

THE STATE OF SOUTH CAROLINA

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In The Court of Appeals

SEP 22 2021

[In The Supreme Court]

**SC Court of Appeals**

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APPEAL FROM MARION COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

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Case No. 2013-CP-33-00-144

Appellant Case No. 2018-002061

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Anderson Brothers Bank

Respondent,

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr., South Carolina Department of Revenue and South Carolina Department of Motor Vehicles, Defendants, Of whom Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr.

Appellants,

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**Petition for A Writ of Certiorari**

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## **Certificate of Counsel**

Petitioners certifies pursuant to SCACR 242 (d)(1) that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 23, 2021.

### **Questions Presented**

1. **Did the Court of Appeals err by affirming the circuit court ruling stating Appellants 60(b)(4) Motion was not filed within a reasonable time?**

### **Statement of the Case**

Appellants on June 4, 2018 filed a Motion for Relief from a Void Judgment 60(b)(4) and Challenge of Jurisdiction[R. p. 213- p. 215], Memorandum in Support[R. p. 216- p. 230], Exhibit A [R. p. 231- p. 238], and Exhibit B[R. p. 239-251] in the Court of Common Pleas in Case number 2013-CP-33-306. Appellants on July 24, 2018 filed an Affidavit of Truth in support of their motion.[R. p. 288- p. 294] Respondents failed to file any response in opposition of Appellants Motion for Relief and Challenge of jurisdiction, nor did they file an affidavit rebutting Appellants Affidavit of Truth. On August 20, 2018 a hearing was held before the Honorable Judge Thomas Russo located at the Marion County Court house located in Marion, South Carolina. Present at the hearing was Appellants, and counsel for Respondents. After hearing arguments from the parties Judge Russo stated he was taking the matter under advisement, and would issue an order later in the week. Prior to the issuance of the order on September 24, 2018 Appellants filed in the Marion County Circuit Court a Request for finding of fact and conclusion of law pursuant to South Carolina Rules of Civil Procedure Rule 52(a)[R. 252- p. 270]. On October 1, 2018 Judge Russo entered an order [R. p. 3- p. 7] Denying Appellants Motion for Relief from a Void Judgment 60(b)(4) and Challenge of Jurisdiction. After receiving the order Appellants realized that Judge Russo failed to make a finding of fact

and conclusion of law on all issues presented before the court for determination in this matter. As a result, Appellants properly and timely filed on October 10, 2018 a Motion to Alter and/or Amend the final order pursuant to South Carolina Rules of Civil Procedure Rule 59(e). [R. p. 257- p. 268] Again, Respondents filed no objection or response to Appellants Rule 59(e) Motion. A hearing date was set and on October 18, 2018 a Notice of Hearing [R. p. 295- p.298] went out to all parties informing them that a court date had been set for November 1, 2018. However, on October 25, 2018 without oral argument Judge Russo issued an Order denying Appellants Motion to Alter and/or Amend the Final Order 59(e) [R. p. 1- p. 2]. Pursuant to the issuance of the latter order, Judge Russo failed to make a ruling on all issues presented before the court for determination Appellants filed a timely appeal on November 19, 2018.

The Court of Appeals denied Appellants Petition for Rehearing and Petitioners seek a Writ of Certiorari to review that decision.

### ARGUMENT

The Appellant Court erred by failing to determine whether the Special Referee had proper jurisdiction (subject matter and personam) (Pursuant to S.C.R.C.P Rule 53) to enter a foreclosure and order for sale entered on August 5, 2013, and Writ of Assistance received October 1, 2015. There was more than one jurisdictional issue raised, but the circuit court only ruled on one. (Special Referee Wife's Involvement). The Circuit Court had a duty to rule on all matters pertaining to jurisdictional challenges. Appellants received Respondents initial complaint on May 1, 2013. On June 25, 2013 Appellants filed an objection pursuant to S.C.R.C.P Rule 53(objecting to Special Referee), and demanded a trial by jury pursuant to S.C.R.C.P Rule 38 [See Final Brief pg. 13 & Reply Brief pg.5 & R. pg. 285-287]. "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100 S. Ct.

2502 (1980). "Jurisdiction can be challenged at any time." And "Jurisdiction, once challenged , cannot be assumed and must be decided. "Basso v. Utah Power & Light Co., 495 F 2d 906, 910. "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368 (Fla 2<sup>nd</sup> DCA 1985). The circuit court has a wide range of discretion however, "There is no discretion to ignore that lack of jurisdiction." Joyce v. US, 474 F2d 215. "The burden shift to the court to prove jurisdiction." Rosemond v. Lambert, 469 F2d 416. The Special Referee and Respondents had full knowledge that Appellants objected to the Order of Reference pursuant to S.C.R.C.P Rule 53 and demanded a trial by jury pursuant to S.C.R.C.P Rule 38. There is no amount of time that can grant jurisdiction where none existed, "Thus, where a judicial tribunal has no jurisdiction of subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." Dillon v. Dillon, 187 P 27. "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." Wuest v. Wuest, 127 P2d 934, 937. Pursuant to the above precedent the actions of the Special Referee entering an order where he lacked proper jurisdiction was in excess of jurisdiction, therefore null and void: In light of the facts alleged, supported by evidentiary facts that the reasonable time requirement does not supersede jurisdictional challenges (subject matter & personam) Furthermore, the Respondents have failed to provide any evidence that the Special Referee did have proper jurisdiction over the subject matter or parties. If there are only two ways that the Special Referee can obtain jurisdiction over the subject matter and the parties (by consent of the parties or by order from a sitting judge of the circuit court). If the Appellants didn't consent nor did a sitting judge of the circuit court order the parties to go before the Special

Referee, than it is abundantly clear that the Special Referee did not have jurisdiction pursuant to S.C.R.C.P Rule 53 and this court should reverse and remand this case with instructions consistent with this court ruling.

### **Reasons to Grant Certorari**

1. The Special Referee had to be agreed to by both parties (pursuant to S.C.R.C.P Rule 53) or circuit court judge orders the parties to go before the Special Referee. In the case sub judice the record clearly shows that Appellants timely, and properly objected to the order in reference to go before the Special Referee(Appellants did not consent), and no sitting judge for the 12<sup>th</sup> circuit ordered the parties to go before the Special Referee. Respondents has failed to dispute these facts, nor have they provided any evidence in the record that Appellants did consent to Special Referee, or an order from a sitting judge of the circuit court ordering the parties to go before the Special Referee. Therefore, it is abundantly clear that the Special Referee did not have jurisdiction over the subject matter and parties pursuant to S.C.R.C.P Rule 53, nor should a reasonable time limit supersede a challenge of jurisdiction, and this court should grant Appellants Certorari.
2. Respondents have failed to provide any evidence that Appellants did consent to the Special Referee, nor did they provide a court order from a sitting judge from the circuit court.

### Conclusion

In sum, for the reasons stated above the Challenge of Jurisdiction (pursuant to S.C.R.C.P Rule 53) should have been determined prior to the issue of reasonable time limit. Therefore, this court should grant the petition for a writ of certiorari, Reverse and Remand with instructions consistent with this court findings.

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September 20, 2021

PROOF OF SERVICE  
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Appellants,

We certify that we served the Petition for a Writ of Certiorari in this case by depositing a copy of it on the date shown below in the United States Mail, and by postage prepaid addressed as follows:

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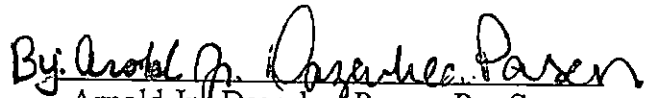
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