

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BARNWELL COUNTY  
Family Court

Dale M. Gable, Family Court Judge

---

Docket No. 2006-DR-06-424

---

Ex parte:

Belinda Davis-Branch,

Respondent.

In re:

Larry Solomon,

Plaintiff,

v.

Betty Jean Solomon

Appellant

---

FINAL BRIEF OF APPELLANT

---

JONATHAN M. HOLDER  
319 Washington Street  
Post Office Box 160  
Barnwell, South Carolina 29812  
(803) 259-2021

ATTORNEYS FOR APPELLANT

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Statement of Issues on Appeal ..... 1

Statement of the Case ..... 1

Facts ..... 1

Arguments

    I.    The Family Court lacks subject matter jurisdiction to enter an order  
    regarding an attorney fee dispute between a client and her own attorney..... 2

        A.    Remedy for Collecting Family Court-ordered attorneys fees..... 3

            i.    Authorizing Suit Money, §20-3-120..... 3

            ii.   Authorizing Family Court to Award Attorney Fees,  
                §20-3-130(H)..... 3

            iii.  Award of Suit Money constitutes a lien against property of party  
                against whom the award was ordered, §20-3-145..... 3

            iv.  Enforcement of Suit Money Award, §20-3-125..... 3

        B.    Distinguishing Family Court-awarded Attorney Fees..... 4

    II.   Ms. Davis-Brach, as defense attorney in the current action, lacks standing to  
    seek relief from this court..... 5

Conclusion ..... 6

## TABLE OF AUTHORITIES

### CASES

<u>Huff v. Jennings</u> , 319 S.C. 142, 459 S.E.2d 886 (1995).....	4, 5, 6
<u>In re Jennings</u> , 321 S.C. 440, 468 S.E.2d 869 (1996) .....	5
<u>Bailey v. Bailey</u> , 312 S.C. 454, 458 (1994) .....	5
<u>Dockside Ass'n, Inc. v. Detyens Simmons</u> , 285 S.C. 565, 330 S.E.2d 537 (1985).....	5

### STATUTES

S.C. Code Ann. § 20-3-120 (1976).....	3
S.C. Code Ann. § 20-3-125 (1976).....	1, 3, 6
S.C. Code Ann. § 20-3-130 (1976).....	3
S.C. Code Ann. § 20-3-145 (1976).....	3, 4
S.C. Code Ann. § 63-5-530 (1976).....	2

### RULES

S.C. R. Civ. P. 17(a), 86.....	5
--------------------------------	---

## STATEMENT OF ISSUES ON APPEAL

**I. The Family Court lacks subject matter jurisdiction to enter an order regarding an attorney fees dispute between a client and his/her own attorney.**

**A. Statutory Remedy for collecting Family Court-ordered attorneys fees.**

**B. Distinguishing Family Court-awarded Attorney Fees**

**II. Ms. Davis-Branch, as attorney in the case, lacks standing to seek relief from this court outside of a petition pursuant to S.C. Code Ann. 20-3-125 (1986).**

## STATEMENT OF THE CASE

On March 26, 2008, The Honorable Dale M. Gable entered a Final Decree of Divorce approving an equitable agreement reached between the parties. As a portion of this agreement, paragraph "S" states "[e]ach party shall pay his/her own attorney's fees, costs and expenses associated with the action." (R. p. 12, lines 6-7) After an inability of Appellant to timely pay her attorney's fees, Appellant's own attorney filed a Rule to Show Cause heard by Judge Gable on June 17, 2010. On June 25, 2010, a bench warrant was issued and an Order of Contempt was filed with the Barnwell County Clerk of Court. On October 25, 2010, Appellant filed a Motion to Set Aside the Contempt Order, which was denied by the court December 20, 2010. On December 30, 2010, Appellant filed a Rule 59 Motion to Alter or Amend Judgment, which was denied by Judge Gable by order filed June 17, 2011.

## FACTS

Appellant was represented in this divorce case by attorney Belinda Davis-Branch, Esq. A divorce was obtained for Appellant including an agreement with her former husband, which was approved by the Family Court. While both parties requested attorney fees, the agreement stated, in part, that each party was to pay his or her own

attorney fees and costs. (R. p. 12, lines 6-7) Due to financial difficulties, Appellant was unable to timely pay Ms. Davis-Branch. Attorney Davis-Branch, despite not being a party to the action, filed a Rule to Show Cause on her own personal behalf, against her own client, in an effort to hold her in contempt to recoup attorney fees. The court granted Attorney Davis-Branch's request, issuing a Bench Warrant for Appellant's arrest. (R. pp. 36-37) On August 25, 2010, Appellant was arrested and taken into custody. Appellant hired her current counsel, who filed a Motion to Reconsider with the Family Court, which released Appellant from jail pending resolution of the contempt order.

