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Apr 15 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2023-001519

Carrie Gaston Henderson, Appellant,

James Reid and Sarania Reid, v. Respondents.

PETITION FOR REHEARING

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rule 221, SCACR, Appellant Carrie G. Henderson, pro se, respectfully petitions this Court for rehearing on the grounds that the Court has overlooked and/or misapprehended material facts in the record.

STATEMENT OF THE CASE

This appeal arises from a property dispute involving a 113-acre tract of land and subsequent eviction proceedings. The Court affirmed the lower court's ruling on the basis that the 1998 quiet title action was not timely appealed and therefore constitutes the law of the case.

Appellant respectfully submits that this conclusion is inconsistent with the record, which reflects that appellate proceedings concerning the subject property were pending in 1998.

ARGUMENT

I. The Court Overlooked Record Evidence Demonstrating That an Appeal Was Pending in 1998.

Rule 221(b), SCACR, permits rehearing where the Court has overlooked or misapprehended material facts. Here, the record contains multiple documents establishing that appellate proceedings were ongoing in 1998.

A filing dated June 16, 1998 explicitly references “an appeal pending in the South Carolina Court of Appeals” in connection with the enforcement of the lower court’s judgment. This constitutes a direct acknowledgment within the record that appellate review had been invoked and remained active.

Additionally, on June 19, 1998, this Court entered an order granting a petition for supersedeas. The granting of supersedeas suspends enforcement of a lower court judgment during the pendency of an appeal and necessarily reflects that appellate jurisdiction has attached. Such relief is not available absent a valid and pending appeal.

Further, the record includes proof of service dated June 16, 1998, demonstrating that appellate filings were served upon the relevant parties, confirming that the appeal was actively prosecuted.

Taken together, these documents establish that appellate proceedings were ongoing in 1998. Accordingly, the conclusion that the 1998 judgment was “not timely appealed” is inconsistent with the record.

II. The Doctrine of Law of the Case Was Improperly Applied.

The doctrine of law of the case applies only to issues that have been finally decided and not timely appealed. Where appellate proceedings are pending, the underlying judgment has not reached finality and cannot serve as a basis to preclude further review.

Because the record demonstrates that appellate jurisdiction had attached and remained active, the 1998 judgment was not final for purposes of applying the law of the case doctrine. The Court’s reliance on that doctrine therefore rests on a misapprehension of the procedural posture.

III. Rehearing Is Necessary to Prevent Manifest Injustice.

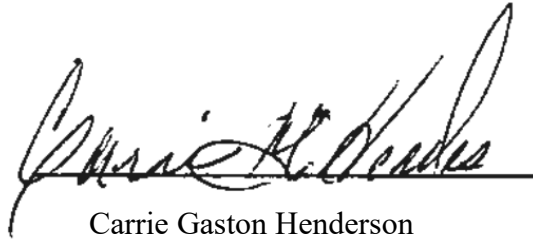
The Court’s conclusion effectively forecloses review of significant issues concerning title, partition, and the validity of prior proceedings based solely on an erroneous procedural premise.

Where a decision rests on a misunderstanding of whether an appeal was taken, rehearing is appropriate to ensure that the Court’s ruling is grounded in an accurate understanding of the record. See *Hartford Accident & Indem. Co. v. S.C. State Highway Dep’t*, 201 S.C. 32, 21 S.E.2d 209 (1942).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant rehearing, reconsider its determination that the 1998 judgment was not timely appealed, and address the merits of Appellant's claims in light of the full procedural record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carrie H. Henderson", is written over a solid horizontal line.

Carrie Gaston Henderson

316 East 35th St.

Savannah, GA 31401

(912) 200-1285

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SC Court of Appeals

APPENDIX

Exhibit A: Court of Appeals Order (June 19, 1998)

THE SOUTH CAROLINA COURT OF APPEALS

Alice G.G. Perry, Emily Mitchell, Eliza Tremble and Doris Green, Respondents

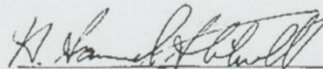
v.

Heirs at Law and Distributees of Charles Gadsden, et al,
Of Whom, Catherine Gaston, Mamie Simmons, and Donival Gaston are Appellants.

ORDER

Appellants filed a petition for supersedeas in this property action. Respondents filed a return. The petition is GRANTED until further order of this court.

IT IS SO ORDERED.

 J.

June 19, 1998

Columbia, South Carolina

cc: Mr. Donival Gaston
Ms. Catherine Gaston
Ms. Mamie Simmons
C. Scott Graber, Esquire

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Exhibit B: June 16, 1998 Filing Referencing Appeal Pending

THE SOUTH CAROLINA COURT OF APPEALS

Alice G. G. Perry, Emily Mitchell, Eliza Tremble
and Doris Green,

Respondents,

v.

