

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Aug 18 2023**

**S.C. SUPREME COURT**

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APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

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

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Rufus Rivers and Merle Rivers, pro se . . . . . Respondents,

v.

James Smith, Jr. . . . . Petitioner.

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**PETITION FOR A WRIT OF CERTIORARI**

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**ATTORNEY FOR PETITIONER**

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## CERTIFICATE OF COUNSEL

Counsel for the Petitioner hereby certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on July 21, 2023.

*Kathleen McDaniel*

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Kathleen McDaniel  
BURNETTE SHUTT & McDANIEL, PA  
ATTORNEYS FOR RESPONDENT

Columbia, South Carolina  
August 18, 2023

## **QUESTIONS PRESENTED**

1. Did the Court of Appeals err in holding that an eviction proceeding is a civil action within the meaning of S.C. Code Ann. § 22-3-20?
2. Did the Court of Appeals err in holding that the Magistrate Court lacked jurisdiction over the eviction proceeding when the Respondent presented only baseless assertions questioning title?

## STATEMENT OF THE CASE

Petitioner Smith owns the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the “Property”), and he allowed Respondents to live there rent-free for a period of time. (R.p. 59; Application for Ejectment (Eviction), dated August 2, 2018.) However, on July 2, 2018, Petitioner Smith wrote to Respondents giving them 30 days to vacate the Property. (R.p 60; *Id.*) On August 8, 2018, Petitioner Smith filed a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate Court against Petitioners Rivers. (R.p. 61; Rule to Vacate or Show Cause (Eviction), filed August 8, 2018.)<sup>1</sup>

The Magistrate Court ruled in favor of Petitioner Smith and ruled that Respondents Rivers were unlawfully occupying the Property. (R.p. 62; Magistrate’s Return of Civil Appeal, filed November 21, 2018.) On October 17, 2018, Respondents filed a Notice of Intent to Appeal to the Circuit Court and a Corrected Notice of Appeal on October 18, 2018. (R.pp.128-129; Notice of Intent to Appeal to Circuit Court, filed October 17, 2018, Corrected Notice of Intent to Appeal, filed October 18, 2018.) Respondents sought to stay the ejectment during the appeal to the circuit court. (R.p. 54, Magistrate’s Return of Civil Appeal.) Accordingly, the Magistrate Court held a hearing to determine the

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<sup>1</sup> On August 6, 2018, Appellants initiated a separate civil action by filing a Complaint in the Orangeburg County Court of Common Pleas, challenging Respondent’s ownership of the Property and alleging causes of action for constructive fraud, negligence, conversion, unjust enrichment, and invalid owner. (R.p. 18, *Rufus Rivers and Merle Rivers v. James Smith, Jr.*, 2018-CP-38-01016, filed August 6, 2018.) On August 17, 2018, the Rivers filed an Amended Complaint in the Court of Common Pleas in the same matter. The case was referred to the Master in Equity. On August 28, 2019, following a hearing, Judge James B. Jackson, Jr., Master in Equity for Orangeburg County, dismissed Appellants’ Amended Complaint for failure to state a cause of action upon which relief could be granted. Appellants did not appeal that decision and the time for appeal of that order has now expired.

appropriate amount of monthly rent for Respondents to pay into court during the appeal to the circuit court in order to stay the ejectment. (R.p. 54; Magistrate’s Return of Civil Appeal.) Because Respondents had never paid rent on the Property, Petitioner submitted the Affidavit of Connie Gaston, a local property manager, to aid the Magistrate Court in determining fair market rent for the Property. (R.pp. 54, 120-121; Magistrate’s Return of Civil Appeal.) In response, Respondents presented to the Magistrate an unexecuted “Bond Undertaking and Order.”

The Magistrate Court determined appropriate rent to be \$700.00, and ordered it to be paid into the Magistrate Court registry each month as bond securing a stay of the eviction pending appeal. (R.p. 54; Magistrate’s Return of Civil Appeal.)

On January 6, 2020, the circuit court affirmed the eviction ordered by the Magistrate Court. (R.p. 4; Order, dated Jan. 6, 2020.) On March 2, 2020, Respondents appealed their eviction to the South Carolina Court of Appeals. (R.p. 140.)

On June 21, 2023, the Court of Appeals issued its Opinion on the Appeal, reversing the Magistrate’s Order of Eviction, holding that because Respondents raised a question to title, the Magistrate Court lacked jurisdiction over the eviction case and the eviction order is a nullity. Petitioner filed his Petition for Rehearing with respect to the Court of Appeals’ Opinion on July 6, 2023, and this petition was denied by Order Denying Petition for Rehearing issued by the Court of Appeals dated July 21, 2023.

