

IN THE SUPREME COURT

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APPEAL FROM ORANGEBURG COUNTY

S.C. SUPREME COURT

Appellate Case No. 2023-001318

APENDIX

APPENDIX A -Certified Receipt.....01

APPENDIX B- Rule to Show/Ejectment.....02

APPENDIX C-Opinion 05992.....03-08

APPENDIX D-S.C. Code 22-3-1110.....09

S.C. Code S.C. Bench book for magistrates and municipal
Judges.....

APPENDIX E-Elements of Common Landlord-Tenant Problems.....10-11

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
James Smith, Jr.
66 Thomas St.
Brentwood, NY 11717



2. Article Identification Number: **7018 0360 0000 3392 7807**

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *James Smith* Agent Addressee

B. Received by (Printed Name): *JAMES SMITH JR* C. Date of Delivery: *8/14/18*

D. Is delivery address different from item 1? Yes, If YES, enter delivery address below. No

3. Service Type
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BRENTWOOD NY 11717
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<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

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Total Postage and Fees: \$7.62

0115
10

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Exh. A

45

7018 0360 0000 3392 7807

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

James F. Smith Jr)
Attorney Kathleen M McDaniel)
Post Office Box 1929)
Columbia, SC 29202)
(803) 850-0912)

PLAINTIFF(S))

VS.)

Rufus & Merle Rivers)
1429 Legrand Smoak Street)
Cordova, SC 29039)

DEFENDANT(S))

2018CV3810702780

CIVIL CASE NUMBER

IN THE MAGISTRATES COURT

230
3792

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WANDA B. CLARK

NOV 21 PM 3:13

CLERK OF COURT
ORANGEBURG, SC

CCSC C...

RULE TO VACATE OR SHOW CAUSE
(Eviction)

TO [Defendant(s)]: [Landlord] is asking this Court to evict you from the property located at 1429 Legrand Smoak Street, Cordova, SC 29039 because they say that:

- You have failed to pay rent when due or demanded in the amount of \$ _____.
- The terms of your tenancy or occupancy have ended.
- You have violated the terms or conditions of your lease by:

You, Rufus & Merle Rivers, the defendant and lessee of the premises listed above, and all others are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 OR to contact Central Region Magistrate located at 1540 Ellis Avenue, Orangeburg, SC 29115, PHONE: (803) 533-5843 within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: August 20, 2018

Gregory D. Doremus
MAGISTRATE JUDGE

Personally appeared before me, the undersigned deponent who, being duly sworn, says that s/he is a person over 18 years of age not a party or attorney in this action and that s/he attempted to serve the Rule to Vacate or Show Cause on [Defendant(s)] on the following dates/times:

	DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE	SETTLED/DATE	VACANT/DATE
1.							
2.							
3.							

SWORN to and Subscribed before me

This 24 Day of August, 2018

William G. ...
NOTARY PUBLIC OR JUDGE

[Signature]
SIGNATURE OF SERVER

Freder

On _____, I deposited a copy of this document in the United States Mail in an envelope addressed to the Defendant(s) above with first class postage affixed thereto.

C

**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

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.

D

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2023 South Carolina Code of Laws Title 22 - Magistrates and Constables Chapter 3 - Jurisdiction And Procedure In Magistrates' Courts Section 22-3-1110. Defense of questionable title in defendant's answer.

Universal Citation: SC Code § 22-3-1110 (2023)

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When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.

HISTORY: 1962 Code Section 43-151; 1952 Code Section 43-151; 1942 Code Section 265; 1932 Code Section 265; Civ. P. '22 Section 221; Civ. P. '12 Section 88; Civ. P. '02 Section 79; 1870 (14) 82; 1972 (57) 2452.

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ejectment: noncompliance with the rental agreement, §27-40-710; failure to pay rent, §27-40-710; noncompliance affecting health and safety, §27-40-720; and absence, nonuse and abandonment, §27-40-730. Always consult the statute before acting. For specific grounds for ejectment under the Manufactured Home Park Tenancy Act, see §27-47-530.

Once an action for ejectment is begun for failure to pay rent, the landlord is under no obligation to accept past rent if offered by the tenant.

b. Commencing Ejectment

The procedure of ejectment commences upon the filing of an application for ejectment with any magistrate having territorial jurisdiction over the area in which the premises are located. (§ 27-37-20). The magistrate must determine whether a landlord-tenant relationship exists and what rent, if any, is due.

