

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

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Stephanie N. Lawrence, Master-in-Equity
Case No. 24-CP-40-4005
Appellate Case No. 2026-001756

James Burrell, as Personal Representative for
The Estate of Elizabeth Jones Burrell,
Respondent,

v.

Catherine Carroll, Deceased, and Any Unknown
Adults being a class designated as John Doe, and
any unknown infants or person under disability or
in the Military service being class designated as
Richard Roe, and Percy Morant,
Defendants,
of whom Percy Morant is the Appellant.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Did the Master err in ordering Appellant to remove himself from the property after dismissing the only claim pleaded in the Amended Complaint, a quiet title action based on adverse possession, where the request for removal depended on Respondent first obtaining title and no independent claim for possession was pleaded or adjudicated?

2. Did the Master err in ordering Appellant removed where the Order identifies no party holding title or a right of possession superior to Appellant's, expressly leaves title and heirship undetermined, and rests removal on Appellant's inability to justify his presence rather than on proof by Respondent of its own right?

3. Did the Master err in ruling that any equitable interest of Appellant "is outweighed by the fact that he never paid rent," where no rental agreement, demand for rent, or evidence of rental value was before the Court, no party entitled to receive rent was identified, and Paragraph 23 of the Order separately finds that Appellant has no equitable interest?

4. Did the Master err in including Paragraph 31, which grants Respondent access to the property for securing, appraising, and insuring it, where the provision was not announced at the hearing, the Court told the parties at the hearing that it could not advise on insurance, and the Amended Complaint requests no such relief?

STATEMENT OF THE CASE

This is an appeal from the Order on Adverse Possession and Occupancy, Not Ending Action (the "Order"), signed August 5, 2026 and filed August 6, 2026, by the Honorable Stephanie N. Lawrence, Master-in-Equity for Richland County, in Case No. 24-CP-40-4005. By its terms, appeal from the Master's decision lies directly to this Court. (Order at 1.)

The action was commenced on or about July 1, 2024 by the filing of a summons, lis pendens, and complaint to quiet title under S.C. Code Ann. § 15-67-10 et seq. (Order at 1, ¶ 1.) It was referred to the Master by order filed February 7, 2025. (Order at 1.) After a hearing on August 5, 2025, the Master entered a quiet title order. (Order ¶ 2.) Appellant, who lived at the property and had not been named, sought emergency relief. After a hearing on February 27, 2026, the Master vacated the quiet title order and the resulting deed by order entered March 20, 2026, and Appellant was made a party. (Order ¶¶ 3-5.) An Amended Summons and Amended Complaint (Quiet Title Action) was filed April 8, 2026 and served on Appellant April 17, 2026. (Order ¶ 5.)

Appellant, proceeding pro se, served and filed his Answer, Affirmative Defenses, and Counterclaims on May 18, 2026. (Order ¶ 6.) On July 2, 2026 he filed an application for entry of default and motion for default judgment on his counterclaims, which the Master denied from the bench at the July 8, 2026 hearing. (Tr. 101:6-102:11.)

The Master heard the matter on July 8, 2026. (Tr. 1.) The Order recites a hearing date of July 6, 2026. Respondent appeared through counsel and Appellant appeared pro se. The Master heard testimony from Appellant, Tekethia Burrell, and James Burrell. (Tr. 2.) From the bench, the Master dismissed Respondent's adverse possession claim (Tr. 129:9-130:11), directed Respondent to petition the Probate Court to determine the heirs of Catherine Carroll (Tr. 131:17-132:12), and ordered Appellant to leave the property (Tr. 132:19-21; 137:6-9). The written Order does the same. (Order ¶¶ 16, 21, 29-30.) The Order recites that Appellant filed counterclaims (Order ¶ 6) and contains no ruling on them; no ruling on the counterclaims is before this Court in this appeal.

