

PETITION FOR REHEARING THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Kenneth Curtis, Respondent,

Vv.

Cynthia Glenn, Appellant.

Appellate Case No. 2020-001699

Appeal From Greenville County

Charles B. Simmons, Jr., Master-in-Equity

10/16/92

RECEIVED

MAY 03 2024

SC Court of Appeals

PETITION FOR REHEARING

Pursuant to Rules of Appellate Practice 221(a), I petition for a rehearing on the following grounds:

- 1. The Court of Appeals (COA) Acts without authority - COA does not have the discretion nor the authority to restate orders of the lower court in a manner that creates new findings or orders.**
- 2. Res Judica must apply to the entire order - The COA vacates portions of the order under Res Judica, but affirms portions of the order that share the exact same boundaries.**
- 3. The Court of Appeals's opinion does not create a final resolution - The COA's opinion lacks clarity and does not have the effect of a final resolution.**

4. **Issues on appeal are not resolved - If the COA is affirming any portion of this case then it is not fully disposed of and the court must address the issues of the case related to the matters being affirmed.**

1 - The Court of Appeals Acts without authority - THE COA CAN NOT CREATE NEW ORDERS BY REWORDING THE FINDINGS OF THE LOWER COURT

The actual findings/rulings of the MIE are much different than represented in the opinion statement. In truth, the MIE never states that Saluda Rest is Private Property. In contrast, the MIE's findings are the opposite.

MIE FINDINGS number five(5) state:

*“Plaintiff owns the property subject to this action **and** that Plaintiff owns private property.”*

There are two statements in number five(5) that are connected by the word “and” therefore the Master-in-equity is referring to two different properties:

The Plaintiff owns property subject to this action.

AND

The plaintiff owns private property.

Although the master concedes that there are multiple properties, he gives no clarity as to which one of the properties are subject to this action, to which

property the plaintiff owns that is private, or under which category he places the property with the driveway that leads to the cemetery that has been opened to the public in which the appellant's husband is buried.

The fact that the MIE is referring to multiple properties/ministries/operations is reiterated in the RULINGS when the MIE order specifies:

*"1. The Plaintiff owns the **properties** known as Saluda Rest.*

The MIE is clear:

1. Respondent has more than one property known as Saluda Rest and one one of the properties is private,
2. Saluda Rest is also an "operation" or a set of actions by the respondent that the MIE identifies as a possible church, cemetery or preserve and makes no ruling on these matters.
3. The appellant's husband is buried on the land at 177 Edwards Road and she accesses the grave from only that one property. See RULING:

*"2. The Plaintiff's **property** is private property. The Plaintiffs **property** is not open to the general public.*

3. The court makes no ruling as to whether Plaintiff's operation called Saluda Rest is or is not a church, legally recognized cemetery, nature preserve or nonprofit entity.

4. The Defendant is entitled to access her husband's burial site with ingress and egress by vehicle through the gate at Saluda Rest at 177 Edwards Road, "

The MIE's use of both the singular and the plural form of the word "property" verifies that there are more than one location, just as there are more than one function. But the remainder of his findings use the singular form of the word "property" thereby making it impossible to distinguish between the original property of interest, the separate properties of reference and other properties or organizations.

By improperly stating, "Saluda Rest is Private Property," the COA has taken it upon themselves to improperly summarize the orders of the MIE and is so doing they have created a distinctly new ruling and order.

It has been established by magistrate court that the respondent opened his land to the public at large. Common-law doctrine provides that private property appropriated by the owner to a public use is thereby subjected to public regulation; therefore it was the courts duty to protect the public welfare by understanding and properly applying the magistrate court findings and reference and to rule only upon the Saluda Rest lands as each one relates to a cemetery. (see GRANGER CASES (1877) *Munn v. Illinois*, 94 U.S. 113, *Chicago, Burlington & Quincy Railroad Co. v. Iowa*, 94 U.S. 155, *Peik v. Chicago & Northwestern Railway Co.*, 94 U.S. 164).

The MIE failed in their duties and the COA does not have the judicial discretion or authority to make new rulings or to create new orders; to do so would interfere with the appellant's rights to a fair and impartial hearing.

2 - RES JUDICATA

If the court vacates a portion of the case for RES JUDICATA, then the entirety of the order must be vacated:

1)The parties are the same. Glenn is the ONLY captioned defendant. 2) The evidence was the same. Glenn presented the exact same evidence for the exact same purposes that she presented them in Magistrate Court regarding her own personal access to the one property where her husband is buried, deeded as Saluda Rest, that she believes to be a cemetery therefore 3) the same primary right was held and 4) the claims arose from the same transaction. (quoting James F. Flanagan, South Carolina Civil Procedure 649-50 (2d ed. 1996))).

The matter of the property having been opened to the public is also already decided by the rulings of magistrate court. Those findings were not appealed and are therefore outside of the jurisdiction of the Master-in-Equity (MIE) to overturn.

