

Form 13
Brief of Appellant

The State of South Carolina

In The Court of Appeals

Appeal From Charleston County
Court of Common Pleas

C. Clyburn Pope, Circuit Court Judge

CASE NO. 2025000893

RECEIVED

DEC 19 2025

SC Court of Appeals

Ashley Anderson, Esq., William Kalivas, Esq., Alwyn
Silver, Attorney At Law, Atty. Melena Dinwoodie, Judge
Mikell Scarborough. Heirs/Tenants of Helen B. Tolbert,
Decedent.

Respondents,

v.

Ave Smith

Appellant.

Initial Brief of Appellant

Ave Smith

338 Fifth Ave + 6th St.

Mt. Pleasant, SC 29464

1-843-216-6960

Pro Se

Appellant Carolyn T. Smith Initial Brief
CASE NO. 2021ep1004058

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Table of Authorities And Citations

1. The South Carolina Court of Appeals - Justia - Fedor Vs. Heirs Atlaw Smashum - Reversed And Remanded to a SC Circuit Ct, "Quiet Title," Defeated by the "Doed of Distribution," and by the judges, "Neglect," to be governed by the, "Standard of Review"
2. The Document, "Why Do I Need A Quiet Title Lawsuit?" There was never a need for said lawsuit, "Dead In The Water," in CASE NO. 2021 CP 10 0458
3. Justia - The six (6) elements to be satisfied to claim, "Title To Adverse Possession" Satisfied by me, Carolyn Tolbert Smith - See pages _____ in Justia
4. Fleming v Rose, 350 SC 488, 493, 567 S.E. 2d 857, 860 (2002) = Per mis-use of Summons Judgment
5. Faile v. SC Dept of Juvenile Justice, 350 SC 315, 324 566 S.E. 2d 536, 540 (2002) Per, "if triable issues exist those issues must be submitted to the jury (I was barred).
6. Young v. SC Dept of Correction
7. Hall v. Fedor 349 S.C. 169, 173-74, 561 S.E. 2d 654, 656 (Ct. App. 2002), Re: Summary Judgment (Judge Mr. Scarborough obstructed Justice by starting with Summary Judgment and refusing to hear my counterclaim of "Title To Adverse Possession.") "He blocked my argument by shutting down the hearing after hearing only one side; leaving my, "genuine issues as to material fact," arguments, "Never," presented. He took it upon himself to take my place and claim the "Lie" that I had ^{more}

copy 2
1.

Table Of Authorities And Citations CASE NO.

Appellate, Are Smith

• Fleming v. Rose, 350 S.C. 488, 498, 567 S.E. 2d 857, 860 (2002). = Per mis-use of Summary Judgment

• Faile v. SC Dept. of Juvenile Justice, 350 S.C. 315, 324, 566 S.E. 2d 536, 540 (2002) Per if triable issues exist, those issues must be submitted to the jury (denied me, Appellant, Are Smith by the Circuit Ct. (re: my hearing before Judge Popel))

• Young v. S.C. Dept. of Corrections, 333 S.C. 714, 718, 511 S.E. 2d 413 (Ct. App. 1999). Hall

• V. Fedor, 349 S.C. 169, 173-74, 561 S.E. 2d 654, 656 (Ct. App. 2002). Re: Summary Judgment - Even where no dispute as to evidentiary facts exists, but only as to the exclusions or inferences to be drawn from them,

• Lanham v. Blue Cross & Blue Shield of S.C., 349 S.C. 356, 363, 563 S.E. 2d 331, 334 (2002).

Per Summary Judgment is a drastic remedy that should be cautiously invoked to ensure no person is improperly deprived of a trial of disputed factual issues. In the prior case, the Backdrop

to CASE 2025 000 893 it is a sad "Pity," the Judge Scarborough avoided Viewing and following this standard! Moot & the claim of Quiet Title Lis Pendens be set aside overturned

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Cont
(2)

