

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

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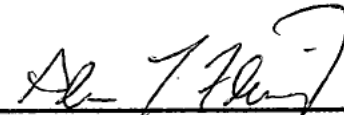
SC Court of Appeals

Vance Mack FlemingAppellant,

v.

Glen Fleming.....Respondent

RESPONDENT'S INITIAL BRIEF

By: 

Glen T. Fleming
10943 Indies Dr. N.
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Pro se

February 15, 2023

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STATEMENT OF ISSUES ON APPEAL

- I) The circuit court judge did not err when she determined the magistrate court had subject matter jurisdiction and remanded Respondents' civil appeal.

- II) The circuit court judge, after consideration of the evidence and arguments by both Plaintiff and Defendant, the court found that the appeal is GRANTED and the matter REMANDED to the lower court for reconsideration.

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 Respondent's 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 Sherril 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 26, 2003 the Respondent traveled from his home in Florida to Aiken to be in Michael Farmer's office on January 27, 2003.

On January 27, 2003 the Decedent and Respondent went to the office of Michael Farmer to execute a deed of survivorship, but were unable to do so because the lady that had the paperwork was out sick. Respondent was supposed to come back the next week, but Decedent was in a motor vehicle accident on January 28,2003.

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._____).

The Decedent was coherent when the notary read the Deed of Survivorship and understood what he was signing, as can be attest to by the witness.

ARGUMENTS

- I) THE CIRCUIT COURT JUDGE DID NOT ERR WHEN SHE DETERMINED THE MAGISTRATE COURT HAD SUBJECT MATTER JURISDICTION AND REMANDED TO THE LOWER COURT.**
 - 1) Respondent has shown this Court, he is the sole owner of the property which is the subject of this action.
 - 2) Respondent hereby requests this Court to Order that either:
 - a) The Appellant vacate the premises owned by the Respondent (being the relief originally sought in Magistrate’s Court): or
 - b) The matter be remanded to the Magistrate’s Court.

CONCLUSION

For the preceding reasons, Respondent respectfully asks this Court to uphold the trial court's decision.

Respectfully submitted,

By: 

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SC Court of Appeals

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

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

Dear Ms. Kitchings:

Please find included with this cover letter Respondent's Initial Brief and Designation of Matter.

Thank you in advance for your assistance in this matter.

Sincerely,



Glen T. Fleming

Cc: William H. Edwards(w/enclosures)

Fleming
10943 Indies Dr N.
Jacksonville, Fl. 32244



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