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Jun 11 2024

SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar W. Dickson**

**Appellate Case No. 2020-000451
Supreme Court Case No. 2023-001318**

Rufus Rivers and Merle Rivers, pro se.....Petitioners

VS.

Stephanie McKune-Grant and Jenny Abbott Kitchings.....Respondents

EMERGENCY PETITION FOR WRIT OF MANDAMUS

Petitioners Rufus Rivers and Merle Rivers submits this **EMERGENCY PETITION FOR WRIT OF MANDAMUS**. This petition is brought pursuant to Rule 221 of SCRCF, directing the court to issue mandate(Rule 41 . SCRCF 62(a)(b)(f) outlines how judgments are stayed.

The issues presented are Stephanie McKune-Grant (The magistrate), illegally withholding funds and Jenny Abbott Kitchings(Clerk of Court of Appeals), failure to issue mandate as required under Rule 41 This matter originated in magistrate's court as an ejectment matter where petitioners were ordered to pay \$700.00 per month in to the magistrate's court. This amount was determined by the magistrate and respondent's attorney Kathleen McDaniel as fair market value for monthly rent. The magistrate ordered ejectment resulting in an appeal and the ordering of the bond to stay ejectment of \$700.00 per month. The Court of Appeals reversed the lower court's decision.(see attached). The Court of Appeal's withholding of the remittitur and mandate does not meet South Carolina Rule 242 of South Carolina Rules of Civil Procedure by not issuing either the remittitur or mandate while Respondent's Petition for Writ of Certiorari is pending. Respondent's Writ of Certiorari was filed timely without requesting stay of the Court of Appeals' decision which means the decision is still effective. Petitioners filed two

distinct motions in the Court of Appeals. First, a “motion for mandate” was filed on December 11, 2023 which was denied because the remittitur had not had issued. Second, a “motion to enforce judgment” was filed on March 28, 2024 and denied because the first motion had been filed and denied.(see attached both orders). Time has since expired for the mandate issuance and petitioners feel the remittitur as well is due. It has been 11 months since the Court of Appeals' decision.

ISSUES

Magistrate Stephnie McKune-Grant and The law firm of Burnette, Shutte & McDaniel, each are holding funds that were intended as bond to stay until the court of Appeals rendered its decision. On June 21, 2023 the Court of Appeals reversed the lower court's decision. Petitioners informed the magistrate and the Law firm of the court's decision while providing a copy of the decision.(see attached opinion). Petitioners were told by the magistrate's staff that they were waiting on the court's instructions. Kathleen McDaniel from the law firm stated that they were not going to return any money until the court says so.

Firstly, petitioners feel that redirecting the payments to the law firm was inappropriate from the beginning. Secondly, the return of funds should have been a priority since they were never legally held. .Thirdly, respondent has initiated a new action in the circuit court regarding the same ejection matter involving the same parties as indicated in Judge Taylor's order dated April 8, 2024.(see attached).

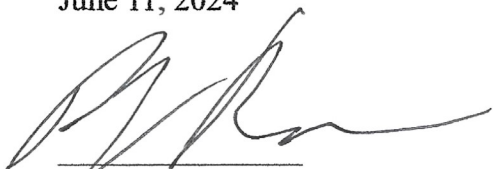
Respondent has had his bite of the apple and looking to get a more favorable result through his instant action where he is precluded , **res judicata**. Petitioners are being disadvantaged by respondent's attempt to circumvent the Court of Appeal's decision by filing a Writ of Certiorari without requesting a stay for the sole purpose of delaying the process while attempting to obtain a more favorable decision in the circuit court Respondent's Writ of Certiorari cites the wrong case number of the lower court's case in the filing(2018-CP-40-01318). The respondent have not presented any issue that would warrant review.

CONCLUSION

Respondent has filed a frivolous Writ of Certiorari, designed to frustrate the courts by interrupting judicial efficiency and creating unreasonable delay.. Respondent, through his attorney have abused the process over and over without any regards to the hardship being placed on petitioners. Not only have they no regard for fairness, respondent have used the process in a way that it was not intended to be used from the onset. What respondent is doing through his attorney is malicious and could be seen as harassment. Petitioners are senior citizens and not in the best of health. It has strained petitioners' finances, health and well-being while holding petitioners' funds is hindering them from effectively prosecuting the new case also. Mostly, unreasonable delay. Petitioners have exhausted their efforts to resolve this matter.

Petitioners pray this court grants this petition for the foregoing reasons and have the Clerk of Court, Jenny Abbott Kitchings issue the mandate and/or remittitur as required.