In addition, the magistrate court had also conducted a Rule to Show Cause hearing regarding the burial site placed in the entrance to the access road to 177 Edwards Rd. So there were absolutely no new conflicts for the MIE to rule upon. See *Zinn v. CFI Sales & Mktg., Ltd.*, 415 S.C. 93, 105, 780 S.E.2d 611, 617 (Ct. App. 2015) ("Res judicata bars

subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." (quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)).

The South Carolina COA states,

"Here, the parties are the same and the subject matter— Glenn's visitation rights—are the same. Moreover, the magistrate's court's order finally determined the visitation parameters for the parties in its order..."

However, the COA fails to recognize that magistrate court has also already addressed Curtis's actions regarding the public as an established fact and rules of estoppel prevent restatement of the identical matters as to create a new cause of action . In fact, Glenn herself was a member of the public, having never met Curtis prior to her husband's death and was introduced to him only because he was soliciting business from employees of Hospice. These facts as well as Curtis's solicitation of unclaimed bodies from county morgues were argued in detail during both lower courts. This determination is clear in magistrate rulings,

"I find that the Plaintiff actively seeks additional bodies to be buried in his cemetery, having obtained bodies from county government as well as advertised his cemetery to the public at large. I find that the Plaintiff has opened his property to the public for use as a cemetery."

Although Curtis's complaint asks for a ruling that "Plaintiff owns private property," it has already been decided that the Saluda Rest property located at 177 Edwards Rd has been

opened to the public by Curtis himself and that his actions are affecting the community at large; therefore, it is not a matter that can be re-litigated before the court without a proper appeal from magistrate court as it has been finally determined. See *id.* at 105, 780 S.E.2d at 618 ("Res judicata is shown if (1) the identities of the parties is the same as a prior litigation, (2) the subject matter is the same as in the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." (quoting *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994))).

Although not specifically stated, we assume the portions of the order being affirmed by the COA are:“(1) Glenn did not prove any elements of her counterclaims, (2) Curtis did not prove Glenn breached the contract nor that she brought forth legal proceedings with an ulterior purpose, (3) the determination of whether Saluda Rest is a church is beyond the MIE's jurisdiction, (4) Saluda Rest is private property, and (5) it had the jurisdiction to grant relief between the parties.”

This appellant now disputes affirmed orders number four(4) and number five(5):

Number 5: Master in Equity did not have the jurisdiction to grant relief.

Since the respondent did not properly file in the Court of Common Pleas and the MIE did not clarify or rule upon the proper issue before the court, all other matters of the case have already been litigated or could have been litigated and rulings violated Res Judicata. No new conflicts were presented; therefore, the court did NOT have the jurisdiction to grant relief.

AND

Number 4: "Saluda Rest is Private Property". The magistrate has already declared that the respondent opened the property to the public; therefore this ruling also falls under Res Judicata. Additionally, number 4 is a false statement created without authority by the COA (see section 1 of this petition).

3 - NO FINAL RESOLUTION

This opinion does not create a final resolution because it does not clarify the confusion caused by the respondent when his filing altered the parameters of the magistrate order and the order of reference and therefore the orders are not enforceable.

Magistrate order:

"A dispute exists as to whether the Plaintiffs property is a cemetery. The determination of the Plaintiffs property as a cemetery is beyond the jurisdiction of this Court; therefore the Plaintiff is ordered to file an action with the Circuit Court to determine Plaintiff's status as a cemetery."

Respondent's Common Pleas Complaint is very different from the requirements in the magistrate order:

"11. Plaintiff asks that this court,... to declare that Plaintiff owns private property and that Plaintiff operates a private ministry, church, and/or religious organization"

It has already been determined by Magistrate Court rulings that the specific property deeded in the name Saluda Rest located at 177 Edwards Road has been opened to the public:

“I find that the Plaintiff actively seeks additional bodies to be buried in his cemetery, having obtained bodies from county government as well as advertised his cemetery to the public at large. I find that the Plaintiff has opened his property to the public for use as a cemetery.”

There should have been but one question before the court of common pleas: Is the property deeded in the name of Saluda Rest, to which Glenn has been given access by the magistrate (177 Edwards Road) to visit her husband’s grave, a cemetery?

The lack of clarity created by the Court of Appeals Opinion statement does not resolve the issues, but instead creates new ones:

- 1 .Is the property at 177 Edwards Rd now open to the public as a condition of the magistrate order because the respondent did not properly file within the allotted 30 days?
2. Which court now has jurisdiction to decide on access or (if necessary) in matters of contempt?
3. Which “property” has the Court of Appeals now ordered to be private?

In magistrate court, the respondent argued that Saluda Rest was a cemetery and presented evidence that the coroners had interred unclaimed bodies on the land. Therefore, the magistrate ruled that the property had been opened to the public.

Yet in MIE, the respondent argued that his property/properties/ministries were now a church and therefore should be private.

The lack of resolution applies to Glenn because, among other things, it applies to whom she can bring with her as support when she visits the cemetery and in which court any future actions should occur.