Appellant filed a notice of appeal on August 7, 2026 and an amended notice, correcting deficiencies, on August 11, 2026. (Order of this Court, Aug. 14, 2026, at 1 & n.1.) On August 12, 2026 this Court temporarily stayed the Order and issued a limited remand to the Master on the motion to stay; on August 14, 2026 it continued the temporary stay. (Orders of this Court, Aug. 12 and 14, 2026.)

STATEMENT OF FACTS

The property and the parties. The property is 300 Meadowlake Drive, Columbia, South Carolina, TMS No. R11816-09-07. (Order at 1.) Catherine Carroll died without a will in or around 2007 holding a one hundred percent interest in the property. No estate was opened for her, and the property remains titled in her name. (Order ¶¶ 17-19.) Respondent is James Burrell, the Personal Representative of the Estate of Elizabeth Jones Burrell, which is pending in the Richland County Probate Court. (Order ¶ 8.) The Order states that Elizabeth Jones Burrell is Ms. Carroll's niece (Order ¶ 17), and also that Ms. Carroll's obituary "indicates other heirs not considered or made party to proceedings." (Order ¶ 20.)

Appellant has lived at the property since about September 2022, at the invitation of Carrietta Burrell, with whom he was in a long-term relationship. (Tr. 96:20-97:3; Order ¶ 24.) Carrietta Burrell died in May 2023. (Order ¶ 24.) Appellant has not paid rent at any time since he moved in. (Tr. 96:20-25; Order ¶ 26.) The Order finds that he paid some property taxes and provided basic upkeep. (Order ¶ 26.)

The pleading. The Amended Complaint is titled "Amended Complaint (Quiet Title Action)." It alleges that Respondent's predecessor held the property by adverse possession and that all interests of the Defendants were thereby extinguished. (Am. Compl. ¶¶ 6, 9-12.) It prays for an order vesting title in Respondent (Prayer ¶ 1), for a

receiver to collect rents from tenants during the action (Prayer ¶ 2), for an order directing the Sheriff "to eject and remove from the premises the occupants of the property, and grant the Plaintiffs' quiet and peaceful possession" (Prayer ¶ 3), and for an order barring the Defendants' claims (Prayer ¶ 4). It pleads no separate cause of action for ejectment, trespass, or recovery of possession. Respondent's counsel stated at the hearing that the action was brought as one for adverse possession. (Tr. 127:14-24.)

The hearing and ruling. The Master dismissed the adverse possession claim for failure of the exclusivity element. (Tr. 129:9-130:11; Order ¶¶ 13-16.) She observed that the matter "comes down to . . . an intestacy issue" (Tr. 130:13-15), said that "adverse possession is out" (Tr. 131:17), and sent Respondent to the Probate Court to determine the heirs of Ms. Carroll (Tr. 131:17-132:6). She stated that she would hold "the quiet title portion in abeyance" until the Probate Court ruled. (Tr. 132:8-12; 136:14-20.) The Order grants Respondent leave to request a later hearing on quiet title once heirs are determined. (Order ¶ 22.) The Master told Appellant: "it's not clear whose it is on this side, but it's absolutely family property, and you are not family." (Tr. 132:14-17.) She later said, "I'm not going to make a determination on the heir." (Tr. 142:1-3.)

Respondent's counsel argued that, whichever option the Court chose, "the one common denominator is Mr. Morant must leave the property." (Tr. 115:13-14.) The Master ordered Appellant to leave (Tr. 132:19-21), found that he has no legal interest in the property (Tr. 133:8-12; 135:7-12), and stated that, whatever the Probate Court decides, "under any determination that they make, you have no right to be there." (Tr. 140:12-21.) The Order directs Appellant to remove himself by August 10, 2026 (Order ¶

29), and states that the Court will issue any necessary writs or orders for removal with the assistance of the Richland County Sheriff's Department. (Order ¶ 30.)