June 11, 2024



Rufus Rivers, pro se



Merle Rivers, pro se

Attorney for Respondent
Kathleen McDaniel, Esq.
P. O. Box 1929
Columbia, South Carolina 29202

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Rufus Rivers and Merle Rivers, Appellants,

v.

James Smith, Jr., Respondent.

Appellate Case No. 2020-000451

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 5992
Submitted March 1, 2023 – Filed June 21, 2023

REVERSED

Rufus Rivers, of Cordova, pro se.

Merle Rivers, of Cordova, pro se.

Kathleen McColl McDaniel and Sarah Jean Michaelis
Cox, both of Burnette Shutt & McDaniel, PA, of
Columbia, both for Respondent.

HEWITT, J.: Rufus and Merle Rivers appeal a circuit court order affirming a magistrate's order of eviction. They contend the case falls within a statute prohibiting magistrates from exercising jurisdiction when title to the property is at issue. Based on that, they argue the magistrate erred in finding a landlord-tenant relationship existed between them and James Smith, Jr., and in ordering them to pay rent into the magistrate's registry to secure a stay while they appealed the eviction. We agree and reverse.

FACTS

This case concerns property once owned by James Smith's deceased mother, Jessie Mae Smith (Jessie Mae). The Rivers have lived on the property since 2009. There is no record of a written lease agreement between the Rivers and either Jessie Mae or James.

In July 2013, Jessie Mae executed a power of attorney designating James as her authorized agent and granting him authority to spend her finances, sell or dispose of her property, and make her healthcare decisions. In September 2014, James transferred the property to himself, on Jessie Mae's behalf, via a quitclaim deed. This deed was recorded the following month. James presented evidence to the magistrate that the Orangeburg County Tax Assessor's Office has identified him as the owner of record since September 2014. Jessie Mae died in 2016.

In July 2018, roughly two years after Jessie Mae died, James sent the Rivers a letter demanding they vacate the property within thirty days. The Rivers refused. They asked James to cease and desist any effort to displace them, claimed James held an invalid power of attorney, and alleged he had breached fiduciary duties. Competing lawsuits followed.

The Rivers sued James in the Orangeburg County Court of Common Pleas. The suit challenged James's ownership of the property and alleged constructive fraud, unjust enrichment, and other causes of action. The Rivers filed an amended complaint a few days later alleging that James used an invalid power of attorney from Jessie Mae and that Jessie Mae had orally given or promised the property to them.

Around the same time, James filed this case against the Rivers in magistrate court seeking to evict them from the property. The magistrate conducted a hearing not long after the case was filed.

The Rivers made various arguments to the magistrate in opposing the eviction, but there is no disputing that the arguments involved an alleged promise by Jessie Mae to give them the property. The record suggests the Rivers alerted the magistrate to their circuit court lawsuit against James. The Rivers asked the magistrate to dismiss the eviction action and allow James to add his claims to the circuit court case.

According to the magistrate's return, James's main argument was that the Rivers' circuit court case and their claim to own the property lacked any conceivable merit because the alleged gift from Jessie Mae would have occurred more than three years before any lawsuits were filed. James argued the Rivers' ownership claims would therefore be barred by the applicable statute of limitations.

After the testimony and arguments concluded, the magistrate orally ruled that James was the current and lawful owner of the property, that the Rivers were tenants, and that the Rivers unlawfully occupied the property.

The Rivers filed a motion for reconsideration. Among other things, they argued the magistrate lacked jurisdiction, that they had informed the magistrate both orally and in writing of their circuit court case, and that James was using the eviction process to circumvent the circuit court case.

The magistrate held a hearing on the motion for reconsideration, at which the Rivers presented a court record reflecting that their case against Smith had been referred to the master-in-equity. The magistrate denied the motion based on its previous finding that Smith owned the property. The magistrate determined the case did not involve a question in title and that she had jurisdiction to hear the dispute.

The Rivers appealed the magistrate's decision to circuit court. The case was continued after a first hearing based on the Rivers' contention that their circuit court suit against James involved a challenge to his claim of title, but after that—and after the master-in-equity dismissed the Rivers' suit against James for failing to state a claim upon which relief could be granted—the circuit court affirmed the magistrate's decision and ordered a writ of ejectment to be issued. The circuit court found the Rivers' jurisdictional issue to be moot. The court stated that Smith owned the property and that although "the Rivers attempted to challenge Smith's title to the [p]roperty, this challenge was dismissed by the [master] for failure to state a claim upon which relief could be granted." This appeal followed.¹

ISSUE

¹ The Rivers recently filed a "motion to vacate" with this court. The motion primarily discusses events outside of the record. After careful review, the motion is denied.

