

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2023-001318

Rufus Rivers and Merle Rivers, pro se Respondents,

v.

James Smith, Jr.. Petitioner.

**SOUTH CAROLINA COURT OF APPEALS
FINAL BRIEFS
FOR INCLUSION IN APPENDIX**

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STATE OF SOUTH CAROLINA
In The Court Of Appeals

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Feb 21 2023

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
THE COURT OF COMMON PLEAS
The Honorable Edgar W. Dickson

Appellate Case No. 000451

Rufus Rivers and Merle Rivers
pro se

Appellants


VS.

James Smith, Jr.

Respondent

APPELLANTS' AMENDED FINAL BRIEF

February 18, 2023



Rufus Rivers



Merle Rivers

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

STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err when he dismissed and remanded Appellants' appeal when no landlord-tenant relationship existed after the inferior court judge adjudicated the matter in violation South Carolina Code Laws -section 22-3-20 and 22-3-1110 through 22-3-1180 of statutory law after the issues were raised and never adequately addressed by the courts.

STATEMENT OF THE CASE

After learning of James Smith, Jr.'s fraudulent transfer of property previously owned by Jessie Mae Smith, now deceased, appellants/defendants filed a summons and complaint in the First Judicial Circuit Court on August 6, 2018 alleging the same, See initiating summons and complaint.(R.pp.10-20). Respondent/plaintiff signed for receipt of the documents on August 14, 2018. (R.p.45)Respondent through his counsel, Kathleen McDaniel, esq., filed eviction documents on August 20, 2018.(R.pp.50-51). After being served defendants/appellants requested a hearing which was held on September 17, 2018. At the hearing pursuant to South Carolina Code of Laws 22-3-20 and 22-3-1110(Appendix E,F,G) defendants advised the court and opposing counsel through a written document titled " Reply: Rule To Show Cause" that legal action was pending in Circuit Court disputing Respondent Smith's ownership to the property(R.pp.24-25)(Appendix F,G). It alleged that Mr. Smith forged a power-of-attorney to transfer the property at 1429 Legrand Smoak Street, Cordova, SC 29039 to himself. Coleman v. Daniel, 261 S.C. 198 (S.C. 1973) . Appellants has always contended that they were granted physical possession of the property at 1429 Legrand Smoak Street, Cordova, Cordova, South Carolina 29039 by Jessie Mae Smith, the owner, now deceased intestate in May 2016. Throughout the proceedings, including Appellants continuing to emphasize and re-emphasize which can be heard on recorded audio. Instead of deferring as required by statute,(Appellants had to motion the court for reconsideration and motion to vacate the writ of ejectionment.

On October 9, 2018, hearings were held simultaneously on Appellants' motion for reconsideration and motion to vacate the writ of ejection. The magistrate denied both motions forcing appellants to appeal and maintain the status quo. Appellants' Notice of Appeal was filed on October 18, 2018. On October 19, 2018 received a copy of a letter from the magistrate's office directed to Attorney McDaniel asking for counsel's recommendation for an appeal bond. On November 2, 2018. While awaiting the bond hearing, Appellants were approached by Attorney McDaniel whom presented Appellants with a copy of a rental analysis which was executed on November 2, 2018, not allowing Appellants adequate time to respond to the analysis. This document was used by the magistrate to determine rents of \$700.00 per month.

On November 5, 2018 Appellants filed a motion to review rental payment bond(Appeal Bond) with the Circuit Court and delivered a copy to the magistrate. The magistrate denied the motion on November 6, 2018 which was not her jurisdiction. A hearing was held on April 8, 2019 where a visiting Judge upheld the magistrate's decision on the appeal bond. Appellants immediately filed a motion for reconsideration which was never addressed in any way. On May 21, 2018, another Judge ordered a continuance of the appeal citing the case was not ripe for a decision on Appeal until the Circuit Court case had been determined. It is Appellants' belief that the order was improper and the case should have been dismissed because the eviction order was done after the Circuit Court case had been filed. The eviction was in violation of South Carolina Code Of Laws 22-3-20.

On November 18, 2018, the appeal hearing was held in Circuit Court where the Honorable Edgar W. Dickson presided. The Judge subsequently upheld the magistrate's court decision. Appellants filed a motion for reconsideration which was denied. On January 6, 2020 and February 21, 2020, Judge Dickson issued final orders and Appellants' appeal timely followed.

STANDARD OF REVIEW

NO LANDLORD-TENANT RELATIONSHIP

The Court of Appeals reviews lower court decisions on questions of facts. When the court finds that there is no finding of fact that a landlord-tenant relationship exist, see *Bruce v. Durney Op. No. 3208 (S.C. Ct. App. Filed July 3, 2000)*, absent a formal agreement there should be some kind of implied agreement to establish a landlord-tenant agreement. Since Smith never discussed Rivers residing at the residence since Jessie Mae Smith granted them physical possession without any consideration, the court must find that no landlord-tenant relationship existed and reverse the lower court's decision.

II. THE MAGISTRATE LACKED SUBJECT MATTER JURISDICTION

The Court of Appeals reviews lower court decisions on errors of law(STATUTES). The Courts are required to follow **Mandstory Authority**. When the court finds that the law has been violated it must reverse the lower courts decision. See *Wynn v. Doe 255 S.C. 509(1971) 180 S.E. 2D 95* “..statute are clear and unambiguous and conveys a clear and definite meaning”.

ARGUMENT

The trial court judged erred when he dismissed and remanded Appellants' civil appeal when no landlord-tenant relationship after the inferior court adjudicated the matter in violation of statute for lack of subject matter jurisdiction where the issues were raised and never adequately addressed.

