OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 22

May 31, 2005

Daniel E. Shearouse, Clerk
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner,

v.

Dana Dudley, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 25989
Heard November 4, 2004 – Filed May 31, 2005

AFFIRMED AS MODIFIED

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Charles H. Richardson, and Senior Assistant Attorney General Harold M. Coombs, Jr., all of Columbia; and Druanne Dykes White, of Anderson, for Petitioner.

Assistant Appellate Defender Aileen P. Clare, of Columbia, for Respondent.

JUSTICE PLEICONES: The Court granted certiorari to consider an *en banc* decision of the Court of Appeals holding that extraterritorial jurisdiction is a component of subject matter jurisdiction such that the issue could be raised and considered for the first time on appeal. State v. Dudley, 354 S.C. 514, 581 S.E.2d 171 (Ct. App. 2003). We affirm as modified.

FACTS

Respondent, a resident of the Atlanta area, was a long time friend of Donald Stokes. Stokes and Earl Hale, residents of Roanoke, Virginia, were drug dealers. Stokes called respondent from Virginia and told her he and Hale were coming to Atlanta. Once there, the men contacted respondent and arranged to purchase cocaine from her. Stokes and Hale left Atlanta, driving back to Roanoke with the drugs.

Stokes and Hale were stopped on Interstate 85 in Anderson County, South Carolina. Hale, the driver, consented to a search of the vehicle, which led to the discovery of 249 grams of powder cocaine. Stokes and Hale were arrested. The men then entered "substantial assistance agreements" whereby they agreed to assist law enforcement agencies in Virginia and South Carolina in making drug cases. They identified respondent as the supplier of the 249 grams.

Stokes, monitored by law enforcement officers, made several phone calls to respondent in an attempt to set up the purchase of more cocaine.[1] While respondent agreed to expedite a deal, she declined to meet Stokes and Hale in South Carolina to consummate it. Eventually Stokes, in the company of several law enforcement officers, traveled to the Atlanta area. Once there, Stokes, at the direction of the officers, made excuses why he could not come further into the city as respondent requested. Finally, respondent came to Stokes who was waiting in a suburban Atlanta parking lot. When respondent

[1] The record does not indicate that respondent was aware that these calls originated in South Carolina.

arrived, she was arrested by South Carolina authorities. She had no cocaine in her possession at the time of her arrest.

Respondent was indicted for trafficking cocaine by aiding and abetting Stokes and Hale in bringing the 249 grams of cocaine into South Carolina (trafficking charge). She was indicted for conspiring to traffic cocaine in Anderson County in connection with the second planned sale (conspiracy charge). Respondent was convicted of both trafficking and conspiracy and received concurrent twenty-five year sentences and was ordered to pay two six-thousand-dollar fines.

A panel of the Court of Appeals reversed respondent's conspiracy conviction, and by a vote of two to one, affirmed the trafficking conviction. Judge Connor dissented, and would have vacated both convictions finding South Carolina lacked extraterritorial jurisdiction.

A petition for rehearing *en banc* was granted to consider the validity of the trafficking conviction.[2] The *en banc* majority concluded that the exercise of extraterritorial jurisdiction was a component of subject matter jurisdiction that could be raised for the first time on appeal, and vacated respondent's conviction, finding no evidence she intended a detrimental effect in South Carolina. In dissent, Judge Anderson maintained respondent was raising a personal jurisdiction claim, which she had waived by failing to object at trial. He nevertheless held there was evidence of "intended effects" in South Carolina as to the trafficking charge. Judge Stilwell also dissented, and would have held that extraterritorial jurisdiction was not an element of subject matter jurisdiction, but was either a component of personal jurisdiction or some third type, and that in any case respondent had waived any right to complain by not objecting at trial. He, too, would have affirmed the trafficking conviction.

We granted certiorari to review the *en banc* decision.

[2] The State has not challenged the reversal of the conspiracy conviction.

ISSUE

Is the issue of extraterritorial jurisdiction a component of subject matter jurisdiction?

ANALYSIS

The Court of Appeals *en banc* majority erred in holding that extraterritorial jurisdiction is a component of subject matter jurisdiction. Subject matter jurisdiction refers to the court's power "to hear and determine cases of the general class to which the proceedings belong…." State v. Gentry, Op. No. 25949 (S.C. Sup. Ct. filed March 7, 2005). The circuit court has original jurisdiction in all criminal matters except those where an inferior court is given exclusive jurisdiction. S.C. Const. art. V, § 11 (Supp. 2004). Magistrates and municipal courts have exclusive jurisdiction over all state criminal charges where the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days. S.C. Code Ann. § 22-3-540 (1988); S.C. Code Ann. § 14-25-45 (Supp. 2004). Trafficking in cocaine, the crime at issue here, is punishable by a minimum sentence of three years and a $25,000 fine.[3] It therefore exceeds the inferior courts' exclusive jurisdictional limits. The circuit court has subject matter jurisdiction over the general class of trafficking charges. Gentry, *supra*.

