

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
In the Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge  
Civil Action No.: 2021-CP-02-02457

Appellate Case No.: 2022-000685

**RECEIVED**  
NOV 17 2022  
**SC Court of Appeals**

Vance Mack Fleming, .....Appellant,

v.

Glen Fleming... .....Respondent.

**APPELLANT'S INITIAL BRIEF**

By: \_\_\_\_\_



William H. Edwards  
Moore Bradley Myers Law Firm  
1700 Sunset Boulevard  
P.O. Box 5709  
West Columbia, SC 29171  
803-796-9160  
will@mbmlawsc.com  
Attorney for Appellant

November 16, 2022

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF CASE .....2

STATEMENT OF THE FACTS .....4

STANDARD OF REVIEW .....11

ARGUMENT .....12

CONCLUSION.....20

## TABLE OF AUTHORITIES

### Cases

<i>Skydive Myrtle Beach, Inc. v. Horry Cty.</i> 424 S.C. 298, 302-303, 818 S.E.2d 224, 226-227 (2018) .....	11
<i>Samuel v. Mouzon</i> 282 S.C. 182, 314 S.E. 2d 612 (Ct. App. 1984).....	11
<i>McKoy v. McKoy</i> 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).....	11
<i>First Citizens Bank and Trust Company, Inc. v. Taylor</i> 431 S.C. 149, 162; 847 S.E. 2d 249, 256 (Ct. App. 2020).....	11
<i>Deborah Dereede Living Tr. dated Dec. 18, 2013, v. Karp.,</i> 427 S.C. 336, 346; 831 S.E.2d 435, 441 (Ct. App. 2019).....	11
<i>Ex Parte Cannon</i> 385 S.C. 643, 654; 685 S.E.2d 814, 820 (Ct.App.2008).....	11
<i>Stewart-Jones Co. v. Skehan</i> 127 S.C. 451, 121 S.E. 374 (1924) .....	12, 17
<i>Cook v. Cooper</i> 59 SC 560 S.E.216 (1901) .....	14
<i>Coon v. Coon</i> , 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005). 346 S.C. 401, 552 S.E.2d 42 (2005) .....	14
<i>Dove v. Gold Kist</i> , 314 S.C. 235, 442 S.E.2d 598 (1994) .....	15
<i>Badeaux v. Davis</i> 337 S.C. 195, 522 S.E.2d 835 (Ct.App. 1999).....	15
<i>Katzburg v. Katzburg</i> 410 S.C. 184, 187, 764 S.E.2d 3, 5 (Ct. App. 2014) .....	15
<i>Ex parte Reichlyn</i> 310 S.C. 495, 427 S.E.2d 661 (1993) .....	15
<i>Anderson v. Anderson</i> 299 S.C. 110, 382 S.E.2d 897 (1989) .....	15
<i>Richland Drug Co. v. Moorman</i> 71 S.C. 236, 50 S.E. 792 (S.C. 1905) .....	17, 18

*Baldwin vs. Cooley*  
1 S.C. 256, 870 LEXIS 30, (S.C. 1870).....17

*Watson v. Wall*  
229 S.C. 500, 93 S.E.2d 918 (1956).....18

**Statutes**

South Carolina Code § 22-3-20(2) .....2, 3, 4, 8, 10, 12, 13, 16, 19  
South Carolina Code § 22-3-1110 (2007).....16  
South Carolina Code § 22-3-1140 (2007).....12  
South Carolina Code § 22-3-1150 (2007).....12  
South Carolina Code § 26-1-60 (2014).....13  
South Carolina Code § 26-1-80 (2014).....6, 13  
South Carolina Code § 26-1-90 (2014).....13  
South Carolina Code § 30-5-30 (2018).....13  
South Carolina Code § 15-67-610 (2007).....17

**Rules**

South Carolina Rules of Civil Procedure Rule 59(e), SCRCF .....3, 10

**Other Authorities**

S.C. Constitution of 1895.....16  
S.C. Constitution Art. V, § 26.....16

**STATEMENT OF ISSUES ON APPEAL**

- I) **The circuit court judge erred when she determined the magistrate court had subject matter jurisdiction and remanded Respondents' civil appeal because the magistrate court lacked subject matter jurisdiction while adjudicating an ejection of trespassers matter.**
  
- II) **The magistrate court did not have subject matter jurisdiction because Appellant's own showing brought the title to the subject property into question.**

