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BRIEF OF APPELLANT THE STATE OF SOUTH CAROLINA

Jun 11 2024

In The court of appeals

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY court of Common Pleas

Charles B. Simmons Jr

C.A. No.: 2020-CP-23-00939

Appellate Case No. 2020-001699

Kenneth Curtis, Respondent,

v.

Cynthia J. Glenn, Appellant,

BRIEF OF APPELLANT

Cynthia J. Glenn by invitation,
Su Juris.
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Gray court, South Carolina [29645]
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TABLE OF CONTENTS

Table of Authorities	3
Statement of Issues on Appeal	4
Statement of the Case	5
Standard of Review	10
Argument	11
Conclusion	17
Designation of Matter	18

Table of Authorities

1. *Lowe v. Clayton*, 264 S.C. 75, 212 S.E. (2d) 582 (1975)
2. *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115 (1978)
3. *Wold v. Funderburg*, 250 S.C. 205, 157 S.E. (2d) 180 (1967)
4. Rule 24 of the South Carolina Rules of Civil Procedure . Rule 24, SCRCPP, provides the procedure for intervention of right and permissive intervention.
5. S.C.Code §§ 1-240 (1952))
6. *Yeargin v. South Carolina Dep't of Highways & Pub. Transp.*, 313 S.C. 387, 438 S.E.2d 234 (1993)
7. *Condon v. Hodges*, 349 S.C. 232, 562 S.E.2d 623 (2002); *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115 (1978)
8. RULE 203 NOTICE OF APPEAL (b) Time for Service
9. THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA 1895 Introduction. (1970 (56) 2684; 1971 (57) 315.)
10. *Scott, Col-lateral Estoppel by Judgment*, 56 HARV. L. REV. 1, 3 n.4 (1942). 6 See, e.g., *Ford v. Ford*, 371 U.S. 187, 194 (1962)
11. *State v. Henley*, 363 P. 3d 319 - Haw: Supreme court 2015
12. 56 Harv. L. Rev. 1 (1942-1943).
13. *Ford v. Ford*, 371 U.S. 187, 194 (1962)
14. *Briggs v. Newberry County School Dist.*, 838 F. Supp. 232 (D.S.C. 1992)
15. U.S. Constitution Annotated, Right to Trial by Jury and proper counsel.

Statement of Issues on Appeal

1. Does Master-In-Equity (MIE) court have the authority or jurisdiction to supersede orders made in magistrate court and rule against the prevailing party without an appeal?
2. Did the MIE court accepted matters of this complaint without proper authority and without proper counsel?
3. Did Curtis, with the assistance of Simmons, re-litigate issues already decided in the lower court? Did this also involve Collateral Estoppel by Judgment, preclusion and legal harassment?
4. Did Common Pleas fail to rule on the one issue of reference, the public's right to visit the cemetery? Since cemeteries on private land are the jurisdiction of magistrate court and that court had already ruled that Curtis had opened his land to the public, did the court neglect its duty by not ruling upon the public's access to the cemetery?
5. Did the court confuse and blend properties that were not part of the original conflict and reference from magistrate court and thereby not resolve the issues surrounding the advertised cemetery located at 177 Edwards Rd?
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?
7. Was it ethical for the court to rule against Glenn with threats of excessive fines that do not match criminal standards and jail time despite her being the prevailing party on all counts?

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?
9. Did magistrate court error in filing a motion of reference after Curtis brought new issues at a Motion for Clarification hearing when he had not brought the issues previously or appealed any ruling?

Statement of the Case

1. Between 2003-2008, there was an extensive court battle over the ownership of the property located at 113 Edwards Rd, known as TOMAR. Judge Charles Simmons presided over these hearings and deemed TOMAR to be the Curtis family cemetery. (pg. 20)
2. December 30, 2010, 177 Edwards Rd was deeded to Kenneth Curtis as a Charitable Gift for the benefit of Saluda Rest to be used as a natural burial preserve. Curtis testified that he operated Saluda Rest as a non-profit charity. (pg. 172, 220)
3. December 2018, Cynthia Glenn acquired rights to bury her husband at a location advertised as Saluda Rest Natural Preserve and Burial located at 177 Edwards Rd, Marietta SC. A sum of money was demanded for this service which Curtis now calls a gift. Glenn and many family members and friends were told that they had full access to the cemetery during daylight hours, but when Glenn and family tried to visit the grave they were turned away, met with harassment, asked to give 'donations' and accused of causing damage. The police were called who verified there was no damage.