Although territorial jurisdiction is not a component of subject matter jurisdiction, we hold that it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding. Compare, e.g., Gordon v. Commonwealth, 38 Va. App. 818, 568 S.E.2d 452 (Ct. App. 2002) (claim that crime did not occur in state not waived by failure to timely raise it). The exercise of extraterritorial jurisdiction implicates the state's sovereignty,[4] a question so elemental that we hold it cannot be waived by conduct or by consent.

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[3] S.C. Code Ann. § 44-53-370(e)(2) (2002).

[4] See S.C. Code Ann. § 1-1-10 (Supp. 2003) ("The sovereignty and jurisdiction of this State extends to all places within its bounds….").

While a defendant need not be physically present in the State in order to commit a criminal offense here, the State's extraterritorial jurisdiction extends only to those who have performed acts "intended to produce and producing detrimental effects within" our boundaries. Strassheim v. Daily, 221 U.S. 280, 31 S. Ct. 558, 55 L.Ed. 735 (1911); see also State v. Morrow, 40 S.C. 221, 18 S.E. 833 (1893). We agree with the Court of Appeals majority that there is no evidence that respondent intended a detrimental effect in South Carolina when she sold the cocaine to Stokes and Hale. Accordingly, the decision of the Court of Appeals is

AFFIRMED AS MODIFIED.

MOORE, A.C.J., WALLER, BURNETT, JJ., and Acting Justice Edward V. Cottingham, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Karl Albert Overcash, III, Respondent,

v.

South Carolina Electric and Gas Company, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 25990
Heard February 2, 2005 – Filed May 31, 2005

REVERSED AND REMANDED

Robert A. McKenzie and Gary H. Johnson, II, of McDonald, McKenzie, Rubin, Miller, and Lybrand, L.L.P., all of Columbia, for Petitioner.

A. Camden Lewis, of Lewis, Babcock & Hawkins, L.L.P., and Fred A. Walters, both of Columbia, for Respondent.

JUSTICE BURNETT: We granted a writ of certiorari to review the Court of Appeals' decision in Overcash v. South Carolina Electric & Gas Co., 356 S.C. 165, 588 S.E.2d 116 (2003). We reverse.

FACTUAL/PROCEDURAL HISTORY

Respondent Karl Albert Overcash, III (Overcash) brought this action seeking damages against Appellant South Carolina Electric & Gas Company (SCE&G) for the injuries he sustained, alleging, among other things, statutory and common law public nuisance. Overcash was severely injured when his boat collided with a dock owned by Sarah and Crawford Clarkson. Overcash alleges the dock connected the Clarkson's property to a small island more than 200 feet from their property and across the navigable waters of Lake Murray. Overcash further alleges SCE&G allowed the dock to be built, deeded the island to the Clarksons, and granted a post-construction permit for the dock.

The Clarksons settled the claims against them and are no longer a party to the suit. The circuit court granted SCE&G's motion to dismiss Overcash's public nuisance cause of action pursuant to Rule 12(b)(6), SCRCP, concluding: (1) personal injuries are not " special injuries" and thus cannot be the basis for a private action for public nuisance; and (2) a private cause of action for public nuisance does not exist pursuant to S.C. Code Ann. § 49-1-10 (1987).

The Court of Appeals reversed and remanded the case to circuit court concluding: (1) Overcash could maintain a common law cause of action under the doctrine of public nuisance for merely personal injuries; and (2) S.C. Code Ann. § 49-1-10 provides a private, statutory cause of action for public nuisance.

ISSUES

I. Did the Court of Appeals err in recognizing a common law

cause of action under the doctrine of public nuisance for purely personal injuries?

II. Did the Court of Appeals err in holding S.C. Code Ann. § 49-1-10 provides a private, statutory cause of action for public nuisance?

LAW/ANALYSIS

A motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCP, must be based solely on the allegations set forth on the face of the complaint. The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Therefore, pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties. Stroud v. Riddle, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973).

I.

The Court of Appeals concluded Overcash's personal injuries constitute direct and special injuries, which support a private tort action for public nuisance. We decline to venture into what William Prosser has termed the "impenetrable jungle," electing instead to follow the well-beaten path to which South Carolina nuisance jurisprudence has long adhered. See W. Page Keeton, Dan B. Dobbs, Robert E. Keeton & David G. Owen, Prosser & Keeton on Torts § 86 at 616 (5th ed. 1984). We reverse.

Under English common law, an action for nuisance was reserved for an interference with the use or enjoyment of rights in land. William L. Prosser, Private Action for Public Nuisance, 52 Va. L. Rev. 997 (1966). As noted by the Court of Appeals, modern nuisance law originates from the medieval English criminal writ of "purpresture." The earliest cases involved purprestures, encroachments upon the royal domain or the king's highway,

and were redressed by the crown in a criminal proceeding. According to Prosser, "[t]here was sufficient superficial resemblance between the obstruction of a private right of way and the obstruction of a public right of passage to content the judges with calling the latter a nuisance as well." Id. at 998. Thus was born the public nuisance. Over time, the public nuisance doctrine has been expanded to cover other invasions of the rights of the general public including violations of the public order, decency, morals, and health. 58 Am. Jur. 2d Nuisances § 39 (2002).

