

*In dex*  
Order Judgment

Principal Matter = This judge  
Congrued himself as to the "motion,"  
in this matter. His decision to deny  
my "motion" to Dismiss with Prejudice the Case No  
2021cp.1004058 adversely impacts my  
daughters property from  
Judge M. Scarborough  
Charleston Common Pleas

Order  
+  
Judgment



Case to Retrieve her  
that prior case, pro-  
Improvidently gifted to an  
estranged non contributing  
relative.

Case Caption: Keith L Tolbert VS Carolyn Tolbert Smith , defendant, et al  
Case Number: 2021CP1004058  
Type: Order/Electronic Form 4

So Ordered  
s/ T.J. Rode (#2792)

Electronically signed on 2025-10-08 13:21:46 page 3 of 3

Please see my rebuttle (rebuttal) on page 2  
01/21/2026  
01/21/2026

Carolyn Tolbert Smith  
338 Fifth Ave 6th St  
Mt. Pleasant, SC 29564  
1-843-216-6960

**RECEIVED**  
May 12 2026  
SC Court of Appeals

58

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS  
9th JUDICIAL CIRCUIT

CASE NO.: 2021-CP-1004058

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

Carolyn Tolbert Smith

Plaintiff,

vs.

The Heirs of Mrs Helen A. Grant Tolbert

Defendant,

Plaintiff's Attorney: <u>Pro Se</u> <u>338 Fifth Ave 4018 St.</u> , Bar No. <u>NA</u> Address: <u>Wt. Pleasant, SC 29464</u> <u>338 Fifth Ave, 4018 St.</u> Phone: <u>803-732-6960</u> Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____									
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information Nature of Motion: <u>To Dismiss With Prejudice CASE NO: 2021CP1004058</u> Estimated Time Needed: <u>1-1 1/2 hour</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO										
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  <u>Carolyn Smith</u> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted _____, 20____										
SECTION III: Motion Fee <input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <table border="0"> <tr><td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td></tr> <tr><td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td></tr> <tr><td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td></tr> <tr><td><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief</td></tr> <tr><td><input type="checkbox"/> Motion for Stay in Bankruptcy</td></tr> <tr><td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCF)</td></tr> <tr><td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td></tr> <tr><td>Name of Court Reporter: <u>heroughis Improvidently granted</u></td></tr> <tr><td><input checked="" type="checkbox"/> Other: <u>Proof of Judge M. Scar? Quiet Title Summary Judgment Order</u></td></tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCF)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter: <u>heroughis Improvidently granted</u>	<input checked="" type="checkbox"/> Other: <u>Proof of Judge M. Scar? Quiet Title Summary Judgment Order</u>
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<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions										
Name of Court Reporter: <u>heroughis Improvidently granted</u>										
<input checked="" type="checkbox"/> Other: <u>Proof of Judge M. Scar? Quiet Title Summary Judgment Order</u>										
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20____									
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____, 20____										
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____										

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Principal Matter Judgment  
Judge T. Rode's judgment

Confusing. It appears that he

decided to switch my single "Motion" to a multiplicity of other "Motions"

eg, "Conspiracy", "Sabotage" which were some of the reasons Carolyn T. Smith filed her "motion", simple & clear which Judge T. Rode gave his response as follows and "on the Record" quote, "I can see why you won't this dismissed". More than a month passed before Carolyn received his Order Judgment and decision to dismiss my "motion", contrary to his belief that opposing Counset that supported Judge Scarborough actions allowing tampering with our sound, perfect Deed of Distribution they could not fix to arrange honesty for their fake, frivolous claim of "Quiet Title" impossible and defeated by the "Deed of Distribution" in place, Sept 26 or \*Sept. 26, 2011 not Aug of 2022. Truth - There was a conspiracy. Atty: Dinwoodie confirms it. Proof - Fearful she kept warning my family, "He's startin' (w) Surry Judgment you have a 5% chance of winning

# Index

## Testimony

### Principal Matter - Below

Da

Judge Mikell who finally Reclused himself from CASE-2021 cp 1004058, left said case with Charles Tolbert the "Illegal" "Order Summary Judgment." This judge accomplished the abhorrent act as follows:

- ① <sup>that</sup> Judge Mikell Scarborough permitted Plaintiff, Keith Tolbert to file and pursue a "frivolous," Law suit, "Quiet Title," Unnecessarily because the initial, Comprehensive, pure and sound, "Deed of Distribution" sat in the Probate section of the Char. Co. Court house beginning in 2011, Sept. 26 in plain view. Judge M. Scarborough ignored this "fact," as to the existence of the initial "Deed."
- ② Having pursued this case/law suit this judge with "Motive and Opportunity" convened several sessions he called, "Conferences," later called, "Status Conferences!"
- ③ He then enjoined Carolyn's atty, Melena Dinwoodie, Esq. Carefully excluding her client, Carolyn to avoid, "Counterproductivity!"
- ④ He then got the "Written Consent," a form (form) from his now co-conspirators. They signed on, agreeing to the judges conspiracy plan that with the co-conspirators backing him they, "Drafted," a Counterclaim, "for" Carolyn not a Counterclaim to "Quiet Title," but his smokescreen would be, yes, "Carolyn Counter-Claimed." His way to prove this deceitful act was to schedule a "hearing," that, "alleged," Carolyn was an "Agenda item," at 10:00 AM, Sept 26, 2022. His conferences took place July 2022 and Aug. 2022 without Carolyn's presence without her input, without her

Knowledge and, "without a word," from Carolyn's atty<sup>s</sup>  
 who kept Carolyn uninformed. Why? Because  
 judge M. Scarborough's plan put this attorney in  
 a gauntlet. He displays his partiality to Carolyn's  
 opposing counsel; tells her that she cannot prove, "Dusted,"  
 one of six elements to be proven to claim true title  
 to Baid title which was and still is Ave's Com-  
 plaint which is not just the same. In the prior  
 case, Carolyn's atty<sup>s</sup> was to argue against and coun-  
 terclaiming the judge's "fake," "frivolous," claim,  
 "Quiet Title" already Reversed and Remanded to  
 the lower ct in "Fender v. Smashum" 2003-2005.  
 Now Carolyn's atty is, "between a brick and a  
 hard place!" Did she sign this judge's consent  
 form? The opposers and my loan atty against  
 the judge and the three opposing atty<sup>s</sup> who  
 dare to, "Keep this judge on the case," "the duration,"  
 of the phony matter. They have her locked down,  
 hands tied behind her back. Carolyn was blind  
 folded about the "eyes," "Conspiracy" until after the S.C.  
 A.M., "hearing," 2021 (Sept. 21, 2022) filed by Kott<sup>s</sup>.  
 followed up by Charles Tolbert neither with any  
 any standing already "Dusted," by the Smiths (#5)  
 The ten yr (10) rule my atty was to argue on Sept 21,  
 2022. We arrived on time. No judge appeared for  
 hours. He walked past us not saying good  
 morning. Nothing entered his office stayed along

3a

long time then exited to the ct. room, his choice of attys. to prevail sat in front of the judge seated up high. My atty entered the courtroom. My family that traveled 640 miles from FL and I entered went to the side across from judge Mickell Scarborough. He fraternized with his chosen in, "Chit chat," greeting one atty. from Georgetown, S.C. and saying to Atty. Ashley Andrews that he and she both looked at or were focusing on the same case law. His reporting proves that the case law he utilized included cases from Justia - Fender V Smashum. It appears that he overlooked the urgent warnings in the, "Standard of Review," concerning the "drastic," Remedy "Summary judgment judgment" which Scarborough ignored. He without hearing Carolyn's "Side of the dispute" because he, "Sabotaged," the "hearing" shutting it down after going straight to Summary judgment to allow Charles Tolbert, through his atty, Ashley Andrews to move for Summary judgment and leave Carolyn's atty. and Carolyn and family, "angling and dumt founded" with that, "Upside-Down, One sided" fake, S.L.A.M., Fraudulent hearing begun with, "Summary judgment first and no opportunity given to the Defenr dumt to Refute or to Counterclaim. Regardless to the flagrant injustice created by an egregiously unethical bold

judge ~~Erin~~ Criminally determined to Show right-  
 eous Citizens how well he can abuse his ungodly po-  
 wer & Shamelessly have things go his way. This beha-  
 vior must be stopped. It appears that judge Scarbo-  
 rough is seasoned in breaking the law, misusing and  
 tripling behind an unworthy, disgraced black robe,  
 "Sinfully Dark!" If he is allowed to wound the Smiths  
 Ave, Warry and Carolyn of our home exclusively now  
 for twenty now 2026 and eighteen years 2003 to 2018  
 when Keith filed the needless, "frivolous," "Quiet  
 Title," law suit while the existing pure "Deed of Dis-  
 tribution," sat available for all to see and determine  
 that it was perfect valued while all of these facts  
~~explaining~~ were seen by all, this judge willfully schemed  
 to see that his Caucasian, licenced attorney did  
 not lose to a lil', old, black widow Pro Se. He  
 saw to it that I was left defenseless by drawing away  
 my atty. But my "Defense" is now the "Best," "Jesus!"  
 He is the "Tri-une-God!" He's Father Son and Holy  
 ghost, never slumbers nor sleeps. He knew Scarbo-  
 rough's and his Co Conspirators plans and the  
 outcome before they knew. Be aware is Ave's ad-  
 vice and Carolyn's you reap what you Sow.  
 Ave, Warry and Carolyn were owners by our lawful proof  
 of our earned claim of our "ownership" of the sub-  
 ject property "adverse to ownership and profit of

of all heirs and covenants. This Appellant, Ane's response to Atty. Williams Kalivas' false accusations about my interest in my home is the home subject in this matter, my home, Open, Exclusive, Notorious, hostile, actual (where all Respondents Disregarded our ownership by their vigilance and diligence. They readily grasped this fact or as stated pg. \_\_\_\_\_, lines \_\_\_\_\_ ... Or should have.

## Conclusion

I, Appellant in CASE NO. 2025-000893 CON-clude the following: That the prior case cited as Case No 2021CP1004058 be label "Moot," and the Improvidently granted Order Summary Judgment be overturned; that Injunctive Relief, "Stop and Stay" any forward in said case - Chas. Co., SC Court(s) recognized or should have understood the egregiously despicable obstruction; and mis - "Carriage of justice" judge Scarborough used at "hearing", hearing only one side not both then gift-ing Carolyn T. Smith's property to a Charles Talbert ineligible one. Attention to pg 9 of 11 - A Court would do us justice by Dismissing Keith's case 2021 CP1004058 obstruct. See please Kalivas' Complaint pg 9 of 11, lines 1, 23 my interest is similar to Fender's interest

65-A

in Fender V. Smashum but as to the  
 decision of the SC Court of Appeals 2003-2005  
 Fender never lived on the property. The property Note:  
 you reference now has been Aré's home from a baby though not exclusively. She has spent every  
 some in her gran'ma's + gran'father's home and every Christmas. On the other hand esp. "Equity only claimants", never had a key to the home, never lived there  
 never sent their gran ma + gran pa' greeting cards etc never gave help or care nor shown love. Honest people would say Keith and Charles have no interest, "zilch" herein  
 needless, senseless stressful burden to have entertain this "MOOT," case that is no case No. 2021cp/10 24038. Judge Scarborough Krew he'd have to, "obstruct justice," "commit," "Prosecutorial-mis-Conduct," "Mis-Carriage of justice" and create a "Travesty of justice" pursuing and allowing his fallen; pursuers, Keith and Charles, Ashley Andrews and you and your judge to dishonor your position. steal the Smiths' home then fight us tooth and nail to stop us from retrieving our loved ones' legacy as to the hard work time love energy and money we've contributed here while "none" of the rest of you "has Contributed a cent!" See now lines 6, 7, 8-22. Appellants, I am not attempting to prove my right to Title To Adverse Possession as was Carolyn. My "different case," is to "Retrieve" my stolen home 65-B

Note:  
 See please  
 Fender V  
 Smashum  
 Pages 6 -  
 two lines  
 Above -  
 Reverse  
 And  
 Remand  
 Also pg  
 #1) para  
 (4) line  
 line #1.  
 Also  
 pg #2, 3  
 the "Stand-  
 of Review"  
 lines 1-13  
 Also pg 3 -  
 "justice"  
 batlom  
 Also pg 4 -  
 First line

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Testimony

Principal Matter - Summons "Quiet Title" Petition

7a

This "Quiet Title" matter is ongoing; never before to mediator; "motion", to declare this case "Moot", the reason being its needless, "frivolous" beginning/origin by a shameless, proud, bold judge and partial to any he favors. For those favor ones whom he decides should prevail, he "fixes" and "throws" his hearings in the outcomes as he wishes. It appears that people up the line support and work with him in his satirical behaviors.

