

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

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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

Supreme Court No. 2021-001049

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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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**Reply to Return to Petition for Writ of Certiorari**

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**JAN 1 2022**

**S.C. SUPREME COURT**

### **Introduction**

Petitioners hereby submits this reply to the return of the Respondents filed December 29, 2021. Respondents states in their Return to Petitioners Writ of Certiorari that (i) the Parsons have not established any basis for granting their Petition for Certiorari under Rule 242(b), SCACR, (ii) The Court of Appeals correctly held that the Circuit Court did not abuse its discretion in finding that the Rule 60 Motion was not filed within a reasonable time, as required by Rule 60(b), SCRCRCP. Petitioners oppose these arguments.

### **Liberal Construction**

Petitioners brought this action pro se and moves this court to take Mandatory Judicial Notice of Haines v. Kerner 404 U.S. 519 (1972) where it states, “Holding that pro se complaints, “however inartfully pleaded,” are held to less stringent standards than formal pleadings drafted by lawyers”; Plaintiff brought this action pro se, which requires the Court to liberally construe her pleadings as per Estelle v. Gamble, 429 U.S. 97, 106 (1976); “Pro se pleadings are held to a less stringent standard than those drafted by attorneys. See Gordon v. Leeke, 574 F. 2d 1147, 1151 (4<sup>th</sup> Cir. 1978); and a “federal district is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case.” Erickson v. Pardus, 551 U.S. 89, 94 (2007).

### **Argument**

**I. The Parsons have not established any basis for granting their Petition for Certiorari under Rule 242(b), SCACR**

Respondent states in their Return to Petitioners Writ of Certiorari that (i) the Parsons have not established any basis for granting their Petition for Certiorari under Rule 242(b), SCACR. Petitioners oppose this argument. For the circuit court and Court of Appeals to ignore long and well established South Carolina and United States precedence pertaining to jurisdictional issues is clearly a basis for granting Petitioners Petition for Certiorari under 242(b), SCACR. See Rule 242 (b) where it states in part.... “A Writ of Certiorari is not a matter of right, but sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Courts discretion or power to grant review in general, indicate the character of reasons which will be considered...” (3) “Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court”; (4) “Where substantial constitutional issues are directly involved.” Defendant’s failure to deny or rebut Petitioner’s jurisdictional challenge alleging that the Special Referee lacked jurisdiction over the subject matter and the parties to enter an order on August 5, 2013 based on the hearing held on July 29, 2013.<sup>1</sup> In South Carolina, “subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” **Storm M.H. ex rel. McSwain v. Charleston Cty bd. Of trustees**, 400 S.C. 478, 735 S.E. 2d 492(2012) citing \*375 **Ward v. State**, 343 S.C. 14, 538 S.E.2d 245(2000). Petitioners is not challenging whether or not jurisdiction was proper in Marion

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<sup>1</sup> Respondents has had numerous opportunities to deny or rebut lack of jurisdictional allegations including but not limited to defensives raised by Respondents in the Circuit Court, Respondents Initial Brief, and Respondents Final Brief in the Court of Appeals, and Return to Petition for Writ of Certiorari. Yet, as the record shows has failed to do so.

County, but whether or not the Special Referee pursuant to the laws of the state of South Carolina, and South Carolina Rules of Civil Procedure, Rule 53 had proper jurisdiction over the subject matter and the parties. Petitioners timely and properly filed their objection to Rule 53, SCRPC with the clerk of court for Marion County, SC and demanded a trial by jury pursuant to Rule 38, SCRPC. [See R.pg. 285-287]. See **Smith v. Ocean Lakes Family Campground**, 315 S.C. 379, 381, 433 S.E. 2d 909, 910 (Ct. App. 1993) where it states, “Pursuant to Rule 53, SCRPC, a master has no power or authority except that which is granted by the order of reference.”; **76 C.J.S References §76(1952)** (a referee has no powers except those conferred by the order of reference). For the Special Referee to enter an order where he lacked jurisdiction to do so was a violation of Petitioners due process rights, of which is protected by Article 1 Section 3 of South Carolina Constitution, and is mandatory pursuant to article 1 section 23 of South Carolina Constitution.

In light of the above stated, Petitioners have established a basis for granting their Petition for Certiorari under Rule 242(b), SCACR. At the very least Petitioners are entitled to a review to determine whether or not the Special Referee had proper jurisdiction over the subject matter and the parties pursuant to SCRPC Rule 53.