See
Reverse
for
Statement of
Issues
Appel

Table of Authorities And Citations Continued-

Grant v. Grant, 288 S.C. 86, 340 S.E. 2d 791 (Ct App. 1986 Per Duster "Actual Turning Out"- Per All Respondent except Carolyn never had a key to subject property; never lived at the residence; Contributed anything to the property - They lost possession of their family's formerly designated private rooms given by the Smith family to our extended families. Former Co-owners, heirs evinced and dis-satisfied by vigilance and diligence evinced that I, Appellant had exclusive possession after ten (10) yrs part of 18 yrs and now after twenty (20) yrs. Woods v. Bivens, 292 S.C. 76, 354 S.E. 2d 909 (1987). Brevard v. Fortune, 221 S.C. 117, 69, S.E. 2d 355 (1952). The act described above in "Duster" in this case suppressed in the prior case, Backdrop for the present case, mine 2025 000893 Per, "Duster" unequivocal in nature and Motive of Attorney Kalivas + Andrews aided and supported by the Chas. Cor, SC Master-In-Equity This very false lawsuit "Quiet Title" against me and my family. Proves distinct hostility on the part of Respondents

Ref

3) cont'

B) Table Of Authorities And Citations

- 1) Ouster unmistakable, Felder, 278 ^{S.C.} at 330.
- 2) 295, S.E. 2d at 642. In rare extreme cases ouster ~~of~~ by one co-tenant of other co-tenants will be implied from exclusive possession and dealings with the property such as collection of rents, improvement of the property. Id, 278 S.C. at 331, 295 S.E. 2d at 642. Our Improvement, (new HVAC system, new roof, ground build up, exterior painting of the dwelling, upkeep of yard, lawn and garden regularly, taxes pd. to preserve our ownership) i.e. for all who asserted his co-ownership. None did! Only my brother, mother and I.
- 3) Ouster is presumed from possession only, if it is continued for a period of twenty yrs. Title by 10 yrs. (ten) Adverse Possession by a co-tenant against another may be acquired only after actual Ouster of which the latter has notice (latter references the co-tenant ousted) or should have in the exercise of a reasonable diligence and vigilance. *Walson v. Little*, 224 S.C. 359, 364, 79 S.E. 2d 384, 387 (1958).

See please the list of improvements

Please see evidence Justice v. Henderson vs. Smackum

(4) Final portion of...

cont'

Table of Authorities And Citations

cont'

4) ~~The~~ Claiming "title" to land by "adverse pos-
session" has the ~~burden~~ burden of proving
adverse possession by clear and con-
vincing evidence. *Lusk v. Callahan*,
287 S.C. 459, 460, 339 S.E. 2d 156, 157.

meritons

(Ct. App. 1986). - This is accomplished by
Ave Smith, Appellant more than once
eg. 2003-20_____ at the false filing
of Keith L. Tolbert re, "Quiet Title Listenders and
by the ten (10) yr. "Title To Adverse Possession 2003-
and secondly now in my case by twenty (20) yrs
Please see attachment regarding all six elements I've satisfied"

- of exclusive possession and legal right
- to prevail as an extremely rare case, having re-

Sided & held "Subject property as my residence
exclusively of and adverse to the right of
possession of all other co-tenants who
did not assert ownership in the subject
property and cannot satisfy the six (6) ele-
ments required along with "Exclusive Pos-
session. Only I, Appellant qualify as do the
Corporal W. Leroy Smith family as to this present
case NO. 2025 000 893

meritons

"Quiet Title" Reversed And Remanded, [6]
I, Ave Smith Cite pg. Seven (7) of *Justin-Fender v. Heirs of Smashum*
4.

cont Table of Authorities

5

14. Ouster of which the latter has notice or should have in the exercise of a reasonable diligence.

"Watson v. Little, 224 S.C. 359, 364, 79 S.E.2d 384, 387 (1953).

The Case law cited herein are relied on to prevail in the Subject "Motion" To Dismiss said case with Prejudice and for this, "Misfeiture of Justice," all the "Obstruction of Justice," "The Prosecutorial-Mis Conduct," attached to the conspiracy, with the result executed in Sabotage of judge Scarborough's scheduled hearing to hear and to have heard my argument for my entitlement to have been granted at that hearing where said judge omitted hearing my side of issue. He ignored the "Standard of Review

8. "Standard of Review;" Same even if, where no dispute as to evidentiary facts exist but only as to the exclusions or inferences to be drawn from them, Summary judgment a drastic remedy should be used^w "precautiously" to insure no person is deprived of a trial of disputed factual issues - Lanham V. Blue Cross Blue Shield of SC, 349 S.C. 356, 363, 563, S.E. 2d 331, 334 (2002).