Equitable interest and rent. The Master stated that Appellant "may have had some equitable interest in paying the property taxes and in some of these improvements, but that that equitable interest is outweighed by the fact that you have not paid any rent." (Tr. 135:1-6; see Tr. 133:22-134:23.) The Order states both that Appellant "does not have any legal or equitable interest in the subject property" (Order ¶ 23) and that "[a]ny equitable interest Mr. Morant may have claimed in the property for payment of some property taxes and upkeep is outweighed by the fact that he never paid rent." (Order ¶ 28.) Respondent's counsel acknowledged at the hearing that Appellant "might have some type of equitable claim" and that Respondent was willing to acknowledge roughly \$1,600 in tax payments. (Tr. 113:3-12.) In closing, Respondent's counsel argued that rent of "some ridiculous low amount like \$100" a month for three years would outweigh any equitable claim. (Tr. 116:1-11.) The Order makes no finding of a rental agreement, a demand for rent, or a rental value. The Order finds that Appellant was "an invited guest" whose "invited status does not extend beyond their deaths." (Order ¶ 27.)

Access and insurance. At the end of the hearing, Respondent's counsel stated that his client "wants to keep the insurance on the house," and Respondent asked whether he needed to. The Master answered, "I can't tell you that," and, "You have to consult with your attorney on that one." (Tr. 143:3-13.) The access provision does not appear in the Master's oral ruling. The written Order provides that Respondent "will be granted access to the subject property for purposes of securing the property, having it appraised, and insured" (Order ¶ 31), and that Respondent "will not reside nor rent nor allow anyone else

to reside in the house pending a subsequent hearing to quiet the title following the determination of heirs by the Probate Court." (Order ¶ 32.) The Amended Complaint's prayer contains no request for access, inspection, appraisal, or insurance. (Am. Compl., Prayer.)

JURISDICTION AND APPEALABILITY

The Order is captioned "Not Ending Action." Appellant recognizes that this Court will consider whether the Order is immediately appealable. Appeals from a master-in-equity are governed by S.C. Code Ann. § 14-11-85, which provides that "an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals" as provided in the appellate court rules, and by Rule 203(b)(4), SCACR, under which the notice of appeal from an order or judgment of a master is served as in Rule 203(b)(1). The Order was entered under an order of reference and states that any appeal lies directly to this Court. (Order at 1.) The Order also finally decides a substantial matter: it adjudicates that Appellant has no right to remain in his home and directs his removal by the Sheriff, relief that cannot be undone if the Order is later reversed. See S.C. Code Ann. § 14-3-330(1), (2). The Supreme Court has held that an order that finally determines a substantial matter forming part of a claim or defense is immediately appealable under § 14-3-330(1) even though other claims remain pending, while cautioning that the statute is narrowly construed to avoid piecemeal appeals. *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). Appellant acknowledges that *Stone* concerned a family court order and that § 14-3-330(1) speaks of a "law case." This Court accepted the notice of appeal, assigned an appellate case number, and has entered stay orders on the Order, and a judgment directing delivery of possession of real property is

one for which the General Assembly has provided a stay procedure pending appeal. S.C. Code Ann. § 18-9-170.

STANDARD OF REVIEW

This action to quiet title was heard by the Master-in-Equity under an order of reference. In an appeal from an equity action, this Court may find facts in accordance with its own view of the preponderance of the evidence. *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d 862 (1998); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). No circuit judge reviewed the Master's findings; the Master entered the Order under an order of reference with appeal directly to this Court. (Order at 1.) Whether relief may be granted on the pleadings and findings made, and whether a party has been shown to hold a right of possession, are questions of law.

An issue must be raised to and ruled upon by the trial court to be preserved for appellate review. *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, Op. No. 27433 (S.C. Aug. 20, 2014). The preservation of each issue is addressed in the Argument.

ARGUMENT

I. THE REMOVAL ORDER HAD NO PLEADED CLAIM TO SUPPORT IT AFTER THE ONLY CLAIM BEFORE THE COURT WAS DISMISSED

Preserved: Defendant's Written Objection to Rulings Entered at July 8, 2026 Hearing and Notice of Intent to Appeal, filed July 9, 2026, ¶¶ 4-5.