**II. The Court of Appeals correctly held that the Circuit Court did not abuse its discretion in finding that the Rule 60 Motion was not filed within a reasonable time, as required by Rule 60(b), SCRPC.**

Respondents states in their Return to Petitioners Writ of Certiorari that (ii) The Court of Appeals correctly held that the Circuit Court did not abuse its discretion in finding that the Rule 60 Motion was not filed within a reasonable time, as required by Rule 60(b), SCRCPP. Petitioners oppose this argument. The Court of Appeals did err in its finding that the circuit court did not abuse its discretion by denying the rule 60(b) (4) motion because it was not filed within a reasonable time. There is no amount time that can grant jurisdiction where none existed in the first place. The hearing held on July 29, 2013, and ruling entered on August 5, 2013 in favor of Respondents was achieved in direct violation of South Carolina Constitution Article 1 Section 3 Due Process (Procedural), and South Carolina Rules of Civil Procedure Rule 53. Under SCRCPP Rule 53 states in part, "In an action where the parties consent..." "Any party may request a jury pursuant to Rule 38..." South Carolina Rules of Civil Procedure Rule 53 also states, "A circuit court judge may order the parties to go before the master in equity or the special referee." The record clearly shows, and Respondents does not dispute that the Petitioners timely filed an objection to the Order in Reference pursuant to SCRCPP Rule 53, and demanded a trial by jury pursuant to SCRCPP Rule 38 prior to, the foreclosure hearing held on July 29, 2013. [See Objection to Order in Reference R.pg. 285-287]. The record further shows, and Respondents does not dispute that no sitting judge for the 12<sup>th</sup> circuit court ordered the parties to go before the Special Referee. The Circuit Court and the Court of Appeals erred by determining the reasonable time requirement first, when instead they should have determined whether or not the Special Referee had proper jurisdiction over the parties pursuant to SCRCPP Rule 53.

Respondents are misleading the court on when Petitioners first filed their initial 60(b) (4). Respondents attempted to use the order in question on October 1, 2015. Petitioners challenged the jurisdiction to enforce said (void order) on

October 16, 2015. Judge Russo at the hearing on January 21, 2016 dismissed the case for Lack of Subject Matter Jurisdiction because an appeal was still pending. [See Judge Russo Order R. pg. 274-276]. After the appeal ended Petitioners refiled their 60(b) (4) on June 4, 2018. It is startling if not misleading that counsel for Respondents appeared at the January 21, 2016 hearing on behalf of Respondents for the initial 60(b) (4) filed on October 16, 2015. As explained to the Honorable Judge Russo the order was served on October 1, 2015, and the initial 60(b) (4) was filed on fifteen days later on October 16, 2015. The foreclosure was heard in 2013, however Respondents did not serve the Writ of Assistance until October 1, 2015. In McDaniel his motion was filed untimely as to the trial courts discretion and an Appellant court will not disturb the Special Referees determination absent abuse of discretion. The trial court ruling McDaniel's motion was untimely was not an abuse of discretion especially since McDaniel participated in the settlement and received substantial benefits from it.... In the case sub judice no parties have participated in a settlement, nor did Appellants received any benefits from the judgment and order for sale that is subject of this 60(b)(4) which are two facts Special Referee used to make his determination in McDaniel that is not relevant in this appeal. So to rely on the rulings in Perry v Heirs at Law of Gadsden, and McDaniel v. U.S. Fid. & Guar. Co., is improper. Further, in McDaniel, there was no Challenge of Jurisdiction as to whether or not the Special Referee had proper jurisdiction over the subject matter and the parties. Therefore, Perry and McDaniel has no bearing in this matter and should not be used as precedence in this case. When a 60(b) (4)