Appellants had their Rule To Show Cause hearing on September 17, 2018. Appellants had been ordered to vacate on September 17, 2018 and never given a written decision. Appellants provided a written reply to the Rule To Show Cause to the Judge and Attorney McDaniel, Respondent's counsel, pursuant to South Carolina Code Of Laws 22-3-1110, Defense of questionable title in defendant's answer. (R.pp.24-25)(R.pp.10-20)(Appendix F)(R.p.45). Appellants filed legal action in Circuit Court on August 6, 2018, alleging, Respondent James Smith, Jr. Fraudulently executed power-of-attorney and used it to execute a quitclaim deed(self-dcaling) and used it to transfer the property at 1429 Legrand Smoak Street Cordova, South Carolin 29039 to himself. Respondent accepted the documents by certified mail on August 14, 2018. (R.p.45). Appellants had been granted exclusive possession of the property in September 2009. Respondent, through his counsel, claims Appellants filed a contemporaneous lawsuit. (R.p.TR.p.line 24-25). It is clear that Respondent had legal documents from

the Circuit Court in his possession before filing eviction documents. Respondent, through his counsel, deliberately ignored the initiating Summons and Complaint which included a motion for injunctive relief to circumvent the Circuit Court and hasten the unlawful eviction, a process that is becoming more and more prevalent when attempting to settle property disputes through the magistrate courts. The magistrate violated South Carolina Code Of Laws 22-3-20,(Appendix E,C). "Jurisdiction may not be waived or conferred upon the magistrate by consent of the parties or a higher Court."

At the eviction hearing, Respondent through his counsel, states he only received an amended complaint. That alone was proof that the title was in question. Respondent through his counsel would have the court believe that the Respondent is entitled to the property because he is the son of the previous owner. Unfortunately, that is a matter that only the Probate Court can determine. The magistrate, once the issue was raised, knew or should have known to defer the matter to the Circuit Court. See *Hargrove v. Cox*, 104S.E. 787,180(N.C.1920), *Hargrove v. Cox*,180, N.C.360,104 S.E. 757,759,(1920), *Hodges v. Rainey*,341 S.C.79,85,533 S.E.D 578, 581(2000) and allowed Appellants to sign an undertaking once she had provided an amount for the surety as provided by Appellants(R.pp. 52-53). Respondent, through his counsel, contends the purpose of Appellants' lawsuit was to prove they owned the property. (R.p.TR.p.3.lines 14-16). Appellants alleged in their lawsuit that Respondent forged a power-of-attorney and used that power-of-attorney to self-deal by transferring the property to himself.Scc *Coleman v. Daniel*, 261 S.C. 198 (S.C. 1973).

The Appeal hearing was held in Circuit Court on November 19, 2019 before the Honorable Edgar W. Dickson. The issues of landlord-tenant relationship and lack of subject matter jurisdiction were not explicitly addressed. On January 6, 2020, the court issued it's order.(R.pp.4-9). Appellants filed a motion for reconsideration on January 14, 2020.(R.pp.21-24). On February 21, 2020 the court issued a final form 4 order denying Appellants' motion for reconsideration, dismissing the matter and

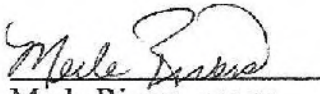
remanding the case back to the magistrate.

CONCLUSION

For the preceding reasons, Appellants respectfully ask this court to reverse the trial court Judges decision and allow Respondent proceed with whatever remedies available to him and release Appellants' funds being held in escrow.


Rufus Rivers, pro se

Attorney For Responsent
P. O. Box 1929
Columbia, South Carolina 29202


Merle Rivers, pro se

1429 Legrand Smoak Street
Cordova, SC 29039
803-218-9573

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Jan 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

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

Rufus Rivers and Merle Rivers Appellant,

v.

James Smith, Jr. Respondent.

RESPONDENT’S FINAL BRIEF

Kathleen McDaniel (SC Bar No. 74826)
Sarah J.M. Cox (SC Bar 104316)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor (29201)
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7913
Facsimile: (803) 904-7910

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

Respondent Smith owns the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the “Property”), and he allowed Appellants to live there rent-free for a period of time. (R.p. 59; Application for Ejectment (Eviction), dated August 2, 2018.) However, on July 2, 2018, Respondent Smith wrote to Appellants giving them 30 days to vacate the Property. (R.p 60; *Id.*) On August 8, 2018, Respondent Smith filed a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate Court against Appellants Rivers. (R.p. 61; Rule to Vacate or Show Cause (Eviction), filed August 8, 2018.)¹

The Magistrate Court ruled in favor of Respondent Smith and ruled that Appellants Rivers were unlawfully occupying the Property. (R.p. 62; Magistrate’s Return of Civil Appeal, filed November 21, 2018.) On October 17, 2018, Appellants filed a Notice of Intent to Appeal to the circuit court and a Corrected Notice of Appeal on October 18, 2018. (R.pp.128-129; Notice of Intent to Appeal to Circuit Court, filed October 17, 2018, Corrected Notice of Intent to Appeal, filed October 18, 2018.) Appellants sought to stay the ejectment during the appeal to the circuit court. (R.p. 54, Magistrate’s Return of Civil Appeal.) Accordingly, the Magistrate Court held a hearing to determine the appropriate

¹ On August 6, 2018, Appellants initiated a separate civil action by filing a Complaint in the Orangeburg County Court of Common Pleas, challenging Respondent’s ownership of the Property and alleging causes of action for constructive fraud, negligence, conversion, unjust enrichment, and invalid owner. (R.p. 18, *Rufus Rivers and Merle Rivers v. James Smith, Jr.*, 2018-CP-38-01016, filed August 6, 2018.) On August 17, 2018, the Rivers filed an Amended Complaint in the Court of Common Pleas in the same matter. The case was referred to the Master in Equity. On August 28, 2019, following a hearing, Judge James B. Jackson, Jr., Master in Equity for Orangeburg County, dismissed Appellants’ Amended Complaint for failure to state a cause of action upon which relief could be granted. Appellants did not appeal that decision and the time for appeal of that order has now expired.

amount of monthly rent for Appellants to pay into court during the appeal to the circuit court in order to stay the ejection. (R.p. 54; Magistrate's Return of Civil Appeal.) Because Appellants had never paid rent on the Property, Respondent submitted the Affidavit of Connie Gaston, a local property manager, to aid the Magistrate Court in determining fair market rent for the Property. (R.pp. 54, 120-121; Magistrate's Return of Civil Appeal.) In response, Appellants presented to the Magistrate an unexecuted "Bond Undertaking and Order."

