

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master In Equity
Hon. Mikell R. Scarborough

APPELLATE CASE NUMBER.: 2022-000172

Johnny Scott..... Respondent

v.

Heirs of James Prioleau, Crystal Adams, John Doe, Sarah Roe, Richard Roe and Mary Roe, being fictitious names used to designate the unknown heirs-at-law, administrators, executors, successors and assigns if any and all other persons claiming any right, title, estate, interest in or lien upon the lands of the estate of James Prioleau, or any portion thereof, including any such as may be infants, incompetents, or otherwise under any disability.....Appellants

INITIAL BRIEF OF APPELLANTS

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Charleston, SC 29407
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Attorney for Appellants Parris Williams,
Stewart Middleton, Dan Middleton, Carl
Middleton, Jr., and Carl Middleton, III, as
heirs of James Prioleau

Other Counsel of Record:

Veronica G. Small, Esq.
Family Legal Service, LLC
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Attorney for Respondent

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Guardian *ad Litem*

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TABLE OF AUTHORITIES

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Delta Apparel, Incorporated v. Daniel G. Farina 406 S.C. 257; 750 S.S. 2d 615 (S.C. App. 2013).....	
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Catherine Rita Roche, Personal Representative of the Estate of George J. Roche, Petitioner, v. Young Brothers, Inc., of Florence, et. al. 456 S.E. 2d 897 (S.C. 1995).....	
South Carolina Rules of Civil Procedure § 4(d)(8), Summons; Personal Service.....	
South Carolina Rules of Civil Procedure § Rules 55(c) and Rule 60(b) 4(d)(8), Setting Aside Default; Relief from Judgment or Order.....	

STATEMENT OF THE ISSUE ON APPEAL

- I. DID THE RESPONDENT EFFECTUATE SERVICE OF THE PLEADINGS ON THE APPELLANT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, WITHOUT RESTRICTED DELIVERY?
- II. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO SET-ASIDE DEFAULT?

STATEMENT OF THE CASE

Respondent initiated this quiet title action by filing amended pleadings, pursuant to the South Carolina Uniform Declaratory Judgment Act, Section 15–53–10, et seq., Code of Laws South Carolina, 1976. Respondent sought to obtain a declaration of rights, status and other legal relations of the parties hereto in respect to the real estate located on James Island County of Charleston, State of South Carolina.

Respondent asks the court to resolve a boundary dispute as a result of a boundary conflict between property owned by the Respondent, Johnny Scott, and property titled in the name of the Heirs of

James Prioleau. Respondent stated that the conflict was discovered as a result of boundary surveys completed by Palmetto Land Surveying, Inc. in 2015 and a survey completed by Atlantic surveying, Inc. on January 31, 2020. Respondent then asserts that as a result of said surveys the boundary conflict was discovered between the property owned by James Prioleau and the property owned by the Respondent.

The Amended Complaint of the Respondent also asserted that Respondent was in possession of the real estate claims owned by him in excess of 20 years and that his possession has been actual, exclusive, notorious and hostile. He also asserted that his ownership is in fee simple, by virtue of legal ownership, actual possession and in the alternative by adverse possession.

Respondents asserted that service of the Amended Summons and Complaint, Notice of Filing, Notice of Intent to Refer to the Master In Equity, Petition for Appointment of GAL and Order Appointing GAL, were served on the Heirs of James Prioleau and another Defendant who owned adjacent property, Crystal Adams; by certified mail, return receipt requested on November 23, 2020.

Respondent secured an Order of Default and Reference upon the Heirs of James Prioleau and other Defendants as a result of a duly sworn Affidavit of Default, filed June 1, 2020, asserting that the Defendants were duly served, including the heirs of James Prioleau, by registered mail return receipt requested, on November 23, 2020; those 30 days had elapsed since the completion of the service and no Answer, Notice of Appearance or any other legal process had been served on Respondent.

Appellant's counsel filed a Notice of Appearance on June 14, 2021 and an Answer on behalf of Defendant, Parris Williams, on the same date. Appellant filed an Answer on behalf of the

Defendant Stewart Middleton, on June 17, 2021 and Respondent filed a Motion to Strike both Answers on the grounds that they had been served by her assertions in the Affidavit of Default. Appellants filed a motion, with a supporting memorandum, to set-aside the default, which was denied by the Court citing service being effective against both Defendants by the certified mailing, return receipt requested of the pleadings, without a response or answer within 30 days of said service.