## ARGUMENTS

### **I. The Family Court lacks subject matter jurisdiction to enter an order regarding an attorney fee dispute between a client and her own attorney.**

The South Carolina Legislature has statutorily-limited the subject matter jurisdiction of the Family Court in domestic matters, as enumerated in S.C. CODE ANN. § 63-5-530(A)(1-46) & (B). The Family Court entered a Final Order in this case on March 24, 2008, concluding case number 06-DR-06-0424. (R. p. 7) The Family Court retains subject matter jurisdiction over disputes between the parties pertaining to enforcement of the Court's Orders, modification of custody, visitation or child support. It does not have jurisdiction regarding a dispute between a party and a non-party.

The current Order of the family court holds the Appellant in contempt of court for not paying her own attorneys fees, pursuant to a Rule to Show Cause brought on behalf of the Appellant's former counsel. This raises two (2) jurisdictional problems.

**A. Statutory Remedy for Collecting Family Court-ordered Attorney Fees ordered to be paid to a party.**

When attorney fees are awarded to a party by the Family Court, collection is laid out by statute. The statutory scheme for collection of these fees is codified in the following sections of Title 20, Chapter 3 of the S.C. CODE ANNOTATED:

i. Authorizing Suit Money, §20-3-120.

Section 20-3-120 authorizes any party to a divorce action to ask for an allowance of attorney fees in his or her pleadings.

ii. Authorizing Family Court to Award Attorney Fees, §20-3-130(H).

Subsection H of §20-3-130 states that the Family Court “from time to time after considering the financial resources and marital fault of both parties, **may order one party to pay a reasonable amount to the other for attorney fees**, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce.” (emphasis added).

iii. Award of Suit Money constitutes a lien against property of party against whom the award was ordered, §20-3-145.

Section 20-3-145 states that “[i]n any divorce action any attorney fee awarded by the court shall constitute a lien on any property owned by the person ordered to pay the attorney fee.

iv. Enforcement of Suit Money Award, §20-3-125.

Section 20-3-125 states that any attorney whose client has been awarded an attorney fee by the family court may petition the family court to enforce the payment of such fee.

S.C. CODE ANN. § 20-3-120, -125, -130, -145 (1976). Accordingly, the jurisdiction of the Family Court to enforce an award of suit money, or attorney fees, is limited to the above-referenced statutory scheme.

**B. Distinguishing Family Court-awarded Attorney Fees**

The original Complaint in this case included at paragraph sixteen (16) a request that Defendant should pay all attorney fees and costs. (R. p. 16 line 15) At paragraph thirty-two (32) of the Answer/Counter Claim of the Defendant, she requests that the Plaintiff be ordered to pay all attorney fees and costs. (R. p. 26, line 12) Finally, in the Final Order, section S of paragraph nine (9) states that “[e]ach party shall pay his/her own attorney fees, costs and expenses associated with this action.” (R. p. 12, lines 6-7).

In Huff v. Jennings, 319 S.C. 142 (1995), Defendant Jennings (a defense attorney in an underlying divorce action) had not been paid the attorney fees from the divorce action, despite a final order ordering each party to pay his/her own attorney fees. Jennings, pursuant to S.C. Code 20-3-145, placed a lien on the property of her client. The South Carolina Supreme Court invalidated the lien for court-awarded attorney fees. In its explanation, the Court reasoned that:

**Simply declaring that each party will be responsible for their own fees does not, as Jennings contends, equate to an "attorney fee awarded by the court" for purposes of the statute.** (emphasis added) The Wife's complaint requested that Huff pay the Wife's attorney's fees; there was no request that the Wife be ordered to pay her own fees. Under Jennings's interpretation of the order, the family court effectively awarded, without notice to the Wife, an indeterminate amount of fees when such relief was never requested. **This interpretation clearly raises substantial ethical and constitutional questions.** We therefore conclude that Jennings's lien filed pursuant to S.C. CODE

ANN. § 20-3-145 was invalid, because she was not awarded a fee by the court. (emphasis added)

Huff at 147. Accordingly, in In re Jennings, 321 S.C. 440 (1996), the Huff case was used as a basis for disbarment of the attorney who filed a lien against her own client for attorney fees where the Family Court ordered each party responsible for their own attorney fees. Jennings at 448.