4. June 2019, Police informed Curtis that Glenn should have access to the burial grounds of her husband. Curtis filed a suit against Glenn in magistrate court.
5. November 22, 2019, an order was issued giving Glenn access to the cemetery for six consecutive hours to begin no later than 11:00 a.m. and to end no earlier than 4:00 p.m. Curtis maliciously interpreted the order to allow Glenn access only on February 29th, leap day, once every four years.
6. A clarifying order was issued on December 6, 2019, but Glenn was never notified of this order and did not become aware of its existence until long after the second order to clarify was issued.
7. A motion for clarification of the November 22, 2019 order was filed by Glenn on December 15, 2019 (after the order had already been clarified on December 6, 2019). At this hearing, Despite Curtis having been the one to originally file a complaint in magistrate court regarding Saluda Rest as a private cemetery, he brought new issues regarding the magistrate courts ability to rule on the designation of that same property.
8. A second amended order was issued January 15, 2020. This order clarified that visitation hours must be at least weekly. Additionally, the magistrate court ordered,
“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. Therefore, the Plaintiff shall set standard weekly visitation hours for which the Defendant may visit the graves on Plaintiffs property.”

....A dispute exists as to whether the Plaintiff's property is a cemetery. The determination of the Plaintiff's 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. If the Plaintiff fails to make such a filing with Circuit court within 30 days of the date of the Order, the posted visitation schedule shall apply to all members of the public in addition to the Defendant.” (pg. 65)

9. An Order of Reference was sent to masters-in-equity court. (pg. 83)
10. Curtis never filed an action in the Circuit court pertaining to his status as a cemetery as it relates to the public in general as required by the magistrate order. Instead he filed another suit against Glenn on Feb 14, 2020 with the same issues already ruled upon in magistrate court. In addition, he later asked for pain and suffering compensation from Glenn for his incarceration for contempt. An appeal has not been filed from Curtis for any rulings.
11. Masters-in-equity accepted the filing from Curtis.
12. March 5, 2020 a Rule to Show Cause hearing was held in magistrate court and Curtis was arrested for violating court orders and continuing to deny Glenn access to the cemetery.
13. Glenn filed and prevailed in a Motion to Dismiss in part on July 7, 2020 (pg. 90) regarding the masters-in-equity complaint. Of it's own accord, the Court also issued mutual restraining orders:
 - a. *“Based upon the evidence presented, the court rules that any issues that occurred between the parties prior to January 15, 2020 (the date of Judge Sutherlin's Order) may not be re-litigated in this court. Further, the court imposed a mutual restraining*

order, punishable by a minimum sanction/fine of \$500.00 per violation and/or jail, against any harassment or interference by and between the parties, directly or indirectly.” (pg. 118)

14. August 2020, Defendant and other family members tried to visit the grave only to find that Curtis had dug a grave-shaped pit in the driveway blocking all access to the cemetery. The pit was open, but a headstone was placed at one end of the opening. Digging of the pit should have been deemed contempt by Curtis by both the Magistrate and Common Pleas orders. An emergency injunction was ordered by Magistrate court forbidding Curtis from interring a body into the open pit and ordered to remain in effect until all issues were addressed in the court of Common Pleas. Rulings on a Rule to Show Cause were deferred (pg. 178).
15. Despite the MIE Order to Dismiss from July 7, a hearing occurred on October 13, 2020 before the judge Charles Simmons. At that time the only portion of testimony related to events occurring after Jan 15, 2020 (per the order) were related to the incident of the pit blocking access to the cemetery which had also been tried in Magistrate Court.
16. The hearing lasted in excess of 8 hours. Testimony primarily related to incidents prior to Jan 15, 2020 and to the Curtis home located at 113 Edwards Rd (TOMAR) where his mother was buried in a family plot and not to the cemetery in question; Saluda Rest Natural Preserve and Burial at 177 Edwards Rd.
17. The court did not comply with the order dismissing all issues already ruled upon in the lower court and continued to entertain testimony and evidence that re-tried the magistrate court case.