The Amended Complaint pleads one claim: that Respondent's predecessor acquired the property by adverse possession. (Am. Compl. ¶¶ 6, 9-12.) It states no cause of action for ejectment, trespass, or recovery of possession. Its prayer asks first that title be vested in Respondent and then, as the means of giving that title effect, that the Sheriff be directed to remove the occupants and "grant the Plaintiffs' quiet and peaceful

possession." (Prayer ¶¶ 1, 3.) Respondent's counsel confirmed that adverse possession was the theory on which the action was brought. (Tr. 127:14-24.)

The Master dismissed that claim. (Tr. 129:9-130:11; Order ¶¶ 13, 16.) Once it failed, the request that the Sheriff place Respondent in possession had nothing left to enforce, because that relief was sought as the consequence of title vesting in Respondent. The Order nevertheless directs Appellant's removal (Order ¶ 29) and authorizes enforcement by the Sheriff (Order ¶ 30), on a claim Respondent never pleaded and did not prove.

Appellant does not contend that Rule 54(c), SCRCP, by itself bars relief that was not demanded in the pleadings. The rule provides that a judgment by default "shall not be different in kind from or exceed in amount that prayed for in the demand for judgment," and that, except as to a party against whom a default is entered, every final judgment "shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." Rule 54(c), SCRCP. The point here is the converse. Rule 54(c) permits relief beyond the demand only for a party who is entitled to that relief. Respondent was not entitled to possession on the claim it pleaded, because that claim failed, and, as shown in Part II, the Order identifies no other ground on which Respondent is entitled to possession.

II. THE ORDER IDENTIFIES NO PARTY WITH TITLE OR A RIGHT OF POSSESSION SUPERIOR TO APPELLANT'S, AND RESTS REMOVAL ON APPELLANT'S FAILURE TO JUSTIFY HIS PRESENCE

Preserved: Written Objection, ¶¶ 6, 16-17.

A. The Order leaves title, heirship, and entitlement to possession undecided.

The Order's own findings show that no one has been found to hold the property. Ms. Carroll held a one hundred percent interest at her death; no estate was opened for her; the property "remains titled in her name." (Order ¶¶ 17-19.) Her obituary "indicates other heirs not considered or made party to proceedings." (Order ¶ 20.) Respondent was directed to petition the Probate Court to determine her heirs (Order ¶ 21) and given leave to request a later hearing on quiet title after that determination (Order ¶ 22). The Master said, "it's not clear whose it is" (Tr. 132:14-17), and, "I'm not going to make a determination on the heir." (Tr. 142:1-3.) The Order also bars Respondent from residing in the house, renting it, or allowing anyone else to reside in it until the later hearing. (Order ¶ 32.) An order that withholds from Respondent the use of the property, while directing the occupant to give it up, is not supported by any finding that Respondent now holds a right of possession.

The Order's single finding about the Burrell family is that Elizabeth Jones Burrell is Ms. Carroll's niece. (Order ¶ 17.) It does not find that she, or her estate, takes any share of Ms. Carroll's property, or in what share, and it expressly leaves that question to the Probate Court. (Order ¶¶ 20-21.)

B. A party who seeks to dispossess another must establish his own right.

In an action to recover land from a person in possession, the plaintiff must recover on the strength of his own title and not on the weakness of his adversary's, and the defendant in possession, whose possession was not obtained by a tortious eviction, is treated as the rightful owner until the plaintiff proves title. *Cummings v. Varn*, 307 S.C. 37, 413 S.E.2d 829 (1992). *Cummings* was an action at law to try title, and Appellant

relies on it for the principle, which applies with equal force where a court of equity is asked to order a person out of the home he occupies: the party seeking possession must show his right to it.

Respondent did not. Its only pleaded route to title, adverse possession, failed. (Order ¶¶ 11-16.) Its alternative route, as heir of Ms. Carroll through Elizabeth Jones Burrell, was neither pleaded nor determined, and the Order sends that question to the Probate Court. (Order ¶¶ 20-22.)