Whether section 22-3-20(2) of the South Carolina Code (2007)—which bars a magistrate from hearing a case when title to real property is in question—prohibited the magistrate from considering this case.

STANDARD OF REVIEW

We are bound by the factual findings under review as long as they are supported by any evidence. *See Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984). Even so, "[d]etermining the proper interpretation of a statute is a question of law, and [the appellate court] reviews questions of law de novo." *Palmetto Co. v. McMahon*, 395 S.C. 1, 3, 716 S.E.2d 329, 330 (Ct. App. 2011) (quoting *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

JURISDICTION OVER THE EVICTION

The legislature has provided that "[n]o magistrate shall have cognizance of a civil action . . . when the title to real property shall come into question, except as provided in Article 11 of this chapter." S.C. Code Ann. § 22-3-20(2). A series of statutes—sections 22-3-1110 to -1180—govern the procedure in cases where title is challenged.

The reason for this rule appears to be that summary proceedings in magistrate court are only appropriate when the conventional landlord-tenant relationship is established. *See Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 455-56, 121 S.E. 374, 376 (1924) (discussing a constitutional provision that has since been substantially codified in section 22-3-20). As one might guess from the date in the citation, there do not appear to be many cases interpreting this rule; certainly not any modern ones. An even older case explains that while the ejectment statute was designed to establish an efficient means for ejecting trespassers, it was not intended to give someone an advantage when there is a dispute over rightful possession. *Richland Drug Co. v. Moorman*, 71 S.C. 236, 239, 50 S.E. 792, 793 (1905).

Precedent explains the magistrate retains jurisdiction if the defendant does not comply with the statutory procedure for raising a question as to title or offer any evidence drawing title into question. In *Bamberg Banking Co. v. Matthews*, for example, our supreme court upheld the magistrate's jurisdiction in spite of the defendant's claim that she owned the property and the lease she signed with the bank was procured through fraud and duress. 132 S.C. 130, 132-33, 128 S.E. 718, 719 (1925). The court noted the defendant did not follow proper procedure, did

not deny the lease at the hearing, and offered no evidence of fraud or duress. *Id. Barnes v. Charleston & Western Carolina Railway Co.* follows the same reasoning. 106 S.C. 227, 230, 90 S.E. 1017, 1018 (1916) (noting the defendant denied the plaintiff's allegations but did not comply with the statutory procedure and did not offer any testimony at the foreclosure hearing).

This case is not like *Bamberg Banking Co.* and *Barnes*. This is not a situation where a defendant feigns a challenge to title but has no actual arguments to muster. This case also differs from those cases in that the Rivers complied with the statutory procedures. A statute allowed them to raise questionable title as a defense in their answer to the foreclosure suit, and they provided the magistrate and Smith with their signed answer raising that defense at the hearing. *See* S.C. Code Ann. § 22-3-1110 (2007). A different statute required them to file an undertaking as assurance that the defendant will promptly file an action in circuit court over title to the property, *see* S.C. Code Ann. § 22-3-1120 (2007), but the Rivers cleared this bar with room to spare—they filed their circuit court suit before Smith filed his case to evict them. They gave the magistrate and Smith copies of the summons and complaint at the hearing.

If this was all there was to the case, we think there would be no question as to the outcome. Smith certainly has defenses to the Rivers' claims, and those defenses may be good ones, but our reading of precedent convinces us the magistrate's jurisdiction ends as soon as it becomes clear that there is a challenge to title and the traditional landlord-tenant relationship does not exist. But, as we noted in the background, the master-in-equity dismissed the Rivers' case against James while the Rivers' appeal of the magistrate's decision was pending. The Rivers did not appeal the master's decision. Absent an appeal or a proper motion under Rule 60, SCRCP, the master's order is binding. The circuit court found this rendered any jurisdictional defect moot.

We cannot agree. If the magistrate did not have jurisdiction over the eviction case, it lacked jurisdiction to enter the eviction order and that order is a nullity. *See, e.g., Leviner v. Sonoco Prods. Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) (stating an order issued without jurisdiction was a nullity). We are not presented with any authority that subsequent events like the master-in-equity's order here can reach back in time and ratify an order that was issued by a court that lacked jurisdiction to do so. This case may well end in a second but successful eviction, but we cannot say that outcome is certain.