Please see pg 6 of Fender V. Smashum and all of pg six See also p 1 Para 4 - line 7 then pg 2 standard of Review - lines 1-13, 1-Also pg 3 and pg 4

All other complaints, arguments, "motions" in this case, please disregard as "Moot"

"MOOT"

most securely more so than Plaintiffs the  
Appellate Case No 2025 000 893 10 yrs 2003 -

**II. The Circuit Court did not err in granting Respondent Keith Tolbert's Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC, and doctrine of res judicata.**

CASE NO 2024 CP 10 06162

213  
and before  
Now  
2003-  
Present  
2024  
Proven

1 In addition to the reasons stated in the preceding section, Appellant does not have any  
2 *she is an owner a cotenant et similar to Fendrin*  
interest in the property independent of her relationship with her mother, Respondent Smith.

3 Appellant is not on the deed and does not have any ownership interest in the properties at issue.

4 Smith filed a counterclaim in case no. 2021-CP-10-04058 alleging the same adverse possession  
5 claim asserted by the Appellant. Judgment was entered against Smith on that claim after a hearing

6 on a motion for summary judgment, and the parties entered a consent order quieting title in the

7 names of the Respondents to this appeal. To the extent Appellant's Complaint is merely an attempt

8 to avoid the judgment entered against Smith on her adverse possession claim, then the action is

9 rightfully barred pursuant to the doctrine of res judicata and was properly dismissed as a matter of

law by the Circuit Court. *The Circuit of char. co., SC is far from de-*

*pendable as to being Revolutionary for Justice"*

"Res judicata bars subsequent actions by the same parties when the claims arise out of the  
same transaction or occurrence that was the subject of a prior action between these parties." *Nelson*

*v. QHG of South Carolina, Inc.*, 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003). The  
doctrine of res judicata prevents any party "from raising any issues which were adjudicated in the

former suit and any issues which might have been raised in the former suit." *Hilton Head Ctr. Of*  
*South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177

(1987). To dismiss a subsequent action under the doctrine of res judicata, a "defendant must prove  
three elements: (1) identity of the parties; (2) identify of the subject matter; and (3) adjudication

of the issue in the former suit." *Nelson*, at 304, 580 S.E.2d at 178.

In this case, while the identity of the parties is not identical, Appellant essentially stands in  
the shoes of Smith from the previous action. Her alleged possession of the property is wholly  
dependent upon Smith's ownership interest, which was previously adjudicated to be insufficient

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to establish adverse possession of the properties at issue. Appellant has no independent claim to an ownership interest in the properties. Therefore, Appellant's claim for title by adverse possession fails as a matter of law and is barred pursuant to the doctrine of res judicata.

*If Appellant's claim is not and foremost that the courts recognize Res ipsa loquitor*  
The Initial Brief of Appellant is instructive on this issue as it contains many of the same *OB-*

*57*  
arguments raised by Respondent Smith in case no. 2021-CP-10-04058. Moreover, Appellant's brief references matters and issues that did not arise in Appellant's case. The references to "summary judgment" and "ouster", as well as references to "Judge Mikell Scarborough" and "Judge Thomas Rode" are clearly references to case no. 2021-CP-10-04058, as those issues and judges were only involved in that case and have nothing to do with Appellant's Complaint, motion or this appeal. When reviewing the totality of the filings in this appeal, it is clear that Appellant's case is nothing more than an attempt to subvert the judgment entered against Respondent Smith in case no. 2021-CP-10-04058 and should therefore be barred by the doctrine of res judicata.

As stated in more detail in the preceding section, the Complaint fails to establish the necessary elements of adverse possession, and even an amended complaint would fail for the reasons set forth above. Therefore, the Complaint was properly dismissed pursuant to Rule 12(b)(6), SCRPC, and the motion for title by adverse possession was properly barred pursuant to Rule 12(b)(8) and the doctrine of res judicata.

**CONCLUSION**

For all the above-stated reasons, this Court should affirm the Circuit Court's ruling, dismiss Appellant's appeal and award costs to the Respondent as allowed by South Carolina Appellate Court Rule 222. This Court should also affirm the Circuit Court's ruling for any other grounds appearing in the Record on Appeal as provided by Rule 220(c), SCACR.

*Justice To Reverse Wrong to Right finally*

*I, Carolyn T. Smith victim of judge Mikella Scarborough's Crime of Conspiracy with <sup>the</sup> Respondent (a felony crime from the bench which occurred when he blocked my equal right as to, due Pro case*  
*Chas. Co. Court*  
*68*

4th For The Designation

In dex Pleading

Pruneyal matter = The  
Cushis, frivolous with un-  
needed law suit being used to  
facilitate prosecutorial mis conduct

approach  
with  
"Motive"  
"abuser of his power"  
"the law called a judge"

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Keith L. Tolbert

Plaintiff,

vs.

Carolyn Tolbert Smith, Charles Tolbert, Betty  
Jean Tolbert Jones, Sara Jo Tolbert Latten,  
and Estate of Charla Tolbert McMillian,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2021-CP-10-

Defendant actively "Disagree"  
with the Complaint of  
COMPLAINT (Quiet  
(Quiet Title, Partition) Title,  
Partition)  
"Moot"

↓ has no interest herein  
NO

Negative

The Plaintiff, complaining of the Defendants herein, would respectfully allege and show  
unto this Honorable Court as follows:

The subject property is  
one Part + Parcel integral

Defendant  
"Disagrees"  
with items  
1-5 here  
upon listed

In addition,  
the address

for Dr.  
Betty J. Jones  
is incorrect,

6 9

1. All parties identified below hold an interest in two (2) pieces of real property located at 338 5<sup>th</sup> Avenue, Mt. Pleasant, SC 29464 ("Property 1") and 0 6<sup>th</sup> Avenue, Mt. Pleasant, SC 29464 ("Property 2"), both of which are located in Charleston County, State of South Carolina
2. That the Plaintiff is a citizen and resident of the State of Georgia, but has an interest in above-referenced real property located in the County of Charleston. Address
3. Upon information and belief, Defendant Carolyn Tolbert Smith ("Carolyn") is a citizen and resident of the County of Charleston, State of South Carolina, and resides at 338 5<sup>th</sup> Avenue, Mt. Pleasant, SC 29464.
4. Upon information and belief, Defendant Charles Tolbert ("Charles") is a citizen and resident of the State of New Jersey, but has an interest in the above-referenced real property located in Charleston County. full " is given
5. Upon information and belief, Defendant Betty Jean Tolbert Jones ("Betty") is a citizen and resident of the State of Virginia, but has an interest in the above-referenced real property located in Charleston County. full address in DC where live

6. Sara Jo Tolbert has no interest herein. NO Plaintiff's referred to above as Defendants except Carolyn Tolbert Smith has any interest in my property presently & they rely on a qualified owner and for the primary owner's goodness to mere

Scheduled by an ELECTRONICALLY FILED - 2021 Sep 02 9:28 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004058  
All hearings barred from beginning 2011 or before based on law (S)

*Index*  
*Order Summary - Principal Matter* *Order Judgment*  
*many judge - The "Draft" judge Scarborough, behind my back,*  
*ment. substituted for my crucial right to "counterclaim," "quiet*  
*Title Lis Pendens, Resulting in this judge's "robbing" me*  
*of "Due Process," Constitutional & Civil Rights.*



Charleston Common Pleas

**Case Caption:** Keith L Tolbert VS Carolyn Tolbert Smith , defendant, et al  
**Case Number:** 2021CP1004058  
**Type:** Order/Summary Judgment

So Ordered

s/Mikell R. Scarborough 3062



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Testimony*

*Principal Matter: The judge with his co conspirators  
have embarked upon an "obstruction of justice," to  
steal property Respondents lost as of 2013 and thereafter*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Keith L. Tolbert

Plaintiff,

vs.

Carolyn Tolbert Smith, Charles Tolbert, Betty  
Jean Tolbert Jones, Sara Jo Tolbert Latten,  
and Estate of Charla Tolbert McMillian,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2021-CP-10-

*a MOOT<sup>al</sup>*  
**SUMMONS**  
**(Quiet Title, Partition)**

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Smith | Closser | Wheeler, P.A., 7455 Cross County Road, Suite 1, Post Office Box 40578, Charleston, South Carolina, 29423-0578, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

SMITH | CLOSSER | WHEELER, P.A.

s/William K. Kalivas

William K. Kalivas- SC Bar No. 80201  
7455 Cross County Road, Ste 1 (29418)  
P.O. Box 40578, Charleston, SC 29423  
843-760-0220; 843-552-2678 (fax)  
wkalivas@scnlaw.com  
Attorneys for the Plaintiff

September 2, 2021  
Charleston, South Carolina  
21-280

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Testimony*

*Principal Matter*

*Quiet Title and Partition Proceedings begun initially as a "blunder" Deed of Distribution pure sound comprehensive was in place filed in probate*  
STATE OF SOUTH CAROLINA *Charleston*  
COUNTY OF CHARLESTON *Sept 26, 2011*

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2021-CP-10-

Keith L. Tolbert

Plaintiff,

vs.

Carolyn Tolbert Smith, Charles Tolbert, Betty Jean Tolbert Jones, Sara Jo Tolbert Latten, and Estate of Charla Tolbert McMillian,

Defendants.

**COMPLAINT  
(Quiet Title, Partition)**

The Plaintiff, complaining of the Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

1. All parties identified below hold an interest in two (2) pieces of real property located at 338 5<sup>th</sup> Avenue, Mt. Pleasant, SC 29464 ("Property 1") and 0 6<sup>th</sup> Avenue, Mt. Pleasant, SC 29464 ("Property 2"), both of which are located in Charleston County, State of South Carolina
2. That the Plaintiff is a citizen and resident of the State of Georgia, but has an interest in above-referenced real property located in the County of Charleston.
3. Upon information and belief, Defendant Carolyn Tolbert Smith ("Carolyn") is a citizen and resident of the County of Charleston, State of South Carolina, and resides at 338 5<sup>th</sup> Avenue, Mt. Pleasant, SC 29464.
4. Upon information and belief, Defendant Charles Tolbert ("Charles") is a citizen and resident of the State of New Jersey, but has an interest in the above-referenced real property located in Charleston County.
5. Upon information and belief, Defendant Betty Jean Tolbert Jones ("Betty") is a citizen and resident of the State of Virginia, but has an interest in the above-referenced real property located in Charleston County.

6. Upon information and belief, Defendant Sara Jo Tolbert Latten ("Sara") is a citizen and resident of the State of California, but has an interest in the above-referenced real property located in Charleston County.

7. Upon information and belief, Defendant Estate of Charla Tolbert McMillian (the "Estate") is open and pending in Charleston County Probate Court, case no.: 2021-ES-10-00675, and the Estate has an interest in the above-referenced real property located in Charleston County.

8. All parties are joint owners of the real property referenced in Paragraph 1 and located in the County of Charleston, State of South Carolina.

FOR A FIRST CAUSE OF ACTION  
(Quiet Title)

9. Plaintiff realleges the allegations of the preceding paragraphs as if fully set forth herein.

10. That the real property which is the subject of this action is located in Charleston County, South Carolina, and is described as follows:

ALL that lot of land with the buildings and improvements thereon in the village or settlement, formerly the property of Charleston Land Company, all of Scanlonville, and formerly Remley's Point, in Christ Church Parish, designated on a Plat of Survey made by John A. Michel the fourteenth day of February, 1870, as Lot No. 326,

Measuring and Containing One Hundred (100') feet on the front and back lines and Two Hundred (200') feet in depth, be the said dimensions more or less,

Butting and Bounding on the North by Lot No. 317, on the East by Lot No. 327, on the South by Fifth Avenue, and on the West by Lot 325.

BEING the same interest in the premises conveyed to Fred W. Tolbert and Helen G. Tolbert by Marvin E. Dennis; by Deed dated June 19, 1970; recorded June 19, 1970 in Book R94 at Page 128 in the RMC Office for Charleston County.

