

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Opinion No. (S.C. Ct. App. Filed April 25, 2011)

Mountain View Baptist Church Respondent

v.

Bobby Lee Burdine Petitioner.

APPENDIX

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South Carolina Legal Services
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Greenville, South Carolina 29601
(864) 679-3525

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Greenville, South Carolina 29601
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Attorneys for Petitioner

Other Counsel of Record

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Circuit Court

John C. Few, Circuit Court Judge

C.A. No.: 2008-CP-23-8598

Mountain View Baptist Church..... Appellant

v.

Bobby Lee Burdine.....Respondent

RECORD ON APPEAL

Candy M. Kern-Fuller, Esquire
200 East Main St.
Easley, SC 29640
(864) 855-3114
Attorney for Appellant

Kirby Mitchell, Esquire
701 South Main St.
Greenville, SC 29601
(864) 679-3247
Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

2008CV2310501624
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Mountain View Baptist Church
Trustees

PLAINTIFF(S)

Vs
Bobby Lee Burdine
108 Temple St.

VACATE BY 5 PM
NOVEMBER 20, 2008

Greenville, SC 29601

DEFENDANT(S)

TO THE SHERIFF/DEPUTY SHERIFF/CONSTABLE:

Upon Judgment of this Court, you are hereby Ordered to proceed to the premises located at 108 Temple St. Greenville, SC 29601, in accordance with S.C Code Sections 27-40-710, 27-40-735, and 27-37-160 as amended.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have twenty four (24) hours to voluntarily vacate the premises. If the premises appear unoccupied and no one responds to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, a deputy sheriff may enter the premises using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

November 13, 2008

[Signature]
City Magistrate 1

In accordance with the SC Rules for Magistrate Court, Sabrina V. Sewell, certify that:

☒ I personally served a copy of this Writ on BOBBY L BURDINE, an occupant of the rental unit.
☐ On 20, at the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise. On 20, at , which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.

☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.

☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.

☐ Informed by Plaintiff that case is settled.

Date: November 13, 2008

VACATE BY 5 PM
NOVEMBER 20, 2008

[Signature]

Sheriff/Deputy Sheriff/Constable

MV 110

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2008CP2308598

Mountain View Baptist Church vs. Bobby Lee Burdine

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 26th day of Nov, 2008, and a copy mailed first class this 26th day of Nov, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

John L.B. Kehl Love Thornton Arnold &
Thomason, PA P.O. Box 10045 Greenville, SC
29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

✓ Candy Kern-Fuller
3208 SC Hwy 153
Piedmont SC 29673

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Paul B. Wickensimer - Clerk of Court

CPFORM4M

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Mountain View Baptist Church,)
)
Respondent,)
)
v.)
)
Bobby Lee Burdine,)
)
Appellant.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2008-CP-23-8598

FILED CLERK OF COURT
GREENVILLE CO. S.C.
2008 NOV 26 P 1:01

ORDER

This matter came before me on a Motion for Supersedeas filed by the Appellant. The Respondent filed an Application for Writ of Ejectment, Civil Case Number 2008CV2310501624, with the Greenville County Magistrate's Court for the purpose of ejecting the Appellant from a house located at 108 Temple Street, Greenville, South Carolina. Judge Leila Foster ruled on the Application and issued a Writ of Ejectment on November 13, 2008, requiring the Appellant to vacate the premises at 108 Temple Street by 5:00 p.m. on November 20, 2008.

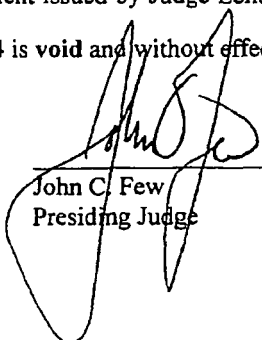
The Appellant alleges that he has a claim of title to the property at 108 Temple Street and has set forth some evidence to support that allegation. The Magistrate, pursuant to South Carolina Code § 22-3-20(2), does not have jurisdiction to rule on issues relating to title to real property. Therefore, the Magistrate was without subject matter jurisdiction to rule on the Application or issue the Writ of Ejectment, as cases in which the title to real property are raised may only be heard in the Circuit Court.

THEREFORE,

IT IS ORDERED that the Writ of Ejectment issued by Judge Leila Foster on November 13, 2008, in Civil Case Number 2008CV2310501624 is void and without effect.

IT IS SO ORDERED!

11/20, 2008
Greenville, South Carolina



John C. Few
Presiding Judge

11/26/cs

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2008CP2308598

2008 DEC 18 AM 8:31

Mountain View Baptist Church vs. Bobby Lee Burdine

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, SC

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

- SEE ATTACHED -

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - JOHN C. FEW

This judgment was entered on December 18, 2008, and a copy mailed first class December 18, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

John L.B. Kehl Love Thornton Arnold & Thomason, PA P.O.
Box 10045 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

Candy M. Kern-Fuller 3208 SC Hwy 153 Piedmont, SC
29673

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Paul B. Wickensimer - Clerk of Court

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) C.A. NO.: 2008-CP-23-8598

Mountain View Baptist Church,

Respondent,

v.

