

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master In Equity

Case # 2020-CP-46-00549
Appellate Case # 2022-001650

RECEIVED

Feb 06 2023

SC Court of Appeals

LB PARK, LLC, Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, Defendants,

of whom Ryan Powell is the Appellant.

**EMERGENCY, EX PARTE, VERIFIED
PETITION FOR SUPERSEDEAS**

To Chief Judge H. Bruce Williams:

Ryan Powell ("Ryan"), brings this Petition under Rule 241 SCACR for the immediate issuance of an order imposing a stay of the matters decided in Judge Weaver's final quiet title order ("Final Order"). Even though the Final Order is a quiet title order, it directs the delivery of possession of Ryan's private property to Respondent LB PARK, LLC ("LB PARK"). A certified copy of the Final Order is attached as Exhibit A and fully incorporated herein by reference. Ryan's ownership of the property is evidenced by an affidavit which includes a certified copy of his deed; both are attached to this Petition as Exhibit B and fully incorporated herein by

reference. A copy of Ryan's Notice of Appeal for this case and proof of its service are attached as Exhibit C and fully incorporated herein by reference.

The reason Ryan even needs to seek a supersedeas to stay the execution of a **quiet title order**, which are always automatically stayed during an appeal, is because Judge Weaver executed her final quiet title order within her final quiet title order [Exhibit A, Final Order, pg 28, #11 a-c] as a means to prevent Ryan from appealing her void on its face order. In effect, Judge Weaver ordered an *ex parte* writ of assistance without any motion for a writ of assistance, without the issuance and service of a rule to show cause, and without a hearing of the non-existent rule to show cause. Judge Weaver's actions violated Ryan's due process rights to notice and opportunity to challenge the dispossession from his private property and also to his right to seek review of the Final Order **before** it is executed. Violations of Ryan's federally protected due process right makes the Final Order void and legally unenforceable.

On February 2, 2023, a business card from Lt. Bert Lilly, the supervisor of the York County Sheriff's Process Service Unit, was found taped to Ryan's front door. When Lilly, or one of his subordinates, serves Weaver's void and unenforceable order, an extremely short 15 day deadline will start for the York County Sheriffs to complete their illegal dispossession of Ryan. Accordingly, there is no time available for LB PARK to reply to this Petition before the Court is required to act. All the facts that this Court needs to act on this Petition can be found in court documents, certified and verified copies of which are attached hereto.

Once a dispossession has taken place, the contested issue of which party owns Ryan's private property will become moot and there will be no longer any effective remedy that this Court could ever order that could restore Ryan's possession once it is lost. Therefore, a supersedeas **MUST** be ordered by this Court to preserve the status quo and prevent a contested issue from becoming moot during this appeal.

If this Court determines that another remedy is more appropriate than a supersedeas order, Rule 62(g)¹ SCRCP authorizes this Court to issue whatever order is needed to preserve the status

¹ Rule 62(g) SCRCP - "The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered. An application for such relief should first be made to the trial court under Rule 62(c) or (d), but when such application is not practicable it may first be made to an appellate court or a judge or justice thereof."

quo and the effectiveness of the judgment that will be entered by this Court when it decides this appeal.

Upon ordering a stay for this appeal, a bond should not be required because the order that needs to be stayed is void on its face for lack of subject matter jurisdiction and also contains within it an *ex parte* dispossession order that deprived Ryan of notice and opportunity to challenge a dispossession. Any order made without having subject matter jurisdiction, or that deprives a party of property by violating their federally protected right to due process, makes that order void and legally unenforceable. Ryan cannot be compelled to post a bond to stay a void and legally unenforceable order,

The extraordinary circumstances that make it impossible to first make this Petition to the lower court include the following: 1) Judge Weaver did not have subject matter jurisdiction to make or enter the Final Order and she does not have subject matter jurisdiction to hear and decide this Petition; and 2) Judge Weaver issued an *ex parte* writ of assistance² decision within her final quiet title order. The issuance of an *ex parte* decision is specifically listed in Rule 241(d)(1) SCACR as one of the situations that constitutes an extraordinary circumstance allowing a petition to be made to this Court without first making it to the lower court.