TMS No. 514-11-00-065

Property Address: 338 5<sup>th</sup> Avenue, Mt. Pleasant, SC 29464 ("Property 1")

- AND -

All that lot, piece or parcel of land situate, lying and being in Scanlonville, which is a portion of a tract of land known as Remley's Point, in what was formerly Christ Church Parish, Charleston County, South Carolina, now known as Moultrie School District No. 2, and shown and designated on a plat made by John A. Michel, Surveyor, February 14, 1870, and revised December 1894 by H.S. Lamble, Civil Engineer, which plat was recorded in the R.M.C. Office for Charleston County on November 3, 1899 in Plat Book D, Page 180, as small black numbers lot 327.

BEING the same premises conveyed to Helen G. Tolbert by Deed of Hollis A. Ayers dated May 24, 1979; recorded May 30, 1979 in Book H119 at Page 107 in the RMC Office for Charleston County.

TMS No. 514-11-00-064

Property Address: 0 6<sup>th</sup> Avenue, Mt. Pleasant, SC 29464 ("Property 2")

11. The fifty percent (50%) interest of Fred W. Tolbert in Property 1 was conveyed by deed of distribution, and recorded in the Charleston County RMC Office on May 18, 2011 in Book 0188, at Page 003, as follows:

Helen Alice Grant Tolbert	50%
Blanton William Tolbert	12.5%
Betty Jean Tolbert Jones	12.5%
Sara Jo Tolbert Latten	12.5%
Carolyn Tolbert Smith	12.5%

12. The now seventy-five percent (75%) interest of Helen Alice Grant Tolbert in Property 1 was then conveyed by deed of distribution, and recorded in the Charleston County RMC Office on January 25, 2013 in Book 0306, at Page 283, as follows:

Carolyn Tolbert Smith	20%
Blanton William Tolbert	20%
Betty Jean Tolbert Jones	20%
Sara Jo Tolbert Latten	20%
Charles Tolbert	10%
Charla Tolbert McMillian	10%

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13. Thereafter, Blanton William Tolbert conveyed his interest in Property 1 to Plaintiff by deed of distribution, and recorded in the Charleston County RMC Office on July 25, 2017 in Book 0654, at Page 353.

14. On or about November 30, 2020, Charla Tolbert McMillian passed away, leaving her interest in the Estate.

15. Therefore, the interests in Property 1 are held as follows:

Keith L. Tolbert	21.25%
Carolyn Tolbert Smith	21.25%
Betty Jean Tolbert Jones	21.25%
Sara Jo Tolbert Latten	21.25%
Charles Tolbert	7.5%
Estate of Charla Tolbert McMillian	7.5%

16. The interest of Helen G. Tolbert in Property 2 was conveyed by deed of distribution, and recorded in the Charleston County RMC Office on September 28, 2011 in Book 0209, at Page 303, in equal shares to Carolyn Tolbert Smith, Blanton William Tolbert, Betty Jean Tolbert Jones, Sara Jo Tolbert Latten, Charles Tolbert, and Charla Tolbert McMillian, respectively.

17. Thereafter, Blanton William Tolbert conveyed his interest in Property 2 to Plaintiff by deed of distribution, and recorded in the Charleston County RMC Office on November 9, 2020 in Book 0933, at Page 418.

18. On or about November 30, 2020, Charla Tolbert McMillian passed away, leaving her interest in the Estate.

19. Therefore, the interests in Property 2 are held as follows: *non se*

Keith L. Tolbert	16.66%
Carolyn Tolbert Smith	16.66%
Betty Jean Tolbert Jones	16.66%
Sara Je Tolbert Latten	16.66%
Charles Tolbert	16.66%
Estate of Charla Tolbert McMillian	16.66%

20. Plaintiff seeks an Order from this Court quieting title to the subject properties in the names and percentages as set forth above.

FOR A SECOND CAUSE OF ACTION

*FB*

(Partition)

21. Plaintiff realleges the allegations of the preceding paragraphs as if fully set forth herein.

22. That the Plaintiff is entitled to compel partition of the above-described properties pursuant to S.C. Code Ann. §15-61-10.

23. That the parties to this action include all persons who presently have a recorded interest in the properties.

24. That the properties are incapable of being partitioned in kind.

WHEREFORE, the Plaintiff prays that this Court:

1. Quiet title to the subject properties in such percentage of ownership as stated above, as tenants in common, in fee-simple, free and clear of all claims to the properties, absolutely and forever;

2. Partition the subject <sup>*Impossible*</sup> properties by private sale, and approving any such sale price which is at least equal to the appraised value and divide the proceeds of the sale accordingly;

3. Pay any superior encumbrances against these properties from the proceeds of the responsible party(s).

4. Award the Plaintiff its costs and attorney's fees associated with this action; and

5. For such other and further relief as the Court may deem fair and equitable.

SMITH | CLOSSER | WHEELER, P.A.

s/William K. Kalivas

William K. Kalivas- SC Bar No. 80201  
7455 Cross County Road, Suite 1  
P.O. Box 40578  
Charleston, SC 29423-0578  
(843) 760-0220  
(843) 552-2678 facsimile  
wkalivas@scnlaw.com  
*Attorneys for the Plaintiff*

September 2, 2021  
Charleston, South Carolina  
21-280

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Record On Appeal  
Index Judgment by

Principal Matter - Conspiracy  
Here - Proceedings by judge Scarborough that are impacting "Matters, Principally, are the painful "lies" and "deceptions," that bring irreparable, "mental," "emotional," and "physiological" harm to me and mine, Caused by judge M. Scarborough and those who "conspired" with Scarborough the "Orchestrator," of their "despicable plans" and the "execution" of said "wicked plans," as follows: judge Scarborough convened, "conferences," he called them. Carolyn learned of one, July 2022; one, Aug. 2022 and perhaps another, 2022 all before a scheduled, "hearing," he scheduled Sept. 21, 2022 for Carolyn's "Counterclaim," in person, attended by Carolyn's atty., Attorney Melena Jimwoodie whom Carolyn trusted to honor her fiduciary relation to "Counterclaim," "Quiet Title...," "Claiming," "Title To Adverse Possession." already learned by Carolyn. Aware of Carolyn's, "Right" to her claim, this judge's, "Motive," to, "Obstruct Justice," and his "opportunity" to, "Pull It Off," this judge used. At the, "Hearing," (Don't be blinded from the "reality," of said, "Hearing,") See proof \* in written, official form, judge Scarborough, as shrewd and ruthless and repugnant as ever, started the hearing with, "Summary judgment," "shut

## Deception

down, the hearing, Omitting Carolyn's Counterclaim but claiming that Carolyn's Counterclaim was heard. Lies! This reprehensible act by a totally ruthless judge, Judge Mikell Scarborough, I pray This Honorable Court See Clearly through the Smoke Screens by Carolyn's "dishonest" "Scheming," Opposing, judge and the lawyers, Kahias and Andrews, Esquires both, both Consenting by signature, Co conspirators. They used my Atty. against me. &c Against Carolyn. In the end with no, "Due Process," for Carolyn, judge Scarborough granted Carolyn's property to a "non-Contributing, Abandoner," Charles Tolbert also to Keith Tolbert and all Defendants Respondents named herein See please, "Justia document - Fender v. Smashum" 2003-2005 for Case Law pg R.P. pages 3-7. Be mindful, I pray that Judge Scarborough and all Respondents' Claim that said, Septs 21, 2022, "Hearing," was other than, "Carolyn's" "Hearing never heard where Carolyn's, "Counterclaim," was omitted, refused by judge Scarborough who made up the "Counterclaim," as he desired, as he did with his Co-Conspirators who, "All," together wrote a "DRAFT," "without" my input is "Carolyn's input," "hidden," from honest parties, Appellant, Studied

these thoroughly Carolyn's family, in attendance at the "infamous," one sided "Hearing," left that "SCAM" "hearing," a fraud, a ghost heavily, "Bewildered Tastingly. The only person finally admitting the SCAM hearing never included nor permitted Carolyn's Counterclaim is Ashley Andrew, Esquire. The Only path to becoming "Distinguished is to break away from the ordinary; to leave the crowd that practices Wrong and then have to lie over and over again wondering when they shall," be caught. God the Almighty in His written word has written, "Behold I set before you Blessing and Curses Life and Death, Choose Life." I add, "Choose Gods blessings. Trust Him and Obey Him. Leave the World behind

The mis-Carriage of justice by judge Mikell Scarborough, "All," is totally, "Responsible," for the "Adverse Impact it renders on my case, CASE No. 2025 000 893. Had judge Mikell Scarborough obeyed the, "Rules," as The SC Court of Appeals Strictly required no substitution, nor judges ignoring the Stringet adherence to the, "Standard of Review" to "Genuine Issues as to material Fact," and not omitted my argument he scheduled in "Hearing"

Exhibits Index, Pleadings, Judgments, Arguments, Rebuttals, Arguments, instructional Cases supporting "Title To Adverse Possession" Testimony

hereupon noted as on Sept 21, 2022, yes this case No. 2021cp 1004058 would have been decided justly rather than, "Im providently," ie blocking Carolyn's ability to Counterclaim a Constitutional and Civil Right. This evil act and reprehensible action the judge and "co conspirator," are attempting to "Coverup" at all cost to sell my property stolen by judge Scarborough who recused himself too late, having subsequent judges simply "Rubber Stamp" what their colleague has illegally brought forth

Opposing Counsel and judge M. Scarborough never took this case to mediation. But judge Scarborough \* Scheduled a hearing Oct 30, 2024, Omitting to inform or Notice Carolyn to their "hearing" where they discussed selling Carolyn's property, "Im providently" gifted to Charles Tokbert and others by Order Summary justice not having anything they called Summary but a discussion from Counsel this judge favored due to Classism, prejudice, Racism after he enjoined my Caucasian atty' with the Caucasian judge and all Caucasian attorney. Now to Retrieve property that belongs to me, And and Worry the only non abandoned news; resider exclusive of all other co-tenants there; taxpers 28 yrs Property improver Ouster owners Adversely. 4.

Index - Pleading + Testimony

II

my opposers' "Standard of Review" - Cont  
The opposers to my fight to retrieve my proper use.  
Finally I, Appellant's Case must not be  
dismissed now nor ever. The case laws  
below already known to be a winner for the  
sake of justice is what my opposers do. They  
never fail to resort to Dismissals of Cases  
they cannot win lawfully. They already "stoop -  
to Conquer" in the prior case they reference re-  
gardless to their felonious actions, the "S.C.A.M and  
fraudulent "Sabotaged" hearing." Please now  
see case law list below especially the  
only, "Standard of Review," pertinent to "Case  
2025 000893" as well as to the prior case re-  
ferenced, ignoring this proper "standard of Re-  
views" and the "Genuine Issues As To Mate-  
rial fact," prompted Judge M. Scarborough to  
perform a "Tranesty of Justice," completely.  
irreparable. CASE Law Per Title to Ad-  
verse possession clearly stated by Atty. Kalivas on  
pg. 8 of 11 per his Argument

Continued Pleading against the deceptive Ar-  
gument of Atty. Kalivas as to Transcript "Testimony"  
of Plaintiff, Aue Smith. I, Appellant proved that not  
Charles nor Keith Tolbert nor any Respondent is qualified for  
ownership nor proset herein See Justia - Forde v. Smasham, 82  
II



Index Pleading Transcript (w) Rebuttal

Pg. 5 R.P. Lines 9-25

Ave Smith's Testimony before Judge C.C. Pope  
in CASE: No. 2024 CP 10 06162

"I, Ave Smith, testified making it extremely clear that by law I had and still have the "Right" to have claimed that Right. Stated sound reasons supporting my cause e.g. the number of yrs I I've resided in the property exclusive of all other heirs in 1997-2026 the present; in college 1995 to 1999. Returned; returned to the subject residence in 1999 and about late 1999; aided Carolyn, Warry and Torry as we cared for our now feeble grandparents, Carol Tolbert & Smith's parents. Our sacrificial but loving care to and for them simply reciprocated their love for us and for all of their grand children all nine of us. Some abandoned our grand parents, Charles and Charla and Keith Tolbert I testified to this, telling that they never had a key nor ever lived at the residence, never pd. for nor assisted with upkeep, maintenance, repairs nor improvement. Only I did AHy! Kalivas' and AHy! Andrews Clients, no longer cotenant have contributed nothing herein. They are only, "Absent" heirs, Only Equity Claimants. The judge like Mikell Scarborough, the Orchestra of this evil Sago

deliberately has attempted, before finally recusing himself, attempted to scheme his way to arriving at any old means to have the judiciary Kalivas and judiciary Andrews prevail. Improvidently or not. So he chose to, "stoop to conquer" and pull in with him those to whom he was partial initially. He abused his power with zeal, overstepping his bounds and dragging down (w) himself the co-conspirators who gave this judge their signed consent to, "sabotage" the scheduled hearing of Sept 21, 2022 by starting with Summary judgment, hearing as did to, false accusations against Carolyn saying that Carolyn made several corrective, "Deeds Distribution" when, indeed, the fact is that they were the ones exhibiting a, "Deed problem", to create a reason to ~~make~~ make legitimate their false, frivolous ~~then~~ fraudulent lawsuit, "Quiet Title Lis Pendens".

