

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0291

Robert H. Breakfield, as attorney-in-fact Respondent,

v.

Mell Woods Appellant.

FINAL BRIEF OF APPELLANT

Court of Appeals Number: 2012 212318

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

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OTHER AUTHORITIES

[SC Statutes]

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Rule 208(b)(1)(c), SCACR

ISSUES PRESENTED

1. Is it lawful for a magistrate to proceed with an eviction action where the defendant pleads SC Statutes §22-3-1110 (Defense of Questionable Title), §22-3-1120, and also §22-3-1130, which requires discontinuance of the action where the cost bond required by SC Statute §22-3-1130 is filed?

2. Is it lawful for a magistrate to issue a "10 day Notice to Show Cause" on the mere word of someone claiming to be a landlord, in secret, and without a summons and complaint and 30 days to answer, as is required for all other classes of litigants in South Carolina?

3. Is it constitutional to have two classes of litigants in South Carolina, those who claim to be landowners and landlords, as opposed to those who are unfortunate enough to be labeled tenants?

STATEMENT OF THE CASE

This case is about respondent trying to evict appellant Mell Woods, where respondent has no legal right to proceed. The case has roots in a probate proceeding where appellant should have been a party to the proceeding but was never notified, and as a result extrinsic fraud was practiced upon the probate court. Appellant is not a tenant as is falsely claimed by respondent. This eviction case is for revenge because appellant Mell Woods is in litigation over the Will of Mrs. Hinson. Appellant purchased some land from the decedent, Mrs. Hinson. The land was purchased in good faith, for value, and without notice of any infirmity, *R.pp. 603A - 603B*; Mrs. Hinson died and Ned Gregory, II, a licensed South Carolina attorney prepared a standard probate form, or petition, #300, *R.pp. 782-783*; in Section II of the form the direct question is asked: "Are you aware of any instrument or document amending or revoking the Will?" The answer was, "No." *R.pp. 782-783*; Ned Gregory, II is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991), where Gregory was disciplined for forging documents. Gregory filled out the probate form for the

probate court, and then obtained the signature under oath of Mr. Breakfield, the Respondent herein, knowing full well that another will existed which revoked the will that Gregory wanted probated, (RECORD, this was brought up during oral argument in Circuit Court, [and also Magistrate Court], circuit transcript page 23 lines 16-19, attached hereto as "Record Note 01" R.pp. 73-76; R.pp. 89-92; R.pp. 99-101; R.pp. 159-163; R.p. 269; R.pp. 387-392; R.pp. 515-516; R.pp. 577-578; R.pp. 584-588; R.pp. 614-619; R.pp. 772-778; R.pp. 580-581; R.p. 654; R.p. 678 lines 14-25; R.p. 679; R.p. 746; R.pp. 699-705; R.pp. 2-588.

Other Information Required by Rule 208(b)(1)(c) SCACR:

The action is an appeal from magistrate court, filed June 13, 2011.

Issue Number three, about the two classes of litigants in South Carolina, was raised in the pleadings in the magistrate court, carried forward in the Record, and ruled on by the circuit court, a Rule 59(e) Motion was filed regarding some points not ruled on, and summarily denied by the circuit court, the Honorable Brooks P. Goldsmith, presiding. The Notice of Appeal was served on June 21, 2012.

ARGUMENT

As to Issue Number 1:

South Carolina Statute §22-3-1130 makes it very clear that where there is a Question of title, that the matter be left alone as far as a magistrate court is concerned. The Record will show that appellant Mell Woods filed a verified answer which denied that respondents had any title whatsoever in the land, *R.p. 603B, (Response to No. 3) R.p. 606 (Response to No. 10) R.p. 604, (Interrogatory No. 7)*; and in addition, filed the bond and cash deposit as required to discontinue the action, Record, *R.pp. 609-611*; This should have been the end of the magistrate case, but no. Here is the case in the South Carolina Court of Appeals. Clear statutes do not mean anything where revenge is involved, and where the person seeking revenge wants to get even.