LB PARK waited 14 weeks before initiating their illegal and unlawful dispossession because its attorneys falsely believe that Ryan acceded to the fraud being committed by the Clerk of the Court of Appeals, Jenny A. Kitchings. The Clerk signed, filed, and mailed to the parties a letter dated January 23, 2023 which states that this appeal is being held in abeyance pending the decision on Ryan's motion to extend the page limit of his brief. However, to hold an appeal in abeyance requires a court order and there has been no court order entered. In order to strengthen the Clerk's fraud, LB PARK intentionally missed its deadline for filing and serving its initial brief; not that it could have made a meritorious rebuttal anyway. However, Ryan did not succumb to their fraud and will NOT be missing his deadlines for perfecting his appeal. Ryan is aware that LB PARK **needs** Ryan to make a mistake or error that will then allow this Court to dismiss or deny his appeal. Otherwise, Weaver, LB PARK, its managers and attorneys can, and will, be liable for their damages. Ryan only feigned acceding to the Clerk's fraud to see if he could obtain evidence that the collusion and conspiracy between this Court and LB PARK is still on-going. Ryan was given very persuasive evidence to support that fact.

² Rule 241(d)(1) SCACR "The issuance of an *ex parte* order ... shall constitute an extraordinary circumstance."

Therefore, if this Court does not immediately issue a stay, you will be responsible for Ryan's loss of his private property making Weaver, LB PARK, its managers and attorneys liable for the damages they have caused Ryan and his property.

ARGUMENT

Judge Weaver Lacked Subject Matter Jurisdiction To Make The Final Order

"The master has no power or authority except that which is given to him by the order of reference. See Rule 53(c), SCRPC ("[T]he order of reference to the master may specify or limit his powers and may direct him ... to do or **perform a particular act...**");", Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 381, 433 S.E.2d 909, 910 (1993) [emphasis mine].

"When a case is referred to a master under the rule [Rule 53], the master is given the power to conduct hearings in the same manner as the circuit court **unless the order of reference specifies or limits the master's powers.**", First Citizens Bank And Trust Company v. Taylor, 847 SE 2d 249, 431 SC 149 (2020) [emphasis and bracketed text mine].

"A master who acts after the reference terminates does so without subject matter jurisdiction, and the resulting orders are void.", Bunkum v. Manor Properties, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (1996).

The Final Order reads in pertinent part - "Further, this matter is within the subject matter jurisdiction of this Court, pursuant to Rule 53, SCRPC, with any appeal to the Court of Appeals of South Carolina." [order, pg 24, #2]. That conclusion is an error of law. As shown in Smith v. Ocean Lakes Family Campground supra, the Master gets her jurisdiction pursuant, and only pursuant, to an order of reference NOT pursuant to Rule 53 SCRPC.

The reference made for this case was "*for the purpose of receiving evidence*". See copy of the LB PARK's Motion for Order of Reference attached as Exhibit D and fully incorporated herein by reference. See also copy of the order granting LB PARK's Motion for Order of Reference attached as Exhibit E and fully incorporated herein by reference.

The Final Order contains a finding/conclusion that the statement "*for the purpose of receiving evidence* is not a limitation on this Court's jurisdiction" [Exhibit A, pg 13, 1st para.]. While "for the purpose of" may or may not be a limitation, it is indisputably a specification of a particular purpose. Further down in the Final Order Judge Weaver changes her earlier conclusion and concludes that Rule 53 of the South Carolina Rules of Civil Procedure (SCRPC) gave her the jurisdiction to make her Final Order [Exhibit D, pg 24, #2]. That conclusion is

contrary to all binding precedent case law that states it is the order of reference, and only the order of reference, that gives the Master subject matter jurisdiction. Smith v. Ocean Lakes Family Campground supra and First Citizens Bank And Trust Company v. Taylor supra as well as hundreds of similar cases were intentionally ignored by Judge Weaver when she concluded "Therefore, this Court has full jurisdiction over the parties to and all subjects of this case." [Final Order pg 13, 1st para., pg 24, #2].

