
 - is a person similarly situated to a spouse of the victim.
 - other: is a Former Employee of the Victim
- 5. The Defendant is a nonresident of this state or cannot be found.
- 6. The Harassment or Stalking, as described herein, occurred in Greenville County, South Carolina.
- 7. The Defendant has committed the following acts which constitute Harassment in the 1st or 2nd degree or Stalking: Harassment

IT IS THEREFORE ORDERED THAT (Check all that apply):

- A. The Defendant is restrained, prohibited and forbidden from abusing, threatening to abuse, or molesting the Plaintiff or members of Plaintiff's family, to include: Minor Children, Hubert Yarborough, Victim's Husband, Braxton Cutchin, Victim's Father
- B. The Defendant is restrained, prohibited and forbidden from entering or attempting to enter the Plaintiff's place of residence, employment, education, or the following locations: Business and Home,
- C. The Defendant is restrained, prohibited and forbidden from communicating or attempting to communicate with the Plaintiff in any way, to include: ANY AND ALL
- D. Federal Firearms Prohibition, pursuant to 18 U.S.C. § 922
 - 1. Does the Order protect an intimate partner, a child of an intimate partner or a child of the defendant? YES NO
 - 2. Did the person restrained have actual notice and an opportunity to participate in the hearing? YES NO
 - 3. Does the Order find the restrained person a credible threat or explicitly prohibit the use, attempted use, or threatened use of physical force? YES NO
- E. A copy of this Order shall be served on the following law enforcement agencies:
Greenville County Sheriff's Office

The terms of this Order remain in effect until , , (a period of at least one year) and may be extended by this Court for good cause shown. If the defendant has been or is during the duration of this Order charged with the crime of Harassment in the 1st or 2nd degree or Stalking, the terms of this Order remain in effect until the conclusion of the defendant's trial.

AND IT IS SO ORDERED.

Entered at 2:30 a.m. / p.m. on March 9, 2020


MAGISTRATE

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL, A FINE OF FIVE HUNDRED DOLLARS, OR BOTH, AND IS IN ADDITION TO OTHER CRIMINAL PENALTIES WHICH MAY RESULT FROM SUCH ACTION.

PURSUANT TO SECTION 16-25-125 OF THE SOUTH CAROLINA CODE OF LAWS, IT IS UNLAWFUL FOR A PERSON WHO HAS BEEN CHARGED WITH OR CONVICTED OF CRIMINAL DOMESTIC VIOLENCE OR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, WHO IS SUBJECT TO AN ORDER OF PROTECTION, OR WHO IS SUBJECT TO A RESTRAINING ORDER, TO ENTER OR REMAIN UPON THE GROUNDS OR STRUCTURE OF A DOMESTIC VIOLENCE SHELTER IN WHICH THE PERSON'S HOUSEHOLD MEMBER RESIDES OR THE DOMESTIC VIOLENCE SHELTER'S ADMINISTRATIVE OFFICES. A PERSON WHO VIOLATES THIS PROVISION IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, MUST BE FINED NOT MORE THAN THREE THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN THREE YEARS, OR BOTH. IF THE PERSON IS IN POSSESSION OF A DANGEROUS WEAPON AT THE TIME OF THE VIOLATION, THE PERSON IS GUILTY OF A FELONY AND, UPON CONVICTION, MUST BE FINED NOT MORE THAN FIVE THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN FIVE YEARS, OR BOTH.

TO LAW ENFORCEMENT OFFICERS:

Notwithstanding any other provision of law, the terms of this Order are enforceable throughout this State. S.C. Code Ann. § 16-3-1750(F). Any person who violates a provision of this Order is subject to a fine of \$500 or imprisonment not to exceed thirty days, or both. S.C. Code Ann. § 16-3-1770(C). Law enforcement officers shall arrest a defendant who acts in violation of this Order after service and notice of the Order have been provided. An arrest warrant is not required. S.C. Code Ann. § 16-3-1800.

COPY GIVEN TO PLAINTIFF BY _____ (initials)

COPY GIVEN TO DEFENDANT BY _____ (initials)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2020-CP-23-01669
Appellate Case No. 2020-001182

Sean Eric Roach Respondent,

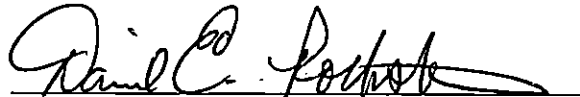
v.

Lee C. Yarborough Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss Appeal and Memorandum of Law in Support of Respondent's Motion to Dismiss Appeal on Appellant, Lee C. Yarborough, by email and by depositing a copy of the same in the United States Mail, postage prepaid, on December 10, 2020, addressed to Appellant's attorney of record, Wesley D. Few, Esq., Wesley D. Few, LLC, P.. Box 9398, Greenville, SC 29604 (wes@wesleyfew.com).

December 10, 2020



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Special Counsel
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December 10, 2020

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SC Court of Appeals

Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Sean Eric Roach v. Lee C. Yarborough,
Appellate Case No. 2020-001182

Dear Ms. Kitchings:

I represent Respondent, Sean Eric Roach, in the above-reference case. Enclosed please find the original and seven copies of Respondent's Motion to Dismiss Appeal, Memorandum of Law in Support of Respondent's Motion to Dismiss Appeal (with attached Exhibit A & B), and Proof of Service. Please file the original and six copies of these documents and return the extra copy, clocked in, to me via the enclosed return envelope.

Enclosed please also find my firm's check for the filing fee in the amount of \$50.00, pursuant to Rule 240(d), SCACR.

Thank you in advance for your attention to this matter. If you have any questions or need anything else, please do not hesitate to call me or email me.



Sincerely yours,

David E. Rothstein

Enclosures

cc: Wesley D. Few (via email and regular mail)

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SC Court of Appeals

P	US POSTAGE & FEES PAID 2 LB PRIORITY MAIL RATE ZONE 2 NO SURCHARGE CONFERENCE	0K250009131589 FROM 29625
		STARTING DATE 12/10/2020
PRIORITY MAIL 2-DAY™		
David E. Rothstein Rothstein Law Firm, PA 1312 Augusta Street Greenville SC 29605		0004
SHIP TO: Hon. Jenny Abbot Kitchings Clerk of Court South Carolina Court of Appeals PO Box 11629 Columbia SC 29211-1629		6012
USPS TRACKING #		
		
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