RECEIVED
Oct 07 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-000062

Roy Williams,..……..…….....…...Respondent,

v.

Jamma L.W. Bradford……...……..……Appellant.

FINAL BRIEF OF APPELLANT

Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

COURT RULES

STATEMENT OF ISSUES

I. Did the master-in-equity err reversibly in ruling that the Respondent has an interest in the property subject of this partition action?

II. Did the master err reversibly in finding against Appellant on her counterclaim, when she proved that Respondent had made unauthorized use of her property?

III. Did the master lack subject matter jurisdiction of this case?

STATEMENT OF THE CASE

This is an appeal by Jamma L. W. Bradford ("Bradford") of orders granting a partition of real estate in kind to Roy Williams ("Williams"), the Respondent, and denying Bradford's motion to reconsider or for a new trial. (R. pp. 1-22.) On the merits, Bradford argued and testified at trial that Williams had many years ago conveyed away his ownership interest in the subject property and, thus, was not entitled to partition and had no standing to seek it. (R. p. 3, p. 89 ln. 13-20, p. 95 ln. 8-24, p. 98 ln. 17-21, p. 99 ln. 25 through p. 100 ln. 9, p. 105 ln. 7-9, p. 108 ln. 3-5, p. 134 ln. 23 through p. 135 ln. 1, p. 136 ln. 2-6, p. 146 ln. 19 through p. 147 ln. 17.) She pointed to a deed from Williams to Emma Young in which Williams conveyed all his right, title, and interest in and to a tract described as exactly the same as a larger tract from which the subject property derives, except for a reduction in the amount of acreage in the property description. (R. p. 3, p. 89 ln. 13-20, p. 95 ln. 8-24, p. 98 ln. 17-21, p. 99 ln. 25 through p. 100 ln. 9, p. 105 ln. 7-9, p. 108 ln. 3-5, p. 134 ln. 23 through p. 135 ln. 1, p. 136 ln. 2-6, p. 146 ln. 19 through p. 147 ln. 17, pp. 210-20, 224-25, 263-64.)

No new boundaries were given in this deed from Williams for the tract conveyed. (R. pp. 5, 263-64.) The boundary description is exactly the same as that used in the older deeds that described the entire larger tract. (R. pp. 5, 210-20, 224-25, 263-64.) Nothing in the words of the deed indicates that Williams was carving out or otherwise retaining any interest in any of the property. (R. pp. 263-64.) When Young, who was the grantee of Williams' deed, deeded her interest in the subject property to Bradford, her deed stated that the property Young was conveying to Bradford included the interest that had been conveyed to Young by the deed from Williams. (R. pp. 269-70.)

Despite this evidence, the master ruled that "[t]he acreage cited in the deed must logically be taken as reflecting an intention by the Plaintiff-grantor to convey only a portion of, actually much less acreage than, the tract owned by the Plaintiff." (R. p. 7.) Having decided that a third of the subject property was owned by Williams, the master ordered division of the property and partition in kind, and he granted judgment in Williams' favor against Bradford for two thirds of Williams' attorneys' fees. (R. pp. 8-10.)

In 1979, Lily Mae Jones deeded a tract of land in Richland County, South Carolina, between the small towns of Gadsden and Eastover, to Lily Williams, who was also known as Lillie L. Williams. (R. pp. 27, 214.) The acreage amount in the property description in that deed was given as "52 acres, more or less," and stated the boundaries of the tract. (R. pp. 5, 214.)

This Lily/Lillie Williams was the adoptive mother of both Williams and Bradford. (R. pp. 12, 27, p. 113 ln. 13-16.) She died intestate in 1981, and Williams and Bradford each inherited a one-ninth interest in this undivided property from her. (R. p. 4.) Through various conveyances over the next 37 years, ownership of this property was gradually consolidated. (R. pp. 4-5, 200-70.)