## STATEMENT OF THE CASE

This matter came before the Court on a Motion for Ejectment of Trespassers on October 4, 2021, filed by Glen Fleming the Respondent (hereinafter “Respondent”), on August 20, 2021. (Order of the Honorable Patrick D. Sullivan, dated October 25, 2021 R. \_\_\_\_\_). Respondent filed the Motion for Ejectment for the purpose of ejecting Vance Fleming the Appellant (hereinafter “Appellant”) from a house located at 1453 Sparkleberry Lane, Aiken, South Carolina, 29803. (Order of the Honorable Patrick D. Sullivan, dated October 25, 2021 R. \_\_\_\_\_). Appellant alleged that he had a claim of title to the property at 1453 Sparkleberry Lane, Aiken, South Carolina, 29803. (Return of Civil Appeal, dated December 10, 2021 R. \_\_\_\_\_)

The Magistrate issued an Order on October 25, 2021, pursuant to South Carolina Code § 22-3-20(2). (Order of the Honorable Patrick D. Sullivan, dated October 25, 2021 R. \_\_\_\_\_). The Court found and ruled that it did not have jurisdiction to rule on issues relating to title to real property and was without subject matter jurisdiction on the Motion for Ejectment, as cases in which the title to real property are raised may only be heard in the Circuit Court. The Magistrate Court dismissed the Respondent’s Motion for Ejectment without prejudice. (Order of the Honorable Patrick D. Sullivan, dated October 25, 2021 R. \_\_\_\_\_).

On November 22, 2021, Respondent filed a Notice of Civil Appeal in the Court of Common Pleas. (Notice of Civil Appeal, dated November 22, 2021 R. \_\_\_\_\_). Respondent asked the Court overturn the finding of the Magistrate’s Court as Appellant did not have any right to claim any interest in the subject property. Respondent asked the Court to Order that Appellant vacate the premises owned by the Respondent or that the matter be remanded to the Magistrate Court with instructions for the Court to find that the Estate of L. Dean Fleming is the only entity with standing

to contest the 2003 deed. A Return of Civil Appeal was filed on December 10, 2021. (Return of Civil Appeal, dated December 10, 2021 R. \_\_\_\_\_).

Appellant filed a Summons and Complaint on January 27, 2022 (Summons and Complaint, dated January 27, 2022 R. \_\_\_\_\_). Appellant requested that the alleged conveyance of the Title to the Real Estate located at 1453 Sparkleberry Lane, Aiken, South Carolina 29803 from L. Dean Fleming be set aside, that the subject property be included in the Estate of L. Dean Fleming for probate, and for such other and further relief as the Honorable Court deemed proper. (Summons and Complaint, dated January 27, 2022 R. \_\_\_\_\_).

On February 2, 2022, the Respondent's Appeal was heard by the Aiken County Court of Common Pleas. On February 3, 2022, the Court issued an Order granting the Respondent's Appeal and remanding the matter to the lower court for reconsideration (Order of the Honorable Courtney Clyburn Pope, dated October February 3, 2022 R. \_\_\_\_\_).

Appellant timely filed a Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment. (Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment, dated October February 14, 2022 R. \_\_\_\_\_). Appellant's Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment was made on the grounds that the Court did not consider and rule on Appellant's argument that the Magistrate Court did not have subject matter jurisdiction to rule on issues regarding title to real property under S.C. Code Sec. 22-3-20(2), which was a necessary finding in the case. (Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment, dated October February 14, 2022 R. \_\_\_\_\_).

On April 20, 2022, the Court issued an Order denying the Plaintiff's Motion for Reconsideration (Order of the Honorable Courtney Clyburn Pope, dated April 20, 2022 R. \_\_\_\_\_). The Court ordered that the Order from February 3, 2022 be amended and that the Magistrate was able to hear the case pursuant to S.C. Code Sec. 22-3-20(2). (Order of the Honorable Courtney Clyburn Pope, dated April 20, 2022 R. \_\_\_\_\_). The Court's Order granted the Appeal and remanded the matter back to the lower court for reconsideration. (Order of the Honorable Courtney Clyburn Pope, dated April 20, 2022 R. \_\_\_\_\_).

Appellant filed a Notice of Appeal on May 23, 2022 appealing the Order of the Honorable Courtney Clyburn Pope dated February 3, 2022 and April 20, 2022. (Notice of Appeal, dated May 19, 2022 R. \_\_\_\_\_).

#### **STATEMENT OF THE FACTS**

The Appellant and Respondents' father, L. Dean Fleming (hereinafter "Decedent"), was a resident and citizen of the County of Aiken. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). Appellant, Respondent, and their sister, Cheryl Dean Willinger are children, heirs at law, and named testamentary beneficiaries of Decedent. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_).

On February 21, 2001, the Decedent, acquired the subject real property located at 1453 Sparkleberry Aiken, South Carolina by Title of Real Estate of Betty W. Fleming, which was recorded in the Register of Deeds of Aiken County in Deed Book 2006, Page 259. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_).