The dissent by Justice Fitzherbert in a 1536 King's Bench decision derailed the course of nuisance law as a branch of the common law, which once dealt only with harm to real property. Justice Fitzherbert argued against the contemporaneous understanding of the law in advocating an individual's action for special or particular damage, including personal injury, should be recognized under a cause of action for public nuisance. Y.B. Mich. 27 Hen. 8, f. 26, pl. 10 (1536). Although Justice Fitzherbert's view has been widely followed by other courts, we decline to recognize a common law cause of action under the doctrine of public nuisance for purely personal injuries.

South Carolina has avoided the uncertainty and confusion surrounding personal injuries in public nuisance actions. The cases in South Carolina concerning a private action for a public nuisance have involved an alleged damage to an individual's real or personal property as the "special injury" required to maintain an action for public nuisance. See e.g., Burrell v. Kirkland, 242 S.C. 201, 130 S.E.2d 470 (1963) (abutting landowner requested injunction for neighbors' obstruction of public road); Huggin v. Gaffney Dev. Co., 229 S.C. 340, 92 S.E.2d 883 (1956) (plaintiff sues for damages on alleged obstruction of public road alleging he was unable to obtain agricultural labor from a source at the opposite end of the road); Crosby v. Southern Ry. Co., 221 S.C. 135, 69 S.E.2d 209 (1952) (plaintiff alleged diminution in value of real property cause by blocked street).

This Court has never specifically concluded that an individual has a common law cause of action under the doctrine of public nuisance for purely personal injuries. The Court of Appeals relies on the decisions in

Drews v. Burton & Co., 76 S.C. 362, 57 S.E. 176 (1907) and Carey v. Brooks, 19 S.C.L. 365, 1833 WL 1682 (Ct. App. 1833). In Drews, the plaintiff brought an action for negligence arguing that a log from the defendant's mill drifted into navigable waters and damaged the plaintiff's schooner. In deciding the merits of the defendant's argument, the Court found that Section 1335 of the Code of Laws of 1902 provided that any person who obstructed a navigable waterway was guilty of nuisance. The Court, citing Carey, stated "[w]hen a person sustains a special injury . . . arising from the obstruction of a navigable stream, he is entitled to recover damages, on the ground that such obstruction constitutes a nuisance under the statute, as well as at common law." Id. 76 S.C. at 366, 57 S.E. at 178.

The decision in Drews does not recognize a cause of action for purely personal injuries under a public nuisance theory. In Drews, the plaintiff alleged property damage to his schooner, not injuries to his person. We do not read the Court's holding to sanction an individual's recovery for personal injuries in a public nuisance action.

Likewise, the decision in Carey, did not involve personal injuries. In Carey, the plaintiff brought an action to recover for the obstruction of a navigable waterway, a public nuisance. The obstruction caused a delay in the delivery of the plaintiff's lumber to a third party, which resulted in damages. The court concluded if by such nuisance, a party suffers a particular damage, the plaintiff could recover. The Court of Appeals then recited Justice Fitzherbert's general illustration regarding corporeal hurt to the individual as constituting a "special injury." [1] We conclude the Court of Appeals rested its decision in large part on the dicta contained in this case. To the extent the

[1] Justice Fitzherbert's famous hypothetical is the origin of the modern special injury rule, which is often referred to and widely accepted by courts. Fitzherbert envisioned a rider on horseback who is thrown when he encounters a ditch across the highway. Because the rider was injured and suffered greater damage than all others, Fitzherbert argued the rider should have action for public nuisance against the maker of the ditch. See Y.B. Mich. 27 Hen. 8, f. 26, pl. 10 (1536).

decisions in Drews and Carey suggest we recognize a cause of action for purely personal injuries under the doctrine of public nuisance, we hereby overrule those cases.[2]

We conclude the special or particular injury requirement necessary for an individual to maintain a cause of action for public nuisance is satisfied only by injury to the individual's real or personal property. For the protection of the person, South Carolina has well developed tort-based doctrines which can redress wrongs resulting in personal injuries sustained by an individual. The addition of personal injury to public nuisance actions in South Carolina would perpetuate the erosion of any semblance of doctrinal consistency in the common law of nuisance. Therefore, we reverse.

II.

SCE&G argues the Court of Appeals erred in finding that a private right of action exists from a violation of S.C. Code Ann. § 49-1-10 (1987). We agree.

Section 49-1-10 provides the following:

> … [A]ll navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free . . . . If any person shall obstruct any such stream . . . , such person shall be guilty of a nuisance and such obstruction may be abated as other public nuisances are by law.