Unless otherwise specified herein, all capitalized terms below are intended to have the meanings given to said terms in the Final Brief and Final Reply Brief of Appellant.

## STATEMENT OF THE FACTS

The relevant facts of this case, as have been set forth before the Magistrate Court, the Circuit Court, and the Court of Appeals in the pleadings and briefs filed in connection with this matter, are as follows: The real property owned by Petitioner is located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the "Property"). (R.p. 59; Application for Ejectment (Eviction), dated August 2, 2018.) The Property was previously owned by Petitioner's mother, Jessie Mae Smith. (R.p. 49.) Respondents moved into the Property in 2009 and have resided there since. (R.p. 50.) There is no evidence of any lease agreement between Respondents and Jessie Mae. (*Id.*) In July 2013, Petitioner's mother, Jessie Mae Smith, granted him power of attorney, designating him as authorized agent and granting him authority to spend her finances, sell or dispose of her property, and make her healthcare decisions. (*Id.*) In September 2014, Petitioner executed a valid quitclaim deed to himself and recorded the deed with Orangeburg County on October 9, 2014. (*Id.*) Jessie Mae later died in 2016. (*Id.*)

On July 2, 2018, Petitioner wrote Respondents a letter giving them thirty days to vacate the property. (*Id.*) Despite the absence of any basis for remaining at the Property, Respondents notified Petitioner that they intended to file suit against him. (R.p. 87.) Accordingly, Petitioners filed suit in the Circuit Court on Monday, August 6, 2018, alleging that Petitioner had breached fiduciary duties and that his Powers of Attorney were invalid. (R.p. 50.)

Petitioner filed a Rule to Vacate the Premises or Show Cause in the Orangeburg Magistrate's Court on August 8, 2018. (R.p. 49). Respondents were personally served on August 23, 2018. (*Id.*) On September 18, 2018, the Magistrate Court held a hearing for the eviction proceedings. (*Id.*) There, Respondents argued that Jessie Mae had gifted the

property to them and that the Powers of Attorney granted to Petitioner were invalid. (R.p. 51-52.) They also notified the court of their separate suit filed in the Circuit Court. (R.p. 51-52.) Petitioner pointed out to the Magistrate Court that any claim to the validity of Respondent's ownership of the Property was barred, as the transfer had occurred three years prior, and it was not legally possible for the Respondents to raise a question of title on their stated bases. (R.p. 51.) At the hearing, the Magistrate Court found that Respondents were unlawfully occupying the Property and issued a Writ of Ejectment. (R.p. 52.)

Respondents filed a Motion for Consideration with the Magistrate Court on September 19, 2018, against arguing, *inter alia*, that the court lacked jurisdiction because of the pending Circuit Court litigation and further questioned the validity of the Power of Attorney and of the Property deed. (R.pp. 52-53.) The Magistrate Court held a hearing on October 16, 2018, and the court denied Respondents' Motion for Reconsideration and separate Ex-Parte Motion to Vacate the Writ of Ejectment filed in the interim. (R.pp. 52-53.) Again, the Magistrate Court found no merit in Respondents' arguments, noting that there was no question of title, and denied both motions. (R.p. 53.) Respondents filed a Notice of Appeal on October 17, 2018, and a Corrected Notice of Appeal on October 18, 2018. (R.p. 146.) On May 20, 2019, a hearing was held on the appealed Magistrate's Court eviction proceeding. (R.p. 147.) On May 20, 2019, the Circuit Court issued an order continuing the hearing on the appeal of the Writ of Eviction until Respondent's separate action against Petitioner in the Circuit Court could be heard and ruled upon by the Master in Equity handling the matter. (*Id.*)

Meanwhile, in the Circuit Court, the Master in Equity dismissed Respondents' Amended Complaint for failure to state a cause of action upon which relief could be granted on August 28, 2019. (R.p. 18, *Rufus Rivers and Merle Rivers v. James Smith, Jr.*, 2018-CP-38-01016, filed August 6, 2018.) Respondents did not appeal that decision, and the time for appeal of that order has now expired.