FACTS

Notwithstanding the substantive and equitable claims of the Respondent, Appellants assert service by certified mail, without restricted delivery, on the Defendants was ineffective service and not a sufficient foundation to support an Order of Default. The pleadings in this action were mailed on November 23, 2020 to the Heirs of James Prioleau, at 1820 S. Grimball Rd., Charleston, SC 29412, which is the address of the Appellant Parris Williams. It has a date of delivery of November 25, 2020. The signature and printed name shown on the return receipt is undecipherable.

Pleadings were also mailed on November 23, 2020 to the Heirs of James Prioleau, at 1833 S. Grimball Rd., Charleston, SC 29412, which is the address of the Appellant, Stewart Middleton, the return receipt being filed indicating that it was not signed. Both of the mailings did not require restricted delivery.

The trial court determined that service, as indicated by the affidavit of the Respondent, with supporting affidavits and memoranda, justified denying Appellant's motion to set-aside the default because of ineffective service; from that order this appeal lies.

STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment "lies solely within the sound discretion of the trial judge." *Roberson vs. S. Fin. of S.C., Inc.*, 365 S.C. 6, 9,

615 S.E.2d 112, 114 (2005) (citing *Thompson v. Hammond*, 299 S.C. 116, 119, 382 S.E.2d 900, 902-03 (1989)). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Id.* (citing *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct.App.1988)). " 'An abuse of discretion in setting aside a default judgment occurs when the [trial court] issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.' " *Id.* (quoting *In re Estate of Weeks*, 329 S.C. 251,259, 495 S.E.2d 454, 459 (Ct.App.1997)).

ARGUMENTS

1. DID THE RESPONDENT EFFECTUATE SERVICE OF THE PLEADINGS ON THE APPELLANT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, WITHOUT RESTRICTED DELIVERY?

Parris Williams and Stewart Middleton (hereinafter referred to as "Appellants") thru their counsel properly filed a Motion to set aside the Order of default, dated June 14, 2021 and June 17, 2021, of the trial court for asserting defective service of process. Said Motion was denied on the grounds that the certified mailing was effective upon the Appellants. The Motion to Set Aside the Order of default was supplemented by a Memorandum in Support of the Motion. Both the Motion and the Memorandum stated that service upon them was ineffective because they never signed for the pleadings nor was there any acknowledgment of their receipt or a subsequent acknowledgment of service the pleadings. The courts have made clear that adherence to the service of process pursuant to Rule 4(d)(8), of the South Carolina Rules of Civil Procedure, is required to effectuate service upon Defendants and therefore be the foundation for an Order of Default with the supporting Affidavit of Plaintiff's counsel. The South Carolina Court of Appeals further opined the

proper application of the rule in Willie Lee Langley v. Richard Graham 472 S.E. 2d 259; 322 S.C. 428 (S.C. App.1996). The court in Langley stated;

.....The trial judge denied the motion finding Graham failed to demonstrate the return receipt was signed by an unauthorized person pursuant to Rule 4(d)(8). Moreover, he found Graham's acknowledgment of actual receipt of the summons and complaint satisfied the requirements of Rule 4(j), SCRCP. Graham' contends the default judgment should be set aside because he did not sign the return receipt for the summons and complaint and, further, Langley failed to send the suit papers by "restricted delivery" mail. Rule 4(d)(8) provides: Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested. and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set [322 S.C. 430] aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules. (Emphasis added).

In the instant case the service was by certified mail but not designated as "restricted delivery". Moreover, the pleadings were addressed to the "Heirs of James Prioleau" when the Appellants names were readily ascertainable by the Respondent. The Langley Court went on to cite Catherine Rita Roche, Personal Representative of the Estate of George J. Roche, Petitioner, v. Young Brothers, Inc., of Florence, et. al. 456 S.E. 2d 897(SC. 1995, reinforcing the principal that at the least, certified mailing of the pleadings has to be restricted to the addressee. The Langley court opined on the analysis in Roach thusly:

In Roche v. Young Bros., Inc., 318 S.C. 207, -- 456 S.E.2d 897, 900 (1995), our Supreme Court held that a plaintiff satisfied the requirements of Rule 4(d)(8) when he demonstrated the "return receipt [was] restricted to the addressee and [accepted] 1 by the defendant." Here, however, it is obvious from a cursory review of the return receipt that neither requirement has been met. Graham did not sign the return receipt, 2 and its delivery was not restricted to "addressee[322 S.C. 431] " only....