On January 28, 2003, Decedent was involved in a motor vehicle accident in Aiken County, South Carolina. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Defendant's Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_).

As a result of the incident, Decedent was transported from the scene of the accident to a hospital in Augusta, Georgia. His severe injuries left him physically impaired and mentally impaired. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Defendant’s Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_). He never regained physical or mental competency, (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). (Return of Civil Appeal – Defendant’s Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_).

At all times following the January 28, 2003 accident Decedent was suffering a mental incapacity and by reason of the mental incapacity was incompetent and physically restrained to such an extent that he could not execute a valid Title to Real Estate or contract. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). (Return of Civil Appeal – Defendant’s Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_).

Decedent remained hospitalized in Augusta, Georgia from January 28, 2003 until April 17, 2003. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Defendant’s Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_). Decedent did not have mental capacity and was too physically incapacitated to effect the transfer and make a gift of the subject property to Respondent. Decedent was physically restrained to his bed, mentally impaired, and unable to speak coherently, and Respondent did not have proper authority to gift real property of the Decedent to himself. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). (Return of Civil Appeal – Defendant’s Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_).

On April 13, 2003, while Decedent was still admitted to the hospital in Augusta, Georgia and, while still physically restrained, Respondent coerced, unduly influenced, and fraudulently induced Decedent to sign a Deed on the property located at 1453 Sparkleberry Lane, Aiken, South

Carolina, which resulted in a purported Title to Real Estate transferring the property to Respondent. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Defendant’s Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_). (Return of Civil Appeal – Plaintiff’s Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_).

That at the time of executing the purported conveyance, Respondent took a South Carolina Notary to the hospital in Augusta, Georgia to execute a purported Title of Real Estate transferring the property from Decedent to Respondent. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_)(Return of Civil Appeal – Defendant’s Exhibit 3, dated December 10, 2021; R. \_\_\_\_\_). (Return of Civil Appeal – Plaintiff’s Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_). The South Carolina Notary, was not a licensed or commissioned notary for the State of Georgia, did not have authority to notarize the purported Title of Real Estate, and did not follow South Carolina Notary Law for execution. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). In accordance with S.C. Code § 26-1-80, a South Carolina notary’s jurisdiction does not extend outside the borders of the state. (Transcript from Hearing, dated February 1, 2022, Page 10, Lines 22-24; R. \_\_\_\_\_).Purported deed indicates on its face that it was executed and notarized in the state of Georgia. (Transcript from Hearing, dated February 1, 2022, pp 9-10, Lines 17-25, 1-10; R. \_\_\_\_\_) (Transcript from Hearing, dated February 1, 2022, Page 13, Lines 2-3; R. \_\_\_\_\_). The South Carolina Notary purportedly notarizing the purported Title to Real Estate fails to note she ever read the document aloud to the Decedent. Furthermore, the purported Title to Real Estate was never properly notarized. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Plaintiff’s Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_). Respondent knowingly and unlawfully had the purported Title to Real Estate to himself recorded with the Register of Deeds

in Aiken County, South Carolina, Book 2301, Page 239, even though the document was physically signed in the state of Georgia and was improperly notarized by a South Carolina Notary who placed an expired date of her South Carolina commission on the face of the instrument. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). (Return of Civil Appeal – Plaintiff’s Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_). (Return of Civil Appeal – Defendant’s Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_).

On January 13, 2006, Appellant moved into the property owned by Decedent, at 1453 Sparkleberry Lane, Aiken, South Carolina. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_).

Decedent died on March 13, 2006, and an Estate was opened in Aiken County Probate Court, Case Number 2006-ES-02-0254.2. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). Since January 13, 2006, the Appellant has openly and continuously resided at 1453 Sparkleberry Lane, Aiken, South Carolina. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_).

On August 20, 2021, Respondent filed a Motion for Ejectment of Trespassers against Appellant seeking to eject Appellant from the Sparkleberry Lane property. This motion was heard on October 4, 2021. (Transcript from Hearing dated February 1, 2022, Page 1, Lines 15-21; R. \_\_\_\_\_). (Transcript from Hearing dated February 1, 2022, Page 1, Lines 15-21; R. \_\_\_\_\_). The Appellant argued that he had a claim of title to the property. (Return of Civil Appeal, dated December 10, 2021; R. \_\_\_\_\_). Appellant asserted a claim to ownership of the property based on deficiencies in Respondent’s purported deed and provisions in their father’s will. (Return of Civil Appeal – Plaintiff’s Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_).