The separate matter resolved, the Circuit Court once more took up the appeal of the Writ of Ejectment and on January 6, 2020, affirmed the eviction order of the Magistrate Court. (R.p. 4; Order, dated Jan. 6, 2020.) On March 2, 2020, Respondents appealed their eviction to the South Carolina Court of Appeals. (R.p. 140.) On June 21, 2023, the Court of Appeals issued its Opinion on the Appeal, reversing the Magistrate's Order of Eviction. Petitioner filed his Petition for Rehearing with respect to the Court of Appeals' Opinion on July 6, 2023, and this petition was denied by Order Denying Petition for Rehearing issued by the Court of Appeals dated July 21, 2023. It is this reversal of the Writ of Ejectment that Petitioner challenges in this appeal.

## ARGUMENT

Petitioner brings this appeal because the Court of Appeals has erred in its interpretation of S.C. Code Ann. § 22-3-20, which governs the jurisdiction of the Magistrate Courts. First, the Court of Appeals erred by characterizing the eviction proceeding in the Magistrate Court as a civil action within the meaning of S.C. Code Ann. § 22-3-20 rather than a summary proceeding, which is not subject to the jurisdictional exclusions of S.C. Code Ann. § 22-3-20. Second, the Court of Appeals erred by interpreting S.C. Code Ann. § 22-3-20(2) in a manner that would unreasonably allow any unlawful tenant to strip the Magistrate Court of its jurisdiction by merely commencing a separate, baseless action questioning title to property. Through its flawed interpretation of the jurisdictional statute, the Court of Appeals has condoned abuse of the State's courts, and the widespread, negative implications and potential for future abuse render this matter appropriate for consideration by this Court.

The Court of Appeals first erred in disregarding the unambiguous meaning of S.C. Code Ann. § 22-3-20. This statute addresses the Magistrate Court's jurisdiction to hear civil actions, yet an eviction proceeding is unequivocally *not* "an action" with the meaning of the statute. See *State ex rel. O'Neale v. Fickling*, 10 S.C. 301, 303 (1878) (holding that an eviction proceeding could not be characterized as an action because it "was enacted prior to the adoption of the Code of Procedure."). In fact, this Court has spoken to the very issue in *State ex rel. O'Neale v. Fickling*, holding that the statute removing jurisdiction from a Trial Justice did "not apply to special statutory proceedings of a summary nature," and denied a petition by a tenant who argued that the Trial Justice who ordered her eviction was stripped of jurisdiction on the basis of her initiation of an action to call into question title to the property. *Id.* at 10 S.C. 301, 303. Here, by failing to exclude eviction

proceedings from the meaning of S.C. Code Ann. § 22-3-20, the Court of Appeals has violated the plain meaning rule, which prohibits the court from “chang[ing] the meaning of a clear and unambiguous statute.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The statute is unambiguously entitled “Civil actions in which magistrate has no jurisdiction.” S.C. Code Ann. § 22-3-20. Because Petitioner’s Rule to Vacate or Show Cause was a summary proceeding rather than a civil action, there was no lawful basis for the Court of Appeals to hold that S.C. Code Ann. § 22-3-20 stripped the Magistrate Court of its jurisdiction to hear the case by virtue of Respondents’ baseless attempt to call the title to the Property in question.

Additionally, even if an eviction proceeding *were* a civil action within the meaning of S.C. Code Ann. § 22-3-20, the Court of Appeals’ interpretation of the phrase “come into question” unreasonably empowers unlawful tenants to strip the jurisdiction of the Magistrate Court to issue an order of eviction by simply filing an action purporting to bring the title of the real property into question. In the context of this case, title never *genuinely* came into question. (R.p. 503.) Respondents’ separate action purporting to question title to the Property was filed just two days prior to Petitioner’s Rule to Vacate or Show Cause, when Respondents were on notice that Petitioner would be seeking an eviction order. (R.pp. 18, 60.) Respondents’ baseless argument that Petitioner was not the owner of the Property was swiftly dismissed by the Circuit Court. (*Rufus Rivers and Merle Rivers v. James Smith, Jr.*, 2018-CP-38-01016, Orangeburg Common Pleas Order of Feb 14, 2019). Not only did the action fail to state a claim, but also the Master-in-Equity specifically held that “[Respondents] ha[d] failed to prosecute their case.” (*Id.*). Consequently, the Court of Appeal’s observation that “[t]his is not a situation where a defendant feigns a

challenge to title but has no actual argument to muster” is fatally flawed: Respondents presented no genuine or colorable challenge to title, and they had no actual arguments to muster. (Court of Appeals Order of June 21, 2023; *Rufus Rivers and Merle Rivers v. James Smith, Jr.*, 2018-CP-38-01016, Orangeburg Common Pleas Order of Feb 14, 2019). Since 2018, Respondents have been eager to appeal order after order of Magistrate, Circuit, and Appellate Courts, yet this is the *one order* they let lie, because its only purpose was to serve as a wrench in the jurisdiction of the Magistrate Court’s eviction ruling.

