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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

Appellate Case No.: 2024-000632
Case No.: 2020-CP-33-00277

Bevance Lynch Respondent,

vs.

Bertha E. Dunham Appellant.

INITIAL BRIEF OF RESPONDENT

/s/ J. Jakob Kennedy
J. Jakob Kennedy
S.C. Bar No. 72619
109 East Dozier Street
Post Office Box 925
Marion, SC 29571
(843) 423-5555

Counsel for Respondent

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STATEMENT OF ISSUE ON APPEAL

1) **Did the circuit court err in granting Respondent's motion for summary judgment pursuant to Rule 56, SCRCP?**

STATEMENT OF THE CASE

This is an eviction action transferred from the Marion County Magistrate's Court to the Court of Common Pleas for Marion County. It concerns real property located in Marion County.

A) Bertha E. Dunham owned real property.

In 1975, Bertha E. Dunham and William Dunham, Jr., purchased the real property in Marion County as shown by a recorded quitclaim deed. (R. ____). In 1983, William Dunham, Jr., transferred his undivided one-half interest to Bertha E. Dunham as shown by a recorded deed. (R. ____). In 1988, Beula Mae Dunham, the daughter of Bertha E. Dunham, married James Oneal Belin as shown by a marriage certificate. (R. ____): In 1996, Beulah Mae Dunham n/k/a Beula Mae Belin states she moved a mobile home on the property and, in 2008, installed a fence on the property. (R. ____).

B) Bertha E. Dunham mortgaged her real property, defaulted on her loan, and the mortgage holder commenced a foreclosure action.

In 2006, Bertha E. Dunham executed a mortgage to secure a promissory note in favor of CitiFinancial and said mortgage was recorded in Marion County Mortgage Book 819, at page 146. (R. ____). In 2017, the mortgage was later assigned to Citifinancial Servicing, LLC, and said assignment was recorded in Marion County Volume 401, at page 5. (R. ____). The mortgage was then assigned to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A and said assignment was recorded in Marion County Volume 401, at page 6. (R. ____).

In 2018, the mortgage holder commenced a foreclosure action (Civil Action No. 2018-CP-33-00653) against Bertha E. Dunham after she defaulted on her repayment obligations. (R. ____). The above-referenced mortgage and assignments are public records appearing in the Marion County recording office as well as the foreclosure action.

- C) The court-appointed special referee, Hon. Haig Porter, ordered the sale of the real property and the real property was sold at public auction to the creditor.**

The foreclosure action was referred to the Honorable Haig Porter as Special Referee who issued an Order of Judgment of Foreclosure and Sale Decree. (R. ____). In his Order, the Special Referee found, among other things, that service was proper; Bertha E. Dunham failed to answer and was in default; the promissory note, mortgage, and assignments were properly introduced into evidence at the hearing; and ordered that the property be sold after proper publication. (R. ____). The property was then sold at public auction to the mortgage holder as the highest bidder and a Foreclosure Deed was granted. (R. ____). The mortgage holder (now owner/grantee) filed a motion for a sheriff's Writ of Assistance claiming the debtor continued her occupancy and refused to leave and remove her personal property. (R. ____). On October 2, 2019, the Special Referee issued an Order for Writ of Assistance authorizing officers with the Marion County Sheriff to enter the premises any time after 1:00 p.m., on October 29, 2019. (R. ____).

- D) Beulah Mae and James Belin file a motion to intervene and the Special Referee denied the motion**

Four days before the Sherriff's Office was authorized to enter and assist with eviction, the debtor's daughter (Beulah Mae Belin) and son-in-law (James Belin) filed, through counsel, a motion in the foreclosure action to intervene claiming a legal interest in the property through adverse possession and, therefore, were entitled to notice in the foreclosure action. (R. ____). The Special Referee, however, denied this motion and found, among other things, that the Belins had no deeded interest in the subject property, placement of the Belins' mobile home on the subject property was "no different than the parking of a moped on a piece of property," and that the Belins had not asserted a claim of adverse possession in a separate civil action against the landowner, Bertha Dunham. (R. ____).

E) The creditor / high bidder sold the property to an LLC; the Belins appeal; the LLC sold the property to Respondent; and Respondent filed a Notice to Quit Action in Magistrate Court which was transferred to the Circuit Court.

On December 23, 2019, the creditor sold the property to a limited liability company named "2019 Castle, LLC" by quitclaim deed. (R. ____). On January 28, 2020, the Belins filed a Notice of Appeal with the South Carolina Court of Appeals to appeal the denial of their motion to intervene in the foreclosure action; Appellate Case No. 2020-000139. (R. ____). On March 3, 2020, the property was sold to Respondent Bevance Lynch by special warranty deed. (R. ____). Respondent then filed a Notice to Quit action in Magistrate Court. (R. ____). Bertha Dunham, through counsel, filed an Answer, Motion to Add Parties, and Motion to Dismiss or Transfer. (R. ____). The motion sought to add Beulah Mae Belin (f/k/a Beulah Mae Dunham), and James Belin as interested parties and argued that these added parties had an equitable interest in the subject property through adverse possession and the Marion Magistrate Court transferred the Notice to Quit case to the Circuit Court¹. (R. ____).