The Magistrate issued an Order on October 25, 2021, pursuant to South Carolina Code § 22-3-20(2). (Order of the Honorable Patrick D. Sullivan, dated October 25, 2021; R. \_\_\_\_\_). The Court found that it did not have jurisdiction to rule on issues relating to title to real property and was without subject matter jurisdiction on the Motion for Ejectment, as cases in which the title to real property are raised may only be heard in the Circuit Court. (Return of Civil Appeal, dated December 10, 2021; R. \_\_\_\_\_). The Magistrate Court dismissed the Respondent's Motion for Ejectment without prejudice. (Return of Civil Appeal, dated December 10, 2021; R. \_\_\_\_\_).

On November 22, 2021, Respondent filed a Notice of Civil Appeal in the Court of Common Pleas. (Notice of Civil Appeal, dated November 22, 2021; R. \_\_\_\_\_). Respondent requested that the Court overturn the finding of the Magistrate's Court as Appellant did not have any right to claim any interest in the subject property and Order that Appellant vacate the premises owned by the Appellant or that the matter be remanded to the Magistrate Court with instructions for the Court to find whether the property belonged to the parties' father's estate and that the Estate of L. Dean Fleming was the only entity with standing to contest the 2003 deed. (Notice of Civil Appeal, dated November 22, 2021; R. \_\_\_\_\_).

On January 25, 2022, Appellant sent an Application for Subsequent Administration to the Aiken County Probate Court for the Estate of Decedent. (Application for Subsequent Administration dated January 25, 2022; R. \_\_\_\_\_). The Application for Subsequent Administration regarding the Estate of Decedent is based upon Respondent's claim that a purported life time conveyance of real property by Decedent to Respondent had failed and should have been included in the residuary of the Decedent's estate, such that the Decedent's children would equally share ownership in the Decedent's property, and that the purported life-time

conveyance be set aside. (Application for Subsequent Administration dated January 25, 2022; R. \_\_\_\_\_).

On January 27, 2022, Appellant filed a Summons and Complaint in the Aiken County Common Pleas Court. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). Appellant alleged that the purported conveyance from Decedent to Respondent, was fraudulent and implemented in bad faith in an attempt to deprive Appellant of any interest in the subject property, as Appellant would otherwise have received a one third interest in the property through the probate of Decedent's Will. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). Appellant's Complaint alleged that Respondent breached a fiduciary duty and/or moral and legal duty to his family by this purported conveyance, and that it would be inequitable if this Title of Real Estate were not set aside by the Circuit Court. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). Appellant alleged that as a consequence of these facts the purported Title to Real Estate is now, and at all times mentioned was, null and void and should be cancelled and set aside. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). Appellant asserted that the Sparkleberry property was an asset of the Estate of Decedent, should proceed through the probate process with the Aiken County Probate Court. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_). Appellant sought to have the property pass through the residuary estate based on the Decedent's Will and would result in Respondent, Appellant, and their sister having an undivided one-third interest in the real property. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Defendant's Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_).

On February 2, 2022 the Respondents Appeal came before the Common Pleas Court in Aiken County. On February 3, 2022, the Common Pleas Court in Aiken County issued an Order

granting the Respondent's Appeal and remanding the matter to the lower court for reconsideration (Transcript from Hearing dated February 1, 2022, Page 13, Lines 5-13; R. \_\_\_\_\_).

On February 14, 2022, Appellant filed a Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment. (Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment, dated October February 14, 2022; R. \_\_\_\_\_). The Appellant's Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment was on the grounds that the Court did not consider and rule on Appellant's argument that the Magistrate Court did not have subject matter jurisdiction to rule on issues regarding title to real property under S.C. Code Sec. 22-3-20(2), which was a necessary finding in the case. (Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), or in the Alternative Motion for Stay of Judgment, dated October February 14, 2022; R. \_\_\_\_\_).

On March 15, 2022, Appellant sent an Application for Appointment to the Aiken County Probate Court regarding the Estate of Decedent. The Application for Appointment was filed with the Aiken County Probate Court on March 21, 2022. (Application for Appointment, dated March 21, 2022; R. \_\_\_\_\_).

On April 20, 2022, the Circuit Court issued an Order denying the Appellant's Motion for Reconsideration and amending the February 3, 2022 Order. (Order of the Honorable Courtney Clyburn Pope, dated February 3, 2022; R. \_\_\_\_\_). The Circuit Court also indicated the Magistrate was able to hear the case pursuant to S.C. Code Sec. 22-3-20(2). (Order of the Honorable Courtney Clyburn Pope dated February 3, 2022; R. \_\_\_\_\_). The Circuit Court

granted the Appeal and remanded the matter back to the lower court for reconsideration. (Order of the Honorable Courtney Clyburn Pope dated February 3, 2022; R. \_\_\_\_\_).