The Court of Appeals’ interpretation of S.C. Code Ann. § 22-3-20 allows any defendant in an eviction proceeding to grind to a halt proper proceedings in the Magistrate Court by reciting baseless accusations calling title into question. This interpretation is wildly unreasonable, as it would disproportionately empower unlawful tenants, disempower rightful owners to property, deny those owners lawful access to their own property, and foment waste of judicial resources. In fact, the Court of Appeals has observed in *Faubel v. Pate* that bare allegations are insufficient to strip the Magistrate Court of jurisdiction. See *Faubel v. Pate*, 2019 S.C. App. Unpub. LEXIS 254 \*1.

In the instant matter, Respondents have only ever made bare assertions challenging title, alleging that they believed Petitioner’s mother was going to give them the Property and that the deed to Petitioner was invalid because, similarly, they believed it was going to be deeded to them eventually. (R.pp. 6-7.) The Circuit Court was able to easily dismiss Respondents’ flimsy and specious arguments. (*Rufus Rivers and Merle Rivers v. James Smith, Jr.*, 2018-CP-38-01016, Orangeburg Common Pleas Order of Feb 14, 2019). Respondents presented no challenge to that order, and they are now barred

by res judicata from claiming ownership of or calling into question Petitioner's title to the Property.

Finally, after the Court of Appeals' recent order, Petitioner was made aware that this is not the first time that Respondents have attempted to wield S.C. Code Ann. § 22-3-20 as a weapon against eviction proceedings. In 2008, Respondent Rufus Rivers engaged in this same procedural maneuver of filing an action in the Circuit Court at the same time an eviction proceeding was filed against him in the Magistrate Court. (*Rufus Rivers v. Brumby Corp, et al.*, 2008-CP-1801209 at 1, Dorchester Common Pleas Order of June 16, 2009). There, Respondent Rufus Rivers also refused to quit premises and refused to pay rent. (*Id.* at 6). Furthermore, the Circuit Court observed that Respondent Rufus engaged in maneuvers that were "a ruse designed to facilitate his continued possession of the premises without any intent to keep his end of the bargain" and engaged in conduct that "delayed or frustrated" the proceedings. (*Id.*) Throughout the course of this five-year litigation, Respondents have repeatedly engaged in procedural maneuvering to delay their eviction, maneuvering for which they had plentiful practice in the *Brumby* proceedings. Respondents are not naïve pro se appellants who had genuine questions to raise regarding the title to the Property, but rather are experienced craftsmen of procedural maneuvering who have pulled the wool over the eyes of the Court of Appeals. Respondents *have*, in fact, feigned challenge to title in order to exploit a statute they had successfully used previously to divest a Magistrate Court of its jurisdiction, in direct contrast to the conclusion of the Court of Appeals. (*Brumby* at 1.)

If the Court of Appeals' ruling stands, the Order would set a dangerous precedent for future eviction proceedings. Respondents, previously encouraged when able to strip a Magistrate Court of its jurisdiction, will be further emboldened to go forth and wreak havoc upon upstanding, lawful property owners. In fact, the Court of Appeals' order encourages *any* unlawful tenant seeking to delay his eviction to recite to the courts any unfounded challenge to title he can muster up and, in an instant, dispossess the Magistrate Court of jurisdiction or nullify an order for his eviction. This interpretation of S.C. Code § 22-3-20(2) is far too unreasonable to stand.

Furthermore, Petitioner will be forced to start once more back where he began five years ago, in the Magistrate's Court. Returning back to square one would be futile and a great waste of judicial resources, as Respondents would be foreclosed from asserting the only argument they have ever put forth against eviction.

Accordingly, Petitioner requests that this Court grant a writ of certiorari to review the Court of Appeals' decision as to the jurisdiction of the Magistrate Court on the basis that the Court of Appeals' interpretation of S.C. Code Ann. § 22-3-20 fails to follow the unambiguous language of the statute and is an unreasonable interpretation of the same.

## CONCLUSION

For the foregoing reasons, Petitioner asks that the Court grant this Petition for a Writ of Certorari to review the Court of Appeals' decision in this matter.

Respectfully submitted,

s/ 

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