F) This action awaited appellate decisions for more than three (3) years.

In August of 2022, the South Carolina Court of Appeals affirmed the Special Referee's denial of the Belins' motion to intervene based, in part, on the Belins' delayed attempt to assert their claim of adverse possession; Appellate Case No. 2020-000139. (R. ____). In May of 2023, the Supreme Court of South Carolina denied the Belins' petition for writ of certiorari; Appellate Case No. 2022-001450. (R. ____).

G) Hearing on summary judgment motion and motion to amend.

On July 5, 2023, Respondent filed his motion for summary judgment. Beulah Belin, the daughter, filed an affidavit in opposition to summary judgment stating that "[m]y husband and I are in the process of filing a quiet title action on our property" (R. ____)

¹ The Magistrate Court has no jurisdiction "[w]hen the title to real property shall come in question," S.C. Code § 22-3-20, provided that "[a]t the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by a least one sufficient surety and approved by the magistrate[.]" S.C. Code §22-3-1120. The transferred record in this case shows no such written and approved undertaking.

but no such action has ever been filed. In addition, the Belins have never filed an action (separately or by cross-claim) against Bertha alleging adverse possession.

The motion hearing was scheduled for August 21, 2023, but Appellant requested a continuance based on priority of another tribunal and the motion hearing was continued. (R. ____). The motion hearing was re-noticed for November 27, 2023 but Appellant requested a continuance based on counsel's vacation and was granted protection for November 27, 2023. (R. ____). The motion for summary judgment was re-scheduled and heard on the morning of November 29, 2023. (R. ____). The Court granted summary judgment and requested an Order to be prepared by Respondent's counsel. (R. ____).

During the hearing on the motion for summary judgment, the Clerk accepted the Appellant's motion to amend her answer which attached a proposed amended answer and counterclaim to allege that Bertha (the former property owner of record and foreclosed-upon mortgagor) resided on the premises with the permission of the Belins (the daughter and son-in-law who were never deed grantees, mortgagors, or otherwise record owners). (R. ____). The proposed amended answer goes on to claim it is actually the Belins who were owners of the property and, therefore, Respondent "and others" conspired to take "unlawful actions" against Appellant Belins knowing the Belins claimed title to the property. (R. ____).

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRPC." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (quoting Rule 56(c), SCRPC). "[T]he 'mere scintilla; standard does not apply under Rule 56(c)." *Id.*, at 463, 892 S.E.2d at 301. "Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." *Id.*

ARGUMENT

I. APPELLANT'S MOTION TO AMEND IS UNTIMELY, FAILS TO STATE, "GENUINE ISSUES OF MATERIAL FACT," AND IS FUTILE

This case began in June of 2020. Appellant's motion to amend her answer was not entered until the morning of the summary judgment hearing and *during* oral argument in November of 2023. Rule 15(a), SCRPC allows court leave to amend pleadings "when justice so requires and does not prejudice any other party."

The procedural posture of this case is very different from the case relied upon by Appellant: *Skydive Myrtle Beach, Inc. v. Horry County*, 826 S.E.2d 585 (S.C. 2019). In *Skydive*, our Supreme Court held that the trial court should give the plaintiff an opportunity to amend the complaint before dismissing the case under Rule 12(b)(6), SCRPC. Of course, a Rule 12(b)(6) motion is filed early in the case and "permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." *Id.*, at 587.

Summary judgment, on the other hand, is not concerned with early pleading sufficiency but rather the presence or absence of a genuine issue as to any material fact in a developed case. Appellant in this case had more than three years to amend (or request leave to amend) her answer and assert a counterclaim. This three-year delay in moving to amend is inexplicable. See *Health Promotion Specialists, LLC v. South Carolina Board of Dentistry*, 743 S.E.2d 808, 813 (S.C. 2013)(affirming summary judgment where delay in moving to amend was inexplicable and amendment would have been futile).

Moreover, "even if the amendment had been permitted, it would not have affected the grant of summary judgment[.]" *Id.*, at 812-13. Respondent Bevance Lynch simply purchased foreclosed property from an LLC which purchased the property from the foreclosure lender. Respondent Bevance Lynch is a public-school employee in Florida who wanted land in South Carolina for retirement. He patiently awaited Appellant's outcome in her previous appellant attempts which ultimately held the Belins could not intervene in the foreclosure action to assert a property interest before Respondent filed his motion for summary judgment in this case. He did not engage in "conspiracy" with unnamed "others" and his purchasing property after a foreclosure sale is in no way taking "unlawful actions".