Counsel for the Appellant then filed a Notice of Appeal on May 23, 2022 appealing the Order of the Honorable Courtney Clyburn Pope dated February 3, 2022 and April 20, 2022. (Notice of Appeal dated May 19, 2022 R. \_\_\_\_\_).

### **STANDARD OF REVIEW**

On an appeal of an ejectment proceeding which was first heard in magistrate's court, this Court "reviews the order under a limited standard of review in which (1) findings of fact are to be upheld if there is any supporting evidence and (2) absent an error of law, the circuit court's holding is to be affirmed." *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 424 S.C. 298, 302-303, 818 S.E.2d 224, 226-227 (2018).

Determinations of questions of law are reviewed *de novo*. *Samuel v. Mouzon*, 282 S.C. 182, 314 S.E. 2d 612 (Ct. App. 1984). An appellate court applies a *de novo* standard of review to determine whether, for example, an action was moot when it was considered at the trial court level. "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed *de novo* on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).

Given the issues in this appeal, there are two (2) standards of review: As applied to the first issue-subject matter jurisdiction-appellate review is *de novo*. *First Citizens Bank and Trust Company, Inc. v. Taylor*, 431 S.C. 149, 162; 847 S.E. 2d 249, 256 (Ct. App. 2020), quoting *Deborah Dereede Living Tr. dated Dec. 18, 2013, v. Karp*, 427 S.C. 336, 346; 831 S.E. 2d 435, 441 (Ct. App. 2019). Review of subject matter jurisdiction can be properly raised on appeal, even if not raised during trial. *Ex Parte Cannon*, 385 S.C. 643, 654; 685 S.E.2d 814, 820 (Ct. App. 2009). However, as applied to testimony and evidence, the trial court is in the best position

to review and determine the relevance, applicability, veracity, and other issues that aid the court in making a decision.

### ARGUMENTS

**I) THE CIRCUIT COURT JUDGE ERRED WHEN SHE DETERMINED THE MAGISTRATE COURT HAD SUBJECT MATTER JURISDICTION AND REMANDED APPELLANTS' CIVIL APPEAL BECAUSE THE MAGISTRATE COURT LACKED SUBJECT MATTER JURISDICTION WHILE ADJUDICATING AN EJECTMENT OF TRESPASSERS MATTER.**

The Code of Laws of South Carolina excludes magistrates' jurisdiction over civil actions “when the title to real property shall come in to question, except as provided in Article 11 of this chapter.” S.C. Code Ann. § 22-3-20(2) (2007). Even where there is some arguable defect in the undertaking, however, and defendant is precluded from raising a disputed title defense, the case must still be dismissed for lack of subject matter jurisdiction where plaintiff's evidence brings title into question. This is a basic and necessary corollary in the statute to satisfy the overarching requirement that matters of title are for the Circuit Court. So, in situations where the defendant does deliver the required undertaking to the magistrate and the magistrate does not retain jurisdiction of the action, then the Circuit Court proceeds with hearing the matter accordingly. S.C. Code Ann. § 22-3-1140 (2007). When the case is heard, however, if the plaintiff's own showing brings title to real property into question, and the defendant disputes such title, the magistrate is then required to dismiss the action. S.C. Code Ann. § 22-3-1150 (2007); Stewart-Jones Co. v. Skehan, 127 S.C. 451, 121 S.E. 374 (S.C. 1924) (“[I]t appeared on the trial from the plaintiff's own showing that the title to real property was in question, and that such title was disputed by the defendant, and hence that the magistrate was without jurisdiction”).

In this case, there was a hearing on October 4, 2021 before the magistrate court for a Motion for Ejectment. The magistrate court entered an Order on October 25, 2021, pursuant to South

Carolina Code 22-3-20(2) dismissing the matter and allowing the Appellant to bring the matter of the disputed title to the Circuit Court. (Order of the Honorable Patrick D. Sullivan dated October 25, 2022; R. \_\_\_\_\_). The magistrate court found that it did not have jurisdiction to rule on issues relating to title to real property and was without subject matter jurisdiction on the Motion for Ejectment, as cases in which the title to real property are raised may only be heard in the Circuit Court and dismissed the case. (Order of the Honorable Patrick D. Sullivan dated October 25, 2022; R. \_\_\_\_\_).