Kalivas and Andrews now reach for a straw cleaning up feverishly because of pursuing the frivolous unnecessary lawsuit. I was all motivated by the One Man Judge + Jury greed with no concern for the irreparable harm they were leaving in the "wake" for the 88 yr. old widow with the father-

less children who sacrificed their college education to give of themselves for the worthy, godly, "Cause," of giving back. Read Gods Holy Word with regard to work. He says, "If you don't work, you don't eat." Parable.

May it please the honorable Court to see, past the "Smoke Screen" of opposing counsel's reference to the prior case ie CASE NO. 2021cp 1004058 as to raise before you excuses and irrelevant accusations (he) they feel might support the illegal, Unjust Order Summary Judgment that judge Mikell Scarborough gifted to a Charles Tolbert by conspiracy and "Sabotage," that barred Carolyn T Smith from her Counterclaim scheduled by judge Mikell Scarborough whom Carolyn found, later when she begged her atty, Melena Dinwoodie to appeal the Improvidently granted judgment, that she refused to appeal, to have already in clandestine conferences, drawn up a "Draft," written and agreed to by Carolyn's opposing \* Counsel and Scarborough, ditching her "Counterclaim," for their "DRAFT," "Said atty," attempted to "push down her throat," "A PIE In A Blanket," wherein she had "no," "Input" that is wherein Carolyn had "No Input."

So now Carolyn T. Smith's Atty's hands were tied. She dropped Carolyn, left Carolyn dangling, told Carolyn Pro Se with no idea that Atty's Kalivas and Andrews would file a "Motion," to Dismiss Carolyn's valid case with Prejudice because she was not advised by her atty' to file, "Intent" to appeal. The SC Ct of Appeals Dismissed with haste ~~they~~ manager, when Carolyn called to see where the case was only then did she learn of the opposers' action, giving Carolyn only 4-7 days to respond. She did. The Ct dismissed. Carolyn filed a "Return to the motion and another Motion all ignored, no reply. Now my Opposers reference the prior case profusely but complain when I, Appellant is compelled to make clear what took place in the prior Ct that again compels me, Appellant to reference said prior case and the Paranoid guilty persons therein who by "Conspiracy, Prosecutorial - mis Conduct, a Mis-Carriage of justice, obstruction of justice and an egregious travesty of justice. Judge C. C. Pope erred by neglecting to examine the previous case to see the glaring truth that an upside down, one sided hearing that stole

From a then 81+ yr. old citizen of the U.S.A., "Due Process" that he knew having been allowed her testimony in the scheduled Counterclaim hearing, his favored Counsel would never have prevailed. She would not need an honest, competent atty's expertise to appeal for her. None neglectful examination into atty's Kalivas and Andrews erroneous Complaints would have been seen for the cover ups that they are. Judge must not only listen and hear allegations. They must search for truth. They must no longer take the bench with mind made up as to who prevail (subjunctive). The very term, "Improviently" already a scornful act in the SC Ct of Appeals should have prompted pursuing. It obviously ~~did not~~. Please see pages that follow pg 5 RP all pages after pg 5 - lines 9 - 25.

Atty's Kalivas' Complaints are totally incoherent, Challenging. I appears to be a ploy to again cover up the blatant lie that Judge M. Scarborough ever "heard" the scheduled Counterclaim that after 10 yrs of exclusive residency and after satisfying all six elements necessary to claim ownership and after twenty (20) plus yrs of exclusive residency it is mine. Please see my exhibits & Justia. No pro asked.

## Index - Judgment

Judgment in Case No. 2024 cp/0 06/62  
Entry date - March 17, 2024 says the  
Court of Common Pleas, Ninth Judicial  
Circuit & before The Honorable Court  
ney Clyburn Pope

My Rebuttal with Attachment

below:

Transcript

Pg 5 R P lines 9-25

# Why would I need a quiet title lawsuit?

As I wrote in my last post, the main reason clients come to me for a quiet title action is because there is a **tax sale** in their property's history. But what are some other reasons that a property owner might need a quiet title action in South Carolina?

A quiet title lawsuit is a way to settle certain **specific, known problems** with ownership rights and/or title defects in a particular piece of land, including:

- When a person passes away and the transfer of their ownership interest in a piece of land is not documented by a deed of distribution. This often happens when a person dies without a will and their estate is never processed through probate court.
- Ex: Grandma Cornelia owned Greenacre. She died without a will and Grandpa Henry passed away before her, so ownership of Greenacre automatically passed to her two children, Lily and Janet. Grandma Cornelia didn't own much, so Lily and Janet never went through the probate process. Lily and Janet rent the property out for 10 years, then decide that they want to sell it. The problem is that the current deed still has Grandma Cornelia's name on it, but Grandma Cornelia is not around anymore to sign it over to the buyer. Lily and Janet cannot probate her estate anymore because it has been more than ten years since Grandma Cornelia's death. To solve the ownership issue so that they can sell Greenacre, they can either bring a quiet title action in equity court or a petition for determination of heirs in the probate court.
- Problems with a previous deed, including incorrect or missing legal descriptions, improper signatures, typos (also known as "scrivener's errors"), or if a previous deed was not recorded at all or was recorded out of order.
- To clarify a landowner's rights to use an access road or easement over another's land.
- In these types of cases, if the relevant landowners are on good terms, it may be easier to ask them to sign an easement agreement rather than go through a quiet title action.
- To clarify boundaries where lot lines are unclear or disputed.
- To settle old mortgages or liens where no satisfaction has been filed. Normally you would request a satisfaction, lost mortgage satisfaction, or release of lien from the lien holder first. If the lien holder will not give you a satisfaction or release, then you could file a quiet title action and ask the court to declare that the liens are no longer a problem. Reasons for this may include that the statute of limitations has passed, the person who mortgaged the property believes that they paid it off but no satisfaction was ever filed, or a municipal tax lien may have been wiped out when the property was sold by the county for unpaid county taxes.

*My city and et al. a speed to what I deplored and still do!*  
*She was pd. and agreed to counterclaim this.*

*Finkel Lawyer Supported*  
*Quiet Title Partition and the dark!*

*Definitively Not the Ca*  
*Attly M. A. Dinwoadie*  
*"Threw my her client under the bus"*  
*She reveal this*  
*Seems in crz in my writted disagreement to Keith*

*NOT SO!*  
*NOT relevant*

*NOT pertaining*

Quiet Title

Irrelevant!

NO fixing ever needed!

The purpose of a quiet title action is to fix a problem with title to land so that the owner can convey marketable title to a buyer. Why does that matter? Most title insurance companies will not issue title insurance for the issues listed above, and most banks will not issue loans on properties that can't get title insurance. For sellers, this typically means that if your property has a title issue and you have not cured it with a quiet title action, then your pool of potential purchasers is narrowed to cash buyers only.

no seller Property is/was to be preserved then Shared in countless ways Add structure to rent Bed +

If you are interested in selling or purchasing land in South Carolina that has one of the title problems listed above, feel free to call McConoughey Law Firm for a consultation at (864) 256-0855.

Breakfast Share profits except if Adverse Possession is claimed

Successfully Sharing becomes different

To get title insurance

This never existed

It seems that a Quiet Title suit is defeated by a Last Will and Testament with Deed Distribution on property with a Warrant deed?

McConoughey Law Firm  
Conoughey

Representative Hartnett's correct Telephone number  
1-803-212-2950

# JUSTIA

## Fender v. Heirs of Smashum

THE STATE OF SOUTH CAROLINA  
THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Sherwood N. Fender, Respondent,

v.

Heirs at Law of Roger Smashum, John Smashum and Arthur Smashum, if living or such heirs of them as may be living, Carolee H. Goodwine, Mae Olive Henderson, Audrey Polite Sawyer, Diana Cornish, Heirs of John Frasier, if living or such heirs of them as may be living, Bernadette Anderson, Eloise Gadson and all other persons unknown, having or claiming any right, title or estate or interest in or lien upon the real property described in the complaint herein, being designated collectively as John Doe and Sarah Roe, including all minors, persons in the armed forces, insane persons and all other persons under any other disability who might have or claim to have any right, title or interest in or lien upon the real property described in the complaint herein, Defendants,

Of whom Henrietta Jones, Sarah Shepard and Lucy Smith, as heirs at law of John Smashum, and Queen Smashum, as grantee of Adam Smashum, heir at law of John Smashum, are Appellants.

Appeal From Beaufort County  
Perry M. Buckner, Circuit Court Judge

Opinion No. 3639  
Heard March 11, 2003 – Filed May 5, 2003

REVERSED and REMANDED

Derek C. Gilbert, of Beaufort, for Appellants.

Alysoun Meree Eversole, of Beaufort, for Respondent.

CURETON, J: Henrietta Jones, Sarah Shepard and Lucy Smith, as heirs of John Smashum, and Queen Smashum, as grantee of Adam Smashum, heir of John Smashum (collectively "Heirs"), appeal the circuit court's grant of summary judgment to Sherwood N. Fender in this quiet title action. We reverse and remand. 1

FACTS

The parties each claim title to a parcel of unimproved land. Each can trace their titles through a series of intestate and deed conveyances to two "Head of Family Land Certificates" granted by the United States District Tax Commission to Roger Smashum around 1867. Roger Smashum's interest eventually passed through intestacy to his son John Smashum and eventually to two of his grandsons, Arthur Smashum and Thomas Smashum. 2

Fender claims title through a November 1988 deed derived from a succession of conveyances from Arthur Smashum. In 1966, Arthur Smashum conveyed his interest in the property to Betty M. Sloan by quit-claim deed. Sloan conveyed the property back to Arthur in 1969 by quit-claim deed. In 1983, Arthur conveyed the property to himself and Charlie Mae Brantley as joint tenants with the right of survivorship. Arthur died in 1984 and in 1988 Charlie Mae conveyed the property to W. Thomas Parker and Fender by warranty deed. [1] 3

Henrietta Jones, Sarah Shepard and Lucy Smith, claim a tenancy-in-common with Fender as heirs of Thomas Smashum. Queen Smashum claims a one-eighth tenancy in common interest with Fender through a 1999 quit-claim deed from Adam Smashum, an heir of Thomas Smashum. 4

In December 1999, Fender initiated the present action seeking to quiet title to the property. He asserted the absence of estate or administrative proceedings related to the estates of Roger Smashum, John Smashum, and Arthur Smashum left a cloud over his title. In his complaint, Fender alleges the interest of a business associate and his was adverse to all others. His complaint states: 5

That possession of the property which is the subject of this cause of action has been in actual, open, notorious and exclusive possession of [Fender and a business associate] 6  
↑ ↑ ↑ ↑ *oust - accomplish Hostile*

under claim of title and that there has been such continued occupation and possession of the premises for over ten (10) years.

Queen Smashum answered on behalf of herself and the heirs of Thomas Smashum in May 2000, and counterclaimed to quiet title to the property in the name of the Heirs. The Heirs claimed Queen Smashum, Henrietta Jones, Sarah Shepard, and Lucy Smith each owned an undivided one-eighth interest in the property.

In June 2001, Fender made a motion for summary judgment. The circuit court conducted a hearing on Fender's motion the following month. In its order issued in August 2000, the circuit court granted summary judgment to Fender. This appeal follows.

### STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 248, 493, 567 S.E.2d 857, 860 (2002). When determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn from it, must be viewed in the light most favorable to the nonmoving party. Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002). If triable issues exist, those issues must be submitted to the jury. Young v. S.C. Dep't of Corrections, 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). Even where no dispute as to evidentiary facts exists, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002). Moreover, 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. Lanham v. Blue Cross & Blue Shield of S.C., 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002).

### LAW/ANALYSIS

The Heirs argue the circuit court erred in finding Fender acquired title to the subject property through adverse possession. We agree.

As an initial matter, the Heirs assert the circuit court erred in failing to find that they are co-tenants in the subject property with Fender. The Heirs cite 86 C.J.S. Tenancy In Common § 8 (1997) for the proposition that upon the intestate death of John Smashum and his wife, his two surviving children, Arthur Smashum and Thomas Smashum owned the property as tenants in common. They further argue that any grantees of Arthur necessarily owned a proportional interest in the property as tenants in common with them as heirs of Thomas Smashum. While acknowledging that Arthur and Thomas were

Judge would not hear the issues!