The Magistrate Court determined appropriate rent to be \$700.00, and ordered it to be paid into the Magistrate Court registry each month as bond securing a stay of the eviction pending appeal. (R.p. 54; Magistrate's Return of Civil Appeal.)

On January 6, 2020, the circuit court affirmed the eviction ordered by the Magistrate Court. (R.p. 4; Order, dated Jan. 6, 2020.) On March 2, 2020, Appellants appealed their eviction to the South Carolina Court of Appeals.

STANDARD OF REVIEW

Upon an appeal of an ejectment proceeding which was first heard in magistrate's court, this Court "reviews the order under a limited standard of review in which (1) findings of fact are to be upheld if there is any supporting evidence and (2) absent an error of law, the circuit court's holding is to be affirmed." *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 424 S.C. 298, 302-303, 818 S.E.2d 224, 226-227 (2018).

ARGUMENT

Appellants bring their appeal based upon two arguments. First, Appellants argue that pursuant to South Carolina Code Ann. § 22-3-20, the Magistrate Court lacked subject-matter jurisdiction to adjudicate the eviction because Appellants attempted to contest Respondent's ownership of the Property. Second, Appellants argue that the Magistrate Court did not determine that a landlord-tenant relationship existed at the time of the eviction, therefore the eviction was improper. Neither of these arguments has merit.

I. The Magistrate Court had subject matter jurisdiction over the eviction matter.

Appellants contend that the title to the property was in question and, therefore, pursuant to S.C. Code Ann. § 22-3-20, the Magistrate Court would not have subject matter jurisdiction over the eviction matter. (Brief of Appellants, p. 8.) Section 22-3-20(2) provides that the Magistrate's Court lacks jurisdiction "[w]hen the title to real property shall come in question." S.C. Code Ann. § 22-3-20(2).

Appellants argued to the Magistrate Court that the title to the real property was in question because on August 6, 2018, they had filed a lawsuit in the Orangeburg County Court of Common Pleas claiming that they should have title to the real property located at 1429 Legrand Smoak Street, Cordova, South Carolina. Contrary to Appellants' arguments, Appellants' Common Pleas lawsuit did not affect the Magistrate Court's

jurisdiction to hear the underlying eviction proceeding. This is because Section 22-3-20(2) does not apply to eviction proceedings. The Honorable William P. Steele, who was a magistrate for Anderson County, South Carolina, addressed this issue directly in an article published in the *South Carolina Lawyer* as follows:

Finally, certain types of actions cannot be filed in magistrate's court. A magistrate may not hear actions in which the title to property comes in question. S.C. Code Ann. § 22-3-20(2) (Law. Co-op. 1989). However, a proceeding to eject a tenant who claims title in himself is not an action involving the title to land but a **summary proceeding, and it may be filed in magistrate's court.** *State ex rel. O'Neale v. Fickling*, 10 S.C. 301 (1878).

Hon. William P. Steele, Jr., A Tale of Two Courts--Civil Procedure in Magistrate Court and the Court of Common Pleas, S.C. Law., MARCH/APRIL 1997, at 32, 33 (emphasis added). Thus, even though Appellants tried to contend in their separate lawsuit that title to the real property should have been in them, that did not make the proceeding to eject them from 1429 Legrand Smoak Street an "action involving the title to land," and it was, instead, a "summary proceeding" that was appropriately maintained in Magistrate Court. The Magistrate Court properly had and maintained jurisdiction of this eviction proceeding.

Importantly, the Circuit Court provided Appellants an opportunity to pursue their claim of ownership through their separate lawsuit and continued the hearing on their appeal until that lawsuit was resolved. Thus, by the time this matter came back for hearing on appeal before the Circuit Court, Appellants' lawsuit challenging title had been dismissed. Appellants did not appeal that dismissal. Accordingly, even if Section 22-3-20(2) were applicable, there was (and is) no basis for Appellants' contention that they ever had title to the real property.

Appellants mention Section 22-3-1110 in their Brief of Appellants, but it is not clear what purpose it serves in their argument. Sections 22-3-1110 through 1180 collectively

entitled “Proceedings When Title to Real Estate is Involved.” As set forth above, an eviction proceeding is not one where title to real estate is involved; thus, Article 11 of Title 22, Chapter 3 is inapplicable in this matter.

Even if it were applicable, its purpose was already served by Appellants filing a separate lawsuit in Circuit Court claiming they owned the property. The purpose of the procedures set forth in Section 22-3-1110 is to give defendants the ability to refer potentially complex title issues which arise in the Magistrate Court to the Circuit Court for adjudication. Appellants’ claims regarding ownership of the Property were fully adjudicated in the Master-In-Equity when they filed their separate action in the Court of Common Pleas. The Master-In-Equity’s order dismissing Appellants’ lawsuit was not appealed. Therefore, Appellants fully exhausted their opportunity to argue that they own the Property as of August 8, 2019 and are now barred by *res judicata* from claiming ownership of the Property or from claiming Respondent does not own the Property.

Finally, even if Section 22-3-1110 is applicable, Appellants failed to follow the procedure required by that section; therefore, that issue is not preserved for appeal. See *Creighton v. Coligny Plaza Ltd. Pshp.*, 334 S.C. 96, 108 (S.C. Ct. App. 1998) (“An issue not raised to or ruled on by the trial court is not preserved for appellate review.”).

Should Appellants succeed in this appeal, and this Court overturn the eviction for lack of subject matter jurisdiction, the result would be for Respondent to be forced to go through the eviction process again. It would be futile and a waste of judicial resources to force Respondent to relitigate the eviction when Appellants are foreclosed from asserting the only argument they have ever put forth against eviction from the Property.

II. A landlord-tenant relationship existed between Appellants and Respondent upon which to base the eviction action.

Appellants argue that the issue of a landlord-tenant relationship was not addressed at the hearing on November [sic] 18, 2019.”² (Brief of Appellants, p. 7.) This is incorrect. Beyond that, they provide no argument that they were not Respondent’s tenants.