is based in part, on a challenge of jurisdiction a court has no discretion to ignore the jurisdictional challenge, and abuses its discretion when failing to determine the issue of jurisdiction. See **Joyce v. US**, 474 F2d 215 where it states, the circuit court has a wide range of discretion however, “There is no discretion to ignore that lack of jurisdiction.” See **Rosemond v. Lambert**, 469 F2d 416 where it states “The burden shift to the court to prove jurisdiction.” Turning to South Carolina jurisprudence, we note this court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which proceedings in question belong, **Pierce v. State**, 338 S.C. 139, 526 S.E. 2d 222(2000); and that issues related to subject matter jurisdiction may be raised at any time. **Brown v. State**, 343 S.C. 342, 540 S.E. 2d 846(2001). If the record clearly shows that the Special Referee lacked the proper jurisdiction to enter a ruling on August 5, 2013, then the order is void and no amount of time can validate such an order. “A void judgment is one that, from its inception, is a complete nullity and is without legal effect.” **Universal Benefits**, 349 S.C. at 183, 561 .E. 2d at 661 (quoting **Thomas & Howard Co. v. T.W. Graham & Co.**, 318 S.C. 286, 291, 457 S.E. 2d 340, 343 (1995)).” “The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgements from courts which lacked subject matter jurisdiction or personal jurisdiction.” See **McDaniel v. U.S. Fidelity & Guaranty Co.**, 324 S.C. 639, 644, 478 S.E. 2d 868, 871(Ct. App. 1996); **Gatling v. Beach Palace, Inc.**, 294 S.C.464, 365 S.E. 2d 736(Ct. App. 1988) (“holding that the reasonable time requirement does not apply to 60(b) (4) because a void judgment is a nullity and

thus may be attacked at any time”); Flanagan, South Carolina Civil Procedure 487 (2<sup>nd</sup> ed. 1996). “Rule 60(b) (4), SCRCPP, provides a court may, upon such terms as are just,” relieve a party from void judgment or order.” A void judgment is one that, from its inception, is a complete nullity and is without legal effect.” **Belle Hall Plantation Homeowner’s Ass’n, Inc. v. Murray**, 419 S.C. 605, 617, 799 S.E. 2d 310, 316(Ct. App. 2017). “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. Appellants are laymen and their Rule 60(b)(4) motion should be read in the same light as Rule 60(b)(6) in **Marquette Corp. v. Priester**, 234 F. Supp. 799(D.S.C. 1964) If the proper circumstances are presented, “Rule 60(b)(6) should be given liberal construction “to the end that justice is accomplished,” cited in **Klugh v. United States** 620 F. Supp. 892,900(D.S.C. 1985) and so should Rule 60(b)(4). “Undue delay, however is not a defense here because a fog of complex real property issues concealed from these laymen plaintiffs whether they possessed any interest about which they might complain. The conflicting judicial opinions concerning these preliminary issues..... high light the complexity that handicapped the plaintiffs from demanding Rule 60(b) (6) relief any sooner than they did (See Marquette Corp. at 803). If a judgment is rendered without regard may be set aside for equitable. **Ex Parte Kibler**, 53 S.C. 461, 31 S.E. 2d 274(1898); **Ex Parte Round Tree**, 51 S.C. 405, 29 S.E. 66(1898). This is logical since “[s]uch a person is in capable of

putting his competency in issue in the prior suit.” **Anderson v. Anderson**, 327 S.E. 2d 355, 356 (South Carolina Court of Appeals 1985). Petitioners in their Petition for Certiorari gave the court two reasons to grant Certiorari (i) the Special Referee lacked jurisdiction over the subject matter and the parties, and (ii) Respondents have failed to provide any evidence that Petitioners did consent to the Special Referee, nor did they provide a court order from a sitting judge from the circuit court. Respondents have failed in their Return to prove the Special Referee did have subject matter and personam jurisdiction pursuant to SCRCF Rule 53. “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. If jurisdiction can be challenged at any time. If the record clearly shows that the Special Referee did lack jurisdiction over the subject matter and the parties pursuant to SCRCF Rule 53, then the Circuit Court should have determined whether or not the Special Referee had proper jurisdiction over the parties and subject matter prior to determining the reasonable time because no amount of time can grant jurisdiction where none existed in the first place.

In light of the above stated, Petitioners have established that the Court of Appeals did err in its finding that the Circuit Court did not abuse its discretion by denying the Rule 60(b)(4) motion because it was not filed within a reasonable amount of time. At the very least Petitioners are entitled to a review to determine whether or not the Special Referee had proper jurisdiction over the subject matter and the parties pursuant to SCRCF Rule 53.

Wherefore, Petitioners, pray for an order granting a Writ of Certiorari to review the final decisions of the Court of Appeals in this case.

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