Heirs at Law and Distributees of Charles
Gadsden, C. H. Gadsden, C. S. Gadsden,
Louise Gadsden, Cain Gadsden, John Gadsden,
Lula Nelson, Louis Gadsden, Herman Gadsden,
Corrie Gadsden, Estella Gadsden, Mattie
Gadsden, United States Department of
Agriculture, Farmers Home Administration,
South Carolina Electric & Gas, Co., Hazel Point
Partnership, Luther Major, Martha Major, Queenie
Major, Dolly Fripp, Beaufort-Jasper Comprehensive
Health Services, Inc.; also Cecil J. Gaston, Jr.,
Cecil J. Gaston, Cornelius Gaston, a/k/a
Cornelius Gadsden, Herman Gaston, Lisa Roacher,
Catherine Mason, Herbert Mason, Willis Gaston, and Louise
Gaston, a/k/a Louise Gadsden, and all heirs at law
and devisees, or persons unknown claiming by, under or
through any of the above-named person, JOHN DOE OR
MARY ROE being fictitious names designating a class
of persons, or legal entity, infants, incompetents,
persons in the military service, if any, known or
unknown, who may be an heir, distributee, devisee,
assignee, alienee, administrator, executor, creditor,
successor or assign, having or claiming to have any
right, title, interest, estate in or lien upon
the real estate described in the complaint herein,

Of whom, Catherine Gaston, Mamie Simmons and
Dorival Gaston are

Appellants.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 90-CP-7-310

RETURN

Responding to the Motion to Enjoin Enforcement of Lower Court Judgement While An Appeal is Pending in the South Carolina Court of Appeals Respondents would say the following:

(1) Rule 225 of the Appellate Court Rules says that service of a notice of appeal, as a general rule, acts as an automatic stay excepting "Judgements directing the sale or delivery of possession of real property as provided in S.C. Code Ann. 18-9-170 (1985)". Rule 225 (b) (4) of South Carolina Appellate Court Rules.

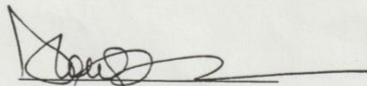
(2) The Order dated 2/20/98, the subject matter of this Motion, is an Order that awards the possession of 100 acres of real property to Respondents herein.

(3) Code Section 18-9-170--Staying judgement for sale or delivery of land--provides that "the execution of the judgement shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgement be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgement..."

(4) Upon information and belief no bond or surety has been obtained by appellants. Neither has there been a request to waive or limit the security required in order to stay the Order of Judge Kemmerlin.

(5) For the reasons enumerated in Paragraphs (1) through (4) in this Return this Motion to Enjoin is flawed and it fails. However, it must be noted that this matter (to recover possession of the acreage herein) was commenced more than eight (8) years ago. The current appeal is the fourth (4th) appeal to the South Carolina Court of Appeals or the South Carolina Supreme Court. The Respondents have waited during for this entire eight (8) year period of time to take possession of the land and utilize the same. During this period one of the original Respondents--Emily Mitchell--died. To further delay their possession and use of the land is unconscionable.

Respectfully Submitted



C. Scott Graber
Attorney for Respondents
605 Carteret Street
Beaufort South Carolina 29902
843 524 8204

June 16, 1998

THE SOUTH CAROLINA COURT OF APPEALS

Alice G. G. Perry, Emily Mitchell, Eliza Tremble
and Doris Green,

Respondents,

v.

Heirs at Law and Distributees of Charles
Gadsden, C. H. Gadsden, C. S. Gadsden,
Louise Gadsden, Cain Gadsden, John Gadsden,
Lula Nelson, Louis Gadsden, Herman Gadsden,
Carrie Gadsden, Estella Gadsden, Mattie
Gadsden, United States Department of
Agriculture, Farmers Home Administration,
South Carolina Electric & Gas, Co., Hazel Point
Partnership, Luther Major, Martha Major, Queenie
Taylor, Dolly Fripp, Beaufort-Jasper Comprehensive
Health Services, Inc.; also Cecil J. Gaston, Jr.,
a/k/a Cecil J. Gaston, Cornelius Gaston, a/k/a
Cornelius Gadsden, Herman Gaston, Lisa Roacher,
Linda Mason, Herbert Mason, Willis Gaston, and Louise
Gaston, a/k/a Louise Gadsden, and all heirs at law
devisees, or persons unknown claiming by, under or
through any of the above-names person, JOHN DOE OR
MARY ROE being fictitious names designating a class
of persons, or legal entity, infants, incompetents,
persons in the military service, if any, known or unknown,
who may be an heir, distributee, devisee,
issue, alienee, administrator, executor, creditor,
successor or assign, having or claiming to have any
right, title, interest, estate in or lien upon
real estate described in the complaint herein,

Of Whom, Catherine Gaston, Mamie Simmons and
Donival Gaston are

Appellants.