The deed must be properly notarized in order to be recorded in South Carolina (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Defendant’s Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_). The purported deed is defective on its face and should have never been recorded. (Return of Civil Appeal dated December 10, 2021; R. \_\_\_\_\_). In accordance with S.C. Code § 26-1-80, a South Carolina notary’s jurisdiction does not extend outside the borders of the state. (Transcript from Hearing, dated February 1, 2022, Page 10, Lines 22-24; R. \_\_\_\_\_). Under S.C. Code 26-1-60 and 26-1-90(B)(3) a notary is required by South Carolina statute to include the expiration date of his commission. (Transcript from Hearing, dated February 1, 2022, pp. 10-11, Lines 22-25, 1-2; R. \_\_\_\_\_). Additionally, Under S.C. Code §30-5-30, before a deed can be recorded it must be proved by affidavit taken before a notary public. The notary public must affix his official seal within the State of his appointment. (Transcript from Hearing, dated February 1, 2022, Page 10, Lines 11-21; R. \_\_\_\_\_).

In this case, the deed is defective because it is not properly notarized, the Decedent was mentally and physically incapacitated while physically restrained to his hospital bed in Georgia at the time the purported deed was executed, the purported deed is notarized by a South Carolina notary who cannot notarize documents outside the state of South Carolina, the notary was not an

appointed notary in Georgia, and the Decedent's signature is not properly denoted by the notary as statute requires. (Return of Civil Appeal dated December 10, 2021; R. \_\_\_\_\_). Additionally, the South Carolina Notary purportedly notarizing the purported Title to Real Estate fails to note she ever read the document aloud to the Decedent. (Return of Civil Appeal dated December 10, 2021; R. \_\_\_\_\_). Furthermore, the purported Title to Real Estate was never properly notarized and the notary's commission, as written by the notary on the purported deed, had expired two and a half years before the purported deed was executed. (Summons and Complaint, dated January 27, 2022; R. \_\_\_\_\_) (Return of Civil Appeal – Plaintiff's Exhibit 1, dated December 10, 2021; R. \_\_\_\_\_) (Transcript from Hearing, dated February 1, 2022, Page 9, Lines 18-20, 1-2; R. \_\_\_\_\_). Appellant concedes the South Carolina notary had an active commission at the time, but the failure to provide an active commission renders the attempted notarial act and the purported conveyance defective on its face, such that it should never have been recorded. *Cook v. Cooper*, 59 S.C. 560, 38 S.E.218 (1901).

The circuit court should have jurisdiction over the matter and the issues raised therein. The circuit court erred when it dismissed and remanded the appeal as the magistrate court lacked subject matter jurisdiction while adjudicating the ejectment matter because title to real property was in question. The Circuit Court's Order should be reversed by this Court.

**II) THE MAGISTRATE COURT DID NOT HAVE SUBJECT MATTER JURISDICTION BECAUSE RESPONDENT'S OWN SHOWING BROUGHT THE TITLE TO THE SUBJECT PROPERTY INTO QUESTION.**

The South Carolina Supreme Court has recognized that “[a] judgment of a court without subject-matter jurisdiction is void.” *Coon v. Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005). Subject-matter jurisdiction, of course, “is the ‘power to hear and determine cases of the general

class to which the proceedings in question belong.” *Id.* (quoting *Dove v. Gold Kist*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994)). Thus, it “is fundamental” to a court entering an order. *Badeaux v. Davis*, 337 S.C. 195, 205, 522 S.E.2d 835, 840 (Ct. App. 1999). Accordingly, when a court lacks this power but enters a judgment anyway, the lack of subject-matter jurisdiction is a basis to consider the judgment void. *Katzburg v. Katzburg*, 410 S.C. 184, 187, 764 S.E.2d 3, 5 (Ct. App. 2014).

The Circuit Court erred in remanding the Motion for Ejectment against Appellant to the magistrate court. The facts presented to the magistrate at the commencement of the hearing on October 4, 2021, demonstrated a legitimate dispute between the parties regarding title to the subject property. The magistrate court did not have subject matter jurisdiction to rule on the issues relating to title on the real property. It is axiomatic that lack of subject matter jurisdiction is a complete defense that may be raised at any stage of a proceeding, even for the first time on appeal before the Supreme Court. It cannot be waived, even by consent of the parties, and can and should be raised *sua sponte* by the court where it appears to be absent. See *Ex parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993); *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989). Accordingly, Appellant respectfully requests this Court to reverse the circuit court’s order to remand the matter back to the magistrate court as the magistrate court did not have subject matter jurisdiction over the case, as Appellant presented an issue relating to title of the real property.

South Carolina property law balances the strict public policy of prohibiting magistrates from hearing cases involving legitimate issues of title to real property with the complementary policy of giving landowners, where appropriate, an expedited process for expelling squatters, trespassers and tenants. Thus, for a magistrate to assume subject matter jurisdiction of a summary

ejectment proceeding, this Court requires property owners to make a preliminary showing that the action brought clearly comes within the particular statute pled.