The Court of Appeals improperly relied on Drews, 76 S.C. 362, 57 S.E. 176, and failed to look for intent on the part of the legislature to

[2] The decisions in Brown v. Hendricks, 211 S.C. 395, 45 S.E.2d 603 (1947) and Bowlin v. George, 239 S.C. 429, 123 S.E.2d 528 (1962) also contain dicta stating the "special injury" requirement would be satisfied by injury to "property or health." To the extent an injury to "health" implies personal injuries, we decline to adopt the dicta in these cases suggesting an individual has a cause of action in public nuisance for purely personal injuries.

create a private cause of action. In Drews, the Court found that Section 1335 of the Code of Laws of 1902 provided that any person who obstructed a navigable waterway was guilty of a nuisance. The Court also stated in dicta that a person who sustains a special injury from the obstruction of navigable waterways is able to recover damages on the ground that such an obstruction constitutes a nuisance both under the statute and at common law. Drews, 76 S.C. at 366, 57 S.E. 176 at 178.

Section 1335 provided "if any person shall obstruct [a navigable waterway], . . .such person shall be deemed guilty of nuisance, and any such obstruction may be abated as other public nuisances are by the laws of this State." Section 1335 and Section 49-1-10 are practically identical in substance. However, the issue of a private right of action under Section 1335 was not squarely before the Court in Drews.

The main factor in determining whether a statute creates a private cause of action is legislative intent. Dorman v. Aiken Communications, Inc., 303 S.C. 63, 398 S.E.2d 687 (1990). In Dorman, we stated,

> The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute . . . . In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

Id. at 67, 398 S.E.2d at 689 (quoting Whitworth v. Fast Fare Markets of S.C., Inc., 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)).

Section 49-1-10 reveals no legislative intent to create a private cause of action. Section 49-1-10 is found within the section of the Code entitled Waters, Water Resources, and Drainage. The section contains criminal penalties and allows for abatement of the nuisance. The statute is primarily for the benefit and protection of the public generally, and we conclude no private right of action exists for its violation.

CONCLUSION

For the foregoing reasons, the Court of Appeals' opinion reversing the circuit court's order dismissing Overcash's cause of action for public nuisance is reversed and the case remanded for further proceedings consistent with this opinion.

MOORE and WALLER, JJ., concur. TOAL, C.J., dissenting in part and concurring in part in a separate opinion in which Perry M. Buckner, concurs.

CHIEF JUSTICE TOAL: I join in Part II of the opinion, but decline to join in Part I. In my view, a plaintiff may maintain a cause of action for public nuisance for personal injuries upon a showing of special injury. Therefore, I dissent in part; and would affirm the court of appeals in result.

In my opinion, the majority misconstrues the concept of a public nuisance. According to the majority, Overcash's personal injuries can be separated from the injury to property. In my view, no distinction can be drawn between personal physical injury and injury to property. I cannot find a rationale to separate Overcash's physical injury from that of his boat. As the majority construes common law nuisance, Overcash can recover for the injury to his boat, but not for the injury to his person. I think this approach is illogical and flies in the face of basic hornbook law. *See* Restatement (Second) of Torts § 821C (stating that when a public nuisance causes personal injury to the plaintiff or physical harm to his land or chattels, the harm is normally different in kind from that suffered by the other members of the pubic and the tort action may be maintained); Prosser, *Private Action for Public Nuisance*, 52 Va. L. Rev. 997, 1012 (1966) (opining that there can now be no doubt that the nuisance action can be maintained where a public nuisance causes physical injury); 58 Am. Jur. 2d *Nuisances* § 252 (2002) (stating that personal injuries are sufficient to show an individual's peculiar injury as required to maintain an action for public nuisance and injuries to a person's health are by their nature special and peculiar for the purposes of maintaining such an action).

Accordingly, I would affirm the holding of the court of appeals recognizing a common law cause of action for public nuisance for personal injury and remand the case to circuit court for trial on that cause of action. In addition, I would reverse the decision to recognize a private cause of action under S.C. Code Ann. § 49-1-10 (1987).

Acting Justice Perry M. Buckner, concurs.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Gay Ellen Coon, Respondent,

v.

James Moore Coon, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
H. E. Bonnoitt, Jr., Family Court Judge

Opinion No. 25991
Heard May 4, 2005 – Filed May 31, 2005

AFFIRMED AS MODIFIED

Alex B. Cash, and Donald Bruce Clark, both of Charleston, for Petitioner.

Ronald L. Richter, Jr., of Charleston, for Respondent.

JUSTICE PLEICONES: This is a divorce case. We granted a writ of certiorari to review Coon v. Coon, 356 S.C. 342, 588 S.E.2d 624 (Ct. App. 2003), in which the Court of Appeals reversed the family court's decision to vacate a domestic-relations order. We affirm.

FACTS

Pursuant to the parties' settlement agreement, the family court entered an order that apportioned Mr. Coon's United States Department of Defense (DOD) retired pay. Under the order, Mrs. Coon was to receive one hundred percent of Mr. Coon's "disposable retired pay"[1] for nine years, and thereafter receive fifty percent. The order provided that the DOD plan administrator pay Mrs. Coon directly.

The order was never sent to the plan administrator, however. All of the retired pay was paid directly to Mr. Coon, who, in turn, remitted the money to Mrs. Coon. Under this arrangement, Mr. Coon was deemed the recipient of all of the retired pay and was thus responsible for all of the taxes.