In my case, a boy danced never asserted themselves as to any ownership ship

cotenants, Fender asserts the cotenancy came to an end when Arthur conveyed the property to a stranger, reacquired title to the property, and thereafter conveyed the property by warranty deed to himself and Charlie Mae Brantley. [2] He further refers to the deposition testimony of Queen Smashum that prior to the death of Arthur Smashum in 1985, she obtained permission from him for her and her husband Adam to plant a garden on the property.

As stated in the case of *Andrews v. McDade*, 201 S.C. 24, 28-29, 21 S.E.2d 202, 204 (1942):

1  
As to real property, the general rule is that where the state has passed a perfect legal title, the doctrine of abandonment is not applicable thereto, and that the title vested in the grantee cannot be affected or transferred by his act in departing from the land and leaving it unoccupied, or otherwise ceasing to exercise dominion over it . . . .

2  
At common law, while an incorporeal hereditament may be lost by abandonment, the principle is firmly established that perfect legal title to a corporeal hereditament cannot be abandoned, or lost by abandonment, operating alone, and dissociated from other acts or circumstances; and so it is frequently said that so far as land is concerned, there can be an abandonment only in a case where the title is imperfect, or less than absolute. The doctrine of abandonment has, therefore, no application to a fee simple; but inchoate rights and equitable rights in land may be abandoned, and so may mere possessory rights, and rights acquired by user . . . .

3  
Although technically a fee simple title holder may not by nonuse abandon his title, his nonuse and failure to assert his title to the property may constitute an important circumstance in a determination of whether another has held the property adversely to the title holder. As clarified at oral argument, Fender does not claim he ousted the Heirs, but rather claims his predecessors in title ousted the Heirs. Thus, he reasons he is not a cotenant with the Heirs and thus need only prove adverse possession for ten years prior to the date of the commencement of this action. We first examine whether Fender's predecessors in title ousted the Heirs. *Irrelevant want for me.*

4  
"Ouster" is the actual turning out or keeping excluded a party entitled to possession of any real property. *Grant v. Grant*, 288 S.C. 86, 340 S.E.2d 791 (Ct. App. 1986). . . . Actual ouster of a tenant in common by a cotenant in possession occurs when the possession is attended with such circumstances as to evince a claim of exclusive right and title and a denial of the right of the other tenants to participate in the profits. *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 acts relied upon to establish an ouster must be of an unequivocal nature, and so distinctly

hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable. Felder, 278 S.C. at 330, 295 S.E.2d at 642. Only in rare, extreme cases will the ouster by one cotenant of other cotenants be implied from exclusive possession and dealings with the property, such as collection of rents and improvement of the property. Id., 278 S.C. at 331, 295 S.E.2d at 642.

Freeman v. Freeman, 323 S.C. 95, 99-100, 473 S.E.2d 467, 470 (Ct. App. 1996). "Ouster is presumed from possession only if it is continued for a period of twenty years. Title by ten years' adverse possession by a cotenant against another may be acquired only after actual ouster of which the latter has notice, or should have in the exercise of a reasonable diligence and vigilance." Watson v. Little, 224 S.C. 359, 364, 79 S.E.2d 384, 387 (1953).

should have known

1.

In re Estate of ...

We conclude the conveyance from Arthur to Betty Sloan by quit-claim deed in 1966; the reconveyance by Sloan to Arthur in 1969; the conveyance to himself and Charlie Mae Brantley as joint tenants in 1983, and the conveyance by Brantley [3] to Fender and W. Thomas Parker by a purported warranty deed in 1988, together with the fact Queen Smashum obtained Arthur's permission to plant a garden on the property are insufficient by themselves to establish that the Heirs were ousted. "In the absence of authorization or ratification, any attempted conveyance of the common property by one cotenant is not binding upon his cotenants, and operates to pass title to nothing more than the seller's own interest." 20 Am. Jur. 2d Cotenancy and Joint Ownership § 106 (1995). We recognize that these conveyances are some evidence of ouster and should not be ignored [4] for possession under such deeds and the assertion of exclusive and unequivocal ownership in time could ripen into title by adverse possession. Nevertheless, Arthur did not enter into possession under such a deed. Moreover, his transfer to Betty Sloan in 1966 and her reconveyance to him in 1969 were by quit-claim deeds which gives rise to the inference Arthur realized he may have had less than a good legal title. [5] In addition, we find that Fender did not present evidence regarding the character of Arthur's possession or that Arthur took actions to exclude the Heirs from the property or asserted exclusive ownership over the land. Likewise, there is no evidence of the character of Charlie Mae's possession of the property.

2.

We conclude, therefore, that a question of fact exists whether Fender established the Heirs were ousted of their interest in the property by Arthur or Charlie Mae. We further conclude that under the posture of the record in this case, Fender and the Heirs are cotenants in the property. Therefore, Fender must show that his actions toward the property amounted to an ouster of the Heirs before he can establish title by adverse possession.

3.

5.

96

There are well-established principles applicable to cotenancy, which control the controversy . . . . A cotenant has the right, in common with his cotenants, to the possession of the property owned in common, so ordinarily the possession by one cotenant is the possession of all. The latter ceases when the exclusive possession of a cotenant becomes adverse to the right of possession by the other cotenant or cotenants; but the hostile character of the possession must be such as to amount to an ouster of the other cotenant or cotenants and must be clearly and unmistakably established by the evidence. While the possessor need not give express notice of the hostility of his possession to the other or others, the nature of it must be brought home, as it has been said, to the other owner or owners.

*Relevant* { Watson, 224 S.C. at 365, 79 S.E.2d at 387. One claiming title to land by adverse possession has the burden of proving adverse possession by clear and convincing evidence. Lusk v. Callaham, 287 S.C. 459, 460, 339 S.E.2d 156, 157 (Ct. App. 1986). *Show this up*

*Err relevant in my case* { The circuit court makes no reference to ouster in its order, but analyzes Fender's claim of title based solely on an adverse possession analysis. In fact, as we understand Fender's claim, he does not claim title to the property pursuant to ouster of the heirs, but rather based solely on adverse possession. Inasmuch as ouster is a prerequisite to a cotenant claiming title by adverse possession, we will analyze Fender's evidence to determine whether a question of fact exists as to whether Fender met this prerequisite.

*Err relevant in my case* { The circuit court found the ten-year statutory period began with the November 14, 1988 deed to Fender and Parker, and ended in November 1998. In finding adverse possession, the court relied on: 1) the receipt by Fender of a warranty deed dated November 14, 1988; 2) the paying of property taxes for the statutory period of ten years; 3) the assertion of title by the giving and receiving of fractional interests through successive conveyances by warranty deeds during the statutory period; and 4) the erection of no trespassing signs on the property during the statutory period. The trial court also presumed Adam and Queen Smashum's previous use of the property was merely permissive, based on Queen's statement that Arthur gave her "the privilege" to plant a garden on the property before his 1984 death. While Fender's affidavit states he and his co-owner "exercised ownership rights ... by tending and maintaining the property," the affidavit does not indicate how, nor does the circuit court place any significance to this statement.

*As to Fender* { We find the actions cited by the circuit court do not as a matter of law establish ouster and consequently do not show Fender obtained title to the property by adverse possession. *Fender's* Fender's proof is not clear and unequivocal that he exercised "hostile, open, actual, notorious and exclusive" possession of the tract throughout the ten-year period. The fact

that Fender placed “No Trespassing” signs on the property, without more, cannot be shown to be adverse to the rights of the other co-tenants. Especially in the light of the deposition testimony of Queen Smashum that she visited the property in recent years and did not see the “No Trespassing” signs allegedly posted by Fender. See *Felder v. Fleming*, 278 S.C. 327, 330, 295 S.E.2d 640, 642 (1982) and *Horne v. Cox*, 237 S.C. 41, 44-45, 115 S.E.2d 513, 515 (1960) (Possession of one tenant in common is the possession of all and, for one tenant to establish title against a cotenant by adverse possession, he must overcome the strong presumption that he holds possession in recognition of the cotenancy.) In addition, the fact that Fender paid the taxes does not constitute ouster. See *Watson*, 224 S.C. at 368, 79 S.E.2d at 387 (payment of taxes by a cotenant ordinarily entitles him only to a proportionate contribution from the other cotenants). The circuit court erred in finding that Fender established title by adverse possession to the subject property.

For the forgoing reasons, the circuit court’s summary judgment order is reversed and the case remanded to the circuit court for proceedings consistent with this decision.

*Admit Title*  
REVERSED AND REMANDED. [6]

STILWELL and HOWARD, JJ, concur.

[1] In February 1990, Parker and Fender conveyed their interests to Fender, Parker-Matthews Investors, Inc., and Mary Hudson Feltner. Feltner conveyed her interest to Fender in 1993.

[2] Fender cites 20 Am. Jur. 2d Cotenancy and Joint Ownership, Section 31 for the proposition that “a tenancy in common will come to an end upon forfeiture or abandonment of the common property, upon its conveyance, voluntary or otherwise, to a stranger, or upon the definite ouster by the cotenant of his fellows.”

[3] Arthur died in 1985.

[4] These conveyances arguably constitute color of title under our adverse possession statutes. *Woods v. Bivens*, 292 S.C. 76, 78-79, 354 S.E.2d 909, 911 (1987).

[5] According to Fender, he had actual notice of these deeds.

[6] Because we reverse on this issue, we do not address Smashum’s other issues on appeal.

Some case metadata and case summaries were written with the help of AI, which can produce inaccuracies. You should read the full case before relying on it for legal research purposes.

Index  
Testimony

Principal Matter - see below

Case flow <sup>from</sup> and, if this judge listened to my legitimate, legal, "Right," to my "Title to Adverse Possession" as I clearly laid it out before her; if she reviewed the law(s) that supported my lawful rights to have claimed Possession of my home, subject herein, and claimed it ~~it~~ adverse to the right(s) of any others to ownership or profit ~~it~~, her decision would not be erroneous as now it is. Index = "Order judgment and Decision" proves that Judge Pope did Err. See, please Justice Fender v. Smashumz pg 2) "Standard of Review," lines 8, 9, 10, 11, 12, + / also Abandonment of Kalivas Client and all others as explained thoroughly by me before Judge Pope. Review of the Conspiracy and blatant, raw, bold, Improvident ly handing over of property <sup>that</sup> I've made my home to two estranged folks who lost their right to my property by abandonment and non-assertiveness except to Charles' attempt to bump my point of property I've paid taxes on for more than twenty yrs, 20 plus.

"Principal matter" please see what Judge Pope missed in her judgment based on the Unjust, the corrupt antics and obstructions of justice opposing Counsel has relied on to get away with his lies, deceit, "Conspiracy" and "Sabotage" glaring for any

Further- Summary Travesty of Justice

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Keith L. Tolbert

Plaintiff,

vs.

Carolyn Tolbert Smith, Charles Tolbert, Betty Jean Tolbert Jones, Sara Jo Tolbert Latten, and Estate of Charla Tolbert McMillian,

Defendants.

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-04058

"Iniquity" now "Hateful!"  
MOOF

ORDER GRANTING SUMMARY JUDGMENT

Improviently Criminal  
this IS! epp

copy 2  
Fowl / Shocking!

Exhibit Fowl

This matter came before me on Defendant Charles Tolbert's Motion for Summary Judgment as to <sup>Plaintiff - my hearing</sup> Defendant Carolyn Tolbert Smith's counterclaim for adverse possession. Defendant Charles Tolbert's motion was filed on behalf of Mr. Tolbert individually and also as Personal Representative of the Estate of Charla Tolbert McMillian.