CONCLUSION

Our holding controls the related issues regarding a landlord-tenant relationship and the rent funds in escrow. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues on appeal when its determination of a prior issue is dispositive). Based on the foregoing, the magistrate's order of eviction is

REVERSED.²

THOMAS and MCDONALD, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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Nov 27 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar W. Dickson, Circuit Judge

Case No. 2018-CP-38-01339
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers, pro se.....Appellants

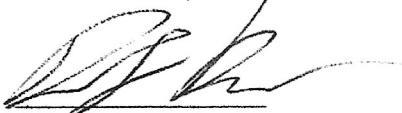
V.

James Smith, Jr.....Respondent

REQUEST FOR MANDATE TO RELEASE FUNDS IN ESCROW

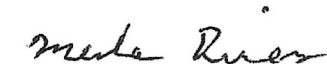
On June 21, 2023, the Court of Appeals issued its Opinion in this matter. Respondent's Request for rehearing was denied July 21, 2023. Respondent never moved the court for stay of the decision. Respondent has since filed a Petition for Writ of Certiorari without making a motion for stay. Pursuant to Rule 41, Writ of Certiorari does not automatically stay the Opinion. Please issue an order releasing funds.

November 22, 2022,



Rufus Rivers, pro se

Attorney For Respondent
Kathleen McDaniel, Esq.
P. O. Box 1929
Columbia, South Carolina 29202



Merle Rivers, pro se

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Nov 27 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Case No. 2018-CP-38-01339

Rufus Rivers and Merle Rivers, pro se.....Appellants

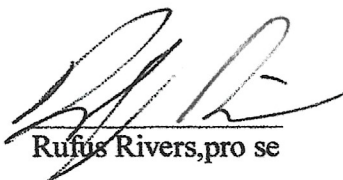
V.

James Smith, Jr.....Respondent

PROOF OF SERVICE

We hereby certify that a copy of Rufus Rivers and Merle Rivers' Request for Mandate to Release Funds held in Escrow was served on James Smith, Jr. through his attorney of Record, Kathleen McDaniel, Esq., email and her last known address P. O. Box 1929 Columbia, South Carolina 29202 by depositing same in the U.S. Mail in an envelope with proper postage affixed.

November 22, 2023


Rufus Rivers, pro se


Merle Rivers, pro se

The South Carolina Court of Appeals

Rufus Rivers and Merle Rivers, Appellants,

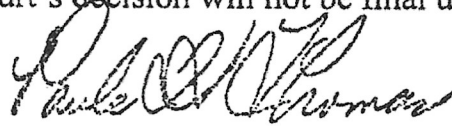
v.

James Smith, Jr., Respondent.

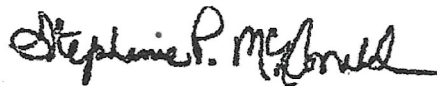
Appellate Case No. 2020-000451

ORDER

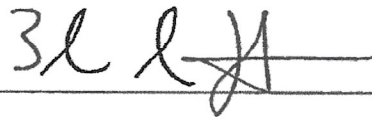
The appellants filed a motion titled "request for mandate to release funds in escrow." The motion is denied as this court's decision will not be final until the remittitur is issued.



J.



J.



J.

Columbia, South Carolina

cc:

Rufus Rivers

Merle Rivers

Kathleen McColl McDaniel, Esquire

Sarah Jean Michaelis Cox, Esquire

The Honorable Edgar W. Dickson

The Honorable Patricia A. Howard

FILED
Feb 07 2024

STATE OF SOUTH CAROLINA
In The Court Of Appeals

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Mar 28 2024

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar Dickson

Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers _____ Appellants

VS.


James Smith, Jr. _____ Respondent

MOTION TO ENFORCE JUDGMENT

On June 21, 2023, this court rendered its decision by reversing the lower court's decision in the above-referenced matter(OP. 05992). No remittitur has been issued and respondent has not filed a motion to stay the decision. Respondent filed for rehearing and was denied and has since filed a petition for review of that decision, which is still pending. Time has now expired and the respondent has initiated a new case in the circuit court regarding the same issues. Appellants now moves this court to enforce its judgment. **Appellants invoked res judicata** in the circuit court. However, appellants does not know the outcome, appellants may be tasked with filing an appeal that places them at a disadvantage for lack of funds. This is not justice when the plaintiff's attorney and the magistrate are withholding the appellants' funds in escrow while a new case is being re-litigated in the circuit court. For the sake of **due process**, appellants ask this court to issue an order enforcing its decision which would allow appellants to move forward in prosecuting their case. Respondent is using the writ of certiorari as the reason for withholding appellants' funds while not filing a motion to stay enforcement


of the Court of Appeals decision, which should raise some ethical concerns. Even though, appellants does not have a crystal ball, it will serve them well to resolve this issue before having to re-litigate the present matter that is looming. Appellants have asked the ODC to intervene, and has received a response that the matter was dismissed by them and therefore will not be re-visited which is not clear to appellants.