The magistrate should, upon making a determination that rent is due, issue a written rule requiring the tenant to vacate the premises or to show cause within ten days why he should not be ejected. (§ 27-37-20). The rule should be personally served on the tenant whenever possible. Special rules for service of process are set out in § 27-37-30. Section 27-37-30 authorizes service of the Rule to Show Cause by posting and mailing after two prior attempts to serve the rule have been unsuccessful, and provides specific procedures for service prior to posting and for mailing. Section 27-37-30, as amended, provides alternative methods of service of rules to show cause in ejectment proceedings.

Subsection (A), as amended, provides that service of the rule to show cause should initially be attempted "in the same manner as is provided by law for the service of the summons. . . ." Those methods are personal service, certified mail, and publication. See Rule 4, SCRPC.

Subsection (B) addresses an alternative procedure for service in abandonment situations and provides that "[w]hen no person can be found in possession of the premises, and the premises have remained abandoned, as defined in Section 27-40-730, for a period of fifteen days or more immediately before the date of service, the copy of the rule may be served by leaving it affixed to the most conspicuous part of the premises." The ten days commences on the first day after the posting.

Subsection (C) provides an alternative procedure for service when service under subsection (A) has been unsuccessful after three attempts and abandonment is not an issue. The procedures set forth in (C)(1), (C)(2), and (C)(3) must be strictly followed before service is complete.

(C)(1) requires that two attempts be made to personally serve the defendant, and each attempt must be "separated by a minimum of forty-eight hours and must occur at times of day separated by a minimum of eight hours." For example: If the first attempt at service is made on Monday at 8:00 a.m., the second attempt could not be made earlier than Wednesday at 4:00 p.m. The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the

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Elements of Common Landlord-Tenant Problems

1. Generally

The relationship of landlord and tenant is always based upon a contract, whether oral or written, which determines the rights and responsibilities each party has and owes to the other.

Usually, the agreement between the parties takes the form of a lease, by which the tenant gains possession and use of the premises during the term of the lease, and in which the terms of the landlord-tenant relationship are spelled out.

Tenancies may be for a specific term of period of time (for a year), or for a periodic term and are automatically renewable (month to month), or tenancies may be at will (in which the lease stands so long as the parties desire it to or until such time as they wish to end it).

The lease usually provides for specific aspects of the landlord-tenant relationship such as subleasing, means of notice, termination, rent payments, and responsibility for repair and maintenance.

If the tenant fails to pay the rent, the landlord can terminate the lease, force the tenant to vacate the premises, and recover any rent due.

2. Jurisdiction of Magistrates

Magistrates have jurisdiction as to those landlord-tenant matters which may be brought pursuant to the provisions of Chapters 33 to 41 of Title 27 of the Code, regardless of the dollar-amount in controversy. While all of the chapters referenced above are important, special attention should be given Chapter 37, Ejectment of Tenants, Chapter 39, Rent, and Chapter 40, South Carolina Residential Landlord and Tenant Act (SCRLTA). When dealing with mobile homes or trailers, reference should be made to the Manufactured Home Park Tenancy Act found in Chapter 47 of Title 27 of the Code.

As to any action brought in a magistrate's court for past due rent not brought as an action for distraint or ejectment, such action must be brought pursuant to one of the jurisdictional grants of authority, other than that as to landlord-tenant matters, provided by S.C. Code Ann. § 22-3-10. As to such an action, the general \$7,500.00 monetary limitation on a magistrate's jurisdiction would apply.

As to any action brought in a magistrate's court to recover sums due under an acceleration clause in a lease, such action must be brought pursuant to one of the jurisdictional grants of authority, other than as to landlord-tenant matters, provided by § 22-3-10. As to such an action, the general \$7,500.00 monetary limitation on a magistrate's jurisdiction would apply. See Op. Att'y Gen. dated January 14, 1982.

3. Eviction or Ejectment

a. Generally

A landlord may bring an action of ejectment against a tenant in these situations: (1) when the tenant fails or refuses to pay the rent when due, (2) when the term of tenancy or occupancy ends, or (3) when the terms or conditions of the lease are violated. (See § 27-37-10). Provisions in the SCRLTA provide the following additional grounds for a residential

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