A road bisects this inherited property. (R. p. 4, p. 84 ln. 2-14, pp. 221-22.) The merits of Williams' claim in this case turn on his 1995 deed to Emma Young, which used the same boundaries description of the property as did earlier deeds and does not contain any "less and excepting" language or similar language indicating that the grantor was conveying less than the entire parcel. (R. pp. 4-5, 263.) It describes the property conveyed as "now containing approximately 42.92 acres[.]" (R. pp. 4-5, 263.) The deed does not speak to what happened to the approximately 10 acres that were included in the tract; it just notes that the size of the

tract has become smaller at some point before Williams deeded away his interest in it. (R. pp. 4-5, 263.)

About 20 years after Williams' 1995 conveyance, a plat was prepared that divided the property into tracts, including using the road as a boundary between tracts. (R. pp. 221-22.) This 2015 plat, for the first time, identified the part of the property south of the road (the 5.64 acres subject of this case) as a separate parcel. (R. pp. 221-22.) That is the property subject of this case. (R. pp. 1-10, 26.) If Williams conveyed his interest in this part of the property to Young, then he does not own any interest in the property subject of this case. If his deed, without stating it was doing so, actually did *not* convey his interest in the subject property, then he is its co-owner solely with Bradford, since Young conveyed all her interest in this subdivided tract to Bradford in 2016 in a voluntary partition. (R. p. 93 ln. 3 through p. 96 ln. 9, pp. 221-22, 269-70.) Young's deed to Bradford lists the 1995 deed from Williams as one of the sources of her title to the 5.64 acre subdivided tract. (R. p. 269.)

Williams brought suit against Bradford for partition, filing his summons and complaint on June 2, 2021. (R. pp. 25-31.) Using magistrate's court forms and acting *pro se*, on July 2, 2021, Bradford filed, but did not serve, an answer and counterclaim. (R. pp. 32-33.) She denied the truth of the allegations of the complaint and counterclaimed for relief related to Williams' unauthorized use of her property. (R. pp. 32-33.)

On September 1, 2021, Williams' attorney submitted a proposed order of reference to the court, without providing a copy or other notice of that to Bradford. (R. pp. 195-96.) The clerk of court signed and filed the proposed order, purporting to refer the case to the master-in-equity. (R. pp. 23-24.) Only after the clerk had signed and filed that document was notice of it given to Bradford. (R. pp. 291-92.)

Williams replied to Bradford's counterclaim, and the case proceeded as though it had been referred to the master-in-equity. (R. pp. 34-36.) Eventually, a trial was held by the master, at which Williams was represented by counsel and Bradford was still *pro se*. (R. pp. 75-167.)

At the trial, Bradford and Williams testified, and the master received exhibits into evidence, including deeds in the chain of title to the subject property. (R. pp. 75-167, 197-279.) The master ruled in favor of Williams in all respects, ordering division of the property in kind, ruling against Bradford on her counterclaim, and ordering Bradford to pay two-thirds of Williams' attorneys' fees. (R. pp. 11-20.) The master issued an amended order that clarified the amounts involved with regard to those fees, which were left blank in the original order in an apparent error. (R. pp. 1-20.)

Bradford retained counsel and made a motion to reconsider or for new trial. (R. pp. 37-41.) The master heard this motion and denied it. (R. pp. 21-22, 168-93.)

This appeal followed.

STATEMENT OF FACTS

The idea that the number of acres stated in the deed from Williams to Young somehow means that Williams did not deed away his interest in the 5.64 acre area, which was at that time undivided by any survey from the larger tract and is not noted in the deed as being retained, is a recent fabrication by Williams, made only in connection with this lawsuit. It defies logic and good sense to conclude that Williams intended to convey only the part of the property north of the road. It would have been so very easy for his deed simply to say so – if that is what he had meant. No plat would have been needed to do that. All that would be needed to convey only that portion of the property would have been a deed that described the

property being conveyed as the portion of the formerly 52ish-acre tract lying to the north of the road.

That is not the deed Williams gave. The deed he gave contains no words at all to the effect that any of that property is being retained by Williams.

Williams does not own any interest in the property subject of this case.

STANDARD OF REVIEW

Since this is a partition action, it is an action in equity. Zimmerman v. Marsh, 365 S.C. 383, 618 S.E.2d 898, 900 (2005). In an action in equity, this court reviews the evidence to determine facts in accordance with its own assessment of the preponderance of the evidence. Id.