At some point, Mr. Coon increased the amount of federal income tax withholding from the retired pay, causing a decrease in the net amount remitted to Mrs. Coon. Mrs. Coon petitioned for a rule to show cause why Mr. Coon was not in contempt of the family court's order. In response, Mr. Coon moved the family court pursuant to Rule 60(b)(4), SCRCP, to vacate the portion of the order distributing the retired pay. Mr. Coon argued that under the Uniformed Services Former Spouses' Protection Act (the USFSPA or the Act),[2] the family court lacked subject-matter jurisdiction to order that Mrs. Coon receive more than fifty percent of Mr. Coon's disposable retired pay. Accordingly, Mr. Coon argued, the order was void. The family court agreed and vacated the order. Mrs. Coon appealed.

The Court of Appeals reversed, holding that the family court had subject-matter jurisdiction to apportion all of Mr. Coon's disposable retired

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[1] "Disposable retired pay" is "the total monthly retired pay to which a member [of the military] is entitled less" certain amounts listed in the statute. 10 U.S.C.A. § 1408(a)(4) (1998).

[2] 10 U.S.C. § 1408 (1998 and Supp. 2004).

pay, although the court lacked "authority" to distribute more than half to Mrs. Coon. In other words, the family court committed a substantive error but not a jurisdictional one, so Mr. Coon was not entitled to relief under Rule 60(b)(4). The Court of Appeals ordered the reinstatement of the order and remanded for further proceedings.[3]

ISSUE

Whether the family court had subject-matter jurisdiction to distribute to Mrs. Coon more than fifty percent of Mr. Coon's disposable retired pay.

ANALYSIS

We agree with the Court of Appeals that the family court committed an error of law but did not lack subject-matter jurisdiction.

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding [if] … the judgment is void." Rule 60(b)(4), SCRCP. A judgment of a court without subject-matter jurisdiction is void. Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). Subject-matter jurisdiction is the "power to hear and determine cases of the general class to which the proceedings in question belong." Dove v. Gold Kist, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). By statute, the family court has subject-matter jurisdiction to decide divorce actions and apportion marital property. S.C. Code Ann. §§ 20-7-420(2) and 20-7-473 (Supp. 2004).

In McCarty v. McCarty, 453 U.S. 210, 101 S. Ct. 2728, 69 L. Ed. 2d 589 (1981), the United States Supreme Court held that the military-retirement statutes then in force prohibited states from dividing military retired pay pursuant to state community-property laws. McCarty applied with like force

[3] The further proceedings contemplated by the Court of Appeals relate to the rule to show cause and to a subsequent motion filed by Mrs. Coon to reform the family court's order. Because we affirm the Court of Appeals' decision on the merits, we also affirm the decision to remand.

to equitable-distribution states such as South Carolina. See Brown v. Brown, 279 S.C. 116, 118, 302 S.E.2d 860, 861 (1983) (citing Bugg v. Bugg, 277 S.C. 270, 286 S.E.2d 135 (1982)). In response to McCarty, Congress enacted the USFSPA.

The USFSPA permits any court of "competent jurisdiction" to "treat disposable retired pay payable to a [service] member … either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court." 10 U.S.C.A. §§ 1408(a)(1) and (c)(1) (1998). In other words, states have a choice whether to treat disposable retired pay as marital property. South Carolina has chosen to do so. See Tiffault v. Tiffault, 303 S.C. 391, 392, 401 S.E.2d 157, 157 (1991); Brown, 279 S.C. at 118, 302 S.E.2d at 861.

A court's authority, however, is subject to the following limitation: "The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay." 10 U.S.C.A. § 1408(e)(1). As the Court of Appeals noted, this limitation applies whether the non-military spouse receives payments directly from the Department of Defense, from the service-member spouse, or a combination of the two. Coon, 356 S.C. at 349-50, 588 S.E.2d at 628.

Mr. Coon argues that the fifty-percent limitation prevents state courts from exercising subject-matter jurisdiction over the protected half of disposable retired pay. We disagree. The limitation supplants state domestic-relations law pursuant to the Supremacy Clause of the United States Constitution,[4] but it does not pre-empt state-court subject-matter jurisdiction.[5]

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[4] U.S. Const. art. VI.

[5] We respectfully disagree with the Supreme Court of Alaska, which recently held that the fifty-percent limitation is jurisdictional. Cline v. Cline, 90 P.3d 147, 152-54 (Alaska 2004).

See, e.g., Curtis v. Curtis, 7 Cal. App. 4th 1, 9 Cal. Rptr. 145 (Cal. Ct. App. 1st Dist. 1992) (holding that neither the McCarty decision nor the USFSPA involves subject-matter jurisdiction); Mansell v. Mansell, 217 Cal. App. 3d 219, 265 Cal. Rptr. 227 (Cal. Ct. App. 5th Dist. 1989)[6] (same), cert. denied, Mansell v. Mansell, 498 U.S. 806, 111 S. Ct. 237, 112 L. Ed. 2d 197 (1990); Evans v. Evans, 75 Md. App. 364, 541 A.2d 648 (1988) (same). The USFSPA neither confers subject-matter jurisdiction on any court nor takes jurisdiction from any court. See Brown v. Harms, 863 F. Supp. 278, 280-81 (E.D. Va. 1994) (holding that federal courts are given no federal-question jurisdiction by the Act and finding that "the Act does no more than make clear that courts of competent jurisdiction, namely courts that already have subject matter jurisdiction from some proper source extrinsic to the Act, may treat a military pension" as marital property).

