

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master-in-Equity

C.A. No.: 2020-CP-46-00549

LB PARK, LLCRespondent,

v.

San Juan Holdings, Bret Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 250056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 Defendants.

of whom Ryan Powell is thePetitioner.

RETURN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was the Court of Appeals within its discretion in dismissing the Petitioner's appeal after Petitioner failed to serve the record on appeal?

INTRODUCTION

LB Park, LLC (“LB Park”) submits this return in response to Ryan Powell’s petition for a writ of certiorari from an order of the Court of Appeals dismissing his appeal for failure to serve the record on appeal. The dismissal of this action does not present any novel question, does not raise a substantial constitutional issue, and is not in conflict with any prior decision of this Court or the Court of Appeals. The orders in question are not published. Given the foregoing, this case does not warrant discretionary review by this Court pursuant to Rule 242, SCACR.

LB Park further notes that the appendix submitted by the Petitioner is incomplete. To the extent this return references additional documents, they have been attached to assist the Court.

COUNTER-STATEMENT OF THE CASE AND FACTS¹

LB Park brought this action on February 12, 2020 to quiet its tax title to 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 (the “Property”) and to reform the tax deed to correct an erroneous plat reference. (Summons and Complaint (without attachments), attached as Ex. 3). Powell claims to have an interest in the Property by virtue of an unrecorded “Title to Private Property” dated December 29, 2012.² (Answer at ¶¶ 7, 31-35, attached as Ex. 4).

¹ LB Park incorporates its initial Respondent’s Brief filed in the Court of Appeals in full by reference. (Attached as Ex. 1). LB Park also attaches the C-Track index of filings in this appeal as well as the Public Index before the trial court. (Attached as Ex. 2).

² Powell admitted he did not have a recorded interest in the Property at either the time of the tax sale or the filing of this action. (Ex. 4 at ¶ 46). Powell did not produce his purported deed until after the trial of this matter. (Motion for a New Trial, or to Alter or Amend, attached as Ex. 5). Only after this appeal was filed did Powell attempt to record the deed (*See* Reply to LB Park, LLC’s “Return to Supersedeas Surety (Bond),” attached as Ex. 6); however, that filing is a nullity by operation of the applicable tax sale statutes and the Final Order in this matter.

In addition, Powell and his mother filed another lawsuit regarding the Property on February 24, 2023 in the York County Court of Common Pleas (C/A No. 2023-CP-46-00607), asserting various claims to recover the Property and for damages. In dismissing that case, Judge William A. McKinnon ruled that Powell’s recorded deed “is declared void and the [ROD] is instructed to strike [Powell’s deed] from its records and to record a copy of this Order to confirm that [Powell’s deed]

He has been litigating the issues of ownership and whether he must pay property taxes on the Property in various actions dating back to 2013 as more fully discussed in LB Park's initial Respondent's Brief filed in the Court of Appeals. At this time, he is pursuing three separate appeals relating to the Property: this one, Appellate Case No. 2019-000979, and Appellate Case No. 2023-000775.

I. The 2019 Case³

LB Park filed a complaint to quiet its tax title and reform the tax deed on January 25, 2019. Powell was not named as a party because he did not have a record interest in the Property. On April 8, 2019, Powell filed a Special Appearance Motion to Dismiss or Intervene and sought to dismiss the action under Rules 12(b)(1) and 12(b)(2), SCRCPP, and alternatively sought to intervene. LB Park filed a motion for an order of reference on May 2, 2019. After a hearing, Judge Daniel Hall denied Powell's motions. Powell appealed.

On motion of LB Park seeking a remand to the circuit court "to dismiss the underlying action without prejudice pursuant to Rule 41(a), SCRCPP" and stating "[i]f the motion for remand is granted, LB PARK will dismiss the underlying action and refile a new action to include Ryan Powell as a named defendant," the Court of Appeals remanded the 2019 case to the York County Court of Common Pleas. (App. 12-13). LB Park filed a Notice of Dismissal on February 12, 2020.

is void and that Ryan Powell has no interest in the Property." (Order filed on April 10, 2023, ¶ 3 at 17, attached as Ex. 7). Judge McKinnon's order is also currently on appeal, Appellate Case No. 2023-000775.

³ This matter is presently on appeal before the Court of Appeals, Appellate Case No. 2019-000979. LB Park's Respondent's Brief in the 2019 case is attached as Ex. 8.