In considering Appellants’ argument of no landlord-tenant relationship, the Circuit Court cited the following definitions. A “landlord” is “the owner, lessor, or sublessor of the premises.” S.C. Code Ann. § 27-40-210(6). An “owner” is defined as “one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.” S.C. Code Ann. § 27-40-210(8). A “tenant” is defined as “a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15). A “rental agreement” is defined as “all agreements, written or oral, and valid rules and regulations adopted under § 27-40-520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.” S.C. Code Ann. § 27-40-210(12). Absent a rental agreement which fixes a definite term, a tenancy is month to month. S.C. Code § 27-40-310(d). All that is required to terminate a month-to-month tenancy is written notice to the tenant thirty days before the termination date in the notice. S.C. Code § 27-40-770(b).

In finding a landlord-tenant relationship, the Magistrate Court noted that a “tenant at will” is defined as “Every person other than the owner of real estate, excepting a domestic servant and farm laborer, using or occupying real estate without an agreement,

² There was no hearing in this case on November 18, 2019, the hearing was on October 18, 2019. (R.p. 31; Tr.)

either oral or in writing.” S.C. Code Ann. § 27-33-10(3). (R.p. 53; Magistrate’s Return of Civil Appeal.)

The Circuit Court held that Respondent holds recorded title to the Property, proof of which he presented to the Magistrate Court and which is included in the Magistrate Court Return for Appeal. There is no evidence in the record that would indicate that Respondent is not the owner of the Property.

Until July 2, 2018, Respondent permitted Appellants to occupy the Property without a written lease, to the exclusion of others, without a definite term. Thus, Appellants are tenants of Respondent. The Circuit Court properly affirmed the Magistrate Court’s determination that there was a landlord-tenant relationship between the parties.

Appellants have presented no argument regarding why they disagree with this decision or how the Circuit Court did not explicitly address this determination. Therefore, Appellants have waived this argument.

III. Appellants have no claim to the funds being currently held in escrow in the Magistrate Court’s registry.

In their Conclusion, Appellants request that this Court “release Appellants’ funds being held in escrow,” among other requested remedies. Appellants made rental payments into the Orangeburg County Magistrate Court’s registry to secure supersedeas for the pendency of their appeal to the Circuit Court. (R.p. 2; Order, dated Jan. 6, 2020.) This appeal has now concluded and the Circuit Court has ordered “the rental payments currently held in the Orangeburg County Magistrate’s Court’s registry be disbursed to [Respondent] at the earliest possible date.” (R.p. 8; *Id.*) Respondent owns the Property. Appellants occupy the Property as tenants. Appellants have occupied the Property against the wishes of Respondent since July 8, 2018, and Respondent has received no

rental payments whatsoever from Appellants during this time, as the Magistrate Court ordered rental payments to be made into the court's registry instead of to Respondent directly.

Appellants have provided no argument regarding why these rental payments should not be released to Respondent per the Circuit Court's Order. Not only did Appellants fail to make an argument for these payments to be paid to them, no argument could be successful. Appellants have only ever asserted a single reason they should not be ejected from the Property: their unsupported contention that Respondent is not the proper owner of the Property. As described above, Appellants have tried and failed to attack Respondent's ownership of the Property and are estopped from pursuing the matter further. Appellants have no colorable argument that these rental payments belong to Appellants. Therefore, this Court should refuse to order the Magistrate Court to release these funds to Appellants and instead this Court should affirm the Order of the Circuit Court which dictated that the funds should be released to Respondent.

CONCLUSION

Appellants have failed to show that the Orders on Appeal contain any findings of fact which lack supporting evidence or that the Circuit Court has made an error of law. Therefore, and for the reasons set forth above, Respondent respectfully requests that this Court to affirm the order of the Circuit Court upholding the decision of the Magistrate Court in this matter and remand the matter to the Magistrate Court for ejectment proceedings.

Respectfully submitted,

s/ Sarah J.M. Cox
Kathleen McDaniel (SC Bar No. 74826)
Sarah J.M. Cox (SC Bar No. 104316)
BURNETTE SHUTT & MCDANIEL, PA
P.O. Box 1929
Columbia, South Carolina 29202
Tel. (803) 904-7913
Fax (803) 904-7910
kmcdaniel@burnetteshutt.law
scox@burnetteshutt.law

ATTORNEYS FOR JAMES SMITH, JR.

Columbia, South Carolina

January 15, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court 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.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

s/Kathleen McDaniel
Kathleen McDaniel (SC Bar No. 74826)
Sarah J.M. Cox (SC Bar 104316)
Burnette Shutt & McDaniel, PA
912 Lady Street, Second Floor (29201)
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7913
Facsimile: (803) 904-7910

ATTORNEYS FOR RESPONDENT

January 25, 2021

APPENDIX - 0193

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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 Court Judge

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

Rufus Rivers and Merle Rivers

Appellants

VS.

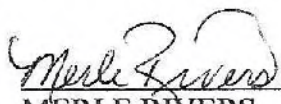
James Smith, Jr.

Respondent

APPELLANTS' REPLY TO RESPONDENT'S FINAL BRIEF

JANUARY 12, 2023


RUFUS RIVERS
Appellant


MERLE RIVERS
Appellant

JANUARY 12, 2023

STATEMENT OF CASE

Respondent Smith allegedly owns property at 1429 Legrand Smoak Street Cordova, South Carolina. Jessie Mae Smith, now deceased intestate as of June 2016, granted Appellants possession of the property about September, 2009 with no conditions or rent. Respondent Smith executed a power-of-attorney and transferred the property to himself (self-dealing). Appellants always contended that Mr. Smith was not a valid owner of the property. (R.p. 10-20) Summons and Complaint with expedited Motion for injunctive relief filed August 6, 2018. (R.p. 45) documents were served on Mr. Smith via certified mail on August 14, 2018. (R.p. 50-51) Respondent filed Application for Ejectment and Rule to Vacate or Show Cause on August 20, 2018 and served on Appellants on August 23, 2018. Respondent shows that those same documents were filed on August 8, 2018, which is irrelevant.

