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SC Court of Appeals

ELECTRONICALLY FILED - 2021 Oct 21 11:43 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700581

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	C/A No.: 2020-CP-07-00581
Linda Ammons,	)	
	)	
Appellant(s),	)	<b>ORDER IN FAVOR OF THE APPEAL</b>
	)	<b>AND REVERSING THE CONTEMPT</b>
- vs -	)	<b>ORDER OF THE MAGISTRATE'S COURT</b>
	)	
Ormondo Leombruno,	)	Magistrate's Court Case Number:
	)	20180R0710400011
Respondent(s).	)	
_____	)	

A Hearing was held before me on July 9, 2021 at 11:00am via Webex. Present for Appellant was her attorney, W. Trey Merck, and present for Respondent was Tom Mikell. After hearing arguments of counsel and considering the evidence in the case, I make the following Findings of Fact and Conclusions of Law:

A *Complaint and Motion for A Restraining Order* was filed in the Magistrate's Court pursuant to S.C. Code Ann. Section 16-3-1700 by Appellant (originally as Plaintiff), seeking a temporary restraining against Respondent for harassment/stalking. At the hearing, the parties agreed to a *Mutual Restraining Order* which was signed on May 22, 2018 and filed on May 30, 2018. Later, Mr. Leombruno brought a contempt action against Ms. Ammons for violations of the *Mutual Restraining Order*, and the Magistrate's Court found her in contempt.

Orders issued by the Magistrate's Court pursuant to S.C. Code of Laws Ann. Section 16-3-1750 and Section 1780 have a duration of one (1) year. Defendant filed his Rule to Show Cause Petition on October 9, 2019. At the time the hearing took place, the Order had expired, and the Court did not have authority to issue the Contempt Order.

The magistrate's courts do not generally have jurisdiction over permanent restraining orders, with some very narrow exceptions not involved herein. See S.C. Code of Laws Section 16-3-1900 et seq. Only the circuit courts and family courts have such jurisdiction. *Id.*

Mr. Merck raised the issue, for the first time on appeal, that the *Mutual Restraining Order* was null and void after one (1) year, therefore the Magistrate's Court did not have jurisdiction to hold Appellant in contempt for a violation of this Order.

It is true that subject matter jurisdiction may be raised at any time, including for the first time on appeal. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998); *State v. Richburg*, 304 S.C. 162, 403 S.E.2d 315 (1991)..." *State v. Passmore*, 611 S.E.2d 273, 363 S.C. 568 (S.C. 2005). Mr. Merck does have a valid ground for reversal on appeal.

This is not a ruling on any finding of fact of the Magistrate.

**THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

The Order of the Magistrate's Court holding Appellant in contempt is hereby reversed on jurisdictional grounds.

**IT IS SO ORDERED.**

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Marvin H. Dukes, III  
Master-in-Equity for Beaufort County

September \_\_\_\_\_, 2021



Beaufort Common Pleas

**Case Caption:** Linda Ammons VS Ormondo Leombruno

**Case Number:** 2020CP0700581

**Type:** Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2020-CP-07-00581

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LINDA AMMONS,	)	
	)	
Plaintiff/Appellant,	)	NOTICE OF MOTION
	)	AND
Vs.	)	MOTION FOR RECONSIDERATION
	)	AND AMENDMENT
ORMONDO LEOMBRUNO,	)	
	)	
Defendant/Respondent.	)	

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TO THE APPELLANT:  
c/o W. TREY MERCK, ATTORNEY

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PLEASE TAKE NOTICE that the Defendant/Respondent will move the Court at such date, time, and place determined by the Court pursuant to Rule 59(E), SCRCP, for the Court to reconsider and amend the errors of law rendered in the Order of October 21, 2021.

The grounds upon which this Motion is made are these, to wit:

1. The Order does not mention nor rule upon the Motion For Summary Judgment filed by the Defendant/Respondent.
2. The Order does not mention nor rule upon the legal defense of Waiver raised by the Defendant/Respondent.
3. The Order does not mention nor rule upon the legal defense of Laches raised by the Defendant/Respondent.
4. The Order does not mention nor rule upon the legal defense of Acquiescence raised by the Defendant/Respondent.



5. The Order does not mention nor rule upon the failure of the Plaintiff/Appellant to follow the Rules of this Court (Rule 18 SC RMC).
6. The Order does not mention nor rule upon the failure of the Plaintiff/Appellant to comply with the statutes of the legislature (Code Sections 18-7-20 and 18-7-30).
7. The Order does not mention nor rule upon the failure of the Plaintiff/Appellant to follow the four basic requirements to preserve an appeal set forth in the SC Bar Book *Appellant Practice in South Carolina*.
8. The Order does not mention nor rule upon the previous decision of the Supreme Court of South Carolina in the case of State v. Brown 358 SC 382, 596 SE2d 39(SC 2009) which held that Mr. Brown had failed to comply with the procedural requirements for an appeal, thus, the decision of the Magistrate's Court was accepted and the claim by Mr. Brown of the lack of subject matter jurisdiction was disregarded.

Respectfully Submitted

October 27, 2021

J. Thomas Mikell, P.C.



By: /s/ J. Thomas Mikell

S.C. Bar No. 3967  
Attorney for the  
Defendant/Respondent  
P.O. Box 1727  
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843-524-2110  
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Jan 04 2022

Linda Ammons

Ormondo Leombruno

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This came before me November 23<sup>rd</sup>, 2021 on Ormondo Leombruno's Motion for Reconsideration and Amendment; filed October 27<sup>th</sup>, 2021. Attorney Trey Merck appeared for Linda Ammons and attorney Tom Mikell appeared for Ormondo Leombruno. After hearing from parties and review of the file I hereby respectfully deny the motion.

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	3069	
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
Trey Weston Merck

\_\_\_\_\_  
J. Thomas Mikell

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** N/A



Beaufort Common Pleas

**Case Caption:** Linda Ammons VS Ormondo Leombruno

**Case Number:** 2020CP0700581

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So Ordered:

s/Marvin H. Dukes III #3069