In this case, the evidence presented to the magistrate at the Motion for Ejectment of Trespassers on October 4, 2021, the Return filed on December 10, 2021, and the evidence and facts presented at the hearing on February 2, 2022, indicated, on its face, that a legitimate dispute existed between the parties regarding the title to the subject property. Confronted with this evidence of a legitimate title dispute at the very outset of the case, the circuit court erred in remanding this matter back to the magistrate court for reconsideration and denying the Respondent's Motion to reconsider.

The prohibition on magistrates hearing actions where title is in dispute is deeply rooted in our law. Historically the South Carolina Constitution precluded state magistrates from having jurisdiction to decide actions involving the title to real property. S.C. CONSTITUTION OF 1895. Upon later amendment, the South Carolina Constitution authorized the General Assembly to provide for the civil jurisdiction of the magistrate courts. S.C. Const. Art. V, § 26. Thereafter, the legislature codified what is now the well-established exclusion of actions involving the title to real property from magistrate's court subject matter jurisdiction. S.C. Code Ann. § 22-3-20(2) (2007). Article 11 under this chapter provides a further statutory safeguard to ensure that magistrates do *not* decide actions involving legitimate questions as to the title of real property. S.C. Code Ann. § 22-3-1110, et seq. (2007). Pursuant to Article 11, such cases either get automatically transferred to the circuit court, or the parties are prohibited from raising the issue of title to real property. *Id.*

In order to reconcile these two separate public policies - affording landowners the convenience of summary proceedings while also ensuring that magistrates do not decide actions involving the title to real property, the South Carolina Supreme Court has consistently required

plaintiffs attempting to utilize summary ejectment proceedings to make a preliminary *prima facie* showing that the dispossession action they bring falls within the particular ejectment statute pled. *Richland Drug Co. v. Moorman*, 71 S.C. 236, 50 S.E. 792 (S.C. 1905), (“The plaintiff claiming right of summary ejectment must bring himself within the statute by at least making before the magistrate a *prima facie* showing that he is the owner of the premises and that defendant is a trespasser.”); *Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 121 S.E. 374 (S.C. 1924) ([Necessarily, therefore, it is competent for the magistrate to determine as a fact whether the relation of landlord and tenant exists ... [because] it is apparent that by merely asserting the claim that another is in possession of real estate as his tenant a party may not be permitted to use the summary statutory proceeding to eject the true owner of the premises”).

Applying these fundamental and well-established principles to the case at hand, for the magistrate to have maintained the summary ejectment proceeding against Appellant held on October 4, 2021, the Respondent initially would have had to demonstrate a valid claim of ownership over the subject premises and was further required to find facts that facially showed that Appellant was an unlawful, tortuous trespasser thereupon. S.C Code Ann. § 15-67-610 (2007); *Baldwin vs. Cooley*, 1 S.C. 256, 870 LEXIS 30, (S.C. 1870) (finding that defendants who during the relevant time were heirs possessing the property at the acquiescence of the executor of the grantor's will were not trespassers in an action brought by purchaser. “They did not enter against the consent of the party... hence the [summary ejectment] Act is not applicable to such a case ... nor was it intended to reach such cases. It was to reach open, flagrant trespassers”). *Baldwin vs. Cooley*, 1 S.C. 256, 870 LEXIS 30, (S.C. 1870). Furthermore, if the initial facts presented at the commencement of the summary ejectment proceeding show that Petitioner did not quit the premises because of a valid claim to ownership of the property, the magistrate was required to

dismiss the proceeding. *Richland Drug Co.*, 71 S.C. at 237. In this case, the information initially presented to the magistrate clearly showed that Appellant was not a flagrant trespasser or squatter, and indeed that he had a legitimate claim regarding the title to the subject property.

The Appellant provided evidence at the October 4, 2021 hearing that he had a legitimate claim regarding title to the subject property through evidence including an illegitimate deed and that the property would therefore pass through the Decedent's residuary estate to both the Appellant, Respondent, and their sister. At the hearing on October 4, 2021, Appellant presented evidence that at the time of the execution of the illegitimate deed, the Respondent coerced, unduly influenced, and fraudulently induced Decedent who was physically incapacitated, mentally impaired, and unable to speak, to transfer title to the real property in question to the Respondent. Additionally, at the time of the purported conveyance, Respondent knowingly took a South Carolina notary to the hospital in Georgia to execute the conveyance and recorded the illegitimate deed in the Register of Deeds office in Aiken County, South Carolina, which was invalid. That in the absence of the execution and recording of the illegitimate deed, the property would have passed to the Appellant, Respondent, and their sister through the Decedent's will, by which the parties would have received a one-third interest in the property. *Watson v. Wall*, 229 S.C. 500, 93 S.E.2d 918 (1956). (Transcript from Hearing, dated February 1, 2022, Page 13, Lines 6-13; R. \_\_\_\_\_).