A hearing on the motion was held before me on September 21, 2022. <sup>My hearing scheduled by Judge Scarborough</sup> Plaintiff Keith L. Tolbert was present with his attorney, William K. Kalivas. <sup>Plaintiff</sup> Defendant Carolyn Tolbert Smith was present with her attorney, Malena A. Dinwoodie. Defendant Charles Tolbert, both individually and as Personal Representative of the Estate of Charla Tolbert McMillian, was present with his attorney, Ashley G. Andrews. <sup>Keith Tolbert at said hearing obliterated by Judge Scarborough and his cohorts</sup> Defendant Betty Jean Tolbert Jones was present but was not represented by counsel. <sup>with Keith and Charles</sup> Defendant Sara Jo Tolbert was not present, however she was represented by her Guardian ad Litem and attorney, Taylor Silver, who was present. <sup>with Keith + Charles</sup>

The within action involves two adjacent parcels of real property located in Charleston County, South Carolina. The first parcel, referred to as Property 1 in the Complaint, is commonly known as 338 5th Avenue, Mt. Pleasant, South Carolina. The second parcel, referred to as Property

In light of Judge Scarborough's "Switcharoo", stealing my hearing from me and giving my hearing to the Defendants ie Keith, Charles, Betty Jean Tolbert Jones and to Sara Jo Tolbert Latten a gross legal obstruction of Justice 100

Note please: Plaintiffs were called on for their input not my counsel's. I became your attorneys and the judge on the same side with a Pro Se Plaintiff must be dealt

Index  
Order

Principal Matter The "Moot" status of the info  
below. It is akin to Scarboroughs case 2021 CP 18  
Needless

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT 04058

COUNTY OF CHARLESTON

DEED OF DISTRIBUTION  
(Real Property Only)  
NOT A WARRANTY DEED

IN THE MATTER OF:  
BLANTON WILLIAM TOLBERT  
(Decedent)

CASE NUMBER: 2017-ES-10-01149

Keith T. ↑



# PGS:

3

The undersigned states as follows:

BP0654353

Decedent died on 6/22/2015; and probate of the Estate is being administered in the Probate Court for BERKELEY COUNTY, South Carolina, in File #2015-ES-08-907-2; with an ancillary administration in CHARLESTON COUNTY Probate Court in File # 2017-ES-10-01149.

I was appointed Personal Representative (s) on June 20, 2017.

Decedent owned real property described as follows: *am being owned 1/5 of our property CPB Carolyn Tolbert & Smith is the current owner, the primary owner beginning 2003 to present*

Tax Map Number: 514-11-00-065

Street/Property Address: 338 5TH AVENUE, MT. PLEASANT, SC 29464 *2024*

Legal Description: **DECEDENT'S 20% INTEREST** IN ALL THAT LOT OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON IN THE VILLAGE OR SETTLEMENT, FORMERLY THE PROPERTY OF CHARLESTON LAND COMPANY, ALL OF SCANLONVILLE, AND FORMERLY REMLEY'S POINT, IN CHRIST CHURCH PARISH, DESIGNATED ON A PLAT OF SURVER MADE BY JOHN A. MICHAEL THE FOURTEENTH DAY OF FEBRUARY, 1870, AS LOT NO. 326, MEASURING AND CONTAINING ONE HUNDRED (100') FEET ON THE FRON AND BACK LINES AND TWO HUNDRED (200') FEET IN DEPTH, BE THE SAID DIMENSIONS MORE OR LESS, BUTTING AND BOUNDING ON THE NORTH BY LOT NO. 317, ON THE EAST BY LOT NO 327, ON THE SOUTH BY FIFTH AVENUE, AND ON THE WEST BY LOT 325. BEING THE SAME INTEREST IN THE PREMISES CONVEYED TO BLANTON WILLIAM TOLBERT BY DEED OF DISTRIBUTION DATED JANUARY 17, 2013 IN THE RMC FOR CHARLESTON COUNTY AT BOOK 0306 PAGE 283.

Discrepancy  
Jan 2013 Keith's  
v.  
Sept 2011 - mine

Established at my signing Sept 2011 CPB

\* where is Charles? Produce! \*

Additional sheet(s) for additional property(ies) is attached (check if applicable)

This transfer is made pursuant to:

- Decedent's Will
- Intestacy Statute: SCPC 62-2-103
- Private Family Agreement: SCPC 62-3-912
- Disclaimer by: \_\_\_\_\_
- Probate Court Order issued on \_\_\_\_\_
- Other: \_\_\_\_\_

where is your father's inheritance that <sup>the</sup> ~~the~~ <sup>which he</sup> contributed solely? I, Carolyn T. Smith is the only appointed Personal Representative to my mother's Estate. No one else ever held this position but me!

Index  
Testimony

Principal Matter Instructions to a  
Shift from Cotenant to Owner Address  
to the "Rights" of all other

time who abandoned said property he and all  
the former Plaintiffs to be Respondents.  
No Cotenant contributed anything to said  
property; None asserted himself as to owner-  
ship. The judge with opposing lawyers  
and mine conspired to sabotage the hear-  
ing where my counterclaim was to be heard.  
This judge executed his criminal intent  
by barring me from argument at the sche-  
duled hearing preventing me from "Due Pro-  
cess and with his conspiracy committed the  
Prosecutorial - mis conduct and a mis-  
carriage of justice

Carolyn T. Smith  
338 Fifth Ave + 0<sup>th</sup> St.  
Mt Pleasant, SC

29464

A 843-216-6960

DOES NOT RESTRAIN THIS  
STANDARD OR REVIEW See

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. *Id.*; *Clearwater Trust v. Bunting*, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006).

In deciding whether the circuit court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Spence*, at 116, 628 S.E.2d at 874 (2006). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id.*; *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Spence*, at 116-17, 628 S.E.2d at 874.

### Standard of Review

Summary judgment is a drastic remedy and should not be used except as precaution to assure that no party is denied the right to jury trial

If there be any genuine issue as to material fact said issue(s) must be heard

Because Judge Scarborough and his co-conspirators feared losing to a black widow not an attorney in concealing their law but prevailing their judge Scarborough stooped to conquer

under claim of title and that there has been such continued occupation and possession of the premises for over ten (10) years.

Queen Smashum answered on behalf of herself and the heirs of Thomas Smashum in May 2000, and counterclaimed to quiet title to the property in the name of the Heirs. (The Heirs claimed Queen Smashum, Henrietta Jones, Sarah Shepard, and Lucy Smith each owned an undivided one-eighth interest in the property.)

Here \*

Defeat for Quiet Title

In June 2001, Fender made a motion for summary judgment. The circuit court conducted a hearing on Fender's motion the following month. In its order issued in August 2000, the court granted summary judgment to Fender. This appeal follows.

### STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). When determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn from it, must be viewed in the light most favorable to the nonmoving party. Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002). If triable issues exist, those issues must be submitted to the jury. Young v. S.C. Dep't of Corrections, 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). Even where no dispute as to evidentiary facts exists, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002).

Judge Scott refused to hear my material facts. He never recognized my family as normal. I left us hanging at the hearing as though we were not there.

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

### LAW/ANALYSIS

The Heirs argue the circuit court erred in finding Fender acquired title to the subject property through adverse possession. We agree.

As an initial matter, the Heirs assert the circuit court erred in failing to find that they are co-tenants in the subject property with Fender. The Heirs cite 86 C.J.S. Tenancy In Common § 8 (1997) for the proposition that upon the intestate death of John Smashum and his wife, his two surviving children, Arthur Smashum and Thomas Smashum owned the property as tenants in common. They further argue that any grantees of Arthur necessarily owned a proportional interest in the property as tenants in common with them as heirs of Thomas Smashum. While acknowledging that Arthur and Thomas were

0 mg - No  
All my home  
CASE

1.

### Designation of The Matter

CASE No. 2021cp1004058 - Legal documents Appellant  
Shall present as require. Some from the prior Case Ad-  
versely Impacting Case No. 2025 000 893

- \* 1. Just as 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 <sup>of</sup> possession or/and to any profits by cotenants (Property the subject herein is a legacy of 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, payment 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 bathrooms (three baths) fixtures; regular yard and curb appeal attention/care (not lately). There's been a 2<sup>nd</sup> New roof, Nov 2025
- 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 as "Coverup" for the Improvidently granting "Order Summary judgment" to d. Charles Tolbert instead of to Keith Tolbert who filed the false, "meritless," Quiet Title Lis Pendens, Law Suit. Why?
- 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," <sup>+ was not</sup> "is not necessary"
- \* 7. All activity following the filing of said Law Suit without merit.

1-A

copy - No  
All my phone  
CASE

1.

### Designation of The Matter

CASE No. 2021cp1004058 - Legal documents Appellant  
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1. - A

0/100  
C.A. 10/10/25

1.

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2/10/25 - No  
All my home  
CASE

1.

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- \* 7 All activity following the filing of said Law Suit without merits

1. - A

Copy

Parables invited listeners to lean in, reflect, and wrestle with what Jesus was really saying. For those with open hearts, these simple stories revealed deep spiritual truths. But for those who resisted, the meaning remained hidden.

### Explore the Ultimate Parable Guide.

Index

Bible

Judgment

## Where Is the Parable of the Persistent Widow in Scripture?

Principal Matter: That judges judge like God

The Parable of the Persistent Widow appears in Luke 18:1-8.

## A Parable of the Persistent Widow Summary

Jesus told His disciples this story:

- There was a judge who showed no concern for God or people.
- A widow kept coming to him, asking for justice against someone who had taken advantage of her.
- The judge ignored her requests and refused to help.
- The widow didn't give up and kept coming back.
- Eventually, the judge gave in because he was tired of being bothered.
- He granted her justice not because he cared, but just to get her to stop.

### Who's Who in the Parable?

Every parable contains people, objects, or animals to which Jesus gives spiritual meaning. This parable is no different. So before we explore what this parable means, we need to find out who and what each thing in this parable represents.

- **The uncaring judge represents injustice.** Despite his given authority to help anyone seeking justice, he doesn't use his position to readily help. Instead he represents what it feels like to be ignored or disregarded.
- **The persistent widow represents tenacity.** Despite her lowly position and the judge's uninterested response, she never stops asking for justice. She

*Index* Principal Matter = It's judge Scarborough neglecting  
Order Summary judgment to do Justice then going about it  
under claim of title and that there has been such continued occupation and possession of  
the premises for over ten (10) years. 2

Queen Smashum answered on behalf of herself and the heirs of Thomas Smashum in May 2000, and counterclaimed to quiet title to the property in the name of the Heirs. The Heirs claimed Queen Smashum, Henrietta Jones, Sarah Shepard, and Lucy Smith each owned an undivided one-eighth interest in the property.

In June 2001, Fender made a motion for summary judgment. The circuit court conducted a hearing on Fender's motion the following month. In its order issued in August 2000, the court granted summary judgment to Fender. This appeal follows.

#### STANDARD OF REVIEW

*Skipped by said judge or Carolyn would prevail*

Summary judgment is appropriate when there is no genuine issue as to any material facts and the moving party is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). When determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn from it, must be viewed in the light most favorable to the nonmoving party. Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002). If triable issues exist, those issues must be submitted to the jury. Young v. S.C. Dep't of Corrections, 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). Even where no dispute as to evidentiary facts exists, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. Hall v. Fedor, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002).

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No pg 7  
in case pg 5

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Pleading

# Smith Law Group of the Carolinas, LLC

Attorneys at Law  
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Summerville, South Carolina 29485

William K Kalivas  
will@smithlawcarolinas.com

Office - 843-607-0254  
Cell - 843-906-3243  
www.smithlawcarolinas.com

Received 02/08/2026

January 29, 2026

**VIA EMAIL ONLY:**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201  
ctappfilings@sccourts.org

Re: Ave Smith, Appellant v. Heirs of Helen Tolbert, et al, Respondents  
Case No.: 2025-00893  
*wrong - correction CASE No. 2025-000 893*

Dear Ms. Kitchings:

Enclosed for filing, please find a copy of Respondent Keith Tolbert's Motion for Extension, Initial Brief of Respondent and Designation of Matter, along with Proof of Service for each filing. By copy of this letter, a copy of each of the above-mentioned filings has been provided to the pro se parties at the addresses on file with the Court of Appeals.

? of time of your Initial

What is each for

Please don't hesitate to contact me if you have any questions.

Sincerely,

William K. Kalivas

Call Emily Secretary Appellate

Email Opposer Initial B Designation to the Court? to All Respondents

Call Code Enforcement Edward on my voice mail service

cc: Ashley G. Andrews, Esquire  
Alwyn T. Silver, Esquire ✓  
Carolyn Tolbert Smith  
Betty Jean Tolbert Jones ✓

|||

Index  
Testimony

Principal matter Please see below.