18. Despite the facts that **no appeal** had ever been filed from magistrate court and that a Common Pleas Order had dismissed all matters of the complaint; the final Order in this case dated October 29, 2020 stated:

“This order shall supersede and overrule any previous orders or rulings related to these matters between the Plaintiff and Defendant.”(pg. 150)

19. The court failed to rule upon the public’s access to the cemetery located at 177 Edwards Rd, the only true issue before the court.

20. The court ruled in favor of Glenn on the contempt related to the open pit blocking all access to the cemetery (pg.47, 150) but did not issue any relief to Glenn nor sanctions to Curtis. Instead the court issued a restraining order against Glenn with excessive fines of **\$5,000 or jail time**(pg. 177).

21. Glenn filed a motion for intervention since she is not an attorney and had no ability to represent the public in this matter (pg. 48; 122). She served it upon both Plaintiff’s attorney and the Attorney General’s office. That motion was denied (pg. 46).

Standard of Review

1. Abuse of discretion - Judge Charles Simmons had already presided over a prolonged case regarding property of Kenneth Curtis. He should have recused himself but instead allowed the two cases and two properties to merge allowing his conflict to prejudice the case (pg. 20; 221).
2. Plain error - An appeal was never filed by Curtis and therefore the court of Common Pleas had no jurisdiction to supersede the rulings of the lower court. The court of Common Pleas also erred when they did not rule upon the public's interest in the cemetery, the sole issue referred by magistrate court.
3. Question of law - The issue as to a person's right to claim non-profit status without qualification, sell to the public, solicit bodies from the county morgues and operate a cemetery without a license because he uses the term "natural burial" appears to be a de novo issue before the state and applies to the public's interest in this matter (pg. 158; 259; 299-310)

Argument

1) Res Judicata - Under the rules of res judicata, when a timely appeal has not been filed, the court of Common Pleas does not have the authority or jurisdiction to supersede orders made in magistrate court and rule against the prevailing party. The court of Common Pleas re-litigated the same case, as it related to Glenn, which had already been tried in magistrate court (pg. 64) . The court's failures put the financial and emotional burden upon Glenn to retry a case in which she had already prevailed. Res judicata applies where there is identity of parties, identity of subject matter, and an adjudication of the issue in the former suit. *Lowe v. Clayton*, 264 S.C. 75, 212 S.E. (2d) 582 (1975). A litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. *Wold v. Funderburg*, 250 S.C. 205, 157 S.E. (2d) 180 (1967).

Although Glenn prevailed in her Motion to Dismiss in part, the decision of the court was ignored and the case was re-litigated by the same judge who had dismissed it. The court did not acknowledge the order dismissing all issues already ruled upon in the lower court and continued to entertain testimony and evidence that re-tried the magistrate court case despite objections made by Glenn.

Despite the facts that **no appeal** had been filed from magistrate court and that a Common Pleas Order had dismissed all matters of the complaint; the final Order in this case dated October 29, 2020 stated:

“This order shall supersede and overrule any previous orders or rulings related to these matters between the Plaintiff and Defendant.”(pg.150)

2) Collateral estoppel or preclusion state that once a court has decided an issue of fact or law necessary to its judgment, that decision precludes re-litigation of the issue in a suit on the same or different cause of action involving a party to the first case. The court's failure to protect Glenn's rights resulted in legal harassment overuse and abuse of judicial resources and extreme pain and suffering for petitioner. *56 Harv. L. Rev. 1 (1942-1943) and Ford v. Ford, 371 U.S. 187, 194 (1962)*

3) The Doctrine of Privity of Contract - also applies. The Law Of Claim Preclusion in South Carolina would bar Plaintiff's re-litigation of her Constitutional claims under the principles of claim preclusion, a final judgment on the merits in a prior action will absolutely bar the parties and their privies from litigating in a subsequent action issues actually litigated and issues that could have been raised in the first action. *Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.S.C. 1992)*

4) No Jurisdiction Without An Appeal - Curtis did not file an appeal to the case from magistrate court, therefore the court of Common Pleas did not have jurisdiction to supersede the rulings of the lower court.

RULE 203 NOTICE OF APPEAL (b) Time for Service. (1) appeals From the court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.

Despite no appeal having been submitted, the court accepted Curtis' request to supersede prior court orders. In an Affidavit to the court of Common Pleas regarding Magistrate court sentencing for contempt for ongoing refusal to allow Glenn access to her husband's gravesite. Curtis states:

“He (Kenneth Curtis) considers the punishment to be far in excess of what is or was just and proper, and believes the punishment to be cruel and unusual...Kenneth Curtis begs and prays, that this court will grant him equitable relief from the continued abuse of process by the Defendant and deny her access to his property, nullify the previous court order...”