9. Grant V. Grant, 288 S.C. 86, 340, S.E. 2d 771 (Ct. App. 1986) Per "Duster," clearly accomplished by me, Carolyn but never heard suppressed by Judge M. Scarborough

10. Woods V. Bivens, 292 S.C. 76, 354, S.E. 2d 909 (1987),

11. Brerard V. Fortune, 221 S.C. 117, 69, S.E. 2d 353, (1952). "Duster," in my, Carolyn's case unequivocal!

12. Felder, 278 S.C. at 330, 295, S.E. 2d at 642,

Watson V. Little, 224 S.C. 359, 364, 79 S.E. 2d 384, 387 (1958) Lusk V. Callahan, 287 S.C. 459,

460, 339, S.E. 2d 156, 157, (Ct. App. (1986)).

* / Freeman V. Freeman 323 S.C. 95, 99-100, 473 S.E. 2d

467 (Ct. App 1996) "Duster is presumed from possession only if it is continued for a period of twenty yrs

(Never, ever the case) the case No. 2021 CP 1004058 was always and only for ten yrs. (Judge Scarborough deceived the SC

District Ct. For the District of SC, documenting that I did not prevail, I Carolyn, because I had not resided at the re-

sident exclusively for 20 yrs.) Clearly another Casual Compromis of the

"Truth," by opposing judiciary. Nevertheless Freeman follows up

14. "Title," by ten yrs, may be acquired only after actual

Copy 2
1. 1

Statement of Issues On Appeal

- 1) The "Improviently," granting of my property at 338 Fifth Ave. + 0⁶th St. in Mt. Pleasant, SC 29464 and Judge C. Clyburn's Denial of my Motion for "Jury Trial!"
- 2) Neglect and deliberate refusal of the Master In Equity who is Judge Mikell Scarborough, to allow the argument "Counterclaiming" the frivolous, "meritless" Law suit i.e., "Quiet Title Lis Pendens," "Dead-In-The-Water," already by the SC Court of Appeals in an appeal found in *Justia - Fender vs. Heirs of Amashum* in 2003 Reversed And Remanded, "Q.T."
- 3) ^{To} Uncover the TRUTH, with Judge Scarborough's false, untrue claim that he considered and adhered to the "Standard of Review," wherein he blocked all argument per' the "Counterclaim," i.e. argument for Defendant's claim for a lawful, "Law Suit with merit" i.e. Defendant's "right" to "Title to Adverse Possession," after having resided on the property exclusively for eighteen yrs. and having satisfied easily all six (6) elements required for, "Title To Adverse Possess. This judge
- 4) The Defendant takes issue with this judge's having persecuted and caused me ^{with} oppression for five, long, stressful yrs. he and his co-conspirators who on a duressment consented to keep this judge on this case the duration of the case, to sabo

- take the S.G.A.M., Fraudulent, ghost hearing where-
by the judge would and did sit before Defen-
dants and Plaintiff; started upside down, hear-
ing, only, Summary judgment argued by the
judges favored lawyers. He ignored the
opposer ~~the~~ opposed to the unlawful treat-
ment this judge afforded Carolyn, the oppo-
ser ^{whom} this judge did not want to prevail. So he pro-
ceeded to shut down the hearing, leaving one party,
Carolyn, and her family dangling, bewildered, distraught
5. Carolyn takes issue with ~~her~~ attorneys hav-
ing tossed, kicked aside her fiduciary rela-
tion with me without allowing ~~me~~ ^{her} input (into)
her "throwing me under the bus" as it were and
after ~~me~~ had paid her upwards of \$1,000.00.
I take issue (w) her refusing to appeal the ⁿ "im-
providently" granting of my only home that I've
preserved, improved, maintained as a legacy
to our parents and open to all family, after now,
new needed repairs existing are accomplished.
6. I take issue with the judge and his co-con-
spirators for any and all oral arguments in
support of their "sabotage" conspiring against
me; their blocking my winning argument; the neglect
of the Supreme ^{of} SC and the Discipline Council's
decision to let these, their colleagues go free ~~also~~
although guilty as sin of an egregious crime, a felony →

