

STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
THE COURT OF COMMON PLEAS
The Honorable Edgar W. Dickson

Appellate Case No. 000451

Rufus Rivers and Merle Rivers
pro se

Appellants


VS.

James Smith, Jr.

Respondent

APPELLANTS' AMENDED FINAL BRIEF

February 18, 2023



Rufus Rivers



Merle Rivers

Attorney For Respondent
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STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err when he dismissed and remanded Appellants' appeal when no landlord-tenant relationship existed after the inferior court judge adjudicated the matter in violation South Carolina Code Laws -section 22-3-20 and 22-3-1110 through 22-3-1180 of statutory law after the issues were raised and never adequately addressed by the courts.

STATEMENT OF THE CASE

After learning of James Smith, Jr.'s fraudulent transfer of property previously owned by Jessie Mae Smith, now deceased, appellants/defendants filed a summons and complaint in the First Judicial Circuit Court on August 6, 2018 alleging the same, See initiating summons and complaint.(R.pp.10-20). Respondent/plaintiff signed for receipt of the documents on August 14, 2018. (R.p.45)Respondent through his counsel, Kathleen McDaniel, esq., filed eviction documents on August 20, 2018.(R.pp.50-51). After being served defendants/appellants requested a hearing which was held on September 17, 2018. At the hearing pursuant to South Carolina Code of Laws 22-3-20 and 22-3-1110(Appendix E,F,G) defendants advised the court and opposing counsel through a written document titled “ Reply: Rule To Show Cause” that legal action was pending in Circuit Court disputing Respondent Smith's ownership to the property(R.pp.24-25)(Appendix F,G). It alleged that Mr. Smith forged a power-of-attorney to transfer the property at 1429 Legrand Smoak Street, Cordova, SC 29039 to himself. *Coleman v. Daniel*, 261 S.C. 198 (S.C. 1973) . Appellants has always contended that they were granted physical possession of the property at 1429 Legrand Smoak Street, Cordova, Cordova, South Carolina 29039 by Jessie Mae Smith, the owner, now deceased intestate in May 2016. Throughout the proceedings, including Appellants continuing to emphasize and re-emphasize which can be heard on recorded audio. Instead of deferring as required by statute,(Appellants had to motion the court for reconsideration and motion to vacate the writ of ejectment.

On October 9, 2018, hearings were held simultaneously on Appellants' motion for reconsideration and motion to vacate the writ of ejectment. The magistrate denied both motions forcing appellants to appeal and maintain the status quo. Appellants' Notice of Appeal was filed on October 18, 2018. On October 19, 2018 received a copy of a letter from the magistrate's office directed to Attorney McDaniel asking for counsel's recommendation for an appeal bond. On November 2, 2018. While awaiting the bond hearing, Appellants were approached by Attorney McDaniel whom presented Appellants with a copy of a rental analysis which was executed on November 2, 2018, not allowing Appellants adequate time to respond to the analysis. This document was used by the magistrate to determine rents of \$700.00 per month.

On November 5, 2018 Appellants filed a motion to review rental payment bond(Appeal Bond) with the Circuit Court and delivered a copy to the magistrate. The magistrate denied the motion on November 6, 2018 which was not her jurisdiction. A hearing was held on April 8, 2019 where a visiting Judge upheld the magistrate's decision on the appeal bond. Appellants immediately filed a motion for reconsideration which was never addressed in any way. On May 21, 2018, another Judge ordered a continuance of the appeal citing the case was not ripe for a decision on Appeal.until the Circuit Court case had been determined. It is Appellants' belief that the order was improper and the case should have been dismissed because the eviction order was done after the Circuit Court case had been filed. The eviction was in violation of South Carolina Code Of Laws 22-3-20.

On November 18, 2018, the appeal hearing was held in Circuit Court where the Honorable Edgar W. Dickson presided. The Judge subsequently upheld the magistrate's court decision. Appellants filed a motion for reconsideration which was denied. On January 6, 2020 and February 21, 2020, Judge Dickson issued final orders and Appellants' appeal timely followed.

STANDARD OF REVIEW

NO LANDLORD-TENANT RELATIONSHIP

The Court of Appeals reviews lower court decisions on questions of facts. When the court finds that there is no finding of fact that a landlord-tenant relationship exist, see *Bruce v. Durney Op. No. 3208 (S.C. Ct. App. Filed July 3, 2000)*, absent a formal agreement there should be some kind of implied agreement to establish a landlord-tenant agreement. Since Smith never discussed Rivers residing at the residence since Jessie Mae Smith granted them physical possession without any consideration, the court must find that no landlord-tenant relationship existed and reverse the lower court's decision.

