THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2011-CP-12-0323

Mell Woods ..... Appellant,

v.

John D. Hinson; Christine Jones; John C. Hinson; Kathy Huffstickle; Charles J. Hinson; William L. Hinson; Lois Hinson; Robert Breakfield, as Personal Representative of the Estate of Reba P. Hinson; Elaine H. Hensley; Robert H. Hinson; George Stanford, as Personal Representative of the Estate of Linda H. Stanford; William C. Hinson, Jr.; Darrell W. Hinson; Mary Roe and John Doe, fictitious names used to designate all other parties, whose names are unknown, and any and all other persons claiming any right,title, estate interest or lien upon the real estate described in the complaint; ..... Respondents.

RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING

This Return is submitted pursuant to Rule 240(e), SCACR. The purpose of a petition for rehearing is not to have the case or order tried or argued to the appellate court a second time. Hon. Jean Hoefer Toal et al., Appellate Practice in South Carolina 293 (2d ed.

2002). Appellant-Petitioner (hereafter "Appellant) must demonstrate that the appellate court has overlooked or misapprehended Appellant's arguments. Id. By this standard, the petition should be denied.

Paragraphs 4 to 8, inclusive, and paragraph 11, of the Petition challenge the Court's opinion with respect to adverse possession. The trial court's Order granting summary judgment held that Reba Hinson possessed only a life estate, that Appellant had constructive notice that Reba Hinson held only a life estate, and that Appellant's claim to title based on Reba Hinson's life estate was barred because "a life tenant (Reba Hinson) cannot claim adverse possession against remaindermen." (R. p. 703, l. 9 to p. 704, l. 3.)

Appellant's Issue on Appeal no. 4, (Appellant's Brief, p. 10-11) rested on his erroneous interpretation of Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992.) Appellant's error regarding the issue decided in Miller and its relationship to the facts of the above-captioned case were addressed in Respondents' Brief, page 35, where it was written:

> Appellant's reliance on Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992) is misplaced. In Miller, the court addressed a situation where a statute of limitations for adverse possession had commenced and subsequently, a life estate was created. The argument was that the subsequent creation of the life estate would stay or "arrest" the running of the adverse possession period. The court in Miller disagreed. Here, Reba Hinson's life estate was not created after her alleged adverse possession limitations period started to run. Assuming that Reba Hinson had an adverse possession claim, its limitations period would have started to run at the exact same time as her life estate was created, namely at the death of Levie Hinson.
>
> Unlike Miller there is nothing in this case that can give rise to a claim that the statute of limitations period was ever suspended. Miller is a limitations period case, whereas the case on appeal herein is a period of possession case.

This court addressed the adverse possession issue as a possession and tacking issue and not as a statute of limitations issue. (Opinion, p. 4, ¶ 3.) The issue was not overlooked or misapprehended.

Paragraphs 9 and 10 of the Petition challenge the Court's decision with respect to the construction of Levie Hinson's Last Will, namely that the will devised a life estate and not fee simple to Reba Hinson. Petitioner simply rehashes his argument that the particular wording of the will and the sequence of the fee simple and life estate terms require a conclusion that a life estate was devised to Reba Hinson. This particular issue takes up the majority of the Court's opinion. (Opinion, p. 2-4, ¶ 1.) Petitioner falls far short of demonstrating that the issue was overlooked or misapprehended by this court. He only demonstrates that he disagrees with the decision.

Finally, in Paragraph 12 of the Petition, Appellant argues that this Court was in error in concluding that the statute at issue, S.C. Code Ann. §15-67-100, was not presented to and ruled on by the trial court and, consequently, was not preserved for review by this court. (Opinion, p. 4, ¶ 2.) The state of the record on this issue was described on page 22 of Respondents' Brief:

> The particular statute identified by the Appellant was not included or alleged in the Complaint. (R. pp. 591-610.) It was not identified or cited in anything filed with the trial court with respect to the summary judgment proceedings until Appellant's Motion for Reconsideration dated January 14, 2012. (R. pp. 705-721, particularly 710, ¶ 14.) . . . It is true that Appellant's verified Response to the summary judgment motion included in his "Wherefore" clause "the fact that plaintiff has a statutory right to a jury trial in a title clearing case," but the particular statute was not identified. (R. p. 646, l. 4-8.) The statute was not mentioned or addressed by Appellant in his oral argument to the trial court on November 9, 2011 when the summary judgment motion was heard.