As the Court of Appeals noted, the USFSPA expresses no intention on Congress's part to pre-empt state-court jurisdiction. Coon, 356 S.C. at 351, 588 S.E.2d at 629. Further, we agree with the Court of Appeals that the use of the term "jurisdiction" in the 1990 House Report on the subsection (e)(1) amendment is unpersuasive. See H.R. Rep. No. 101-665, at 3005 (1990); Coon, 356 S.C. at 350, 588 S.E.2d at 628 (finding that by "jurisdiction," the House meant "authority").[7]

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[6] This California case was on remand from Mansell v. Mansell, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989). There, the United States Supreme Court held that the USFSPA prevented "military retirement pay waived by the retiree in order to receive veterans' disability benefits" from being apportioned pursuant to state community-property (or equitable-distribution) laws. The reason was that in the Act Congress did not grant the states permission to apportion disability benefits. Thus, the pre-emption found in McCarty remained with respect to those benefits.

[7] Even the United States Supreme Court, in an unrelated matter, has recently stated: "'Jurisdiction' … is a word of many, too many, meanings. … Clarity would be facilitated if courts and litigants used the label 'jurisdictional' … only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling

We disagree, however, with the Court of Appeals' suggestion that the USFSPA's savings clause, section 1408(e)(5), "further undermines any argument that Congress explicitly directed the fifty-percent limitation is jurisdictional …." Coon, 356 S.C. at 351-52, 588 S.E.2d at 629. As already stated, the Act does not address subject-matter jurisdiction in any respect. It follows that the savings clause does not impact the jurisdiction issue one way or the other.

As stated above, the Court of Appeals' holding was correct. The Act does not pre-empt state-court jurisdiction, so the family court's jurisdiction is strictly a matter of South Carolina law. In this case, the family court did not exceed its jurisdiction. See S.C. Code Ann. §§ 20-7-420(2) and 20-7-473 (Supp. 2004); Dove, 314 S.C. at 237-38, 442 S.E.2d at 600. That the family court erred in failing to follow pre-emptive federal law does not change this result. Thus, Mr. Coon is not entitled to relief under Rule 60(b)(4), SCRCP.

CONCLUSION

The family court's order is not void for want of subject-matter jurisdiction, so the family court erred when it vacated the order. We therefore affirm the Court of Appeals' decision to reverse the vacatur and remand the case to the family court.

AFFIRMED AS MODIFIED.

TOAL, C.J., MOORE, WALLER, BURNETT, JJ., concur.

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within a court's adjudicatory authority." Kontrick v. Ryan, 540 U.S. 443, 454-55, 124 S. Ct. 906, 915, 157 L. Ed. 2d 867, 879 (2004) (parentheses in original).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The Huffines Company, LLC, Respondent,

v.

Nancy R. Lockhart and
Morrison Payne as Trustee, Appellants.

Appeal From Colleton County
John C. Few, Circuit Court Judge

Opinion No. 3994
Submitted May 1, 2005 – Filed May 23, 2005

REVERSED AND REMANDED

Edward M. Brown, of Charleston, for Appellants.

W. Mullins McLeod, Jr. and M. Todd Rainsford, both of Charleston, for Respondent.

ANDERSON, J.: The Huffines Company, LLC, initiated this action against Nancy R. Lockhart (Lockhart) to recover a real estate brokerage commission. The circuit court found that Lockhart had breached

the parties' Listing Agreement and directed a verdict in favor of the Huffines Company, LLC. We reverse and remand for a new trial.[1]

FACTUAL/PROCEDURAL BACKGROUND

Calvert Huffines (Huffines) is a licensed real estate broker in South Carolina. He owns the Huffines Company, LLC, a small real estate company located in Colleton County. Lockhart hired Huffines to find a buyer for fifty acres of land located in Hendersonville, South Carolina (the Hendersonville property). She listed the Hendersonville property with Huffines on April 26, 1999, for a selling price of $250,000. The Listing Agreement provided, in pertinent part:

> I (we), the seller(s), grant you the right to sell or transfer this property from the date of this agreement to and including 4/30/2000, and to accept deposit thereon, and employ you to procure a purchaser, ready, willing and able to buy this property at the listed price and terms, or at a price and terms that are acceptable to me. . . .
>
> If a buyer or transferee ready, willing and able to buy or exchange for this property is procured by you, I agree to pay you a commission of 10% of the selling price, or a minimum commission of $200, whichever is greater.
>
> If within six months after the termination of this agreement I sell or transfer this property to a prospect procured by you prior to its termination, I shall pay you your commission . . . .