Once Judge Weaver "*received evidence*" during the final hearing held on September 27th, her jurisdiction terminated and according to Bunkum v. Manor Properties supra anything she did on the case after her jurisdiction terminated was done without subject matter jurisdiction.

"jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.", Limehouse v. Hulsey, 744 SE 2d 566 (SC Supreme Court 2013).

Since Judge Weaver made findings of facts, conclusions of law, and then entered the Final Order after her jurisdiction terminated, the Final Order is void on its face and can never legally be enforced. Of course that fact may not stop LB PARK from attempting to enforce the void Final Order.

Judge Weaver Issued An *Ex Parte* Writ of Assistance Within Her Final Quiet Title Order

No order, including a quiet title order is ever self-executing. Rule 62(a) SCRCP proves this to be true by stating that "Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.". A quiet title order is not one of the exceptions listed in Rule 62(a) SCRCP which include only injunctions, receiverships, and accountings. Clearly Rule 62(a) SCRCP proves that there are proceeding that must be taken in order to enforce any order including a final quiet title order. That Rule 62 SCRCP shows that enforcement of a judgment is not only a separate proceeding but that such separate proceeding cannot even be taken until at least 10 days AFTER the judgment was been entered.

After an automatically stayed appeal of a quiet title order has been taken and decided, then the party who is not in possession of the property can initiate the at law proceedings to take possession of the property via a writ of assistance -

Writ of Assistance - "Writs of Assistance exist to enforce judgment of court directing specific act. An equitable remedy normally used to transfer real property, the title of

which has been previously adjudicated, as a means of enforcing the court's own decree. It is essentially a mandatory injunction, the effect of which is to bring about a change in the possession of realty; it dispossesses the occupant and gives possession to one adjudged entitled thereto by the court.", [internal citations removed], Blacks Law Dictionary, 6th ed., page 1609.

The first thing to notice in the above legal definition of a writ of assistance is that the "title of which has been previously adjudicated" further evidences that a quiet title order is not, and can never be, self-executing.

In order to begin the proceedings to be granted a writ of assistance, the out of possession party must move for, and receive, a "rule to show cause" order -

" Antrum having refused to relinquish the property to the purchaser, and an affidavit to that effect having been submitted to the court. Judge Lewis issued, on December 30, 1949, an order requiring him to show cause on January 7, 1950, why a writ of assistance should not be issued directing the sheriff of Darlington County to remove him from the premises and to put the purchaser into possession.", Antrum v. HARTSVILLE PROD. CREDIT ASS'N ET AL., 89 SE 2d 376 (SC Supreme Court 1955).

The rule to show cause order must then be personally served and a hearing held so that the person in possession can "show cause" why a writ should not issue. None of these required court proceedings ever took place as evidenced by the Final Order itself. These violations of Ryan's due process rights alone makes the Final Order void and unenforceable.

Relief Requested

Since the illegal dispossession process has already been started, time is of the essence as Ryan will be irreparably harmed if this Court does not act, and act quickly. Therefore, this Court must immediately issue an order imposing a stay of enforcement of the Final Order, or make any other appropriate order pursuant to Rule 241(3) SCACR to achieve that same goal. Since the Final Order is void on its face, this Court should not condition the imposition of a stay on any terms that require a bond. If this Court finds that a bond is required, then this Court must order one in a reasonable amount.

With Reservation of all rights without prejudice,

February 6, 2023

/s Ryan Powell
Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina

Verification and Certification

I, Ryan Powell, pursuant to 28 U.S.C. 1746(1), verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and I further certify that all copies of documents that I have attached to this Petition are true, correct, unaltered and were taken directly from the court files of the case in the lower court except for the Final Order that was certified by the York County Clerk of Court.

Executed on: February 6, 2023

/s Ryan Powell
Ryan Powell

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