(R. ____). In other words, the proposed amended pleading alleging conspiracy against Respondent would be futile, unjust, and prejudice Respondent with further delays that denied him possession of his property.

II. APPELLANT HAD THREE YEARS TO COMPLETE DISCOVERY BEFORE THE MOTION FOR SUMMARY WAS HEARD

The circuit court order granting summary judgment adequately addresses the Appellant's argument regarding discovery completion. Again, this case has been pending since 2020 and Appellant never initiated written or deposition discovery and did not seek to assert a conspiracy counterclaim until the morning of the summary judgment hearing.

III. APPELLANT DID NOT NEED PERMISSION FROM HER DAUGHTER AND SON-IN-LAW TO BE ON PROPERTY SHE PURCHASED AND MORTGAGED AND THAT ISSUE IS NOT A MATERIAL GENUINE ISSUE AS TO WHETHER BERTHA DUNHAM MUST VACATE THE PREMISES AFTER FORECLOSURE

Bertha Dunham (mother) was the deeded owner of the property and entered a mortgage which she did not pay and lost the property in foreclosure. Beula Belin (daughter) and her husband, James Belin, moved a mobile home onto the property with Bertha's permission. The Belins have never held a deeded interest in the property. Respondent Bevance Lynch purchased the foreclosed property. Appellant now argues there is a genuine issue about whether the Belins allowed Mrs. Dunham to live on her own property before and after foreclosure. Appellant seems to have resolved this unimportant question for herself in paragraph two (2) of the proposed amended answer which states "Bertha E. Dunham is lawfully residing on the premises, with the consent of the owners of the property, Beullah [sic] Mae Belin and James Belin." (R. ____).

It is impossible to imagine why Bertha Dunham --- who purchased the property in 1975 --- would need her daughter and son-in-law's permission to occupy her own property after the Belins moved their mobile home onto the land in 1988 with Mrs. Dunham's permission; on the other way around. This argument is nonsensical and certainly does not raise a genuine issue of material fact in this case. To the extent, the Belins continue claim a property interest through adverse possession, that issue is adequately addressed

in the order on appeal and, notably, the Belins have never cross-claimed or separately filed an action against Mrs. Dunham for adverse possession.

IV. APPELLANT'S DAUGHTER AND SON-IN-LAW DID NOT HAVE A RIGHT TO INTERVENE IN THIS CASE

Appellant's due process argument is adequately discussed in the order on appeal as a matter of non-mutual collateral estoppel and that discussion is incorporated here by reference for the sake of brevity.

CONCLUSION

For the foregoing reasons, the Order Granting Summary Judgment should be **AFFIRMED**.

October 10, 2024

/s/ J. Jakob Kennedy
J. Jakob Kennedy (S.C. Bar No. 72619)
KENNEDY LAW OFFICE, LLC
109 East Dozier Street
Post Office Box 925
Marion, SC 29571
(843) 423-5555
Attorney for Respondent

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PROOF OF SERVICE

I hereby certify that I have served the foregoing **INITIAL BRIEF OF RESPONDENT** upon counsel for the Appellant, Paul B. Ferrara, III, who is a lawyer admitted to practice law in South Carolina by using his primary e-mail address of paul@ferraralawfirm.net as listed in the Attorney Information system (AIS). A copy of the e-mail is attached on the next page.

October 10, 2024

/s/ J. Jakob Kennedy
J. Jakob Kennedy (S.C. Bar No. 72619)
KENNEDY LAW OFFICE, LLC
109 East Dozier Street
Post Office Box 925
Marion, SC 29571
(843) 423-5555
Attorney for Respondent

From: Jake Kennedy jake@kennedysc.com 
Subject: Appellate Case No.: 2024-000632 Lynch v. Dunham
Date: October 10, 2024 at 11:42 AM
To: Paul Ferrara paul@ferraralawfirm.net

JK

Paul - please see the attached: (1) Motion for Extension of Time; (2) Respondent's Designations of Matter to be Included in the Record on Appeal; and (3) Initial Brief of Respondent. This email is being sent to your AIS registered email and for the purposes of serving these documents in compliance with Supreme Court Order (2020-000447) section (d)(1).

Motion for Extension of Time.pdf



Respondent's Designation of
Matter.pdf



Initial Brief of Respondent.pdf



Jake Kennedy
Attorney

Phone: (843) 423-5555

Fax: (843) 492-0424 **Email:** jake@kennedysc.com

Mailing Address: PO Box 925, Marion, SC 29571

Physical Address: 109 E. Dozier Street, Marion, SC 29571