MIE court accepted matters of this complaint without proper authority and without proper counsel. Any action that was separate from the plaintiff's equitable property related to the public's access and the designation of cemetery was a matter for another court, but any matter related to the public entitled the public to fair representation. *U.S. Constitution Annotated, Right to Trial by Jury and proper counsel.*

- 5) No clarification of issues - Defendant was not allowed an opening or closing statement and in so doing there was no clarity as to the exact issue or property in question (pg. 336. The court did not acknowledge the order dismissing all issues already ruled upon in the lower court and continued to entertain testimony and evidence that re-tried the magistrate court case
- 6) Full and Fair Hearing - Defendant was not allowed an opening or closing statement in full accord with due process despite her explicit request. (pg. 122; 225)
- 7) Error of Fact - The hearing lasted in excess of 8 hours and Curtis' case focused substantially on his home property located at 113 Edwards Rd (TOMAR) where his mother was buried in a family plot and not to the cemetery in question; Saluda Rest Natural Preserve and Burial deeded “Saluda Rest f/b/o Kenneth Curtis.” Curtis argued

that his home parcel was the property in question and testified that this alternate location was the burial site.

The home parcel has never been in dispute and Glenn has never asked to visit that property nor was it a part of the magistrate case reference or any public testimony. Although Glenn objected to the error of facts and exhibits, the court allowed the testimony and exhibits and subsequently made rulings upon the wrong property; a property unrelated to the magistrate court reference or the burial grounds of Glenn's husband. The two properties have separate entrances almost a mile apart, are deeded in different names, and have separate deeds and map #'s in the Greenville County tax index.

By encompassing property located at 113 Edwards Rd whose use was were never disputed, the Court's mistake of facts nullified the true nature of 177 Edwards Rd.

8) Trial by Jury - Glenn was denied a jury trial by her peers. Special reference was made by the magistrate judge specifically to a masters-in-equity (MIE) court on issues related to the public's access to the cemetery (pg.83). Masters-in-equity court does not hold jury trials and their ruling encompassed more than just equitable division as evidenced by rulings of excessive fines and loss of freedom. Glenn has not waived her right to a trial by jury and the consequences of complaints filed against Glenn far exceeded the amount of \$20.00 and entitle Glenn full access to a trial by jury.

9) The Public's Interest Was Not Served - The public's interest was not adequately represented by Glenn. Glenn is not an attorney or a defender of the public interest and should not have been given the burden nor the responsibility of representing the public in this case. At best she might have been called as a witness in a trial conducted by

representatives of the state or Greenville County. The public is also entitled to fair representation in such matters, therefore, the public was denied their right to counsel, *U.S. Constitution Annotated, Right to Trial by Jury and proper counsel.*

Although both Greenville County and the Attorney General's offices were notified, they both failed to intervene as allowed by Rule 24 of the South Carolina Rules of Civil Procedure. Rule 24, SC. The Attorney General has broad statutory and common law authority in his capacity as the chief legal officer of the State to institute actions involving the welfare of the State and its citizens, including vindication of wrongs committed collectively against the citizens of the State. *See Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002); State v. Beach, 271 S.C. 425, 248 S.E.2d 115 (1978).* Additionally, since Curtis is claiming to be a non-profit charity, the Attorney General had specific statutory support for his intervention under his duty "to enforce the application of funds given or appropriated to public charities." *Id.* at 515, 93 S.E.2d at 925 (quoting S.C.Code §§ 1-240 (1952)). (pg. 122)

10) Right to Counsel – By superseding the magistrate order thereby striking the public's right to the cemetery from the ruling and then forcing Glenn to continue with a case regarding complaints that should have determined the public's access, the MIE effectively denied the public access without a fair hearing. In so doing, the Public was denied proper counsel. Curtis is now allowed to sell to the public but visiting the remains of loved ones placed upon the property, a perpetual and inalienable right, are being denied to the public. *U.S. Constitution Annotated, Right to Trial by Jury and proper counsel.*

11) Grossly Severe Sentencing - Although Glenn prevailed in the Rule to Show Cause Motion regarding the pit dug in the path to the cemetery prevented her access to her husband's gravesite, she was sentenced as though she had lost the argument and threatened with jail time and excessive fines of \$5,000. The Eighth Amendment prohibits sentences which are grossly out of proportion to the severity of the crime. *YeARGIN v. South Carolina Dep't of Highways & Pub. Transp.*, 313 S.C. 387, 438 S.E.2d 234 (1993).