Just as in Huff, here we have each party held responsible to pay its own attorney fees. According to Huff, this does not equate to an “award of attorney fees” and thus should not be enforced as such, particularly through the mechanism of civil contempt.

**II. Ms. Davis-Branch, as Appellant’s former attorney in the current action, lacks standing to seek relief from the family court.**

Ms. Davis-Branch does not have standing in this case to ask the Family Court for relief, which is a fundamental requirement. “To have standing, a party must have personal stake in the subject matter of a lawsuit, and must be a real party in interest.” Bailey v. Bailey, 312 S.C. 454, 458 (1994); S.C. R. Civ. P. 17(a), 86. The Bailey court went further in defining who has standing for relief in a divorce case, saying

A real party in interest [. . .] is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action. Dockside, *supra*. In this instance, the real interest lies with the parties in the divorce action - the appellants - and they alone have a real proprietary interest in the subject matter of the proceedings. **We find that respondents’ interest as claimants asserting a right to attorney fees is peripheral and not the real interest at stake. Therefore, we hold that respondents lack standing to intervene in appellants’ lawsuit.** (emphasis added)

Id. at 457 (*quoting* Dockside Ass’n, Inc. v. Detyens Simmons, 285 S.C. 565, 568-569 (Ct. App. 1985)). Similarly in the current case, Ms. Davis-Branch is asserting a right



to attorney fees. Under Bailey, this assertion clearly represents a peripheral interest and not a real interest in the case. Accordingly, Ms. Davis-Branch lacks the standing to assert a right to relief in the current action and thus her claim should be summarily dismissed.

### CONCLUSION

The South Carolina Supreme Court has defined exactly who has standing to bring a claim in a divorce matter. An attorney seeking court-awarded attorney fees has only a peripheral interest in the case and thus lacks standing to assert this right to relief to the family court through the underlying action. The Family Court has a well-defined statutory scheme for collection of Attorney fees awarded to a party in the case. Where an award of attorney fees is actually granted (*see Huff* distinction), the party seeking to collect these court-awarded fees may petition the Family Court, pursuant to S.C. CODE ANN. § 20-3-125 (1976). Neither South Carolina statutes nor common law provide jurisdiction to the Family Court to order a party to pay her own attorney fees.

**THE MOORE FIRM, LLC**



E. TIMOTHY MOORE, JR.

JONATHAN M. HOLDER ✓

Attorneys for the Defendant

319 Washington Street

Post Office Box 160

Barnwell, South Carolina 29812

(803) 259-2021

Barnwell, South Carolina,

This 16th day of December, 2011.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BARNWELL COUNTY  
Family Court

Dale M. Gable, Family Court Judge

---

Docket No. 2006-DR-06-424

---

Betty Jean Solomon, ..... Appellant

vs.

Larry Solomon..... Respondent


---

CERTIFICATION OF COUNSEL

---

The undersigned hereby certifies that Appellant's Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

12/16/11  
DATE

  
\_\_\_\_\_  
THE MOORE FIRM, LLC  
E. Timothy Moore, Jr.  
Jonathan M. Holder ✓  
319 Washington Street  
Post Office Box 160  
Barnwell, South Carolina 29812  
(803) 259-2021  
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BARNWELL COUNTY  
FAMILY COURT

Dale M. Gable, Family Court Judge

---

Case No. 2006-DR-06-0424

---

Larry Solomon,

Respondent,

v.

Betty Jean Solomon

Appellant.

---

PROOF OF SERVICE


---

I certify that a true and correct copy of Appellant's Final Brief was on this 19th day of December, 2011, deposited into the United States Postal Service with sufficient postage affixed thereon to ensure delivery by first class mail and addressed to the following:

Belinda Davis-Branch, Esq.  
1111 Doyle Street  
Orangeburg, SC 29115

Zipporah O. Sumpter, Esq.  
Sumpter Law Office  
198 Docket Street- Suite 200  
Orangeburg, SC 29115

December 19, 2011

  
E. Timothy Moore, Jr.  
Jonathan M. Holder ✓  
319 Washington Street  
Post Office Box 160  
Barnwell, South Carolina 29812  
(803) 259-2021

ATTORNEYS FOR APPELLANT