

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Hugh Parks Price,

Appellant,

vs.

Sara Filler,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2023-CP-41-00015

**ORDER DENYING APPEAL**

**RECEIVED**

**Jun 26 2023**

**SC Court of Appeals**

**BACKGROUND**

This matter was presented to the Court on Appellant Hugh Parks Price's Notice of Appeal from the judgment entered on January 27, 2023, by Judge Robin Freeman. Judge Freeman presided over a jury trial arising out of an ownership dispute over livestock. After the jury found for the Respondent, Sara Filler, Appellant timely filed this appeal raising two issues:

1. Did the court fail to properly charge that "one in possession of personal property is presumably its owner"?
2. Did the amount in controversy exceed \$7,500?

A hearing was held for this appeal on June 2, 2023 via the Virtual Courtroom. Present at the hearing on behalf of the Appellant was Rolf M. Baghdady, Esquire. Present at the hearing on behalf of the Respondent was William E. Booth, III, Esquire.

In addition to the arguments of counsel at the hearing, the Court has also reviewed the return of the civil appeal, the Magistrate's court file, an audio recording of the trial, and all other documents filed with this court.

Pursuant to the appeal, recording, and documents on file, as well as the memoranda and arguments of counsel, I hold and find as follows:

## STANDARD OF REVIEW

S.C. Code Ann. § 14-5-340 allows a circuit court to hear appeals from magistrate’s court. S.C. Code Ann. § 14-5-340 (2017). Furthermore, §18-7-170 provides that “upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.” S.C. Code Ann. § 18-7-170 (1976).

### Jury Charge

“Generally, the trial judge is required to charge only the current and correct law of South Carolina. In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error.

“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. The substance of the law is what must be charged to the jury, not any particular verbiage.

“A jury charge which is substantially correct and covers the law does not require reversal. To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.”

*State v. Adkins*, 353 S.C. 312, 317-19, 577 S.E.2d 460, 463-64 (Ct. App. 2003) (internal citations omitted).

Valuation

In reviewing the magistrate’s determination regarding valuation, this Court may only reverse for abuse of discretion. See *McDowell v. McDowell*, 300 S.C. 96, 101, 386 S.E.2d 468, 470 (Ct. App. 1989).

**ANALYSIS**

A. Jury Charge

Judge Freeman charged the jury as follows on the law regarding claim & delivery:

“Claim & delivery is an action for the recovery of specific personal property, wrongfully taken or withheld from its rightful owner, with recovery of any damages resulting from the taking or possession of the property. Claim & delivery may not be used to recover ownership of real property but may only be used to recover goods for the personal property. Actions of claim & delivery are proper in the magistrate’s court so long as the value of the property to be regained does not exceed the magistrate’s jurisdictional amount of \$7,500. If the property’s value exceeds that amount, recovery of the property may only be had through an action in circuit court.  
...

“Only certain property is subject to recovery through claim & delivery. The property must be personal, rather than real property. It must be moveable and capable of identification and certainly must be in existence and of substance able to be seized. A claim and delivery action cannot be maintained by one who does not have a general or specific property interest in the thing taken or detained. This means that in order for a party to maintain an action for claim & delivery, the plaintiff at the

time of commencement must be entitled to the immediate possession and may not recover on the weakness of adversary's title or right of possession."<sup>1</sup>

It appears from the record in this case that the jury charge, as a whole, adequately covers the law. Defendant now Appellant requested an instruction that "one in possession of personal property is presumably its owner" per *Jackson v. Frier*, 146 S.C. 322, 144 S.E.2nd 66, 69 (1928). However, the Magistrate declined to give this instruction because no testimony had been allowed regarding Plaintiff now Respondent's eviction or her family members being on trespass notice. Because that testimony was not in evidence, an instruction regarding a presumption based on possession would be prejudicial. This Court finds no error in refusing to charge the requested law.

#### B. Valuation

It further appears that the valuation of the livestock was reasonable based on the testimony presented and made without abuse of discretion. The Magistrate, having observed the testimony regarding the value of the livestock was in the best position to judge the credibility of the witnesses and their testimony. Judge Freeman remarked that it was clear to him that "the goats and sheep were obviously priced low by Ms. Filler and priced high by Mr. Price." Therefore, he split the difference and arrived at a value below the \$7,500 limit. In a similar case, a trial judge "weighed the testimony and judged the credibility of the parties" before assigning values to livestock that were "within the values cited by the parties." *McDowell*, 300 S.C. at 101, 386 S.E.2d at 470. In that case, the Court of Appeals found no abuse of discretion. Under substantially similar circumstances presented to this Court, I hold that the Magistrate did not abuse his discretion in arriving at a valuation below the \$7,500 limit.

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<sup>1</sup> This transcription was done in chambers based on an audio recording provided to the Court. It was not prepared by a professional. In the omission, Judge Freeman informed the jury about the common law and statutory history of claim & delivery.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the January 27, 2023, judgment is AFFIRMED.

Prior to this appeal being heard, Respondent filed a motion to compel asking this Court to fine or imprison Appellant and compel him to disclose the location of the livestock at issue in this case pursuant to Judge Freeman's order dated August 8, 2022. After a review of the relevant law, and in light of the fact that the appeal is hereby denied, this Court lacks jurisdiction to enforce a Magistrate's order. Therefore, this matter is remanded to magistrate's court for a hearing pursuant to S.C. Code Ann. § 22-3-1380 provided upon the filing of an affidavit in support as required.

IT IS SO ORDERED.



Saluda Common Pleas

**Case Caption:** Hugh Parks Price VS Sara Filler

**Case Number:** 2023CP4100015

**Type:** Appeal/Affirmed

So Ordered

Debra R. McCaslin