

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-40-06087

Colie Slice,
PLAINTIFF-APPELLANT,
vs.
David Troy Slice and Kayla Slice,
DEFENDANTS-RESPONDENTS.

ORDER AFFIRMING
MAGISTRATE'S DECISION

RECEIVED
Sep 29 2023
SC Court of Appeals

The above-captioned proceeding is a magistrate's court appeal that came before me at a hearing held by WebEx on June 30, 2023. This case was brought in the magistrate's court as a landlord-tenant eviction action. The magistrate dismissed the eviction action for lack of subject matter jurisdiction, citing the existence of an issue concerning title to real property, over which magistrates have no jurisdiction. S.C. Code Ann. §§ 22-3-10 & -20.

In the eviction proceedings, the Plaintiff-Appellant applied for the issuance of a rule to vacate or show cause, and, based on that application, the magistrate issued such a rule. The rule to vacate or show cause was served on the Defendants-Respondents. Defendants-Respondents, then *pro se*, called the magistrate's court to request a hearing, and a few days later Defendants-Respondents, through counsel, served and filed a motion to dismiss the eviction proceedings, noting that there is an issue concerning title to real property involved in this matter. With their motion, Defendants-Respondents provided to the magistrate a copy of the circuit court summons and complaint in an they have filed (which remains pending), and they included an affidavit stating that the property had been deeded to them, the deeds had been executed and delivered, but, before they were recorded, Plaintiff-Appellant got possession of the deeds and has not recorded them.

Notably, Plaintiff-Appellant made no factual record indicating anything other than this had happened.

Magistrate's courts are courts of limited jurisdiction, and magistrates do not have jurisdiction to decide issues of title to real property. S.C. Code Ann. §§ 22-3-10 & -20. Plaintiff-Appellant argued to the magistrate and argues to this court that the provisions of Article 11 of Chapter Three of Title 22 of the South Carolina Code of Laws required the magistrate to go forward with the case and disregard any issue about title to real property. Those statutes provide that “[w]hen the title to real property shall come into question in an action brought in a court of a magistrate[,]” in order for the question of title to be in issue in the action, the defendant must give a written answer and “[a]t the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.” S.C. Code Ann. §§ 22-3-1110 & -1120. The maximum liability of the surety on the undertaking is \$100.00. S.C. Code Ann. § 22-3-1120.

The statutes state that, if the undertaking is given, the action “shall be discontinued and each party shall pay his own costs.” S.C. Code Ann. § 22-3-1130. If the undertaking is not given, however, the Code states that the magistrate “shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.” S.C. Code Ann. § 22-3-1140. If the plaintiff's own showing at trial brings title to real property into question and the defendant disputes the plaintiff's contention of title, “the magistrate shall

dismiss the action and render judgment against the plaintiff for the costs.” S.C. Code Ann. § 22-3-1150.

The record contains an undertaking of this type given by Defendants-Respondents. The issue presented in this appeal is one of timing. As Plaintiff-Appellant’s counsel noted, no answer is required at all in a rule-to-vacate-or-show-cause eviction action, such as the one that ended in the appealed dismissal. Plaintiff-Appellant contends that the phone call to the magistrate’s court to request a hearing was Defendants-Respondents’ “answer” and that, accordingly, they were required to give the undertaking at the time of that phone call. Plaintiff-Appellant argues that the failure to give a \$100 undertaking at the time of the phone call barred Defendants-Respondents from raising the issue about title to real property.

The Court of Appeals recently dealt with nearly an identical question in the case of Rivers v. Smith, Op. No. 5992 (S.C. Ct. App. filed June 21, 2023) (Howard Adv. Sh. No. 24 at 70). There, an issue of title to real property was present, the parties occupying the land raised the issue to the magistrate and filed their own action in circuit court about it, and they did not give the undertaking stating that they would pay \$100 if they did not cooperate in the joining of an action about that issue in the circuit court. See S.C. Code Ann. §§ 22-3-1110 & -1120.

The Court of Appeals held that the magistrate should have dismissed the eviction action for lack of jurisdiction. The court noted that “summary proceedings [for eviction] in magistrate court are only appropriate when the conventional landlord-tenant relationship is present.” Rivers, Howard Adv. Sh. No. 24 at 73. The Court of Appeals ruled that Mr. and Mrs. Rivers had satisfied the requirements of Article 11 of Chapter Three of Title 22 and that no undertaking was needed because they had *already* brought a circuit court action about the issue. Rivers, Howard Adv. Sh. No. 24 at 74. The Court of Appeals rejected Smith’s technical arguments about the undertaking

statute and held that “our reading of precedent convinces us the magistrate’s jurisdiction ends as soon as it become clear that there is a challenge to title and the traditional landlord-tenant relationship does not exist.” Id.

Especially in light of the Rivers decision, this court cannot say that the magistrate committed reversible error in dismissing the eviction proceedings for lack of jurisdiction. The record before the magistrate showed the existence of an issue as to title to real property. The phone call asking to schedule a hearing was not an answer and was not functionally the same as an answer. Defendants-Respondents actually gave the undertaking, but, since they had already brought an action about the issue in circuit court, they were not required to do so. Id. Plaintiff-Appellant also failed to make a showing that “the traditional landlord-tenant relationship” existed. Id. Indeed, the only factual showing was to the effect that such a relationship did *not* exist. The magistrate was right to conclude that he had no subject matter jurisdiction. S.C. Code Ann. §§ 22-3-10 & -20.

It is therefore hereby ORDERED that the magistrate’s dismissal of the eviction action is affirmed.

And IT IS SO ORDERED.

The Honorable Maite Murphy
Circuit Judge



Richland Common Pleas

Case Caption: Colie Slice VS David Troy Slice , defendant, et al

Case Number: 2022CP4006087

Type: Order/Other

So Ordered

s/ Maite Murphy 2166