

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

In the Matter of the Estate of Reba P.
Hinson, Probate # 2008-ES-12-297,
Circuit Court # 2010-CP-12-168,

SUPREME COURT NUMBER 2013-001947

Mell Woods Petitioner,

v.

Robert H. Breakfield, as Personal Representative
of the Estate of Reba P. Hinson, Respondent.

PETITION FOR A WRIT OF CERTIORARI

(Court Of Appeals Internal Tracking Number: 2011-191876)

Mell Woods
P.O. Box 2603
Lancaster, SC 29721
Petitioner

Other Counsel of Record:
Moses Koon & Brackett
Attorney for Respondent
B. Michael Brackett
P.O. Box 100261
Columbia, South Carolina 29202
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SC Court of Appeals

The Supreme Court of South Carolina

In the Matter of the Estate of Reba P. Hinson, Probate
2008-ES-12-297,

Mell Woods, Petitioner,

v. .

Robert H. Breakfield, as Personal Representative of the
Estate of Reba P. Hinson, Respondent.

Appellate Case No. 2013-001947

ORDER

The time for serving and filing the Petition for Writ of Certiorari and Appendix is hereby extended until October 23, 2013.

FOR THE COURT

BY *Drenda J. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

September 17, 2013

cc:

B. Michael Brackett, Esquire
Mr. Mell Woods
The Honorable Jenny Kitchings

Appendix #2013-001947

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Certification Regarding Rehearing

Petitioner certifies that a Petition for Rehearing was ruled on by the Court of Appeals on August 22, 2013, as a final matter, with a copy of the Order attached hereto in the Appendix, Page A-004.

QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court err in granting summary judgment where issues of fact remained?

2. Did the trial court err in granting summary judgment in a nuisance case where Lever v. Wilder Mobile Homes, Inc., 283 S.C. 452, 322 S.E.2d 692 (Ct.App. 1984) was specifically made a part of the pleadings, and argument to the trial court?

3. Did the trial court err in not adding Ned Gregory, II., as a party?

Statement of the Case

This case started in the Probate Court of Chester County. This case involves appellant Mell Woods, because of a nuisance maintained in a close proximity to lands and a recreation boat dock owned by appellant Mell Woods, located at Fishing Creek Lake. If there is such a thing as a current "Hinson Estate," that entity is responsible for pollution discharge into the public waters of South Carolina. The pleadings complain of and blame the Hinson Estate for dumping raw untreated human sewage into the lake near the appellant's boat dock, (R.pp. 121-124, R.pp. 679-688). The reason this is done is that the entire subdivision was never intended to have permanent residents, but only travel trailers, which would have "holding tanks," (R.pp. 121-124). Many people now live directly on the river bank and have installed 55 gallon drums either near, or directly on the high water line. Commodes are flushed into the drums which is illegal according to South Carolina State regulations, (R.pp. 639-650).

Appellant has raised questions in the probate court, and the circuit court if the Hinson Estate really exists, because the current personal representative, the respondent herein, lied under oath (perjury) in order to obtain appointment as a personal representative in the first place, (R.pp. 150-156).

The pleadings allege that Ned Gregory, II., is the actual cause of the nuisance, because Gregory helped the respondent herein, Breakfield in obtaining his bogus appointment as personal representative of the Hinson Estate, (R.pp. 77-91, R.pp. 150-156, R.pp. 592-602).. Ned Gregory, II., is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991), where Gregory was disciplined for forging documents. Gregory filled out the probate form #300 involved in this appeals case, and then obtained the signature under oath of Mr. Breakfield, the Respondent herein, knowing full well that another will existed which revoked the will that Gregory wanted probated, (R.pp. 63-64, R.pp. 93-109, R.pp. 159-163, R.pp. 203-212, R.pp. 386-392).

Argument as to Question One:

1. In South Carolina, there are two standards of applying facts where a summary judgment motion is decided; the first is the federal standard, meaning not necessarily an action in federal court, but any action in a State court where the action is based on federal law, or a State action where a heightened burden of proof is required, and as explained by the South Carolina Supreme Court in Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 637 S.E.2d 801, (2009);

2. In addition to the federal standard, there is also the regular, South Carolina Standard, where only a scintilla of evidence is needed in order to defeat a motion for summary judgment, all as explained in Hancock, as above;

3. The Trial Court's summary judgment order, applies the federal standard; this case is a plain preponderance of evidence case, where only one scintilla of evidence is needed to send the case to jury;

4. The record in this case is full of sworn, and admissible testimony in quantities enough to send the case to jury, (R.pp. 639-650).