As to Issue Number 2:

In South Carolina to be labeled a tenant is to be treated worse than a dog -- perhaps not a dog, because dogs do have rights, maybe a rattlesnake is a better example. The label "tenant" is nearly synonymous with sharecropper, and the South Carolina summary eviction procedure is from the old days, and is part and parcel of the sharecropper system. The "10 day Notice to Show Cause," SC Statute §27-37-20, and its counterpart SC Statute §27-37-40 fail to meet constitutional muster. If everyone else is allowed 30 days to answer, then it cannot be fair to label, and then create another class of persons with less rights.

As to Issue Number 3:

"A defendant has thirty days from the date of service of the complaint to serve his answer." Bowers v. Robinson, 311 S.C. 412, 429 S.E.2d 799 (1993).

"A summons requiring an appearance in less than the statutory time is fatally and jurisdictionally defective." Rule 12 entitles a defendant to thirty days to respond. Board of Medical Examiners v. Fenwick Hall, 300 S.C. 274, 387 S.E.2d 458 (1990).

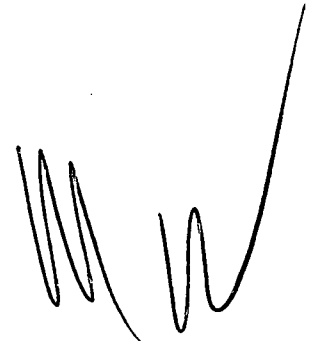
An issue affecting title to land is a substantial right and should be tried in front of a jury in common pleas court, Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985).

CONCLUSION

Appellant asks that the South Carolina summary eviction practice be declared unconstitutional; asks further that the magistrate action be dismissed.

Respectfully submitted,

this 03 day of ~~January~~ June, 2013.



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Certificate of Service follows: [page 11]

1 talk about the magistrate bench book, that's something --
2 it's a training manual they write up there, it's not really
3 the law citing that. And he cited that older statute, I
4 didn't get the number of it. But I mean, the South
5 Carolina Rules of Civil Procedure superceded those older
6 statutes and everybody nowadays is entitled to a 30 day
7 notice of anything and a summons. But he's claiming that
8 this annotated law is still the law in South Carolina and
9 it's not, under the Rules of Civil Procedure they have to
10 go by it. I'm not trying to reform everything but it may
11 be time to get the bench book rewritten. The Rules of
12 Civil Procedures controls all cases even in the magistrates
13 court. And all the stuff we're talking about are all jury
14 issues, if we can ever get in here in front of a jury we
15 can get things straightened out but it's never going to get
16 over the way we're going. And the root cause of this
17 problem is they've probated the wrong will instead of
18 Ms. Hinson's will and they swore to a lie to get into
19 court, that's what the main root of all of this problem is.
20 If you ever get this --

21 THE COURT: You're talking about the probate court.

22 MR. WOODS: I'm talking about probate court.

23 MR. BRACKETT: Your Honor, that's been heard and
24 decided by you previously in a summary judgment order when
25 you affirmed to Judge Gettys' probate court order.

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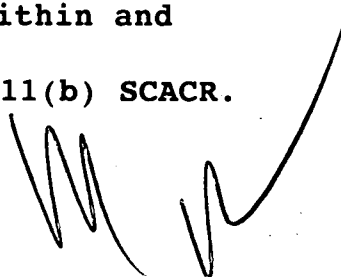
Mell Woods Appellant.

Rule 211(a) SCACR CERTIFICATE OF PARTY

Court of Appeals Number: 2012 212318

Mell Woods hereby certifies that the within and
foregoing *Final Brief* complies with Rule 211(b) SCACR.

This 03 day of June, 2013.



Mell Woods

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CERTIFICATE OF SERVICE

Court of Appeals Number: 2012 212318

Respondent was served with a copy of the within and foregoing document entitled Final Brief of Appellant, by method of placing the copy in the U.S. Mail with sufficient postage addressed to the counsel of record for respondent, to wit:

Moses Koon & Brackett, PC
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 03 day of June, 2013.



Mell Woods

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