Huffines subsequently marketed the Hendersonville property. He informed area brokers of the listing, talked to neighboring property owners, and disseminated plats and descriptions of the property. Huffines learned

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

from a newspaper article that the Colleton County School Board (the School Board) was searching for property suitable for a new school. On November 10, 1999, he wrote a letter to the Colleton County Department of Education and School Board members to inform them that the Hendersonville property was for sale and "would make an excellent site for a school."

Elbert O. Duffie, general counsel for the Colleton County School District, was retained to seek out suitable properties for the new school. He compiled a list of twenty or thirty sites that met the School Board's criteria. The Hendersonville property was not placed on his initial list of suitable properties. However, Duffie was later forwarded a copy of the letter Huffines sent to the School Board. Duffie contacted Huffines and the two began a series of conversations concerning the property. Eventually, Duffie placed the Hendersonville property on his list of possible properties for the School Board to purchase.

Duffie informed Huffines that the School Board would be willing to pay a maximum of $3,500 an acre for the property. Huffines conveyed this information to Lockhart in an email dated March 20, 2000. Lockhart responded by email that same day, instructing Huffines to let the School Board know she was willing to accept that amount for the property. On March 21, 2000, the School Board held a regular meeting at which the trustees authorized Duffie to secure an option to purchase the Hendersonville property for $3,500 an acre. Duffie prepared a draft option contract. The School Board agreed to pay $1,000 for the option. On March 22, 2000, Lockhart emailed Huffines, informing him she did not feel the offer was a good one and requesting additional information about the transaction.

Duffie's next communication concerning the property was from Edward M. Brown, Lockhart's attorney. In a letter dated April 24, 2000, Brown informed Duffie that he had been asked to intercede in the real estate transaction. The letter stated that $3,500 an acre was unacceptable. Huffines received a letter from Lockhart, dated April 24, 2000, which requested he direct all communications concerning the property to Brown.

On April 30, 2000, the Listing Agreement expired. However, the agreement provided that Huffines was still entitled to a commission if the property was sold or transferred within six months of the expiration of the agreement to a buyer procured by Huffines. The six-month time period ran until October 30, 2000.

Brown and Duffie continued to negotiate the sale of the property after the Listing Agreement expired. Lockhart demanded a new price of $5,000 an acre and an option price of $10,000. The School Board trustees subsequently rejected the $5,000 an acre offer. Lockhart reduced the asking price to $4,500 an acre with a $1,000 option price. The trustees voted to accept that purchase price, and the parties signed an option contract on May 8, 2000. The option contract stated:

> Whereas, it is agreed that the Option price of the property located on Highway 17-A (Hendersonville Highway), near the Community of Hendersonville, in Colleton County, South Carolina, TMS#234-00-00-042, containing fifty (50) acres, more or less, and one (1) improvement shall be Four Thousand Five Hundred and No/100 ($4,500.00) Dollars per acre. . .
>
> . . . [B]ut in the event that the Option is not exercised within one hundred eighty (180) days, the Optionor is no longer obligated and may retain the One Thousand and No/100 ($1,000.00) Dollar consideration. . . .

Pursuant to a United States District Court Consent Order, issued on November 17, 1999, the School Board was required to obtain permission from the United States Justice Department before building a new school at a designated site. Duffie contacted a Justice Department attorney, Dan Foreman, prior to 2000. They subsequently discussed obtaining approval for the placement of a school upon the Hendersonville property. In early September of 2000, Foreman visited Colleton County and viewed the Hendersonville property. After observing the site, Foreman orally informed Duffie that the property was suitable for the purpose of a school. However, written approval was not forthcoming until November 1, 2000.

Lockhart testified that at some point after she signed the Listing Agreement, her half brother indicated he thought he should share in any proceeds obtained from the Hendersonville property. He later informed Lockhart that he had retained an attorney to pursue his claim. Lockhart filed a clear title action on September 18, 2000. Lockhart was adjudged the owner of the property in fee simple absolute on November 13, 2000.

On October 17, 2000, the School Board trustees voted to purchase the Hendersonville property pending approval from the U.S. Justice Department. Although no contract of sale was ever signed, Lockhart sold the Hendersonville property to the School Board on November 16, 2000, for $4,500 an acre.

Huffines attended the closing, but Lockhart refused to pay him a commission. The Huffines Company, LLC initiated this action alleging Lockhart breached the Listing Agreement by not paying Huffines a commission. The circuit court directed a verdict in favor of the Huffines Company, LLC on the breach of contract claim in the amount of $21,906. Additionally, the circuit judge held that Huffines procured a buyer in March of 2000 when he negotiated to sell the property for $3,500 an acre. The judge ruled that a sale or transfer of the property occurred in May of 2000 (within the six-month expiration period) when the School Board signed the option contract. He further held that a sale or transfer occurred on October 17, 2000, when the School Board voted to exercise the option contract. The jury rendered a verdict in favor of the Huffines Company on a breach of contract accompanied by a fraudulent act claim. However, no punitive damages were awarded.

STANDARD OF REVIEW

"In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt."