II. The 2020 Case

A. The Complaint

Consistent with its motion for remand and following its dismissal of the 2019 case, LB Park filed this action on February 12, 2020. (Ex. 3). As to Powell, LB Park alleged:

Plaintiff is informed and believes that Defendant Ryan Powell has claimed to possess an unrecorded ownership interest in the Property. While Plaintiff denies that Defendant Ryan Powell has any interest in the Property, Plaintiff has named Defendant Ryan Powell as a party to provide him with notice of this proceeding and the opportunity to protect any interest he claims to have in the Property.

(*Id.* at ¶ 7).

B. Procedural History Before the Master

Following the remittitur of two interlocutory appeals (Appellate Case Nos. 2020-001128, 2021-001192, 2022-000275 (petition for cert following dismissal of appeal by Court of Appeals)), the master called this case for hearing on September 27, 2022.⁴ (Tr., attached as Ex. 9). Powell did not attend. (*Id.* at 5:12-14).

After considering the evidence, the master entered a detailed final order setting forth findings of fact and conclusions of law on October 24, 2022. (Order, attached as Ex. 10). In the order, the master found that the tax sale was valid, that LB Park was the owner of the Property, and that LB Park's title "is incontestable on procedural or other grounds and all claims against or challenges to the Tax Sale of the Property are barred by the two-year statute of limitations set forth in S.C. Code Ann. §§ 12-51-90(c) and 160, because more than two [years] have passed since the date of the Tax Sale." The master further found that the tax deed should be reformed to correct an erroneous plat reference.

⁴ For a full discussion of the order of reference and the master's authority to resolve this matter, *see* Ex. 1 at 12-13.

In addition, the master dismissed Powell's counterclaims for the following independent reasons: (1) "Powell bases the Counterclaims on the allegations that the Property is not subject to taxes because he, as the alleged owner, has not recorded his alleged deed. The Court finds that these are the same arguments that Powell has previously litigated and that have previously been dismissed;" (2) "Powell did not appear at the final hearing and thus abandoned and failed to prosecute the Counterclaims, which is sufficient alone to dismiss the Counterclaims with prejudice;" (3) "Powell lacks standing to assert any counterclaim concerning the Property because he has never produced a deed for the Property, he admittedly has no interest of record in the Property, and the South Carolina Administrative Law Court has previously found that Powell failed to establish he was the owner of the Property. Additionally, the doctrines of *res judicata* and collateral estoppel bar Powell from re-litigating whether he has any interest in the Property;" and (4) the Recording Act, S.C. Code Ann. § 30-7-10, bars all of Powell's claims because "in order for a deed to be valid as to subsequent purchasers without notice, the deed must be recorded and that priority between a subsequent purchaser of real estate without notice 'is determined by the time of filing for record.'" The master then found that each of the counterclaims failed on its merits.

Powell moved for a new trial or to alter or amend by motion filed on November 4, 2022. (Ex. 5). The motion was denied by order dated November 10, 2022. (Attached as Ex. 11). This appeal followed.

C. Procedural History Before the Court of Appeals

Powell filed this appeal on November 29, 2022. As reflected in the C-Track index of filings, Powell filed numerous motions between November 2022 and March 2023. LB Park filed a motion to consolidate this appeal with that in the 2019 case on March 15, 2023.⁵

On March 21, 2023, counsel for Respondent received an email from the Court of Appeals attaching an order extending the timelines for its initial brief and designation together with a letter stating “the timelines for perfecting the appeal will be held in abeyance pending a ruling on the motion [to consolidate].” (App. 45-48). As of that time, C-Track showed the case as “Held in Abeyance.” As the deadline under the March 21 order approached, counsel for Respondent contacted the clerk’s office about the status of the appeal and was assured more than once that the matter was held in abeyance and that Respondent did not need to request an additional extension or to file its initial brief and designation.

Immediately following the ruling on the motion to consolidate, counsel for Respondent emailed the clerk’s office inquiring about deadlines. (App. 49-50). The Court of Appeals responded with a letter directing Respondent to file its initial brief and designation within 10 days of May 4, 2023 (App. 51). Respondent filed its initial brief and designation on May 12, 2023. (App. 52, Ex. 1).⁶

⁵ The following history is set forth in LB Parks’ return to motion to strike respondent’s initial brief and designation of matter. (App. 42-56).

⁶ Respondent explained as follows in its cover letter filing its initial brief and designation:

Respondent is happy to comply with the deadline set in the Court’s letter of May 4, 2023. Just by way of explanation, this matter was held in abeyance pending a ruling on a motion to consolidate until May 2, 2023. While the motion was pending, the clerk’s office assured me that the matter was in fact held in abeyance and no filings were due. For that reason, Respondent did not believe the time for filing its initial brief and designation had expired.