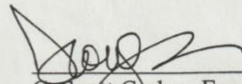
The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 90-CP-7-310

PROOF OF SERVICE

Exhibit C: Proof of Service (June 16, 1998)

I certify that I have served the Return on Catherine Gaston, Mamie Simmons and Donival Gaston by depositing a copy of it in the United States Mail, postage prepaid, on June 16, 1998, addressed to Catherine Gaston at Route 1 Box 224, Ridgeland, SC 29936; Mamie Simmons at Route 1, Box 224, Ridgeland, SC 29936 and Donival Gaston at 542 Duffy Street, Savannah, Georgia 31401.

June 16, 1998



C. Scott Graber, Esquire
605 Carteret Street
Beaufort, SC 29902
803 524 8204
Attorney for Respondents

Exhibit D: Court of Appeals Decision (Perry v. Gadsden)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) CIVIL ACTION NO. 90-CP-07-310

ALICE G.G. PERRY, EMILY)
 MITCHELL, ELIZA TREMBLE)
 and DORIS GREEN,)
)
)
 Plaintiffs,)

v.)

Heirs at Law and)
 Distributees of CHARLES)
 GADSDEN, C.H. GADSDEN,)
 C.S. GADSDEN, LOUIS)
 GADSDEN, CAIN GADSDEN,)
 JOHN GADSDEN, LULA NELSON)
 LEWIS GADSDEN, HERMAN)
 GADSDEN, CARRIE GADSDEN,)
 ESTELLA GADSDEN, MATTIE)
 GADSDEN, et al.,)
)
 Defendants.)

COMMISSIONERS' REPORT

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 BEAUFORT COUNTY
 CLERK OF COURT
 BEAUFORT, S.C.

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Pursuant to an Order issued in the referenced action by Thomas Kemmerlin, Jr., Special Circuit Judge for Beaufort County Common Pleas, we, the four undersigned commissioners, together with a fifth individual, Violet Alston, were deputized as commissioners and charged with the responsibility of partitioning the subject property in-kind between the individuals found by Judge Kemmerlin to have undivided percentage interests therein.

We met at noon on Friday, February 28, 1997, at the law offices of Harvey & Battey, P.A. (The fifth commissioner, Violet Alston, had been notified of the meeting and agreed to attend,

but did not.) In debating an appropriate division of the subject property, we agreed that it was appropriate to consider the following:

a. The order issued by Judge Kemmerlin on October 18, 1991, confirming that the following individuals have the indicated undivided percentage interests in the subject property:

Eliza Gadsden Tremble	1/20
Emily Mitchell	1/20
Alice Gadsden Perry	1/20
Doris Gadsden Green	1/20
Lisa Roacher	1/80
Linda Mason	1/80
Herbert Mason	1/80
Herman Gaston	1/80
Louis Gadsden Floyd Williams	1/4
Cecil J. Gaston, Jr.	1/2

b. The order issued by Judge Kemmerlin on April 8, 1995, granting all of the heirs in subparagraph a, supra, save and excepting Cecil J. Gaston, Jr. (said individuals being sometimes hereinafter collectively referred to as the "judgment holders"), a judgment against Cecil J. Gaston, Jr. in the amount of \$151,146.27. (As of April 8, 1997, after factoring in interest on the original judgment amount at the statutory rate, the referenced judgment totals \$193,467.22. Each individual has an interest in the referenced judgment in proportion to his/her interest in the subject property.)

c. The testimony of Don Fisher, a licensed South Carolina appraiser, credited by Judge Kemmerlin, establishing that the fair market value of the subject property as of February 9, 1995, was \$354,000.00.

d. The per curiam opinion issued by the South Carolina Court of Appeals on April 1, 1996, affirming the judgment referenced in subparagraph b, supra.