Add to

T issues

Statement of Issues on Appeal

- 1) I take issue with judge Thomas Rode's neglecting to grant my, "Motion," to, "Dismiss with Prejudice," case No. 2021 CP1004058.
- 2) Issue No. two - Judge T. Rode from the bench where he presided at my hearing, Oct 8, 2025 exclaimed after hearing the facts in the subject case exclaimed, saying, "I can see why you want this case dismissed!" But neglected to grant the, "Motion," gravely necessary to stop my persecutions from allowing judge Mikell to get away with
3) Stealing my hard earned property from me and my children, the total, sole contributors and gifting my property to estranged relatives, Keith Tolbert and Charles Folbert who abandoned said property already held "Adverse," to ^{the right} possession and/or profit herein from all
4) Cotenants/heirs. All kicked my mother the decedents, "Will," aside and my offer to buy their interest herein. They refused to negotiate the \$50,000.00 each that I offered. But gathered themselves together and in hostile manner had
5) Keith file a false claim, without any, "Merit," because the sound, single, comprehensive, "Deed of Distribution," was prepared by my atty., Atty. George Counts and filed in the Chas. Co. Ct. House in and about 2011 long before Keith filed the false, meritless, "Quiet Title" Law suit
B. I take issue in having judge Mikell Scarborough's
4) Mis-Carriage of justice by "Improviently" granting

Issues

Charles et al. ^{Plaintiffs} Defendants, through charity, permission to pursue a false worthless, meritless, "Law Suit," ^Q "Quit Title Li's Pents," which created the monstrous and egregious Saga of five loathesome yrs. of reprehensible Fallout as follows:

- * In essence these are all issues that compelled me to bring the, "Motion," to, "Dismiss with Prejudice," the subject case;
- a). Keith Tolbert files in 2021 a false case with no merit
- * b) Keith's, "Quit Title," Case/Law suit is pursued, supported by the Master - In Equity though this judge knew the Law suit had no merit herein!
- c) Said judge now has, "motive," to obstruct Justice and so does! ~~Q~~ Carolyn T. Smith ~~is~~ the Ct. appointed Personal Rep' To my mother, the decedent's Estate (e) Suddenly some judiciary judge
- x gives Keith a doc' with official heading that Keith is now in my place. The heading says that I ^{Carolyn} have relinquished my position and to ~~my~~ adversary, Keith. (f) opposing counsel, Kalivant, Andrews now support their clients in tampering with the Deed of Dist.
- g) now Charles T., a non-contributor is given by the judge's preferred lawyers a greater percentage ownership in the Deed of Dist. We were five children 20% each ownership - Now Charles has 30 plus % then 25% dropping the %s of the rest of us. (h) judge Scarborough convenes two Conferences, July 2022 and Aug 2022. Her choice judiciary with my atty, Molena Dinwoodie enjoined give written consent to keep judge M. Scarborough on the case
- x for the duration. (i) They draft a substitute claim for ^{me} and in place of my attorney's counterclaim of "Adverse Possession Title" which they knew ~~Q~~ Carolyn would win!

Issue

- 7 (j) Those, 'Conferences', were the Conspiracy meetings of his judge, or-
x chestrated with Intent, a felony crime (k) They executed the
"Intent," by appearing at the hearing, this judge scheduled for
my argument, Sept. 21, 2022 after he, "Threw a wrench," as it
were into the now, "S.C.A.M.", "fraudulent," "Ghost hearing"
8 as to my argument: (L) He opened the hearing with "Sum-
mary judgment," without recognizing my atty nor
me to counter the meritless "G" "T" Lawsuit. Here
this judge ended the S.C.A.M. hearing, refu-
sing to follow the, "Standard of Review", herein.
- 9 (m) He succeeded in barring my scheduled
10 argument; (N) He "Replaced" my "argument,"
with the conspired, "Drafts," "Concocted,"
by himself, M. Scarborough and his Co-
Conspirators, William Kalivas, Ashley An-
drews and Charles Tolbert and Atty. Mc Dinwoodie.
- 11 (O) This partial, zealous judge herein ti-
ed my atty's' hands. She was no longer at
liberty to Appeal my case on my behalf. She
had enjoined them as she consented to, "Sabo-
tage," the S.C.A.M., Ghost hearing that was
to happen for me, Carolyn but was scrapped
by judge M. Scarborough. As to said beha-
vior this judge is guilty of, "Prosecutorial-
mis-conduct," a "mis-carriage of Justice," ob-
struction of justice, A travesty of justice and
of, "Improviently" granting Order Summary