Because of numerous unwanted actions by the respondent, the MIE acknowledged that Glenn needed witnesses and/or security when she visited the cemetery. By removing the MIE order, but not clarifying whether the magistrate's 30 day contingency had been satisfied, the Court of Appeals has created a safety issue for the appellant. In order to visit the grave of her husband, is the appellant now being forced to go a mile alone into the secluded grave area without any accompaniment even after many threats have been made upon her by the respondent?

4 - Issues on appeal are not resolved - There is not a full disposition of the case and therefore remaining issues of the appeal must be addressed.

The court states in its opinion, “in light of this court's above determination, we need not reach Glenn's remaining issues.” However, the issue is not dispositive because the orders were not vacated in their entirety and the affirmed portions are related to the issues brought by Glenn.

ISSUE ON APPEAL 4. Did Common Pleas fail to rule on the one issue of reference?

The actual order of reference was, “Plaintiff is ordered to file an action with the Circuit Court to determine Plaintiff's status as a cemetery.” But that question was never posed nor ruled upon by the MIE.

Without the proper order of reference the case returns to the jurisdiction of the magistrate court case which states:

“Plaintiff is ordered to file an action with the Circuit Court to determine Plaintiff's status as a cemetery. If the Plaintiff fails to make such a filing with Circuit Court within 30 days of the date of this Order, the posted visitation schedule shall apply to all members of the public in addition to the Defendant.”

It is the duty of the courts to find a final resolution. By not answering the Issue on Appeal number four (4), there is no clarity for enforcement of the magistrates' orders.

ISSUE ON APPEAL 5. Did the court confuse and blend properties ... and thereby not resolve the issues surrounding the advertised cemetery located at 177 Edwards Rd?

Even the Court of Appeals did not seem to understand the distinction of the properties and their significance.

By not answering the question posed in the Issues on Appeal, the COA has caused more confusion. The lower court will be unable to clarify orders and Law enforcement will be unable to distinguish the meaning of this opinion or enforce it.

Many questions remain unanswered including: What is Saluda Rest?
Where is Saluda Rest? Is any portion of Saluda Rest a cemetery?

ISSUE ON APPEAL 8. Since Glenn is not an attorney and is thereby not able to represent the public's rights, did Greenville County and the Attorney General's office fail in their duty to intervene in this case when requested and when a proper motion was filed?

The court can not rule against the public if the public was not represented. It is the responsibility of the court to add parties that would be affected by the rulings of a case, in this instance, the public (or a representative for the public) should have been a party if such a ruling were to be permissible.

Glenn does not hold a bar card, is not a public employee or regulatory body and does not speak on behalf of the public; therefore the public was not represented regarding their

access to lands already deemed to have been open to the public. Since the COA did not vacate the MIE's orders in entirety, then the court must resolve all of the issues on appeal.

An order of reference was requested because the magistrate court determined that more people had been injured by the case than just the parties captioned:

“I find that the Plaintiff has opened his property to the public for use as a cemetery. As a result, the Plaintiff owes a duty to the families of those buried in his cemetery to allow them to visit their family member's graves. “

The respondent had the ability and duty to clarify his responsibility by properly fulfilling the order of reference, yet he intentionally created a case embodied in chaos and without merit. In fact, the respondent never even uses the word “cemetery” in his complaint.

The MIE continued the chaos by allowing an improper case filing, not clarifying the order of reference and by not assuring that the public’s interest was being preserved thereby creating orders without proper notice or representation.

ISSUE ON APPEAL 6. Was it ethical for Judge Charles Simmons to preside over a case in which he was already intimately involved with the Plaintiff and with whom he had also befriended?

If the COA vacates “the portions of the master's order that involve Glenn”, then the only matter that could possibly be before the court is the matter of the property located at 113

Edwards Rd, yet this matter was already ruled upon by the same judge. As explained in the final brief of the appellant, between 2003-2008, there was an extensive court battle over the ownership of the property located at 113 Edwards Rd, known as TOMAR. The same MIE, Judge Charles Simmons, that created the orders of this appeal also presided over the hearings related to 113 Edwards Rd, therefore, the Issue on Appeal must be address to determine if it is ethical for the COA to affirm any portions of the order.

WHEREAS; The South Carolina Court of Appeals Acts without authority, the South Carolina Court of Appeals's opinion does not create a final resolution, Res Judica must apply to the entire order, and Issues on Appeal are not resolved; this appellant now entrust the court to vacate the orders created by the Master-in-Equity in their entirety or else justify the remaining issues on appeal.

Cynthia J. Glenn / Date: 4/28/24
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PROOF OF SERVICE

I certify that I have served PETITION FOR REHEARING by depositing a copy of it in the USPS, postage prepaid, on April 29, 2024 addressed to Kenneth Curtis 113 Edwards Rd, Marietta South Carolina 29661.

Cynthia J. Glenn / Date: 4/29/24

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