Judge Kemmerlin found that Cecil J. Gaston, Jr. has an undivided one-half interest in the subject property. The credited testimony of the appraiser established the appraised value of the subject property as of February 9, 1995, to be

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\$354,000.00. Over two years have lapsed since this appraisal and we agreed that for purposes of opining as to a fair and equitable partition of the subject property in-kind, notice needed to be taken of the increase in the subject property's fair market value since February 9, 1995. After discussion, and based on our personal knowledge of the value of properties in the immediate vicinity of the subject property, we agreed that a per annum increase in value of 10% was a conservative estimate; hence, we considered the fair market value of the subject property as of our meeting date to be approximately \$424,800.00. (Note: if this increase in the subject property's fair market value can not be considered because of a lack of evidentiary support, then it is our recommendation that Judge Kemmerlin appoint an appraiser for the purpose of providing a current appraisal. Given the partition approach hereinafter taken by us, which we believe to be equitable, it is not fair, in our opinion, to compute the amount of the judgment debt to the present date and not to similarly compute the current fair market value of the subject property.)

If the current fair market value of the subject property is \$424,800.00 and Cecil J. Gaston, Jr.'s undivided one-half interest in the subject property is transmuted into a monetary amount, then he "owns" \$212,400.00 worth of the subject property. If the judgment holders were to collect their judgment by levying against Cecil J. Gaston, Jr.'s interest in the subject property (as we believe Judge Kemmerlin has the authority to order), then they would "acquire" all but \$18,932.78 of his undivided interest

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in the subject property. If the subject property is currently worth \$424,800.00, then Cecil C. Gaston is left with an undivided 4.45% interest in the subject property (i.e., \$18,932.78 divided by \$424,800.00). Thus, we proceeded to consider how to equitably apportion 4.45% of the subject property to Cecil C. Gaston, Jr.

A visual inspection of the subject property indicates that there are five mobile homes on the subject property facing S.C. Hwy. S-7-790, and that there are three buildings and a mobile home situated in the northwestern corner of the subject property. Several of these mobile homes/buildings appear to be occupied. The record in this action indicates that there are individuals living upon the subject property, and that these individuals claim a right of possession dependent upon the ownership interest of Cecil J. Gaston, Jr. If at all possible, we agreed that it would be equitable to allocate a portion of the subject property to Cecil C. Gaston, Jr. that was not only commensurate with his revised 4.45% interest, but which also minimized the necessity of having the referenced mobile homes and buildings moved.

Accordingly, based upon the factors identified hereinabove, we recommend that: 1) Cecil J. Gaston, Jr., be awarded title to the 4.26 acre portion of the subject property referenced on the plat as PARCEL "D" and additional acreage adjacent to said denoted parcel so as to increase its size to five acre; 2) that the owners of the five mobile homes currently facing S.C. Hwy. S-7-790 be provided a reasonable period of time to be relocate them to this five-acre portion of the subject property; and 3) that

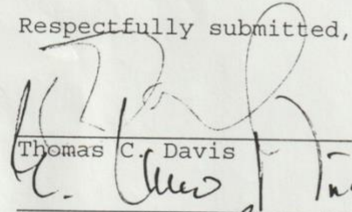
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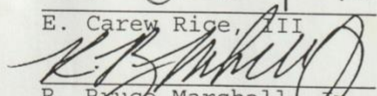
the judgment holders each be awarded the following undivided percentage interest in the remainder of the subject property:

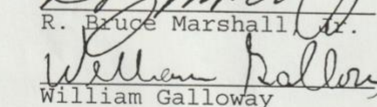
Louis Gadsden Floyd Williams	1/2
Eliza Gadsden Tremble	1/10
Emily Mitchell	1/10
Alice Gadsden Perry	1/10
Doris Gadsden Green	1/10
Lisa Roacher	1/40
Linda Mason	1/40
Herbert Mason	1/40
Herman Gaston	1/40

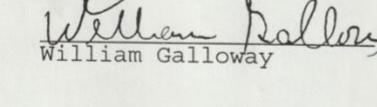
We have been advised and verily believe that the judgment holders do not desire their individual percentage interests in the remaining portion of the subject property to be divided in-kind.

Respectfully submitted,


Thomas C. Davis


E. Carew Rice, III


R. Bruce Marshall, Jr.


William Galloway

April 9, 1997

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin Dukes III, Circuit Court Judge

Case No. 2023-001519

Carrie Gaston Henderson,

Appellant,

v.

James Reid and Sarania Reid,

Respondents.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Attorneys Chereese T. Handy of Heritage Law Firm, PC, Thomas J. Rode and Sarah D. Baum of Thurmond Kirchner & Timbes, P.A. for James Reid, and Sarania Reid by depositing a copy of it in the United States Mail, postage paid, on April 15, 2026, addressed to the Appeals Court 1220 Senate St, Columbia, SC 29201.

April 15, 2026

s/ Carrie Gaston Henderson
Carrie Gaston Henderson,
Pro Se