Here, the Respondent has not met the requirement of effectuating service on the Appellants by mail. Further, there was no attempt to serve Appellants by the alternate means authorized by the rules of civil procedure, specifically personal service upon the defendants.

II. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO SET-ASIDE DEFAULT?

The South Carolina Rules of Civil Procedure, Rules 55(c) or Rule 60(b) allows an order of default to be set aside if the return receipt was signed by an unauthorized person. The facts of this case show that one return receipt, although still not restricted to the addresses, was marked by an illegible mark and not done by the Appellant, Parris Williams, to whose address the pleadings were directed. The Court in Graham Law Firm, P.A. v. Mohamed Makawi, et. al, 396 S.C. 290; 721 S.E. 2d 430 (SC. 2012), although this case involved a corporate actor, clarified the remedy of noncompliance with the service rule.

In pertinent part the Graham court expanded upon this procedure as follows:

The trial court's findings of fact regarding validity of service of process are reviewed under the abuse of discretion [395 S.C. 295] standard. Clark v. Key, 304 S.C. 497, 500, 405 S.E.2d 599, 601 (1991).

Rule 4(d)(8), SCRPC, sets forth the requirements for effective service of process by certified mail in relevant part: Service by Certified Mail. Service of a summons and complaint upon [an individual [721 S.E.2d 433] or corporate] defendant ... may be made ... by registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.

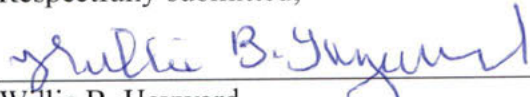
CONCLUSION

The Appellants, and the other heirs of the long-deceased James Prioleau, have been divested of their interest in real property that has been in the family for generations without the opportunity to

respond, counterclaim or otherwise defend their property rights against the Respondents. Respondent's pleadings contained allegations in both law, (boundary conflict) and equity, (adverse possession), but the heirs of James Prioleau who are most able to defend the varied interest in the family land have been denied the opportunity to do so. The Appellants therefore ask that the Order of Default be set-aside for ineffective service and the Appellants be given an opportunity to address the allegations in Respondent's Amended Complaint.

Respectfully submitted,

July 25, 2022



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Attorney for the Appellants

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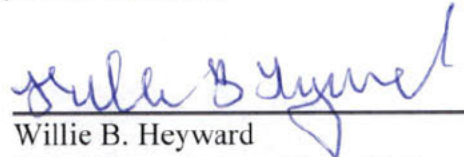
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estate, interest in or lien upon the lands of the estate of James Prioleau, or any portion
thereof, including any such as may be infants, incompetents, or otherwise under any
disability.....Appellants

PROOF OF SERVICE

I certify that I have served a copy of the **Initial Brief and Designation of Matter** on all counsel
of record by depositing copies of the same in the United States Mail postage prepaid, on July 25,
2022 addressed to the person(s) hereinafter named, at the places and addresses stated below, by
depositing said envelope and contents in Charleston, South Carolina.



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SC Court of Appeals

South Carolina Court of Appeals
1220 Senate Street
P. O. Box 11629
Columbia, S.C. 29211

Re: Johnny Scott vs. The Heirs of James Prioleau, et al.
Case No.: 2020-CP-10-04908

Dear Sir/Madam:

Enclosed please find Initial Brief and Designation of Matter in the above referenced action. Also enclosed is the Proof of Service on the Counsels of record in this case.

Thank you for your kind attention in this matter.

Yours truly,


Willie B. Heyward

Attorney for Appellants, Parris Williams, Stewart Middleton,
Dan Middleton, Carl Middleton, Jr., and Carl Middleton, III

cc: Veronica G. Small, Esq.
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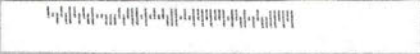
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Enclosures as stated

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