C. The ruling asked what Appellant was entitled to, not what Respondent was entitled to.

Respondent's counsel argued that, whichever of several options the Court chose, "the one common denominator is Mr. Morant must leave the property." (Tr. 115:13-14.) The Master's reasoning followed that frame. She examined Appellant's status as a former invitee whose invitation ended with Carrietta Burrell's death, his nonpayment of rent, and whether his equitable interest was exhausted (Tr. 133:8-134:23), and, referring to the Probate Court, concluded that "under any determination that they make, you have no right to be there." (Tr. 140:19-21.) The Order adopts the same approach. (Order ¶¶ 23-29.)

That approach reverses the burden. A plaintiff whose claim has failed does not obtain possession because the defendant has not shown a better right. Appellant, as the person in possession, had no burden to establish a right superior to Respondent's; the question was whether Respondent had one. Appellant objected below to this shifting of the burden. (Written Objection ¶¶ 16-17.) The statement that Appellant has no right to be on the property under any probate outcome assumes that whoever is eventually found to hold the property will be entitled to remove him. That is a prediction about a

determination that has not been made, and the Master herself declined to make it. (Tr. 142:1-3.)

D. Removal before heirship is determined is premature.

Respondent may argue that, as the estate of a niece of Ms. Carroll, it holds at least an undivided interest that permits it to remove a person with no interest at all. The record does not support that argument. The Order does not find that Elizabeth Jones Burrell is an heir who takes, or in what share, and it recognizes other heirs not yet before the Court. (Order ¶¶ 17, 20.) Respondent did not plead or try an heirship-based claim to possession; it tried adverse possession. (Tr. 127:14-24.) Whether Respondent holds any interest, and in what share, is the very question the Master sent to the Probate Court. The Master's own course, holding quiet title in abeyance until that question is answered (Tr. 132:8-12; Order ¶ 22), is inconsistent with ordering Appellant out beforehand. Paragraphs 29 and 30 should be reversed, without prejudice to Respondent's right to seek possession once it establishes a right to it.

III. THE RULING THAT APPELLANT'S EQUITABLE INTEREST IS "OUTWEIGHED" BY UNPAID RENT HAS NO LEGAL OR EVIDENTIARY BASIS

Preserved: Written Objection, Notice of Intent to Appeal ¶ 18(e) and ¶¶ 16-17.

A. No rent was owed, shown, or fixed.

Paragraph 28 holds that any equitable interest Appellant may have for paying property taxes and providing upkeep "is outweighed by the fact that he never paid rent." (Order ¶ 28; Tr. 134:16-23; 135:1-6.) Rent is an obligation owed under an agreement or, for the reasonable value of use and occupation, to a person entitled to possession. The Order finds none of the facts on which such an obligation could rest. It finds no rental

agreement and no demand for rent. It finds that Appellant lived in the house as an invited guest. (Order ¶ 27.) Appellant testified that he has not paid rent since moving in (Tr. 96:20-25), which is consistent with that finding. No evidence of the rental value of the property was offered. The only figure in the record is Respondent's counsel's closing argument that rent of "some ridiculous low amount like \$100" a month would exceed any equitable claim. (Tr. 116:4-11.) Argument of counsel is not evidence.

Appellant does not contend that rent can never be charged without a written lease. South Carolina permits a claim for the reasonable value of rent-free occupancy without one. *A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 812 S.E.2d 759 (Ct. App. 2018). But in *A&P Enterprises* the claimant sued for ejectment and rent, testified to the rent he expected, and presented the occupant with a written lease; the court directed that rent be calculated from the date the lease was first presented; and it directed that the rent award be reduced by any amount awarded to the occupant for maintenance and improvements. *Id.* There, the offset ran in the occupant's favor. Here, the Order identifies no demand, no starting date, no rental value, and no party entitled to rent, and it used unpaid rent to eliminate the occupant's claim rather than to be reduced by it.