Argument as to Question Number Two:

1. The South Carolina Court of Appeals has ruled in a case very similar to the present one, that matters of nuisance, sewage, and odors are jury questions, from Lever v. Wilder Mobile Homes, Inc., 283 S.C. 452, 322 S.E.2d 692

(Ct.App. 1984), the following:

"However, issues are for the jury when the evidence, viewed in the light most favorable to the non-moving party, may establish the issues in the mind of a reasonable juror. Brave v. Blakely, 250 S.C. 353, 157 S.E. 2d 726, 728 (1967). We hold the nuisance issue was for the jury. In South Carolina "Anything" working inconvenience or damage, or interfering with the enjoyment of life or property is a nuisance. Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 125, S.E.2d 628, 632 (1962). More to the point, it is a nuisance to use property in such a way that annoying or injurious odors are emitted. Woodstock Hardwood & Spool Manufacturing Co. v. Charleston Light Water Co., 76 S.C. 95, 63 S.E. 548, 556 (1909)."

There is evidence in the Record that Respondent's actions have inconvenienced appellant, and interfered with his property, (R.pp. 362-367, R.pp. 639-650, R.p. 710, R.pp. 23-721).

2. This case is no different from the Lever case; there is sworn testimony within the Record which establishes *prima facie* nuisance and negligence, and as such, this case was never a proper one for summary judgment, R.pp. 639-650).

[Number Two continues]

Part of the Lever case is hereby set out verbatim because the Court of Appeals said it so much better than petitioner can say it:

Wilder first argues the trial court erred in refusing to grant its motions for directed verdict and judgment notwithstanding the verdict. However, issues are for the jury when the evidence, viewed in the light most favorable to the non-moving party, may establish the issues in the mind of a reasonable juror. *Brave v. Blakely*, 250 S.C. 353, 157 S.E.2d 726, 728 (1967). We hold the nuisance issue was for the jury. In South Carolina "anything" working inconvenience or damage, or interfering with the enjoyment of life or property is a nuisance. *Strong v. Winn-Dixie Stores, Inc.*, 240 S.C. 244, 125 S.E.2d 628, 632 (1962). More to the point, it is a nuisance to use property in such a way that annoying or injurious odors are emitted. *Woodstock Hardwood & Spool Manufacturing Co. v. Charleston Light & Water Co.*, 76 S.C. 95, 63 S.E. 548, 556 (1909). There is evidence in the record Wilder's actions inconvenienced Lever and interfered with the enjoyment of his life and property: Lever's wife testified the offensive odors from Wilder's property (1) precluded the couple from continuing to host family picnics and church groups, and (2) interfered with Lever's gardening activities. Under the "two-issue rule" it is unnecessary for us to consider whether the trespass issue was for the jury. In *Anderson v. West*, 270 S.C. 184, 241 S.E.2d 551, 553 (1978) the court held where the jury returns a general verdict involving two or more issues and the verdict is supported as to at least one issue, the verdict will not be reversed on appeal. Therefore, the trial court was correct in refusing to grant Wilder's motions.

Argument as to Question Number Three:

1. Ned Gregory, II., should be a party in this action because it is his doing that the estate cannot be settled; it is prejudicial to everyone involved, appellant, respondent, and the Hinsons, because Gregory is the person responsible for causing a revoked Will to be admitted to probate, (R.pp. 150-156).

Petitioner adopts by reference pages A-001 through A-022 of the Appendix attached hereto in support of this petition.

CONCLUSION

For the reasons stated petitioner asks that the Court grant and issue a writ of certiorari.

This 23 day of October, 2013.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

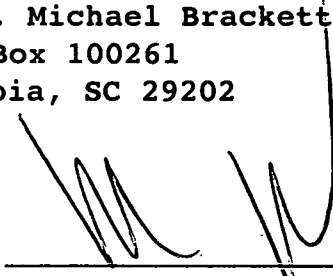
2nd ORIGINAL
(COURT OF APPEALS)

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondent with a true copy of the within and foregoing *Petition for a Writ of Certiorari* and also a copy of the Appendix attached hereto, pages A01-A51 by method of placing the documents in the U.S. Mail with sufficient postage addressed to the counsel of record for respondent to wit:

Moses Koon & Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 23 day of October, 2013.



Mell Woods

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