not heirs property - 5 An Issue

6. The case is also about the subject property not being heirs' property abandoned by heirs evidenced that the intention disseized by all heirs was that Carolyn, Warry and Aré and ^{the W. Eugene Smith} family intended to live on said property indefinitely, see fact por' in 'Justia'

7. Carolyn offered cotenants/heirs fifty-thousand dollars each to agree to her adverse possession. without further negotiation they agreed to Keith and

* Charles' hostile filing of the meritless lawsuit Defeated by the existing perfect, "Deed of Distribution that Cause them attempts to execute other "Deeds of Dist." If stymied Keith + Charles, they returned to reality

Designation of The Matter

CASE No. 2021cp1004058 - Legal documents Appellant

Shall present as require

- * 1. Justia in Fender V Heirs At Law Smashum
- 2. All Case Law Supporting, "Title To Adverse Possession" as to my eighteen (18) yrs. of holding or having held the subject property Adverse to the ^{of 082} possession or/and to any profits by cotenants (Property the subject herein is a legacy to our parents)
- * 3. Interrogatories that prove only I, Appellant and two (2) heirs who never abandoned the property are eligible and have standing as to ownership with regard to subject property.
- * 4. Attorneys', "Drafts" prepared in the dark behind closed doors shed light on Appellant's upkeep, maintenance, pymt. of all taxes, improvements eg new roof; new HVAC; ground build up level to the bottom of fencing to avoid bottom openings exterior painting; New kitchen and bathroom (three baths) fixtures; regular yard and curb appeal attention/care (not lately).
- 5. Documents from the District Ct. From the Dist of SC to show deceitful reporting to said Ct. by the Char Co Ct. of Common Pleas a "Coverup" for the Improvidently granting "Order Summary judgment" to a Charles Tolbert instead of to Keith Tolbert who filed the false, "meritless," Quiet Title Lis Pendens, law suit.
- 6 Document, "Why Do I Need A "Quiet Title" Law Suit," which proves that opposes to my entitlement to "Title" To Adverse Possession." Document in NO. 6 says, "Quiet Title," is not necessary
- "7 All activity following the filing of said Law Suit without merit.

Designation of The Matter

- * ① Justia - Fender V Heirs At Law Smartum
- * Justia also a "need of distribution" defeating "Quiet Title" total doc
- * ② All Documents Associated with Judge Mitchell's Conferences - July and Aug. 2022 and those pertaining to the alleged "Counter claim" argument as well as the hearing where
X Judge reported that the argument to Counter ^{claim} ~~the~~
X Claims argument took place though it did not! X
All judgments + findings (faulty) that support the "Imprudently" actions
- * ③ Affidavits from family members ^{who} witnessed the Judge's having "Scrapped" hearing my Carolyn's "Counter claim" to the meritless "Quiet Title" fraudulent hearing this judge scheduled, after abusing his power by deciding my case behind closed doors. Transcript must show Ashley Adams' admissions
- * ④ The "Draft" of what the judge and co-conspirators decided, to "Substitute" for my "prevailing" argumenting "Title to Adverse Possession"
- ⑤ Ct. filings repeatedly because the subject case was not overturned by the District Ct. for the Dist' of SC. Ct personnel wrote that ^{they} could overturn this case but that they would not. They Dismissed without prejudice.
- ⑥ Documents from the SC Supreme Court, the SC Court of Appeals and from the District Ct for the Dist' of SC
- ⑦ Letters to Atty' Melena Dinwoodie asking her to act on my behalf.