B. No party entitled to receive rent was identified.

Even if the value of Appellant's use of the property after the invitation ended in May 2023 could be charged against him, it would be owed to the person entitled to possession. For the reasons in Part II, the Order identifies none. An offset in favor of an unidentified party cannot defeat Appellant's claim for taxes and upkeep paid.

C. The Order is internally inconsistent.

Paragraph 23 states that Appellant "does not have any legal or equitable interest in the subject property." Paragraph 28 treats him as having an equitable interest that is then outweighed. At the hearing the Master said Appellant "may have had some equitable interest in paying the property taxes and in some of these improvements." (Tr. 135:1-6.) Respondent's counsel acknowledged that Appellant "might have some type of equitable claim" and that roughly \$1,600 in tax payments could be acknowledged. (Tr. 113:3-12.) The findings cannot all stand. Appellant recognizes that the Master expressed doubt about his estimates of the cost of painting and tree removal. (Tr. 134:3-15.) The error identified here does not depend on those estimates. It is that any interest in the taxes was set off against rent that was not owed, shown, or quantified, in favor of a party not shown to be entitled to it.

Paragraph 23, to the extent it finds that Appellant has no equitable interest, and Paragraphs 26 through 28 should be vacated, and Appellant's equitable claim should be determined after title is determined. Appellant's counterclaim for unjust enrichment and betterment, pleaded in the alternative, remains pending in the trial court.

IV. PARAGRAPH 31 OF THE ORDER, GRANTING ACCESS TO THE PROPERTY, HAS NO BASIS IN THE HEARING OR THE PLEADINGS

Preservation: Paragraph 31 first appeared in the written Order and was not announced at the hearing, so Appellant had no opportunity to object to it beforehand. He challenged it in his motion for supersedeas filed August 7, 2026 and his supplemental filing, and raises it here.

Paragraph 31 provides that Respondent "will be granted access to the subject property for purposes of securing the property, having it appraised, and insured." Nothing in the transcript supports it. The Master's oral instructions about what the written order

would contain concerned removal, the Sheriff's authority, and "any other occupants." (Tr. 138:14-139:14; 142:13-15.) The only discussion of insurance came when Respondent's counsel said his client "wants to keep the insurance on the house," Respondent asked whether he needed to, and the Master answered, "I can't tell you that," and told them to consult counsel. (Tr. 143:3-13.) Respondent's counsel had argued in closing that Appellant should leave so that Respondent could "make sure the insurance is secure." (Tr. 115:15-18.) The Master did not adopt that request from the bench.

The provision also lacks a pleaded or tried basis. Appellant recognizes that pleadings are construed liberally and that, under Rule 54(c), SCRCP, a court may grant relief to which a party is entitled even if it did not demand it. The question is entitlement and opportunity to be heard. The Amended Complaint's prayer asks for title, a receiver, removal of occupants, and an order barring the Defendants' claims, and contains no request for access, inspection, appraisal, or insurance. (Am. Compl., Prayer.) The hearing did not address access. The Order contains no finding that Respondent is entitled to enter the property; it grants access to a party whose title and right to possession are undetermined (Part II) and whom the Order bars from residing in or renting the house (Order ¶ 32). And because the provision first appeared in the written Order, Appellant had no opportunity to be heard on it. A provision entered without a ruling from the bench, a finding of entitlement, or an opportunity to respond should be reversed.

CONCLUSION

Appellant respectfully requests that this Court:

(a) reverse Paragraphs 29 and 30 of the Order, which direct Appellant's removal and authorize its enforcement, without prejudice to Respondent's right to seek possession after it establishes a right to it;

(b) reverse Paragraph 31 of the Order;

(c) vacate Paragraph 23 of the Order to the extent it finds that Appellant has no equitable interest, and Paragraphs 26 through 28, and remand for a determination of Appellant's equitable claim after title and heirship are determined;

(d) in the alternative, vacate the Order insofar as it directs removal and remand with instructions that no removal be ordered until a party has established a right to possession superior to Appellant's; and

(e) grant such other relief as the Court deems just.

Respectfully submitted,

October ____, 2026

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