Powell moved to strike Respondent’s initial brief and designation. (Motion, attached as Ex. 12). That motion was denied by order dated June 28, 2023. (App. 24-25).

The Court of Appeals issued a letter on July 25, 2023 directing Powell to serve a copy of the record on appeal on Respondent within ten days. (App. 23). By his own admission, Powell did not comply. (App. 35, stating “Rule 210(a) SCACR placed no obligation whatsoever on Ryan to serve a copy of his ROA on the Respondent, so he did not do so[.]”). Powell had notice and an opportunity to correct the situation, but he willingly failed to do so.

The Court of Appeals then dismissed the appeal because Powell “failed to serve a copy of the record on appeal as required by Rule 210 of the South Carolina Appellate Court Rules (SCACR) and this Court’s letter dated July 25, 2023.” (App. 1-2). Powell filed a motion to reinstate on August 15, 2023, which was treated as a petition for rehearing and denied.⁷ (App. 3-4). This petition followed.

ARGUMENT

Rule 260(a), SCACR provides for dismissal of an appeal if a party has not complied with the requirements of the South Carolina Appellate Court Rules. Rule 260, SCACR does not require dismissal for all instances of non-compliance. Appellate courts retain discretion as to whether dismissal is appropriate and may provide parties with an opportunity to correct deficiencies. *Henning v. Kaye*, 307 S.C. 436, 437–38, 415 S.E.2d 794, 794 (1992). In this case, as in *Henning*, Powell was given a chance to address the court’s concerns prior to the order dismissing this appeal.

(App. 52).

⁷ Powell’s motion to reinstate was fully briefed by the parties. (App. 27-38 (amended motion), 39-56 (return), 57-59 (reply)).

Powell defied the court's instructions, and his appeal was dismissed. Even after the Court of Appeals denied his motion to strike LB Park's initial brief, Powell refused to serve the record on appeal. Contrary to Powell's petition, he was given numerous chances to perfect his appeal but failed to do so because of his fears that the Court of Appeals "does not want Ryan to keep his property and if they heard this appeal they know they would have to reverse or vacate [the master's] Void Order not only because it is void but also because Respondent's case is non-justiciable." (Petition at 3).

Following a dismissal for noncompliance, "the case will not be reinstated except by leave of the appellate court with good cause shown and after notice to all the parties." Jean H. Toal *et al.*, *Appellate Practice in South Carolina* 373 (3d ed. 2016). Powell has not given good cause for his failure to serve the record on appeal. As shown in his motion to reinstate, his failure to comply was willful and intentional. (App. 27-28). A panel of the Court of Appeals fully considered Powell's motion to reinstate, albeit recharacterized as a petition for rehearing. As such, there is no basis for Powell's first and fourth questions presented. His motion was heard and correctly denied.

With respect to Powell's second and third questions presented, the record shows that Powell failed to serve the record on appeal even after the Court of Appeals denied his motion to strike Respondent's initial brief and designation and after the July 25 letter directing him to serve a copy of the record on appeal. Powell admits he did not serve the record on appeal. Accordingly, there is no basis for Powell's charge that the dismissal of his appeal was somehow a conspiracy hatched so that the Court of Appeals could avoid hearing Powell's appeal. As set forth above, appellate courts have the authority to dismiss appeals for failure to follow the court's instructions and non-compliance with the appellate court rules. Nothing in the rules or the case law suggests

that dismissal may only be had following a motion. In fact, South Carolina appellate courts routinely dismiss appeals for non-compliance with the rules and/or attempted appeals from non-appealable orders. As such, there is no merit to Powell's fifth and sixth questions presented, which argue that the Court of Appeals could not dismiss this case absent a motion and that the dismissal of the appeal somehow violated the judges' and clerk's oaths of office.

The procedural history before the Court of Appeals and ultimate dismissal of this action is consistent with the South Carolina Appellate Court Rules and case law. The dismissal order and order following the motion to reinstate do not raise any novel questions of law, nor do they raise any constitutional concerns. Powell was given notice of the record on appeal issue and failed to comply with the Court's instructions. Following the dismissal of this action, his motion to reinstate was fully briefed and heard by a three judge panel of the Court of Appeals.

CONCLUSION

For these reasons, Powell's petition does not implicate any of the factors for discretionary review by this Court and should be denied.

Respectfully submitted,

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