

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jul 06 2023

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-40-01318
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers, pro se Appellants,

v.

James Smith, Jr.. Respondent.

RESPONDENT’S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellant Court Rules, Respondent hereby files this petition for rehearing. Respondent respectfully requests rehearing on Opinion No. 5992, which was filed on June 21, 2023. The basis for this Petition for Rehearing is that this Court erred in determining that Appellants put title to the subject property into question before the Magistrate Court such that it deprived the Magistrate Court of jurisdiction.

S.C. Code Ann. § 22-3-20(2) states that the Magistrate Court has no jurisdiction “when the title to real property shall come in question.” It appears that this Court believes that title to the subject property came in question by the following actions of Appellants:

1. Appellants told the Magistrate at the eviction hearing:
 - a. that Respondent's mother, prior to her death, had orally given or promised to give the subject property to Appellants and
 - b. that Appellants did not believe the validity of the deed into Respondent because they thought Respondent's mother would give them the property.
2. Appellants filed an action in the circuit court alleging the same two beliefs.

Neither of these actions can be sufficient to bring into question title to the subject property. If either of these unsupported assertions could be sufficient to call title into question, then there would be nothing to stop parties subject to eviction from raising these same issues or filing a similar lawsuit in circuit court to further delay an eventual eviction.

In this case, Respondent presented the Magistrate Court with proof of ownership of the property. It is illogical that Appellants could overcome the Magistrate Court's jurisdiction simply by making the bare assertion that they thought someone had given them the property instead. The fact of their filing a competing lawsuit in circuit court does not enhance the validity of their allegations because the lawsuit contained nothing more than the same unsupported allegations made to the Magistrate.

This situation is similar to the case of *Faubel v. Pate*, 2019 S.C. App. Unpub. LEXIS 254. In that case, the individuals to be evicted claimed that they had entered into a contract with the landlord to purchase certain real property. However, they presented nothing more than bare allegations. This Court held:

We also acknowledge the magistrate generally does not have subject matter jurisdiction over an action when title to real estate is at issue. See S.C. Code Ann. § 22-3-20 (2007) ("No magistrate shall have cognizance of a civil action . . . [w]hen the title to real property shall come in question, except as provided in Article 11 of this chapter."). However, without the contract between the parties, we cannot say that a landlord-tenant

relationship did not exist; thus, we cannot conclude the magistrate exceeded his jurisdiction.

Faubel v. Pate, 2019 S.C. App. Unpub. LEXIS 254, *1.

In this appeal now before this Court, Appellants presented nothing more than a belief that they owned the property or that Respondent did not own the property. Without more than that, there is no basis to conclude that a landlord-tenant relationship did not exist, and therefore, the Magistrate Court did not lose jurisdiction in this case.

Respondent respectfully requests that this Court reconsider this matter, find in Respondent's favor, and determine that the Magistrate Court had jurisdiction to hear and decide the underlying eviction matter.

Respectfully submitted,

s/Kathleen McDaniel

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July 6, 2023