Whether an order is void is a question of law. See Chew v. Newsom Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631 (Ct. App. 1993) ("question of subject matter jurisdiction is a question of law for the court"). An appellate court reviews all questions of law *de novo*. Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010); Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010).

ARGUMENT

I. Established deed interpretation principles show the master was wrong about how to read the deed from Williams to Young.

The master ruled that "[t]he acreage cited in the deed must logically be taken as reflecting an intention by the Plaintiff-grantor to convey only a portion of, actually much less acreage than, the tract owned by the Plaintiff." (R. p. 7.) The master cited no case or other law to support this interpretive proposition, and indeed his order cites no cases at all. (R. pp. 1-10.) His order is not required to cite cases, of course; however, had he looked for a case to

cite for that proposition, he would not have found one. No South Carolina reported decision or other law supports such a notion as the master wrote down.

At the trial, Williams' counsel cited two cases, Edgewater on Broad Creek Owners Assn., Inc. v. Ephesian Ventures, LLC, 430 S.C. 400, 845 S.E.2d 211 (Ct. App. 2020), and S.C. Dept. of Parks, Rec. & Tourism v. Brookgreen Gardens, 309 S.C. 388, 424 S.E.2d 465 (1992). (R. p. 157 ln. 1 through p. 158 ln. 1.) Neither of these cases help to support the master's conclusion. It seems there are none that do.

Williams cited Brookgreen Gardens for the proposition that, when the derivation clause in a deed (e.g., "This being the same property conveyed to the grantor by deed of so-and-so dated such-and-such and recorded on such-and-such date in the office of the register of deeds . . .") conflicts with the physical description of the property in the deed (e.g., "This being the same tract, parcel, or plot of land being shown on such-and-such plat as being Tract XYZ . . ."), the physical description controls. (R. p. 157 ln. 15 through p. 158 ln. 1.) This is of little use to him and does not support the master's decision. There is no conflict between the derivation clause in Williams' deed to Young and the physical description of the property in it. (R. p. 263.) An examination of the law, starting with Brookgreen Gardens, bears that out.

Williams' lawyer was alluding to the following passage from the Brookgreen Gardens opinion:

> Both parties also agree that the discrepancy in description and derivation is immaterial. Citing Brownlee v. Miller, both parties ask this Court to reaffirm the rule that the legal description in a deed governs conflicting derivation information. 208 S.C. 252, 37 S.E.2d 658 (1946). This appears from the cases to be a long standing rule in South Carolina, and we will continue to accord it great weight. See McNair v. Johnson, 95 S.C. 176, 78 S.E. 892 (1913); Norwood v. Byrd, 18 S.C.Eq. (1 Rich.Eq.) 135 (1844). The conflict in the derivation of title should have no effect on the state of the title. We hold that the legal description in the

> Deed of Real Estate, and Release, and the land as granted to Brookgreen under the four separate conveyances, reaches all of the land in dispute and comprises the boundaries of Huntington Beach.

Brookgreen Gardens, 309 S.C. at 393.

Williams did not cite Brownlee to the master, and it is easy to see why. Brownlee did not concern a situation of discrepancy between a derivation clause and a physical property description. 208 S.C. at 254-66. Brownlee concerned a situation in which a deed gave a physical property description with metes and bounds but also incorrectly stated the acreage conveyed as being 77 acres less than the area that was within the metes and bounds in the description. Id. at 254, 260. That informs another reason why it would not have been strategically wise for Williams to cite Brownlee to the master. That reason is that Brownlee states South Carolina law, adverse to Williams' fundamental position about the whole case, that is controlling on the merits of whether Williams has an interest in the subject property: "It is of course a proposition too elementary for any citation of authority that boundaries govern acreage and inaccuracies relating to the area of a tract are generally immaterial." Id. at 260.

Williams' entire case was founded on the notion that "inaccuracies relating to the area of a tract" in his deed have great significance and mean that he actually did not convey away his rights in the area his deed said he did. Id. Rules of deed construction dispose of this argument. Id. The boundaries of the property set out in Williams' deed to Young control what property it conveyed. Id. The number of acres given as deeded is "immaterial." Id. Under the master's analysis, the number of acres stated in the deed was very nearly the only material thing from the trial – at least the thing upon which he put the most weight. (R. pp. 1-10.) The master's analysis is contrary to the law, and reversal is required if this court reaches the merits (which, for subject matter jurisdiction reasons discussed below, the court might not do).

