

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Apr 17 2023**

**S.C. SUPREME COURT**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge  
Robin B. Stilwell, Circuit Court Judge

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Case No. 2022-001724

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative  
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;  
SC Housing Corp.; and Twin Creeks Homeowners Association,  
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,  
is the Appellant.

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REPLY IN OPPOSITION TO RESPONDENT'S RETURN  
TO PETITION FOR WRIT OF CERTIORARI

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Michelle Hodges, Pro Se Petitioner  
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## INTRODUCTION

A. Respondant claims in Return to Petition for Writ of Certiorari the Petition does not meet standard of SCACR 242 (Intro. lines 1-5 - no pg #)

B. Reply in Opposition to Respondant's Return to reiterate and incorporate by reference my introduction and statement of the case in my corrected Petition for Certiorari and state the following here:

1. I have listed the Orders which are being appealed and referencing my grievances, in accordance with SCACR 201, as follows:
2. I am aggrieved and appealing the Circuit Court's Order dated 8/7/2019, at all times, Mr. Gravely was acting as the Circuit court Judge, when he violated my substantive right to inherit property under SC Code 62-2-101, receive property via the "Special Warranty" Deed, as a remaining joint tenant under the SC Code 27-7-40 and to be free from stale creditor claims under the SC Probate Code 62-3-803(a) and my right not to be held liable for documents that I did not sign under the SC Code 36-3-401; because Mr. Gravely failed to base his decisions on the record, as required by the SCRCRCP, Rule 56. And my said rights were not vindicated by the Court of Appeals, which Decision dated is dated 8/1/2022, which affirmed the Circuit court Order and is being appealed as the SC COA, also violated my above mentioned rights.
3. I am also appealing the SC COA Order dated                      which denied by application to file a Rule 60 motion to vacate Circuit Court Order for Summary judgment, so this order does not become

law of the case.

A. Respondent's claims in Return to Petition for Certiorari, (Intro, line 6) there are no conflicts between the SC COA decision dated 8/17/2022 and any established precedent of this Honorable Court.

B. Reply in opposition to the aboveparagraph concerning conflicts with established precedents.

1. I bring to this Honorable Court's attention the Circuit Court's Order, holding that Wells Fargo has standing, and SC Code 36-3-301 and the SC Court of Appeals in its decision, held the same.

(R. Decision, p.4, 4th paragraph, lines 1-7). Where this Honorable Court has held "Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." See *Youngblood v. SC Dept of Soc. Servs.* 402, SC 311, 317, 741 S. E. 2d 515, 518(2013). The Court of Appeals has demonstrated its departure from the procedural precedent, as shown under (*Youngblood*) above, as the Court of Appeal's rulings only takes into consideration of the said statute and does not take into consideration the compatible SC Code 36-3-401, which provides a person is not liable on the instrument, unless the person signs the instrument. .

2. Nor did the Court of Appeal take notice that the Circuit lacked subject matter jurisdiction to determine that the Estate of Ruth Ladson Witherspoon owned the subject property, under the South Carolina probate code 6-1-302, which provides in relevant part: " the probate court has exclusive original jurisdiction over all subject matter relate to (1) estates of decedents, ...., determination of property in which the estate of a decedent or a protected person has a interest and .....".

3. Further the court of appeals like the Circuit court utilized the last 2 sentences of 62-3-104 to

decided the Circuit had jurisdiction because Wells Fargo waived its right to seek a deficiency judgement, when a read of the entire statute calls for a determination as to whether or the creditor's claim had been barred and the COA Decision is void of any statutory analysis or related statutes, such as the claims barring statute under the SC Probate Code 62-3-803 which provides :

"(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, the decedent's heirs and devisees, and non probate transferees of the decedent, unless presented within the earlier of the following dates: (1) year after the decedent's death".

A. Respondent's Return to Cert. Petition claims Summary Judgment was proper (Item I, line 5)

B. I reiterate my statement concerning this in corrected petition for writ of Certiorari. A. Respondent's Return to Cert. Petition claims Wells Fargo is owner/of Note/ has standing under Note (Item I, line 4)

A. Addressed Wells Fargo's lack of standing above and reiterate statements in corrected Petition for Writ of Certiorari.

A. Respondant's Return to Cert. Petition claims standing under mortgage as the servicer. (Item I, line 5)

B. Reply in opposition to above paragraph and the Mortgage document itself states, that if a person did not sign the Note, the person is not liable for the mortgage. (R. p. 86, paragraph 12, lines 3-6. "Any Borrower who co signs this Security Instrument, but does not execute the Note is co signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument is not personally obligated to pay the sums

secured by this Security Instrument". Therefore, because I did not sign the Note or Mortgage, I am not liable.

Respondent's Return to Cert. Petition claims I acquired 50% ownership of subject property in December of 2016, (Item I, lines 9-11)

Reply in Opposition to the above statement, Under the the law of intestate and joint tenancy, the transferrals and vests upon the passing of the Decedent and not when instrument are created.

Respondent's Return of Cert Petition claims loan in default, (Item II, line 17) ( not in default) no security interest and no rights under note.no claim filed in probate. I

1. Under the South Carolina Rules of Civil Procedure, Rule 56 the burden of proof is on the Plaintiff to prove there is no genuine issue of material, especially since, I alleged that I was not liable under the Note in my Sixth amended, Answer and it is apparent from the Decisions of the Circuit court and Court of appeals the burden of proof was erroneously placed on me to show that there was a genuine issue, when I am not required to come forward, until the Plaintiff meets its burden. Additionally the was no affidavit, verified complaint or fact competent witness available for cross examination as to Wells Fargo's possession of the Original Note. According to Rule 56, Summary Judgement can be acquired based on liability only. Surely, if the Plaintiff had my signature on any documents those documents would have been presented to the court.

CERTIORARIO ON SUMMARY JUDGMENT. - addressed in correct Petition for Certiorari

Note not signed by me indicating liability Only the statements from wells Fargo's attorney whom never even states that he has first hand knowledge of the Original. nd the rules without an evidence that he When the did show that I am legally liable under the Note and Mortgage. learned some of rights and as I stated I am not liable under the Note or Mortgage and the Mortgage document itself states taht if a person did not sign the Note, they are not liable under

the Mortgage, serviving provision are contained in the Mortgage. As I stated I am not liable under the Note and mortgage and it is Wells Fargo Burden to show that I am liable was sending notices in my inidicapcity

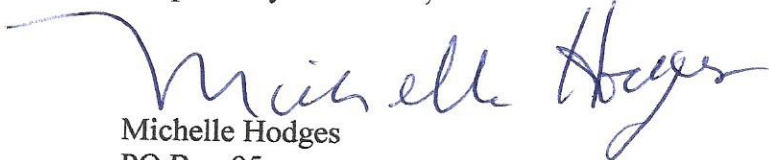
Respondent claim due process claim is not preserved

Respondent again addresses Note and Mortgage Under argument section and I reiterate the above statements regarding Wells Fargo's lack of standing the Circuit's lack of subject matter jurisdiction as shown above and incorporate them here by reference.

Conclusion

because this petition meets the requirements of the SCRCPC, Rule 242 it should be allowed and Wells Fargo case should be dismissed for lack standing and because the Circuit lacks subject matter jurisdictions and violated my substantive due process rights, its order should be deemed void along all orders following it Summary Judgment Order dated August 7, 2019, which includes SC COA Orders as shown above and request that case should be remanded so that I can amend my causes of action in accordance with what I have discovered while on Appeal.

Respectfully Submitted,



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