Now says took part in approving Charles the question-  
able oral word of mouth, behind closed door Verbal  
request for Summary Judgment she should now own up  
to her accepting the any pay from me with getting no service  
from you, whom I know now 5/12/2026) through me and  
your fiduciary relation in this case. You probably  
also knew that Scarborough and all of you thieves of my  
parents the grandparents' legacy home and property use, the  
Corporal W. Leroy Smiths would have to go to court  
to take back what you've stolen what a low life to disgrace  
the black robe and position that does not require you  
have before you God's Holy word neither do I see the  
see the scales of justice anymore Too bad you who  
call wrong right and right wrong; you surely need  
to get in touch with my God. Scarborough might stop  
scheduling S C A M "hearings" where you only hear the  
one side of a two sided dispute so that you can write  
a "fake" Order judgment and fail to own up to your  
selfish sick lies as you omit to do right but does  
ment that provides "Due Process" for those in whose  
faces you slammed the door, shut down the hearing  
to avoid hearing the righteous citizen that does to  
prevail. Bible - "Be ye not deceived. God is  
not deceived. God is not mocked. you shall  
Reap what ye Sow." Behold a set before you "Blessing"  
and Curses - Choose. Cpl

Please note Every document from the hands and pens of opposing counsel is heavily laden with some lies against Carolyn by judiciary → William Kalivas. This is sickening page after page after page.

Appellant's Transcript of the hearing in FACTS is the same transcript the Respondents and their judge Scar have their copy of

1 Appellant has either failed to properly order a copy of the hearing transcript, or a copy has  
2 failed to be produced. Regardless, Respondent believes reference to certain undisputed facts is  
3 necessary for a proper understanding of the appeal. However, no reference can be made to the  
4 record on appeal because there is no transcript and a formal record on appeal has not yet been filed  
5 by the Appellant.

Par I

1 Appellant is the daughter of Respondent Carolyn Tolbert Smith ("Smith"). Smith is a

2 Defendant in a separate lawsuit, case no. 2021-CP-10-04058, that was filed by Respondent on  
3 September 9, 2021. That Complaint contained causes of action for Quiet Title and Partition,

4 related to the same two (2) parcels of property as the Complaint filed by Appellant over three (3) years later. Smith answered the complaint and asserted a counterclaim for Adverse Possession.

5 years later. Smith answered the complaint and asserted a counterclaim for Adverse Possession.

6 Smith, through her attorney, and the other parties, which included all Respondents hereto, filed a  
7 consent order on August 15, 2022 quieting title to the properties at issue. A hearing was then held

Par II

8 on Smith's counterclaim for Adverse Possession. Prior to the hearing, Respondent Charles Tolbert

9 filed a Motion for Summary Judgment on the issue, and argument on the motion was heard at the  
10 start of the hearing on September 21, 2022.

1 After considering the arguments of counsel and facts of the case, The Honorable Mikell R.

2 Scarborough issued an Order Granting Summary Judgment, thereby entering judgment against

3 Smith on the Adverse Possession claim on November 8, 2022. That case remains pending and the

4 subject of no less than eighteen (18) filings by Smith, including at least one (1) appeal to this Court,

5 all of which center on the ruling on the Adverse Possession Claim. Appellant's case, including

6 the documents and Initial Brief filed in this appeal, are restatements of the same facts and issues

7 that have been presented, argued and denied in case no. 2021-CP-10-04058.

Par III

OURS, Our issues are factual, based on Truth & Justice. Yours are stiff lies, bold, repugnant, shamefully Reprehensible harmful, satanical.

My God is aware of your demonic deeds!

II. The Circuit Court did not err in granting Respondent Keith Tolbert's Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC, and doctrine of res judicata.

Appellant is the only grandchild with vested interest, the only grand-interest in the property independent of her relationship with her mother, Respondent Smith. Appellant is not on the deed and does not have any ownership interest in the properties at issue. Smith filed a counterclaim in case no. 2021-CP-10-04058 alleging the same adverse possession claim asserted by the Appellant. Judgment was entered against Smith on that claim after a hearing on a motion for summary judgment, and the parties entered a consent order quieting title in the

names of the Respondents to this appeal. To the extent Appellant's Complaint is merely an attempt

to avoid the judgment entered against Smith on her adverse possession claim, then the action is rightfully barred pursuant to the doctrine of res judicata and was properly dismissed as a matter of law by the Circuit Court.

"Res judicata bars subsequent actions by the same parties when the claims arise out of the

same transaction or occurrence that was the subject of a prior action between these parties." Nelson v. QHG of South Carolina, Inc., 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003). The doctrine of res judicata prevents any party from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. Hilton Head Ctr. Of South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To dismiss a subsequent action under the doctrine of res judicata, a "defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Nelson, at 304, 580 S.E.2d at 178.

In this case, while the identity of the parties is not identical, Appellant essentially stands in the shoes of Smith from the previous action. Her alleged possession of the property is wholly dependent upon Smith's ownership interest, which was previously adjudicated to be insufficient. Neither Charles Tolbert, (Charles Leon McMillian) nor Keith had standing to file any law suit in this matter, worse yet, said law suit is without merit. Filed in the SC Court of Common Pleas for Charleston County is the proper sound

Appellant is the only grandchild with vested interest, the only grand-interest in the property independent of her relationship with her mother, Respondent Smith. Appellant is not on the deed and does not have any ownership interest in the properties at issue. Smith filed a counterclaim in case no. 2021-CP-10-04058 alleging the same adverse possession claim asserted by the Appellant. Judgment was entered against Smith on that claim after a hearing on a motion for summary judgment, and the parties entered a consent order quieting title in the names of the Respondents to this appeal. To the extent Appellant's Complaint is merely an attempt to avoid the judgment entered against Smith on her adverse possession claim, then the action is rightfully barred pursuant to the doctrine of res judicata and was properly dismissed as a matter of law by the Circuit Court.

Irrelevant

Irrelevant

Irrelevant

Recd 02/ 1/2026

Principal Matter = The "Err" as to the Decision of Circuit Court Judge G. Pope

STATEMENT OF ISSUES ON APPEAL

Judgment

- I. The Circuit Court did not err in denying Appellant's Motion for Title by Adverse Possession because Plaintiff failed to establish the necessary elements.
- II. The Circuit Court did not err in granting Respondent Keith Tolbert's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, and doctrine of res judicata.

I relevant

I The circuit court did err in denying Appellants Motion for jury trial to retrieve her property, "Improvvidently" gifted to an estranged Cousin. Circuit Ct's judge did err in accepting and agreeing to Judge Scarborough's lies and deceptive reporting and documenting said lies and deceptions

II Hence the circuit court review of the initial ct proceedings were full of obstructions of justice mis-carnage of justice, Prosecutorial Mis-Conduct, a travesty of justice. He heard one side of the dispute, the summary judgment. Then he shuts the hearing down, denying the scheduled, promised counterclaim argument, ignore the Blacks on that side of the dispute on two different occasions i.e. Sept 21, 2022 and again Oct 30, 2024. Then you finally Recuse yourself still planning to get rich via of Black Window, Carolyn T. Smith.

We reap what we sow, he said. Be ye not deceived, God is not mocked.

Principal Matter = For me, Ave is the Circuit

Court judges Decision to dismiss Appellants "Motion" for jury trial to Retrieve property of hers to Charles Tolbert who Page 4 of 11 contributed nothing while Ave, with vested interest pd taxes for county plan, preserved it. and lived there and helped

INDEX  
pleading

D

Attachment

State of South Carolina  
County of Charleston

In the Court of Common Pleas  
Ninth Judicial Circuit

Carolyn Tolbert Smith  
Plaintiff,

Summons

File No 2021 CP 1004058  
CASE 2021 CP 1004058

vs.

Judge Mikell Scarborough  
The Heirs of Helen G. Tolbert  
Defendants.

"Motion" that there  
be no "Preliminary  
Hearing" as to  
Partition in the  
Case written Above

FILED  
JEROME D. JONES  
PR 24 AM 2:32

I, Carolyn T. Smith Come before this honorable Court  
with sound, solid reasons as to why there should be  
no, "Preliminary Hearing" nor, "Hearing" of any kind in the  
above motion, Further CASE NO. 2021 CP 1004058  
Should be dismissed with prejudice.

No hearing herein pre-empts "mediation," According to  
Judge Johnson, <sup>the</sup> judge in the hearing herein just before  
Judge Cyburn Pope took this case. Beyond this, Judge Mikell Scar-  
borough who finally recused or (reclused himself) and dropped  
out of said case, egregiously obstructed justice ~~pre~~ before,  
by gifting property that I earned, after having lived here twen-  
ty eight, 28 yrs. and having satisfied all six (6) elements

Justice is <sup>what</sup> we're seeking. require for, "Title To Adverse Possession; then by deceit,  
lies, Conspiracy and Sabotage convinced my own attor-

Cont'

ney to, "Turn coat on me; "Throw me under the bus;"  
forget her, "fiduciary relation," with me; go along (w)  
and consent to deciding me Case and winning argu-  
ment, Counterclaiming, "Quiet Title," already Reversed  
And Remanded by the SC Supreme Court in the Case

cc; the  
Congress  
of the  
USA  
cc; the  
U.S. Su-  
preme  
ct.

"Fender Vs Heirs At Law Smashum," 2003; herein my Case  
with two (2) secondary tenants who abandoned said  
property, one property part and parcel at 338 Fifth Ave'  
and 6<sup>th</sup> St., Mt. Pleasant Integral my case was  
as the 2003 Case! The judge and my opposing attorney  
and co-tenants' "Motive," for stooping to Conquer by  
Lying, falsely accusing me before the judge who's con-  
spired scheme was played out is wrapped up in this  
whole scenario. Here's the "Travesty of justice," the  
judge and his consenters, at the Sept. 21, 2022 hearing  
scheduled by this judge had consented to said judge  
starting the hearing upside down and one-side. So  
judge. Mitchell Scarborough heard ONLY The/my oppo-  
nents in Summary judgment with nothing to Sum-  
marize having heard only my opponents not one nor my atty,  
who was to Counterclaim but acquiesced stood like a  
statue until, at the end the judge

of  
to  
to  
to  
to  
to

nodded to her. She gave him a paper,  
walked back to my family and me then  
shut the hearing down. He Improv. suddenly  
ruled Order Judgment - Summary judgment to  
an estranged relative. This Case must end, NOW END

Dated 04/23/2025  
Carolyn T. Smith

338 Fifth Ave.  
and  
0<sup>6</sup>th St. P.O. Se

Mt Pleasant, SC 29464

1-843-216-8960

Index

Testimony

J2  
Copy

Thank you Ingratefully

→ I am Carolyn T. Smith 87 yr. old Matriarch in a family of 5 children of Fred + Helen A. Grant Tolbert Principal Matter Family

→ Remaining are 3 children, siblings

→ I am Ct. appointed, Personal Representative of my mothers Estate

→ I probated mothers "Last Will and Testament,"

\*Sept. 26 2011 the only, "Deed of Distribution" came with the will 20% to ea. of us 5 sib-

blings \* → My family and I seek justice and to be made whole

→ Jan 1, 1995-2 our eldest past away, leaving 2 children. Ea. inherited 10% ea. - Charles + Charles

→ 2015 our only brother passed, leaving one son,

→ Keith (w) 20% In 2020, most heirs discussed the Dist.

→ Mothers Will provided for her 5 children and for their children in proper proportions as proven above. I, Carolyn, offered to buy interest of heirs.

Heirs no longer negotiate! There was never a need to further "Deed" questions. Quiet the title with the existing, "Deed of Dist" legally in place Sept 26, 2010.

→ Nonetheless Keith Tolbert shocked me with a "Quiet Title Lis Pendens," "Dead-In-The-Water," "Claim."

A claim that the SC Ct. of Appeals Reversed and Remanded, based on Fender v "The Heirs At Law Shemashums." It appeared that Fender

dropped his claim of, "Trust," an element one of six which Fender could not prove. Neither did he prove his qualification for Quiet Title claim.

The Ct. of Appeals considered the fact that heirs

elements proven

Always to "G" to "Q" Selling our legacy! Please see answers 1+2 below

heirs proved that ea. one had 1/8 Owner-ship in the undivided land. Fender was a cotenant now with Quiet Title claim created by the "Smashums".

→ We, the Carolyn T. Smiths have the same Claim (w) all six (6) elements satisfied

→ to be granted Title to Adverse Possession based on Ten year exclusive possession, actual, notorious etc., etc. hostile consistent

→ The prospect that I would prevail in the matter was the "Motive" that drove a judge sworn to uphold justice, to take advantage of opportunity and his tainted power to "Abstract justice," and, "gift my position to

File what? a false claim of "G, T."

my estranged nephews, Keith who filed and to A.K.A Charles who collected. Both acted fraudulently. Keith used a form indicating in part that

he was Co-Rep to my mother's Estate. Fraud!