Nor does this court's decision in Edgewater support the master's analysis. The other thing the master saw as material was testimony from Williams about what Williams *meant* to do with the deed. (R. pp. 7-8, p. 118 ln. 9 through p. 126 ln. 22.) Edgewater, relevantly to the instant case, is one of many South Carolina appellate decision that hold that extrinsic evidence is unnecessary – even incompetent – where "the intention of the parties as to the legal effect of the [deed] may be gathered from the four corners of the instrument itself." 430 S.C. at 409-10 (internal quotation marks omitted, brackets in original). There was no reason for the court to hear Williams' testimony about what he intended to do, as it makes no difference to the interpretation of the deed. Id. Because of Brownlee and what the deed does say, the deed can be logically and fully construed without ever having to look beyond the document. 208 S.C. at 260. The only quirk in the deed was the amount of acreage stated. Brownlee supplies a rule that tells us what to do with that quirk without looking beyond the text of the deed. Id. It was error for the master to decide that, partly based on extrinsic evidence, the acreage recitation discrepancy changed the meaning of what property the deed conveyed. See Edgewater, 430 S.C. at 409-10.

As this court again observed in 2023, "[t]he intention of the grantor must be found within the four corners of the deed." Vista Del Mar Condominium Assn. v. Vita Del Mar Condominums, LLC, 441 S.C. 223, 892 S.E.2d 532 (Ct. App. 2023) (quoting Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987)). The master did not do that, did not undertake the proper analysis. (R. pp. 1-10.)

"The master is without authority to consider parties' secret intentions[,] and words cannot be read into a deed to impart an intent unexpressed when the deed was recorded."

Edgewater, 430 S.C. at 406-07 (quotation marks omitted). That – considering a party's secret intentions – is what the master did. (R. pp. 1-10.)

Applying established principles of deed construction to the deed from Williams at issue, there is only one answer: Williams deeded away all his interest in the subject property, has no such interest, and does not even have standing to bring a partition action, much less entitlement to win one. S.C. Code Ann. § 15-61-10(A) (right to partition belongs to one who is a cotenant in real estate with another). All the rest of what the master did – ordering partition, awarding attorney's fees to Williams – depended on the incorrect way he construed the deed and must be reversed.

II. Bradford proved her counterclaim.

The master found that Bradford failed to prove her counterclaim, but he was wrong. Williams used Bradford's property for years – and continues to do so – without her permission. (R. p. 100 ln. 8 through p. 102 ln. 2.) He is her tenant at will, and she wants him out of there and to pay her rent for the time he has been there. (R. p. 33, p. 100 ln. 8 through p. 102 ln. 2.)

"'Tenant' shall be construed to mean tenant at will, tenant for a term, tenant for years, domestic servant, farm laborer, sharecropper and agricultural renter." S.C. Code Ann. § 27-33-10(8). "Every person other than the owner of real estate, excepting a domestic servant and farm laborer, using or occupying real estate without an agreement, either oral or in writing, shall be deemed a 'tenant at will.'" S.C. Code Ann. § 27-33-10(3). A tenant at will might not have *agreed* to pay rent, but that does not mean he does not owe any. "Failure to pay the rent agreed upon when due, *or a reasonable rent for use and occupation* when demanded, shall terminate all tenancies for a term, for years, from month to month *and at will* and the tenant shall forthwith vacate the premises without notice." S.C. Code Ann. § 27-35-140.

Plus, at the very least, Bradford had an unjust enrichment claim against Williams, as he received and realized a benefit from Bradford (use of her land), and it is unjust for him to have had that use without paying its value. Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 257, 715 S.E.2d 348, 356 (Ct. App. 2011) (elements of unjust enrichment).

Bradford was at least entitled to some relief on her counterclaim. Indeed, she was entitled to Williams' eviction and a money judgment against him. Id.; S.C. Code Ann. § 27-35-140.

The master erred reversibly in finding against Bradford on her counterclaim.

