

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS )

EIGHTH JUDICIAL CIRCUIT

Gregory D. Hopkins, and )  
Amy N. Hopkins, )

Civil Action No.: 2021-CP-30-0964

Appellants, )

vs. )

ORDER OF APPEAL  
REVERSING and REMANDING

Jamie Hood-Hopkins, )  
Respondent. )

**RECEIVED**

**Apr 29 2022**

**SC Court of Appeals**

BACKGROUND

This matter came before me on appeal arising out of Laurens Court Summary Court, case numbered 2021-OR-30-10100014. On November 10, 2021 the lower court issued its restraining order prohibiting Amy Hopkins and Gregory Hopkins from "Any and all places the Plaintiff and Minor Child visits frequently." Notice of Appeal was timely filed and the Magistrate's made his Return in a timely manner, as evidenced by this court's file. Appellants Amy Hopkins and Gregory Hopkins were represented by W. F. Partridge, III, Esquire. Respondent Jamie Hood-Hopkins was represented by Shanise A. B. Greenfield, Esquire; and Tamika Cannon, Esquire. All Parties were present at the hearing.

Amy Hopkins and Gregory Hopkins appealed the ruling of the Magistrate and this court reverses the order of the Summary Court and remands for further disposition without impacting or including the minor child.

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### FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The appellants assert that the magistrate's court erred as a matter of law in exercising jurisdiction over a minor's visitation. Appellant's position is that Family Court has the sole and exclusive jurisdiction to determine matters affecting visitation of minor children, arguing the magistrate's court lacked subject matter jurisdiction to issue a restraining order. I agree.

Subject matter jurisdiction refers to a court's power to hear and determine cases of the general class or category to which proceedings in question belong. If a court does not have subject matter jurisdiction, it cannot obtain it. Lack of subject matter jurisdiction cannot be waived, even by consent or stipulation of the parties. Badeaux v. Davis, 522 S.E.2d 835 (Ct. App. 1999); Peterson v. Peterson, 510 S.E.2d 426 (1998); State v. Richburg, 303 S.E.2d 315, 317 (1991); Anderson v. Anderson, 382 S.E.2d 897 (1989); Cox v. Lundsford, S.E.2d 918 (1979); Austelle v. Austelle, 362 S.E.2d 181, 183 (1987).

"Lack of subject matter jurisdiction may be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court," Harden v. South Carolina State Highway Dept., 221 S.E.2d 851, 853 (1976), quoting Lake v. Reeder Const. Co., 498 S.E.2d 650, 653 (Ct. App. 1998).

When a court lacks subject matter jurisdiction, it should dismiss the action under SCRCP Rule 12(h)(3), even if the parties have not requested dismissal. If the action is not dismissed, any action by a court that lacks subject matter jurisdiction is void. Peake v. Peake, 327 S.E.2d 375 (Ct. App. 1985); State v. Funderburke, 191 S.E.2d 520 (1972).

The family court has exclusive jurisdiction to hear and determine actions involving all types of "marital litigation." S.C. Code Ann. §63-3-530(A)(2) (2009) gives the family court exclusive jurisdiction to hear and determine actions concerning marital litigation. In addition to "marital litigation," the family court also has specific legislative authority to hear and determine additional

types of disputes between spouses and former spouses, even if they are presented outside the context of marital litigation. These include disputes involving children (ie: paternity, termination of parental rights, custody, visitation, and support).

The family court's authority to hear and determine cases involving child custody issues is provided in S.C. Ann. §63-3-510(A)(1)(e) (2009). Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action: (1) Concerning any child living or found within the geographical limits of its jurisdiction.

In 2012, the legislature further expanded the authority of the family court in deciding child custody issues: ... (D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

In the present case the Summary Court modified the visitation of the grandparents by denying them visitation in issuing its restraining order ruling that the Appellants cannot be at any place the minor child frequently visits.

In 2014 there was another amendment to S.C. Code Ann. §63-3-530(A)(33) (Supp.) which made it easier for grandparents to obtain visitation. The section now reads:

(A) The family court has exclusive jurisdiction:  
... (33) to order visitation for the grandparent of a minor child.

The Summary Court in issuing its restraining order, improperly modified the visitation of Amy Hopkins and Gregory Hopkins, the grandparents and their grandchild; which is the subject matter jurisdiction of the Family Court and not of the Summary Court.

**THEREFORE, IT IS ORDERED** that the Summary Court is **REVERSED** and the case is **REMANDED** for further disposition without impacting or including the minor child. The Summary

Court may issue an order which restricts conduct between the adult parties. If Respondent wishes to pursue the matter to include restrictions involving the child, she should seek relief in the Family Court. This court is aware and acknowledges that the visitation involving a minor child are intertwined with extended family members, and suggests that the family court is equipped with jurisdiction and authority to hear the interdependent issues and can perhaps simplify the issues.

**IT IS SO ORDERED.**

  
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Eugene C. Griffith, Jr.  
Judge of the Circuit Court  
Eighth Judicial Circuit

Laurens, South Carolina  
April 26<sup>th</sup>, 2022