Appellant cites to four places in the Record where he asserts that he raised the issue of the statute to the trial court. On R., p. 646, in his Response to Defendant's Motion for Summary Judgment, not in the argument itself but in the "Wherefore" clause, Appellant wrote:

> Wherefore, having shown at least a scintilla of evidence warranting a jury trial, and coupled with the fact that plaintiff has a statutory right to a jury trial in a title clearing case, plaintiff asks that defendant's [sic] Motion be denied.

Appellant cites to R., p. 692, the transcript of the summary judgment hearing, where he said to the trial court, "That's all I want is a jury trial."

Appellant cites to R. p. 710 and 712, both pages from Appellant's written Motion for Reconsideration. On p. 710, the Appellant, for the first time in the case, identifies S. C. Code Ann. §15-67-100 as an issue in the case. (R., p. 710, l. 4-6.). As such, as this Court held, it was too late to raise that particular statute for trial court decision. On p. 712, again in the Wherefore clause of the Motion for Reconsideration, Appellant wrote, "all plaintiff wants is a jury trial." (R., p. 712, l. 4-5.)

Appellant cannot rely on a generic, unspecified statutory right without identifying the specific statute, out of the thousands of state law statutes, that is the source of the alleged claim.

The alternative argument presented by the Respondents in their Brief, an argument that the Court did not address in its Opinion, was that Appellant's argument missed the mark on the reach of S.C. Code Ann. § 15-67-100. From Respondents' Brief, p. 23, l. 1-9:

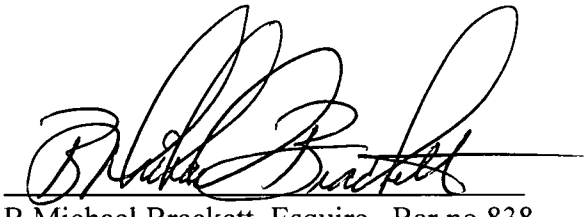
> Reserving the argument in the preceding paragraph, Appellant appears to argue that summary judgment is unavailable to a defendant in a "title

> clearing case" because S.C. Code Ann. §15-67-100 preserves, or more accurately guarantees without exception, the right to jury trials in such cases. There is no law holding that the right to a jury trial in law cases is synonymous with a guarantee of a jury trial that cannot be lost via an adverse summary judgment. Summary judgment is frequently granted in law cases (cases in which litigants have the right to jury trials). Summary judgment is governed by the nature and sufficiency of the pre-trial evidence presented and the existence, or not, of genuine issues of fact, not by the title of the cause of action or by the existence of a right to jury trial.

Because this argument appears in the appellate record, it can be used as a basis to deny the Petition for Rehearing. Rule 220(c), SCACR.

CONCLUSION

Appellant-Petitioner has not demonstrated that the points he raised in his appeal to this Court were overlooked or misapprehended in the Court's unpublished, per curiam Opinion. At best, he has only shown that he disagrees with the decisions announced therein. The Petition for Rehearing should be denied.



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January 27, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2011-CP-12-0323

Mell Woods,

Plaintiff,

v.

John D. Hinson; Christine Jones; John C. Hinson; Kathy Huffstickle; Charles J. Hinson; William L. Hinson; Lois Hinson; Robert Breakfield, as Personal Representative of the Estate of Reba P. Hinson; Elaline H. Hensley; Robert H. Hinson; George Stanford, as Personal Representative of the Estate Linda H. Stanford; William C. Hinson, Jr.; Darrell W. Hinson; Mary Roe and John Doe, fictitious names used to designate all other parties, whose names are unknown, and any and all other persons claiming any right, title, estate interest or lien upon the real estate described in the complaint;

Defendants.

CERTIFICATE OF SERVICE

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Defendants in the above-captioned matter, do hereby certify that I have served Plaintiff, pro se with a copy of **Respondents' Return to Appellant's Petition for Rehearing** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 27th day of January, 2014 at the following address:

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January 27, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Woods v. Hinson, et. al.
2011-CP-12-0323
Appellate Case No. 2012-212330
MB File No.: 12085.4

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Respondents' Return to Appellant's Petition for Rehearing.

By copy of this letter, a copy of the enclosed Return is being served upon the Appellant, personally, who has appeared pro se throughout these proceedings.

The authorities supporting the Return are set forth in the Return, so I am not filing a separate memorandum of law.

Please return a clocked copy of the first page of the return using the envelope provided.

Very truly yours,

B. Michael Brackett

BMB/lta
Enclosures

cc. Robert H. Breakfield, Esquire
Mell Woods

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