March 27, 2024



Rufus Rivers, pro se

Attorney for respondent
Kathleen McDaniel, Esq.
P.O. Box 1929
Columbia, South Carolina



Merle Rivers, pro se

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Mar 28 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar Dickson

Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers, pro se

Appellants

VS.

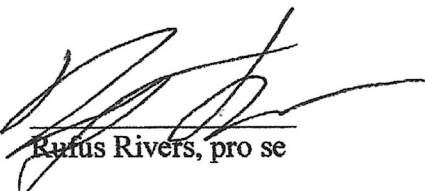
James Smith, Jr.


Respondent

PROOF OF SERVICE

Rufus Rivers and Merle Rivers hereby certify service of their motion to enforce judgment made to defendant James Smith, Jr. by depositing same in the U.S. Mail, in an envelope with proper postage affixed and addressed to his attorney of record at P.O. Box 1929, Columbia, South Carolina, 29202.

March 27, 2024


Rufus Rivers, pro se


Merle Rivers, pro se

The South Carolina Court of Appeals

Rufus Rivers and Merle Rivers, Appellants,

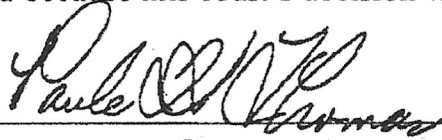
v.

James Smith, Jr., Respondent.

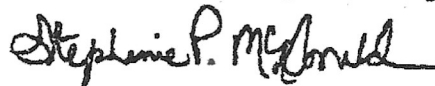
Appellate Case No. 2020-000451

ORDER

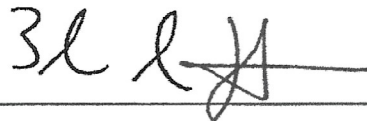
The appellants filed a second motion seeking an order releasing the funds in escrow. As before, the motion is denied because this court's decision will not be final until the remittitur is issued.



J.



J.



J.

Columbia, South Carolina

cc:

Rufus Rivers

Merle Rivers

Kathleen McColl McDaniel, Esquire

Sarah Jean Michaelis Cox, Esquire

The Honorable Edgar W. Dickson

The Honorable Patricia A. Howard

FILED
Apr 16 2024

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP3801749

James Smith, Jr.
PLAINTIFF(S)

Rufus Rivers et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The Plaintiff's motion for judgment on the pleadings is denied without prejudice. In the prior ejection action between the same parties, the Court of Appeals noted that "[t]his case may well end in a second but successful eviction, but we cannot say that outcome is certain." Rivers v. Smith. 440 S.C. 183,190,889 S.E. 2d 254,257 (Ct. App. 2023). A Petition for Writ of Certiorari is currently pending in the South Carolina Supreme Court, Appellate Case No. 2023-001318 to review the above cited opinion of the Court of Appeals. Accordingly, the Plaintiff's motion is denied without prejudice and with leave to refile upon this Court's receipt of the remittitur in Appellate Case No. 2023-001318.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/08/2024 .

Rufus Rivers for Rufus Rivers
Merle Rivers
Rufus Rivers for Rufus Rivers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Orangeburg Common Pleas

Case Caption: James Smith Jr. VS Rufus Rivers , defendant, et al
Case Number: 2023CP3801749
Type: Order/Electronic Form 4

IT IS SO ORDERED.

Heath P. Taylor

Electronically signed on 2024-04-08 14:33:15 page 3 of 3

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Jun 11 2024

SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar W. Dickson**

**Appellate Case No. 2020-000451
Supreme Court Case No. 2023-001318**

Rufus Rivers and Merle Rivers pro se.....Petitioners

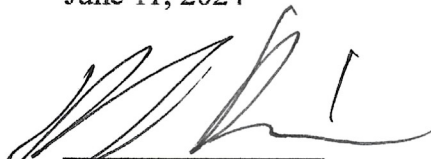
VS.

James Smith, Jr.....Respondent

PROOF OF SERVICE

Rufus Rivers and Merle Rivers hereby certify that copy petitioners' **Emergency Petition for Mandamus** was served on James Smith, Jr. through his attorney of record Kathleen McDaniel Esq. By email and depositing same in the U.S. Mail, in an envelope with proper postage affixed addressed to P.O. Box 1929 Columbia South Carolina 29202.

June 11, 2024


Rufus Rivers, pro se


Merle Rivers, pro se