The magistrate ruled in favor of Plaintiff/Respondent while lacking subject matter jurisdiction and there (see Appendix: Judicial Branch's elements of landlord-tenant problems) was no finding of fact that a landlord-tenant relationship exist. Pursuant to South Carolina Code Of Laws 22-3-20, "no magistrate shall have cognizance of any civil case when title to real property shall come in to question". (R.p. 52-53) Pursuant to South Carolina Code Of Laws 22-3-1110, Appellants/Defendants presented the court and counsel for the Defendant/Respondent with their answer and reply showing that the title to real property was in question. "...defendants either with or without other matter of defense, set forth in their answer any matter showing that such title will come in to question. Such answer shall be in writing, signed by the defendant... and delivered to the magistrate". (R.p. 10-20) Appellants'/Defendants' Summons and Complaint were also provided. The magistrate failed to accept and enter the documents in to the record along with refusing Appellants'/Defendants' offer of Bond of Undertaking which only needed an amount to be set by the magistrate and Appellants'/Defendants' agent was prepared to come and execute. Appellants/Defendants were forced into a position where they had to accept the Bond to Stay Ejectment ordered by the magistrate.

Appellants never paid rent because there was never any agreement to pay rents between Appellants and Respondent. Respondent through his counsel told the magistrate Appellants were tenant-at-will which does not create a landlord-tenant relationship. On the day of the bond hearing on 11-2-2018, Respondent's counsel approached Appellants with a rental market analysis that was used by the magistrate to determine the rent amount of \$700.00.

STANDARD OF REVIEW

The Court Of Appeals reviews lower court decisions on questions of law and questions of fact. When the Court finds that an error of law has occurred, it should reverse the lower court's decision.

ARGUMENT

I. THE MAGISTRATE COURT LACKED SUBJECT MATTER JURISDICTION

Pursuant to South Carolina Code of Laws 22-3-20 “no magistrate shall have cognizance...” and South Carolina Code Of Laws 1110 “when title to real property shall come in to question in an action brought in a court of a magistrate...” (R.p. 52-53) Appellants Reply and Answer in the magistrate's court barred the magistrate from proceeding with the eviction process. Repondent's assertion that Appellants Summons and Complaint had no affect on the magistrate court's jurisdiction and South Carolina Code Of Laws 22-3-20 does not apply to evictions is incorrect because it is laid out under magistrates jurisdiction, procedures and the absence of a landlord-tenant relationship is front and center. Appellants never stated they held title to the property, but emphasized that Appellants were granted possession by Jessie Mae Smith, now deceased and died intestate. At no time has the Respondent denied the agreement between Appellants and Jessie Mae Smith. The possession of the property was a gift to Appellants from Jessie Mae Smith At no time has Respondent denied there was an agreement between Appellants and Jessie Mae Smith with the promise that Appellants could live

and maintain the property as their own indefinitely without interference. Appellants continuing to reside at the property is simply performance and keeping with the promise of Jessie Mae Smith. Appellants' claims in circuit court were never fully adjudicated, but dismissed after Respondent filed for dismissal out of time. Appellants had requested a jury trial but was somehow awarded a bench trial simultaneously with a motion to dismiss filed out of time. In response to Respondent's counsel regarding re-litigating this matter as being futile and a waste of Judicial resources, "Due Process" is never futile and a waste judicial resources.

II. NO LANDLORD-TENANT RELATIONSHIP EXISTED

Respondent's counsel states that Appellants never provided any argument that they were not tenants, Appellants never argued they were tenants. The issue of landlord-tenant relationship was never adequately addressed. The magistrate's decision was simply upheld. Respondent's definition of "landlord, owner and tenant does not determine a landlord-tenant relationship. Respondent's definition of "tenant" sums it up, "all agreements written or oral. "Tenant-at-will" is when a term of tenancy has ended or terminated, hence, there had to have been some form of agreement at some point that could be ended by either party. Tenant-at-will does not create a landlord-tenant relationship. (R.p. 50-51) Application for Ejectment and Rule To Vacate or Show Cause does not reflect any agreement or rental payment amount.

Respondent does possess an invalid quitclaim deed and at the time of the eviction hearing a challenge to the validity of that title was in process and barred the magistrate from adjudicating the case at the time she did rule. Even if the Master-in-Equity later dismissed the matter doesn't prove that the title is valid. "Due Process" was hindered by the magistrate holding her foot on Appellants' necks while the Master-in-equity scenario played out, placing undue stress on Appellants.

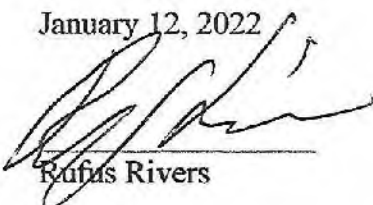
III. APPELLANTS ARE ENTITLED TO FUNDS HELD IN ESCROW

Appellants have paid money into escrow as supersedeas, however, the magistrate and Respondent held a motion hearing on October 26, 2021, which was to have been a follow-up hearing from August 25, 2021 (see Appendix A) summons, where Plaintiff unilaterally dismissed the matter. (see Appendix B) there was only one writ of ejectment attempt which was remedied by filing of Appellants' appeal with the Court of Appeals. After the magistrate's office began refusing to accept payments, (See Appendix C) affidavit. Appellants were summoned to the magistrate's court with a summons for motion to vacate and no details. (See Appendix A) Summons. When Appellants arrived at court a discussion was held for remedying past due payments that the court had been refusing to accept, but accused Appellants refusing to pay during the pandemic. (See Appendix D) CDC Certification. It ended with Appellants agreeing to applying for assistance through S. C Stay and ordered to start paying directly to Respondent's attorney. There was to be a follow-up hearing scheduled for October 26, 2021. Appellants arrived late at approximately 2:25 p.m. and was not allowed to attend the hearing but was allowed to obtain a recording of the hearing. Appellants completed their portion of the S.C. Stay form and submitted it to Respondent's counsel to complete the form. After following up with Respondent's attorney there was no response.