II. THE MAGISTRATE LACKED SUBJECT MATTER JURISDICTION

The Court of Appeals reviews lower court decisions on errors of law(STATUTES). The Courts are required to follow **Mandstory Authority**. When the court finds that the law has been violated it must reverse the lower courts decision. See *Wynn v. Doe 255 S.C. 509(1971) 180 S.E. 2D 95* “..statute are clear and unambiguous and conveys a clear and definite meaning”.

ARGUMENT

The trial court judged erred when he dismissed and remanded Appellants' civil appeal when no landlord-tenant relationship after the inferior court adjudicated the matter in violation of statute for lack of subject matter jurisdiction where the issues were raised and never adequately addressed.

Appellants had their Rule To Show Cause hearing on September 17, 2018. Appellants had been ordered to vacate on September 17, 2018 and never given a written decision. Appellants provided a written reply to the Rule To Show Cause to the Judge and Attorney McDaniel, Respondent's counsel, pursuant to South Carolina Code Of Laws 22-3-1110, Defense of questionable title in defendant's answer. (R.pp.24-25)(R.pp.10-20)(Appendix F)(R.p.45). Appellants filed legal action in Circuit Court on August 6, 2018, alleging, Respondent James Smith, Jr. Fraudulently executed power-of-attorney and used it to execute a quitclaim deed(self-dealing) and used it to transfer the property at 1429 Legrand Smoak Street Cordova, South Carolin 29039 to himself. Respondent accepted the documents by certified mail on August 14, 2018. (R.p.45). Appellants had been granted exclusive possession of the property in September 2009. Respondent, through his counsel, claims Appellants filed a contemporaneous lawsuit. (R.p.TR.p.line 24-25). It is clear that Respondent had legal documents from

the Circuit Court in his possession before filing eviction documents. Respondent, through his counsel, deliberately ignored the initiating Summons and Complaint which included a motion for injunctive relief to circumvent the Circuit Court and hasten the unlawful eviction, a process that is becoming more and more prevalent when attempting to settle property disputes through the magistrate courts. The magistrate violated South Carolina Code Of Laws 22-3-20,(Appendix E,C). "Jurisdiction may not be waived or conferred upon the magistrate by consent of the parties or a higher Court."

At the eviction hearing, Respondent through his counsel, states he only received an amended complaint. That alone was proof that the title was in question. Respondent through his counsel would have the court believe that the Respondent is entitled to the property because he is the son of the previous owner. Unfortunately, that is a matter that only the Probate Court can determine. The magistrate, once the issue was raised, knew or should have known to defer the matter to the Circuit Court. See *Hargrove v. Cox*, 104S.E. 787,180(N.C.1920), *Hargrove v. Cox*,180, N.C.360,104 S.E. 757,759,(1920), *Hodges v. Rainey*,341 S.C.79,85,533 S.E.D 578, 581(2000) and allowed Appellants to sign an undertaking once she had provided an amount for the surety as provided by Appellants(R.pp. 52-53). Respondent, through his counsel, contends the purpose of Appellants' lawsuit was to prove they owned the property. (R.p.TR.p.3.lines 14-16). Appellants alleged in their lawsuit that Respondent forged a power-of-attorney and used that power-of-attorney to self-deal by transferring the property to himself.See *Coleman v. Daniel*, 261 S.C. 198 (S.C. 1973).

The Appeal hearing was held in Circuit Court on November 19, 2019 before the Honorable Edgar W. Dickson. The issues of landlord-tenant relationship and lack of subject matter jurisdiction were not explicitly addressed. On January 6, 2020, the court issued it's order.(R.pp.4-9). Appellants filed a motion for reconsideration on January 14, 2020.(R.pp.21-24). On February 21, 2020 the court issued a final form 4 order denying Appellants' motion for reconsideration, dismissing the matter and

remanding the case back to the magistrate.

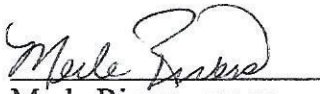
CONCLUSION

For the preceding reasons, Appellants respectfully ask this court to reverse the trial court Judges decision and allow Respondent proceed with whatever remedies available to him and release Appellants' funds being held in escrow.



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