Glenn was entitled to relief for Curtis's violations, for cruel and unusual treatment and for being denied access to her husband's burial site by Curtis, but instead was sanctioned without any relief which has allowed Curtis to continue to deny Glenn access to this day based upon frivolous accusations with real threats of imprisonment.

Conclusion

Magistrate court erred by allowing Curtis to bring new issues after completion of trials and by making a reference to Common Pleas without an appeal. Court of Common Pleas exceeded their authority by ruling on issues not before the court and overturning the proper rulings of magistrate court. Common Pleas did not grant Glenn relief despite her being a prevailing party, but merely exasperated and fueled Curtis's contempt by granting him the ability to imprison Glenn. The issue of public access was not resolved.

Therefore; this Appellant asks that these rulings be dismissed; that prior Magistrate Court Orders granting Glenn, the wife of Mark James Guion and a living person, be restored; and that the public also have the same access as ordered; that Curtis be subject to contempt charges in Magistrate Court for not filing a proper complaint with Masters-in-Equity court for issues of the public as ordered by the lower court; and that Magistrate Court be allowed to rule upon the Rule to Show Cause filings related to the open pit. Petitioner seeks relief as appropriate.

Signed this date _____, 2023

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Designation of Matter

1. TOMAR Order (pg.20)
2. ORDER AMENDING AND SUPPLEMENTING THE NOVEMBER 22,2019 AND DECEMBER 6,2019 ORDERS Jan 15, Case number 2020 2019CV2311101849 & 2019OR2311100028 IN THE SUMMARY COURT (pg. 46)
3. Common Pleas complaint Feb 14, 2020 (pg. 52)
4. Defendant's Motion to Dismiss in Part (pg. 90)
5. Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss in Part (pg. 94)
6. Curtis Motion to Amend and opposition of Glenn Motion for new trial and NOTICE OF MOTION AND MOTION TO ALTER OR AMEND Nov 5, 2020 (pg. 105)
7. Affidavit of Curtis in Response to Motion to Dismiss July 2, 2020 (pg. 113)
8. Order to Dismiss in Part July 7, 2020 (pg.118)
9. Defendant's Amended Motion for New Trial and Intervention Nov 9, 2020 (pg. 122)
10. Defendant's Rule to show cause for grave in driveway in magistrate court Sept 27, 2020 (pg. 168)
11. Common Pleas Order denial of intervention and new trial Nov 17, 2020 (pg.139)
12. Deed to 177 Edwards Rd and 113 Edwards Rd (pg. 172)
13. Curtis letter to Simmons (191)
14. Transcripts in part
 - a. July 7, 2020 HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY (pg. 193)
 - b. October 13, 2020 HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY (pg. 215)
 - c. PARTIAL VIRTUAL HEARING Emergency Injunction, Rule to Show Cause **PART B** (pg. 248)
 - d. VIRTUAL HEARING Monday, August 17,2020 Emergency Injunction, Rule to Show Cause **PART A** (pg. 379)

BRIEF OF APPELLANT THE STATE OF SOUTH CAROLINA
In The court of appeals

APPEAL FROM GREENVILLE COUNTY court of Common Pleas
Charles B. Simmons Jr
C.A. No.: 2020-CP-23-00939

Appellate Case No. 2020-001699

Kenneth Curtis, _____ Respondent,
v.
Cynthia J. Glenn, _____ Appellant,

PROOF OF SERVICE

I certify that I have served **[INITIAL] BRIEF OF APPELLANT and DESIGNATION OF MATTER** by
depositing a copy of it in the United States Post Office, postage prepaid, on _____, 2023 addressed
to attorney of record,

In care of Rural Route

The Law Offices of _____, LLC

_____ Greenville, South Carolina [29601] and to the

Curtis home:

In care of Rural Route

113 Edwards Rd, Marietta South Carolina [29661].

Signed this date _____, 2023

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BRIEF OF APPELLANT GLENN