CONCLUSION

Appellants pray that this court reverse the lower court's decision for error of law, lack of subject matter jurisdiction and the lack of a landlord-tenant relationship. Appellants also ask this court to examine magistrate's order to dismiss and amend and rule that the matter was terminated as a result, and Respondent be made seek whatever remedies afforded him to proceed.

January 12, 2022


Rufus Rivers


Merle Rivers

APPENDIX

- A. MAGISTRATE SUMMONS**
- B. MAGISTRATE ORDER OF DISMISSAL**
- C. AFFIDAVIT OF PAYMENTS**
- D. CDC CERTIFICATION**

**APPENDIX A
SUMMONS**

COUNTY OF ORANGEBURG

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

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the

Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC

on **August 24, 2021 at 2:30 PM** to serve as a party in a Motion Hearing in the case of:

RE: James Smith Jr

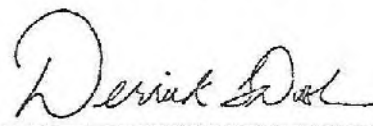
Vs Rufus Rivers
Merle Rivers

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2018CV3810702780, Rule to Vacate \$40.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**



JUDGE

Central Region Magistrate
1540 Ellis Avenue
P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844
Fax: (803) 516-4011

August 9, 2021

MV42

**APPENDIX B
ORDER FOR DISMISSAL**

APPENDIX



Rufus Rivers <rivers788@gmail.com>

**-James Smith, Jr. vs Rufus & Merle Rivers (EVICTION HEARING) -
2018CV3810702780**

1 message

Stephanie Grant <sgrant@orangeburgcounty.org>

Tue, Oct 26, 2021 at 5:03 PM

To: "kmcDaniel@burnetteshutt.law" <kmcDaniel@burnetteshutt.law>, "rivers788@gmail.com" <rivers788@gmail.com>

Good Afternoon,

As follow up from this afternoon's motion hearing in the above-referenced case, this email serves as clarification of the court's interpretation of the Plaintiff's Motion to Dismiss and the court's ruling thereof. In absence of Defendants Rufus and Merle Rivers, Attorney McDaniel on behalf of Plaintiff Smith, motioned the court for dismissal of action on the plaintiff's case. Attorney McDaniel stated the plaintiff's request not to pursue was based on payment by the defendant to her (for plaintiff) for September and October 2021 rent, and based on veracious beliefs that defendants have or will qualify for SC Stay Rental Assistance Funds.

The plaintiff's Motion to Dismiss was granted with the understanding that plaintiff must refile case if future violation occurs.

The court's ruling is therefore amended and clarified to reflect the following:

- There has been only one case filed in Magistrate Court for an eviction action against the defendants (Case No.# 2018CV3810702780)
- Two attempts have been made by the plaintiff to evict the defendants
- The first attempt at eviction was appealed by the defendants
- Defendants posted appeal bond and made payments for a portion of time per court instructions
- Magistrate Court is holding in escrow, a specific sum as collected in appeal bond payments for forwarding to the plaintiff, pending the outcome of the appeal
- Subsequently, defendants payments per court instructions became non-existent
- Defendant was informed to contact the plaintiff regarding payments
- A second attempt at eviction was pursued by plaintiff and halted pursuant to the CDC Eviction Halt Declaration
- Eviction proceedings resumed after expiration of CDC Eviction Halt Declaration
- In August 2021, Plaintiff's attorney and Defendant made agreement to pay future rent payments to the plaintiff and defendant will seek additional funds from rental assistance agency or other resources to satisfy past unpaid rent
- **October 2021, Plaintiff's Motion to Dismiss is granted by the court and intent will be applied toward the termination of plaintiff's request to proceed with eviction under 2nd request for ejectment. It is the court's understanding that plaintiff no longer desires to pursue eviction under the 2nd attempt for ejectment in this case**
- Original eviction case (2018CV3810702780) in it's entirety will not be dismissed in Magistrate's Court and is considered to be pending until the decision of the Appellate Court is

APPENDIX

published

- Plaintiff will inform the court of the final Appellate Court's decision
- Previous court instructions to the defendant remain in effect for payment of a monthly appeal bond/rental payments
- Pursuant to agreement between the plaintiff and defendants, monthly payments in the amount of \$700 should be made to the plaintiff via attorney
- Defendant's future violation of payment terms can and/or will result in plaintiff's request for eviction and court ordered ejection in this pending case
- This case is still pending in Magistrate's Court awaiting the outcome of the Appellate Court's decision

IT IS SO ORDERED.

The Honorable Judge Stephanie McKune-Grant

Orangeburg County Magistrate



ORANGEBURG COUNTY
WORKING HARD FOR YOU

#

**APPENDIX C
AFFIDAVIT OF PAYMENTS**

JUL 15 2020

SC Court of Appeals

Affidavit To The Court Of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

The undersigned, RUFUS AND MERLE RIVERS, being duly sworn, hereby depose and say:

1. We are over the age of 18 and are residents of the State of South Carolina. We have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereon.
2. We suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. We currently have an appeal pending in the Court of Appeals with an appeal bond of \$700.00 per month being paid in to escrow.
4. The appeal alleges the Magistrate lacked subject matter jurisdiction because there was legal action pending in circuit court when the plaintiff filed eviction papers and had already been served on August 14, 2018.(see attached)
5. Magistrate Grant also ordered us to pay rental payments of \$700.00 per month when there was no landlord-tenant agreement and the plaintiff did not ask for rental payments. (see attached).
6. Magistrate Grant's staff refused our payment when we visited the office to provide a notice of appeal on March 2, 2020 without any valid explanation other than the notice did not state a reason for the appeal.
7. It is our belief that we are being treated unfairly and that the magistrate and her staff has taken this matter personally because of the appeal.
8. On March 11, 2020 the sheriff came to evict us and allowed us to remain to another date.
9. We personally visited the Court of appeals on March 12, 2020 and paid the filing fee and obtained a filed copy and provided it to the magistrate's office and was told they would get back with us. We received a call from the magistrate's office, allowing us until March 18, 2020 to make the rental payment.
10. On March 17, 2020, after obtaining a copy of Judge Beatty's order, we emailed the magistrate's court a correspondence requesting an extension. (see attached)
11. We received a reply from Sylvia Edwards stating that our request was denied. (See attached) We also received a reply from Lisa Proveaux explaining when the payments were due. (See attached)
12. On May 1, 2020, we visited the magistrate's office to bring the payments current in the amount

FILED FOR RECORD
 WINNIFAB. CLARK
 2020 JUN 22 AM 10:04
 ORANGEBURG SC
 CLERK OF COURT

of \$1400.00 and again the staff told us that they were instructed not to accept the payment by Judge Grant and to return on May 4, 2020 without any reason for returning. (see attached)

13. On May 4, 2020, we visited the magistrate's office as instructed. After being told to have a seat, Rufus Rivers waited for almost 30 minutes. He then approached the receptionist to ask how much longer and was told they could not accept the payment and to contact his lawyer knowing we are pro se litigants.