From the heading itself it states that I relinquished my position as "Personal Rep" to my mother's Estate. Ludicrous! That would be Counter Pro-

1. → ductive for me who was against his claim of "Quiet Title Lis Pendens."

2. → The Smith Family has vested interest in the parents and grandparents of ours, who entrusted us, their children, to preserve their legacy of hard work, love, care, thoughtfulness, foresight and most assuredly for the current and future total welfare of their children and posterity.

→ The Smith Family has vested interest in the parents and grandparents of ours, who entrusted us, their children, to preserve their legacy of hard work, love, care, thoughtfulness, foresight and most assuredly for the current and future total welfare of their children and posterity.

2022

→ for generations according to mother's  
→ Last Will and Testament's Intent. Of

→ I, Carolyn T. Smith took my Complaints

Pro Se to the following Courts is the SC Ct  
of Appeals, The SC Supreme Ct. and to the  
District Ct For the Dist<sup>o</sup> of S.C.

→ I appeal the Order Judgment by Judge M.  
→ Scarborough who scheduled a Hearing just  
→ Sept 21, 2022 CASE CP 10 04058 to hear my  
→ atty? Attorney Melena Dinwoodie argue on my be-  
→ half to Counterclaim Quiet Title L/S Pendens

At the hearing I was the Plaintiff by ms. Din-  
woodie. She acquiesced, my family, my atty and  
I were ignored. Foreclosure for some reason  
was also scheduled but not heard. My atty on-  
ce with a head turn from the judge slowly  
walked up to the judge; handed him paper(s) then  
returned to our desolate corner.

The judge started the hearing upside down (w/  
summarizing judge argument from my oppo-  
sers, heard nothing from me; asked all among  
my opposers to speak then shut it all down.  
See the packet, please, used as the well verch-  
trated Conspiracy (w), "Intent," (A crime, I learn-  
ed); Intent executed by the judge and all of his co-  
consenting saboteurs who were to sabotage said  
hearing accomplished my family up from Miami,  
FL were dumbfounded, overwhelmed. I dis-  
covered when my atty. failed to appeal on my  
behalf that she tossed aside her fiduciary rela-  
tion with me, enjoined my opposers and consented to the sabotage.

Note: All attorneys are notified electronically timely. Appellant is notified by U.S. postal service routinely. A Jaws Esq. was negligent & notified me within four (4) days of 30 days limit!

Sec. of Appeals Congress Extra

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
Exhibit

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Mikell R. Scarborough, Master-in-Equity

Case No. 2021-CP-10-04058  
Appellate Case No. 2022-001815

Appeal Exhibit  
Estate of Charla  
Cannot speak  
"Improv- dently"

Index

Order Judgment

Keith L. Tolbert, ... Principal Matter ... Respondent,

The judges Prosecutorial Misconduct hearing.

Carolyn Tolbert Smith, Charles Tolbert,  
Betty Jean Tolbert Jones, Sara Jo Tolbert  
Latten, and Estate of Charla Tolbert McMillian, ..... Defendants

Of whom Carolyn Tolbert Smith is the ..... Appellant,

and

Charles Tolbert, Betty Jean Tolbert Jones,  
Sara Jo Tolbert Latten, and Estate of Charla  
Tolbert McMillian are the ..... Respondents.

MOTION TO DISMISS

Please take notice

my responses where the arrows point. I appeal that Athy Andrews is gifted at trampling upon justice freely. Pursuant to Rule 21, E. McMillian (hereinafter the Appellant's failure to comply with the SCACR. Specifically, Appellant's failure to comply with the SCACR. Specifically, Appellant's failure to comply with the SCACR.

Said Dismissal "Motion" against Carolyn's Appeal is the result first of opposing counsel with the judge's support is spurring a frivolous unneeded case in "Quiet Title," but mainly because Carolyn's ally, Kicked aside her Fiduciary relationship tied her hands to the opposers and refused to appeal Summary Judgment without hearing argument per the genuine

Ashley Andrews, Esq.  
Estate of Charla Tolbert  
Impossibility of this appeal due to SCACR. Appellant was ... at the hearing held on ... hanging with Order Judgment for ...

120

copy  
10/20/2028

Index => Pleading - CASE No. 2025000893

Principal Matter - Pleading, ~~Order~~ Order Dismissal

Below Find please the Principal Matter per Judgment.

I, Appellant, Ave Smith entered a "Motion" for  
in an effort to retrieve my Property  
at 338 Fifth Ave. & 6<sup>th</sup> St., Mt. Pleasant, SC 29464.

I lawfully after 18 yrs. and now after 26 yrs., I hold  
the subject property, "Adverse to Ownership and profit  
rights," to all cotenants/heirs. Please see "Justin - Fen-  
der v Smashum," pages R.P. 3, 4, lines 12-22 per  
"abandonment and non-assertive acts." Please also  
see R.P. lines 28-33, Grant v. Grant 288 S.C. 86,  
340 S.E. 2d 791 (Ct. App 1986) 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). "Duster" was  
clear when new/different family members were given  
occupancy in rooms assigned previously to Respon-  
dents. This "Duster," brought hostility from the Re-  
spondents, manifested by their decision to file this  
drastic, and also, "pivotal," unnecessary lawsuit i.e.  
\* "Quiet Title Lis Pendens," meaning the Respondents are  
"uncaring." The family Smiths include Carolyn Tolbert  
Smith, eight-eight yr. old resident in the property  
cited, 1995-2026. I, Appellant am compelled to refer-  
ence the tainted, "prior CASE No. 2021 CP 10 04058."  
It is that judge Mickell Scarborough's "Motive," and goal

To have Atty. William Kalivas, Esquire, Ashley Andrews  
 Esquire, Alwyn Silver prevail by any means necessary.  
 It brought me to Court to undo the Tragedy of justice egregiously!  
 See, please R.P. pg. 4, lines 1-9-9, Justice Fender v. Smashum. "See please as to the my 'Right'  
to claim - proved hostile and unmistakable; - Felder,  
 278 S.C. at 330, 295 S.E. 2d at 642 (In rare cases  
 (like mine) will the "Ouster," be implied from ex-  
 clusive possession and dealings with the, eg. col-  
 lection of rents and improvements per the proper-  
 ty Id, 278 S.C. at 331 295 S.E. 2d at 642 Freeman  
 v. Freeman, 323 S.C. 93, 99-100, 473 S.E. 2d 463  
 470 (Ct. App 1996). If "Ouster" is continued for twenty  
 yrs: it's presumed. This is, "true," for me, Ave. Re: the  
 ten yr. (10) rule; please see R.P. pg. 4, lines 5-9, "Ac-  
 tual "Ouster" may be acquired as Cotenants has no-  
 tice or should have in the exercise of a reasonable  
diligence and vigilance. "Watson v. Little, 224 S.C. 359,  
 364, 79 S.E. 2d 384, 387 (1953) The above makes it  
 clear re my worthy "motion"; It follows that my Testi-  
 mony before Judge Pope made clear my 'Cause' and  
 and reason for my battle via the S.C. Courts to review  
 now at the level, S.C. Court of Appeals this appeal that proves  
 \*that Judge Pope erred in her decision to, "Dismiss"  
 my "Motion," for either "jury trial" or for my earned, "Right" to

"Title To Adverse Possession," or the "Travesty of justice," the "Prosecutorial-mis-conduct," the "Mis-Carriage of justice" Committed by Judge Mickell Scarborough who had the need, the genuine "Need," to cover his egregious obstructions in a case that lead to her Improvidently granting, (gifting) boldly, my property to Charles Tolbert an "Absent heir," an "Equity only-non-Contributing Claimant" like others in that matter and this one, of pure persecution, deceit, injustice in the U.S.A. Courts where, "justice," is required in law by Law. Men + Women give their lives in Countries around the world, "pro," "justice" that fails. Even those who return home too often suffer said injustice.

Their hands tied for getting rightful help. It's past time," for a change, positive change.

In rebuttal to Atty. Kalivas' Allegation that I did not state my cause as he stated in his irrelevant, "Standard of Review" about time delay which he and Counsel for the Respondents have created. All the unnecessary delays eg

... for Continuance for Keith Tolbert's Flight lessons; to said Counsel with their judges pursuit of the law suit with no merit; their, "Deed," tampering, attempting to fix their pretending a need to change the "initial," "Deed," they

Distid \* had to stick with; the judges lies to the Dist. District Ct for SC, by documenting that Carolyn's lawsuit was the 20yr rule, No. The 20yr

\* Judge erred in her decision to Dismiss my CASE No. 2025 000 893 Influenced by opposing Counsel's Obstructive, Criminally based excuses and false accusations against me and against Carolyn Tolbert Smith; by their pursuing a frivolous, fruitless law suit, "Quiet Title," which drove them to delay their unjust course with their criminal strategy, conspiracy and sabotage to stuff the truth away by "robbing," Carolyn T. Smith of, "Due Process," where she would have exposed their criminal course to what any judge entering this case would in all just determination, have by all means stop CASE NO. Cp 1004058 from moving forward in its state of Improvidentia. State. Of course the judge knew these things but depended on his ~~Cot~~ Counsel, judiciary and friends higher up the ladder and at any level to continue to support his misconduct. It appears that all of them lost the favor of God.

In God ~~at~~ I put my trust, for truth and "justice" as given, a sure thing, demanded by God. In this Court that has made help available to me though I, being "Pro Se," cannot do the job as one schooled in this matter can do, if lead by God, I will prevail, justly.

I humbly pray the Court accept the facts. True given I prevail.

# Index

# Orders

2021 Cp 10 04058 = CASE

Judgment

Judge T. Rode

Index No. 2 → Order

Principal Matter = Need to dismiss said case

The Dismissal of Defendant, Carolyn Tolbert

Smiths; "Motion To Dismiss" CASE No. 2021 Cp 10

04058 With Prejudice, in order to retrieve pro-

perty belonging to me at the time as primary owner

for eighteen yrs. but "Improviently" gifted to an

estranged nephew, Charles Tolbert; Equity only

Claimant who abandoned the decedent, his grand-

mother, for yrs. i.e. 1980-2003 when she pas-

sed away. Judge Mickell Scarborough refused to

acknowledge and obey the "Standard of Review,"

denying Carolyn, Defendant, to argue through her

attorney, Atty. Melena Dinwoodie ~~or~~ or Carolyn her-

self to counterclaim, "Quiet title Lis Pendens" in order

to be given Sole Title to her earned, "Title To Adverse

Possess fair and sq. See document "Justice" Fender

v. Smashum, p. 7, R. P. pag. 2, paragraph 6, lines 1, 2

pg. 3, R. P. pg. 3, "Standard of Review" R. P. lines 1-12

pg. 3; "Law Analysis" R. P. lines No. 1, pg. No. 4, par-

agraph 3, R. P. lines 1-4, Paragraph No. 4, R. P. lines

9-15, pg. 5, paragraph 1, R. P. lines 1-5, Also a-

bove, R. P. lines a, b, c, d, e, also paragraph 3,

pg. 5, R. P. lines No. 1, Facts. pg. No. 6, paragraph

"1" R. P. lines 1, 2, 3. Carolyn proves ~~order~~ order heard!

1/2

this  
is  
8/1/2022

copy 6 - Ave  
Extra is sheet #5  
AM Mine

INDEX  
preading

Mail the Defendants' Sheets  
Keith  
Charles  
Carolyn \*  
Betty Jean  
Sara Jo C/O  
then or a  
guardian Ad  
Loriam?  
find response  
to Charles re;  
rejections to  
denying one  
Terry Terie

STATE OF SOUTH CAROLINA,  
COUNTY OF Charleston  
Ave Smith  
Plaintiff,  
vs.  
Heirs of Helen Tolbert  
Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2024-CP-10-6162

01/03/25  
sent  
Proof of  
except to Ka  
Livan on the  
May 01/04/25  
full motion  
sent & served  
along with  
use 1 sheet

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Charleston, South Carolina

Ave Smith Pro Se  
Plaintiff/Attorney for Plaintiff

Dated: December 11, 2024  
Second mailing Apr 24, 2025

Address: 338 5th Ave <sup>216th St.</sup>  
Mount Pleasant, SC 29464

2024  
JULIE J ARMSTRONG  
CLERK OF COURT  
2024 DEC 12 PM 2:59  
FILED

Note: Summons mailed  
Date 01/14/2025  
Approximate arrival date 01/17/2025

→ → → → Note: Where is the ans. to this  
Complaint ie motion to counter  
Claim & wet Title? It's now March 26  
2025