Steinke v. South Carolina Dept't of Labor, Licensing & Reg., 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999); accord Hurd v. Williamsburg County, Op. No. 25959 (S.C. Sup. Ct. filed March 28, 2005) (Shearouse Adv. Sh. No. 14 at 28); Hinkle v. Nat'l Cas. Ins. Co., 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003); Collins Entertainment, Inc. v. White, Op. No. 3935 (S.C. Ct. App. filed January 31, 2005) (Shearouse Adv. Sh. No. 7 at 33); Lingard v. Carolina By-Products, 361 S.C. 442, 446, 605 S.E.2d 545, 547 (Ct. App. 2004); Sims v. Giles, 343 S.C. 708, 714, 541 S.E.2d 857, 860 (Ct. App. 2001). If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should have been denied. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003); Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

A motion for directed verdict goes to the entire case and may be granted only when the evidence raises no issue for the jury as to liability. Carolina Home Builders, Inc. v. Armstrong Furnace Co., 259 S.C. 346, 358, 191 S.E.2d 774, 779 (1972). When the evidence yields only one inference, a directed verdict in favor of the moving party is proper. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 476-77, 514 S.E.2d 126, 130 (1999); Sims v. Giles, 343 S.C. 708, 714, 541 S.E.2d 857, 860 (Ct. App. 2001). However, if the evidence as a whole is susceptible of more than one reasonable inference, the case must be submitted to the jury. Hurd v. Williamsburg County, Op. No. 25959 (S.C. Sup. Ct. filed March 28, 2005) (Shearouse Adv. Sh. No. 14 at 28); Quesinberry v. Rouppasong, 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998); Getsinger v. Midlands Orthopaedic Profit Sharing Plan, 327 S.C. 424, 426, 489 S.E.2d 223, 223 (Ct. App. 1997).

When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); Pond Place Partners v. Poole, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct. App. 2002); Boddie-Noell Props., Inc. v. 42 Magnolia P'ship, 344 S.C. 474, 482, 544 S.E.2d 279, 283 (Ct. App. 2000), aff'd as modified by 352 S.C. 437, 574 S.E.2d 726 (2002). The issue must

be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997). Yet, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Small v. Pioneer Mach., Inc., 329 S.C. 448, 461, 494 S.E.2d 835, 848 (Ct. App. 1997). Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. Bell v. Bank of Abbeville, 211 S.C. 167, 173, 44 S.E.2d 328, 330 (1947); Small, 329 S.C. at 461, 494 S.E.2d at 848. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture, or speculation. Hanahan, 326 S.C. at 149, 485 S.E.2d at 908; Small, 329 S.C. at 461, 494 S.E.2d at 848. This does not mean the court should ignore facts unfavorable to the opposing party. Long v. Norris & Assocs., Ltd., 342 S.C. 561, 568, 538 S.E.2d 5, 9 (Ct. App. 2000); Love v. Gamble, 316 S.C. 203, 208, 448 S.E.2d 876, 879 (Ct. App. 1994). In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence. Pond Place Partners, Inc., 351 S.C. at 15, 567 S.E.2d at 888.

This Court will reverse only where there is no evidence to support the trial court's ruling, or where the ruling was controlled by an error of law. Clark v. S.C. Dep't of Public Safety, 362 S.C. 377, 382-83, 608 S.E.2d 573, 576 (2005); Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999); Abu-Shawareb v. S.C. State Univ. Op. No. 3968 (S.C. Ct. App. filed March 21, 2005) (Shearouse Adv. Sh. No. 15 at 86); Welch v. Epstein, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000). Essentially, our Court must resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party's favor. Harvey, 350 S.C. at 309, 566 S.E.2d at 532; Hanahan, 326 S.C. at 149, 485 S.E.2d at 908.

LAW/ANALYSIS

Lockhart argues the circuit court erred in granting a directed verdict in favor of Huffines. We agree.

The Listing Agreement provided alternative conditions precedent to the broker's right to recover a commission. The first condition precedent required Huffines to procure a buyer or transferee who was "ready, willing and able to buy or exchange" for the Hendersonville property. Alternatively, Huffines was entitled to a commission if Lockhart actually sold or transferred the property to a "prospect procured by [Huffines]" within six months after the termination of the Listing Agreement. The circuit court erred in ruling Huffines was entitled to payment under either clause.

I. Ready, Willing, and Able

First, Lockhart contends the circuit court judge erred in directing a verdict on the basis that Huffines procured a buyer when the Listing Agreement required him to procure a ready, willing, and able buyer. We agree.

In issuing his ruling, the circuit judge stated:

> "[I]t was Mr. Huffines who made this deal take place, who put Ms. Lockhart in the position of selling this piece of property to the School District.
>
> There is no way in the facts of this case that this piece of property would have ever been sold to the School District had it not been for the work that Mr. Huffines did.
>
> Now, under those circumstances, and when Mr. Huffines brings this deal to the table and gets an agreement between them within the one year of the listing agreement, that is clearly to procure a purchaser within the term of that contract, and clearly he is entitled to his ten percent commission.

In the absence of an agreement, a broker is entitled to a commission when he procures a sales contract that is both valid and enforceable by the seller, regardless whether the contract actually closes. Helms Realty, Inc. v.