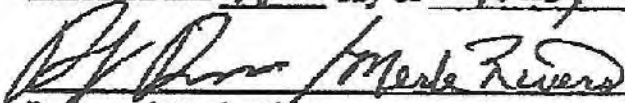
14. We have come to believe that we are being treated differently than anyone else. This is nothing more than retaliation for appealing a matter that should not have been decided by the magistrate in the first place. We certainly have the right to pay what was past due while the evictions were halted.

15. Because of the magistrate's actions, Rufus Rivers had to take temporary work to make certain we could take on the added expense of the rental payments. The temporary work ended March 11, 2020.

16. We believe the magistrate's office is acting in bad faith as agents for the Plaintiff and his counsel against us senior citizens with chronic medical issues.

I declare that, to the best of our knowledge and belief, the information herein is true, correct, and complete.



Executed this 18th day of May, 2020.


Rufus and Merle Rivers

NOTARY ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA, COUNTY OF ORANGEBURG, ss:

The foregoing Affidavit was acknowledged before me this 18th day of May, 2020, by Rufus and Merle Rivers, who, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit subscribed by him/her, and that the matters stated herein are true to the best of his/her information, knowledge and belief.


Notary Public


2020-03-17-02

The Supreme Court of South Carolina

RE: Statewide Evictions

ORDER

FILED FOR RECORD
WINNIFER B. CHAPMAN
2020 MAY 22 10:05 AM
CLERK OF COURT
DRAPER BUILDING

Pursuant to provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that all evictions currently ordered and scheduled statewide from March 17, 2020, through March 31, 2020, shall be rescheduled for a date not earlier than May 1, 2020. However, case-by-case exceptions for evictions may be made for matters that involve essential services and/or harm to person or property.

s/Donald W. Beatty
J.

FOR THE COURT

Columbia, South Carolina
March 17, 2020



Search mail

8 of 377

to me, twolfe@burnetteshutt.law

Payment of \$700.00 is due on today, 3-18-2020 and thereafter \$700.00 payments are to be made by the 2nd of each month.

From: Rufus Rivers [mailto:rivers788@gmail.com]

Sent: Wednesday, March 18, 2020 10:23 AM

To: Lisa Proveaux

Cc: Kathleen M. McDaniel

Subject: Eviction- Rufus & Merle Rivers

FILED FOR RECORD
WINNIE B. CLARK
2020 MAY 22 AM 10:23
CLERK OF COURT
ORANGEBURG, SC

As of today, we are requesting that our appeal bond payments be extended, pursuant to the attached Supreme Court order issued 03/17/2020. Please see attached. We are placing a hard copy in the mail.

Rufus Rivers <rivers788@gmail.com>
to Lisa, twolfe@burnetteshutt.law

Wed, Mar 18, 5:22 PM (22 hours ago)



Search mail



4 of 377

-Rufus Rivers - Eviction Inbox x

Sylvia Edwards <sedwards@orangeburgcounty.org>
to me

12:13 PM (3 hours ago)

Good afternoon,

Your request for extension is denied and payment of \$700.00 was due on March 18, 2020 and thereafter payments of \$700.00 are due by 2nd of each month and are to be made on time as previously ordered.

Will do, thank you.

Paid.

Thank you for informing me.

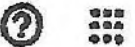
FILED FOR RECORD
WINNIE B. CLARK
2020 MAR 22 AM 10:05
CLERK OF COURT
ORANGEBURG, SC

Reply

Forward



Search mail



83 of 452

-RE: Eviction- Rufus & Merle Rivers Inbox **x**

Lisa Provesaux

Wed, Mar 18, 3:38 PM

Payment of \$700.00 is due on today, 3-18-2020 and thereafter \$700.00 payments are to be made by

Rufus Rivers <rivers788@gmail.com>

Wed, Mar 18, 5:22 PM

to Lisa, twolfe@burnetteshutt.law

Received, thank you.

Reply

Reply all

Forward



FILED FOR RECORD
WINNIEFA B. CLARK
2020 MAY 22 AM 10:05
CLERK OF COURT
ORANGEBURG, SC



**ORANGEBURG COUNTY
CENTRAL REGION
MAGISTRATE COURT**



1540 Ellis Avenue
P.O. Box 9000
Orangeburg, South Carolina 29116
Phone: (803) 533-5843
Fax: (803) 516-4011

May 18, 2020

VIA ELECTRONIC DELIVERY: rrivers789@gmail.com
Rufus and Merle Rivers
1429 Legrand Smoak Street
Cordova, South Carolina 29039

**RE: Defendant's Appeal on Eviction
James Smith vs Rufus and Merle Rivers
Magistrate Case No.: 2018CV3810702780**

FILED FOR RECORD
WINNIFRA B. CLARK
2020 MAY 22 AM 10:05
CLERK OF COURT
ORANGEBURG, SC

Dear Mr. Rivers:

Our records reflect that your monthly rent payment was not made to our office in March or April by the specified due date as required.

Past due payments and future payment arrangements may be coordinated directly with the plaintiff's attorney if accepted.

A physical copy of this letter will follow via today's U.S. Mail.