The magistrate did not err by failing to exercise summary ejectment jurisdiction over the matter and dismissed the action accordingly. The pleadings and evidence presented to the magistrate at the commencement of the summary proceedings demonstrate that Appellant, Decedent, and Decedent's ex-wife occupied and possessed the subject property up to twenty-one (21) years before Respondent's claim to title in 2021 and that Appellant was occupying the premises at the time Respondent brought the action in 2021. In this case, Appellant raised a

legitimate claim to title to the subject premises and the preliminary facts, even in the light most favorable to Respondent, failed to establish the necessary *prima facie* showing that the relationship of the parties came within the summary ejection of trespassers statute. The magistrate was required and acted accordingly in dismissing the application pursuant to S.C. Code § 22-3-20(2) so that Respondent or Appellant, could bring an action to determine title in circuit court.

Accordingly, the magistrate court was correct in finding that the magistrate court did not have subject matter jurisdiction because in this case there was a legitimate question of title to the subject property. Furthermore, the magistrate court is not allowed to issue an Order resolving title to real property as the magistrate court lacks jurisdiction to issue an enforceable judgment on such a matter and any such judgment would be void.

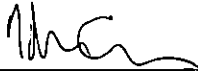
In this case, it is clear in Appellant's magistrate court pleading that the title to land was in question, other documents and statements made by Appellant leave no doubt that he was attempting to resolve a title issue to the real property and the magistrate court has no jurisdiction to resolve title to real property. The magistrate court did not have jurisdiction to resolve the issue of title to real property and properly dismissed the case, so that the Respondent or Appellant could bring the matter before the civil court. In this case, the Circuit Court erred in remanding the matter to the magistrate court, as title to the property was at issue.

Therefore, the magistrate did not have subject matter jurisdiction because Respondent's own showing brought the title to the subject property into question and the judgment is void.

**CONCLUSION**

For the preceding reasons, Appellant respectfully asks this Court to reverse the trial court's decision and Appellant be allowed to pursue whatever remedies available to him in Circuit Court or Probate Court.

Respectfully submitted,

By:  \_\_\_\_\_

William H. Edwards  
Moore Bradley Myers Law Firm  
1700 Sunset Boulevard  
P.O. Box 5709  
West Columbia, SC 29171  
803-796-9160  
will@mbmlawsc.com  
Attorney for Appellant

November 16, 2022

# MBM MOORE BRADLEY MYERS

S. Jahue Moore†  
James Edward Bradley†  
Sheila McNair Robinson  
Christian G. Spradley  
William H. Edwards  
Stanley L. Myers  
Jane H. Downey\*  
S. Jahue Moore, Jr.  
William B. Fortino  
Ralph Nichols Riley, Jr.  
John C. Bradley, Jr.

Melissa K. Moore  
Lester McGill Bell, Jr.  
Bryan C. Letteer  
Sierra D. Carini  
Lawrence D. Turner  
Emily E. Collins

*Retired*  
J. Mark Taylor\*\*  
Robert D. Hazel†  
C. David Sawyer, Jr.†  
Billy C. Coleman (1916-2019)

November 16, 2022

**VIA US Mail & E-MAIL: ctappfilings@sccourts.org**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

**RECEIVED**  
NOV 17 2022  
SC Court of Appeals

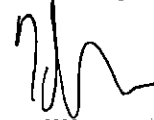
Re: Vance Mark Fleming vs. Glen Fleming  
Appellate Case No.: 2022000685

Dear Ms. Kitchings:

Please find included with this cover letter Appellants Initial Brief and Designation of Matter with Attorney Certification for filing of the same.

Thank you in advance for your assistance in this matter.

Sincerely,



William H. Edwards

WHE/clj  
Enclosures

cc: Tom G. Woodruff (w/enclosures)  
Vance M. Fleming (w/enclosure)

1700 Sunset Boulevard, West Columbia SC 29169 | PO Box 5709, West Columbia SC 29171

TEL 803.796.9160 FAX 803.791.8410 [www.mbmlawsc.com](http://www.mbmlawsc.com)

\*Member of American Board of Trial Advocates \*Fellow of the American Academy of Matrimonial Lawyers \*Certified Specialist in Bankruptcy & Debtor/Creditor Law †Retired

**MBM** MOORE  
BRADLEY  
MYERS

PO Box 5709, West Columbia SC 29171  
1700 Sunset Boulevard, West Columbia SC 29169

**RECEIVED**


NOV 17 2022

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201



US POSTAGE BY METRE BOWEN

  
ZIP 29169 \$ 011.95<sup>0</sup>  
02 4th  
0000388006 NOV 16 2022