JAA

- (in) This matter is liable as to my Appeal of the judgment of judge C. Chyburn Pope ie Dinwoodie's failure ^{fiduciarily}
- (7) judge Mr. Kell Scarborough's "Improvidently" granting of "Order Summary judgment" with "nothing to Summarize!"
 - (8) Documents of this judge Scarborough's scheduling a hearing to hear precisely the attorney in the "prior case's" Counterclaim to "Quiet Title", the fraudulent case of no merit, having already been pronounced, "Dead-In-The Water" by the SC Appeals Ct. of Appeals in and about 2003-2005 in Fender V. Heirs of Smashum,
 - (9) The "Standard of Review" in Fender V. Heirs of Smashum, "Omitted" to show that judge Scarborough had to have deliberately ~~compromised~~ compromised, "TRUTH," saying he observed and adhered to said "Standard of Review." He decides for the opposers ~~fake~~ that was to lose.
 - (10) As the other SC Circuit Ct. received their judgment Reversed and Justia Remanded back to their Ct, utilizing said "Standard of Review" omitted I'll show that in the prior case wherein Atty Mr. Dinwoodie was not heard as to her argument Pro, "Title To Adverse Possession, I and Carolyn and one other eligible owner would have, as I will prove, that I satisfied then and now, as did Carolyn, blocked, "Improvidently," by judge Mr. Scarborough and his co-conspirators, all "six (6)," elements required to claim "I satisfy so" "Title To Adverse Possession." This facts and all the facts in the prior case made Carolyn the partic/person who prevailed on the prior case thereby protecting my interest as to my existing ownership of the property abandoned for eighteen plus years in 2021 at the filing of "Quiet Title," defeated ^{10th} Tax Reports by the "Deed of Dist"
 - (11) Any and all Ct matters ie Circuit Ct.; Court of Appeals, SC; The SC Supreme

(Cont)
7. County Dinwoodie's apparent lack of fervent fiduciary relation with me as to demanding interrogatories from Clients of opposing counsel which had the judge on their side. One letter to her then another begging her to act on my behalf.

(13) Mother, the decedent's Last Will And Testament discarded by the respondents tossed away as they abandoned me and my offer to buy their interest which no longer existed after they abandoned the property to which they contributed nothing. "you work not, you eat not." Judge M. Scarborough apparently knows not these things at all.

13. The conspirators' tampering with the Deed of Distribution taking portions of the Primary owner and gifting it to Charles Tolbert, calling him primary owner. 14. Allowing Charles Tolbert an attempt to make a payment on my property on which I made the payments. He made none! The refunded him is money. 15. Keith had no authority with a form granted to him to use with "Heading" The Representative (Personal) to the Estate of Helen Tolbert relinquished her position. Keith was passed off as Carolyn's Co Personal Rep' to the Estate of Mrs H. D. Tolbert. Both statements lies, gross lies.

(16) Judge Scarborough deceived the Dist' Ct. for The Dist' of SC by pretending a deliberate lie, saying that I could not prevail herein because I had lived ^{not} exclusively there for twenty yrs. He knew fully that my ^{Carolyn's} case was based on the 10 yr. rule.

(17) The judge, "Recused" himself after I, ^{Carolyn} appeared at on Oct. 30th 2024 hearing he omitted to alert ^{Carolyn} of and made ~~no~~ effort to have or allow ~~my~~ participation. I began to participate; he jumped ship; said he

Judge Scarborough shut me down again
cont. ... jumped up, said he was turning the case back
over to the circuit ct. j. recused himself and left the court

(18) Judge Rode's hearing - Heins property -

Issue Heins "Kicked out" when the Law
Suit without merit was filed causing
obstructions of justice Prosecutorial mis-
conduct and ultimately Judge M. Scarba-
rough's gifting of Appellant's property a double
lot at 338 Fifth Ave and 016th St. to Charles
Tolbert

(19) All Ct. filings 2021-2025

(20) All objections to Motions denied in CASE NO. 20
25 and as compelled to be revealed as to Connection per
the injustice(s) stemming from the prior case cited and
impacting case NO. 2025 000 893 is the parent case

(21) Typical Court error in the courts' attempt
to spear or avoid having judge T. Rode's Order
judgment be focused on the "One" motion before
him to end, "Dismiss with Prejudice Case 2021 cp
10 04056. Their error impacts my case NO. 2025
000 893 adversely