County of Orangeburg
Central Region Magistrate Office

CC: VIA ELECTRONIC DELIVERY:
KMcDaniel@BurnetteShutt.Law
TWolfe@BurnetteShutt.Law
Kathleen M. McDaniel, Esquire
Attorney for James F. Smith, Jr.
Post Office Box 1929
Columbia, South Carolina 29202

Terry Leverette, Court Administration – by U.S. Mail and Electronic Delivery

FILED FOR RECORD
WINNIFA B. CLARK

Valid Money Order includes: 1. Heat sensitive, red stop sign AND 2. Contains a True watermark held up to light to view

MoneyGram

2020 MAY 22 AM 10:05

88-188
TOST

To Validate: Touch the stop sign, then watch it fade and reappear



CLERK OF COURT
ORANGEBURG, SC

PAY TO THE
ORDER OF/
PAGAR A LA
ORDEN DE:

Magistrate's Court

IMPORTANT - SEE BACK BEFORE CASHING

Ruby & Monte Rivers

PAY EXACTLY

ADDRESS/
DIRECCION:

1429 Legwood Street, Orangeburg, SC 29134

Payable Through
BOKF, NA
Erid, OK

ISSUER/DRAWER:
MONEYGRAM PAYMENT SYSTEMS, INC

10310186412094 58210082090 May, 2020

Valid Money Order includes: 1. Heat sensitive, red stop sign AND 2. Contains a True watermark held up to light to view

MoneyGram

To Validate: Touch the stop sign, then watch it fade and reappear



PAY TO THE
ORDER OF/
PAGAR A LA
ORDEN DE:

Magistrate Court

IMPORTANT - SEE BACK BEFORE CASHING

Ruby & Monte Rivers

PAY EXACTLY

ADDRESS/
DIRECCION:

1429 Legwood Street, Orangeburg, SC

Payable Through
BOKF, NA
Erid, OK

ISSUER/DRAWER:
MONEYGRAM PAYMENT SYSTEMS, INC

10310186412094 014205082090 March, 2020

MONEY
ORDER

MONEYGRAM PAYMENT SYSTEMS, INC
1429 LEGWOOD STREET, ORANGEBURG, SC 29134

19-094193651

\$ [Redacted]

EURO
RESUMO AGENT

PAY EXACTLY
PAY TO THE
ORDER OF

Magistrate Court
Ruby & Monte Rivers
1429 Legwood Street
Orangeburg, SC 29134

10310186412094 401909419365170

Apr. 1, 2020

MONEY
ORDER

MONEYGRAM PAYMENT SYSTEMS, INC
1429 LEGWOOD STREET, ORANGEBURG, SC 29134

19-094193652

\$ [Redacted]

EURO
RESUMO AGENT

PAY EXACTLY
PAY TO THE

**APPENDIX D
CDC CERTIFICATION**



Eviction Protection Declaration

The Centers for Disease Control and Prevention (CDC) has issued an order that may protect you from being evicted or removed from where you are living. **This means that you may be able to stay at the place where you live through October 3, 2021, if you qualify.**

How to use this form

1. See if you qualify for eviction protection under the CDC order. If you'd like help from an expert, contact the US Department of Housing and Urban Development (HUD) at (800) 569-4287 or go to <https://www.hudexchange.info/programs/housing-counseling/rental-eviction/> to get contact information for a local housing counselor.
2. Sign the declaration that you qualify, on the next page.
3. Give the signed declaration page to the individual or company you rent from (for example, building management, landlord, etc.). Keep a picture or copy for your records and call your expert back if there's a problem.

If your landlord violates the CDC order, they could be subject to criminal penalties, including fines or a term of imprisonment.

1. Do I qualify?

If you can check at least one box in each column, you qualify.

Column A

AND

Column B

- I received a stimulus check (Economic Impact Payment) in 2020 or 2021
- I was not required to report any income to the IRS in 2020
- I am receiving any of the following benefits:
 - Supplemental Nutrition Assistance Program (SNAP)
 - Temporary Assistance for Needy Families (TANF)
 - Supplemental Security Income (SSI)
 - Supplemental Security Disability Income (SSDI)
- In 2020 or 2021, I earned (or expect to earn) less than \$99,000 as an individual or less than \$198,000 as a joint filer

I cannot pay my full rent or make a full housing payment because:

- My household income has gone down substantially
- I have been laid off from work
- My work hours or wages have been cut
- I have extraordinary out-of-pocket medical expenses¹

None of the above — You do not qualify.

None of the above — You do not qualify.

You checked at least one item in each column? Your income level qualifies.

Check the first box on the next page]

¹ Defined as 75% or more of your adjusted gross income for the year.



Rufus Rivers <rrivers788@gmail.com>

Hearing

1 message

Rufus Rivers <rrivers788@gmail.com>

Wed, Aug 25, 2021 at 1:15 PM

To: "Kathleen M. McDaniel" <kmcdaniel@burnetteshutt.law>

Ms. McDaniel, just to follow-up on what was discussed. Please find attached the first page of CDC Declaration which has been signed and verified and protected. It is valid. I have contacted a local resource and awaiting a call. I will advise. I feel that I was ambushed with this second attempt for Rule to show Cause or vacate.

Rufus Rivers
803-218-9573

Virus-free. www.avast.com

 cdc.pdf
368K

IN THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

Jan 13 2023

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar W. Dickson

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

Rufus Rivers and Merle Rivers

Appellant

VS.

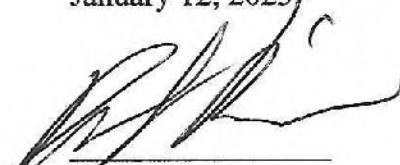
James Smith, Jr.

Respondent

PROOF OF SERVICE

We certify we have served Appellants' Reply To Respondent's Final Brief on Respondent James Smith, Jr. by electronically filing a copy with the Court Of Appeals depositing same in the U.S. Mail in an envelope with proper postage attached addressed to his attorney of record, Kathleen McDaniel, esq. At P.O. Box 1929 Columbia, SC 29202 on January 12, 2023.

January 12, 2023



Rufus Rivers, pro se



Merle Rivers, pro se