III. The master lacked subject matter jurisdiction. The purported order of reference is void.

This was not a default case. Though Bradford actually did not serve her answer and counterclaim, as Williams wrote in his return to her motion to reconsider, "when Plaintiff's counsel learned of Defendant's Answer, Defendant was treated by Plaintiff, in all respects, as an appearing party." (R. p. 291.) Under the law of the case doctrine, Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009); Ross v. Med. Univ. of S.C., 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997), the master's order precludes any contrary determination, as it found that Bradford "served an Answer and a Counterclaim[.]" (R. p. 4.) Williams' counsel – quite commendably – does appear to have treated Bradford in all respects as not being in default.

That this was not a default case, though, reveals that the master never obtained subject matter jurisdiction to hear the dispute. The purported order of reference issued by a deputy clerk of court was done in the absence of any power of the clerk to make the reference. (R. pp. 23-24, 195-96.)

Rule 53(b), SCRCP, provides as follows:

> In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court.

The parties did not consent to a reference. (R. p. 38.) This was not a default case. It was not an action for foreclosure. (R. pp. 26-33.) The clerk of court lacked the power to refer it to the master-in-equity. See S.C. Community Bank v. Salon Proz, LLC, 420 S.C. 89, 94-95, 800 S.E.2d 488, 491 (Ct. App. 2017).

This reveals a lack of subject matter jurisdiction. "A master's authority to determine issues referred to him by the circuit court is a question of subject matter jurisdiction[.]" Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 74-75, 773 S.E.2d 607, 616 (Ct. App. 2015); accord Bunkum v. Manor Properties, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (Ct. App. 1995) (question concerning scope of master's authority under order of reference was "issue[] relating to subject matter jurisdiction"); Bonney v. Granger, 292 S.C. 308, 322, 356 S.E.2d 138, 147 (Ct. App. 1987) ("[b]y consenting to an order of reference without limitation, [the appellant] submitted to the master's subject matter jurisdiction to the same extent as if the matter were before the circuit court").

"*When a case is referred to a master*, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers." Deep Keel, 413 S.C. at 75 (quoting Smith Cos. of Greenville, Inc. v. Hayes, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993) (emphasis added). "*Once an action is referred*, the master possesses all power and authority that a circuit judge sitting without a jury

would have in a similar matter." Normandy Corp. v. S.C. Dept. of Transp., 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009) (emphasis added).

For a case to be referred to a master-in-equity, the order of reference must be valid, and that requires notice of the application for the order of reference to be provided to all parties who have appeared in the case. See Tryon Fed. Sav. & Loan Assn. v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992); Rule 5(a)&(b)(3). "If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person[,]" because it is then void. Id.; accord Universal Benefits, 349 S.C. at 183. If an order is void, relief from it must be granted; the order is a nullity, and there is no need for further analysis. See BB&T v. Taylor, 369 S.C. 548, 552 n. 1, 633 S.E.2d 501, 503 n. 1 (2006).

The reference, indispensable to the master's subject matter jurisdiction, never actually occurred. Rule 53(b), SCRCP; see Salon Proz, 420 S.C. at 94-95. The master lacked subject matter jurisdiction to do anything.

CONCLUSION

Reversal is required here. If the court determines – as it seems it must – that the order of reference was void, the case must be remanded to the "regular" circuit court. If the court determines the master had subject matter jurisdiction, this court must reverse and either a) make its own findings that comport with the law and the evidence or b) remand for a new trial.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29290
(803) 500-0891
drew@radekerlaw.com
Attorneys for Appellants

October 7, 2024

RECEIVED
Oct 07 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-000062

Roy Williams,..……..…….....…...Respondent,

v.

Jamma L.W. Bradford……...……..……Appellant.

CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
Attorney for Appellant

October 7, 2024

RECEIVED
Oct 07 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-000062

Roy Williams,..……...…….....…...Respondent,

v.

Jamma L.W. Bradford……...……..……Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing final brief on the date given below by emailing it to the other counsel of record in this appeal at the address(es) noted below.

Leonard R. Jordan, Jr., Esq., at ljordan@ljordanlaw.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29290
(803) 500-0891
drew@radekerlaw.com
Attorney for Appellant

October 7, 2024