Bobby Lee Burdine,

Appellant.

FILED CLERK OF COURT
GREENVILLE CO S.C.
2008 DEC 12 P 4:44

**MOTION TO ALTER OR AMEND
JUDGMENT**

ENTERED COMPUTER

Pursuant to SCRCP 59(e), Plaintiff moves to Alter or Amend the Judgment this

Court entered on February 27, 2007. The bases for this motion are as follows:

A. FACTS/PROCEDURAL HISTORY

This action was before the Court on appeal from the Magistrate's Court Order of Magistrate Leila Foster.

As outlined at the appeal hearing, Plaintiff and Defendant do not now have, nor have they ever had, a landlord/tenant relationship. Rather, the Magistrate's Court ejectment action was brought pursuant to S.C. Code Ann. § 15-67-620, as amended which provides that:

If the person in possession shall, before the expiration of the five days, appear before such magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him, by any of the modes of proceeding now provided by law, the magistrate shall not issue his warrant as provided in § 15-67-610.

(Emphasis added)

As presented at the appeal hearing, the procedural history and timeline of the

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Mountain View Baptist Church Trs.,)

Plaintiff,)

v.)

Bobby Lee Burdine,)

Defendant.)

CIVIL CASE NUMBER
IN THE MAGISTRATE'S COURT

10-02-08 P04:27:18

APPLICATION FOR EJECTMENT
(Eviction)

1. Plaintiff, Mountain View Baptist Church Trs., is the owner of the premises described as: a parcel of land and a house located at 108 Temple St., Greenville, SC 29601 (Tax Map #0054000201000). (See GIS Tax Map and Title to Real Estate attached hereto as Exhibit 1)
2. Plaintiff affirms that this action is within the jurisdiction of the Greenville City Magistrate, Leila Foster.
3. Plaintiff states that, with regard to the above described premises, a landlord-tenant relationship does not exist, nor has it ever, between Plaintiff and the Defendant.
4. Defendant has unlawfully resided in the house located on the parcel of land located at 108 Temple St., Greenville, SC 29601 (Tax Map #0054000201000) and has failed to vacate the premises upon request of the Plaintiff.
5. Plaintiff now moves before this Court for a Rule To Vacate or Show Cause.

[SIGNATURE BLOCK ON PAGE 2]

Respectfully submitted,



Candy M. Kern-Fuller, Esq. (SC Bar #11392)

UPSTATE LAW GROUP, LLC

3208 S.C. Hwy. 153

Piedmont, SC 29673

(864) 295-9168

(864) 295-9170 (facsimile)

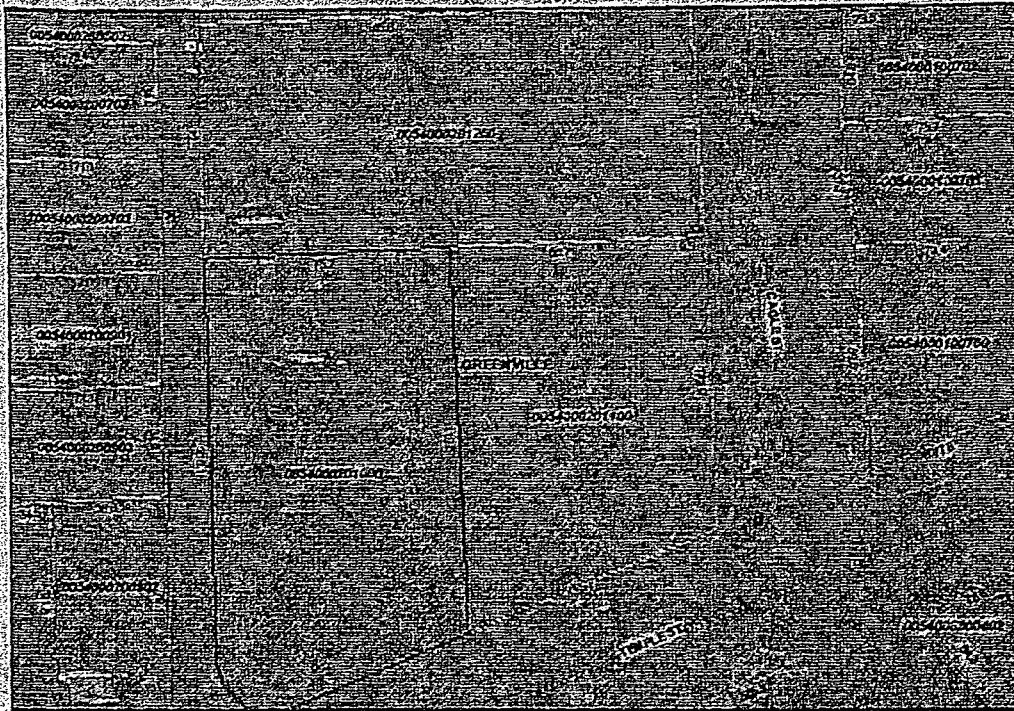
Candy@UpstateLawGroup.com

Piedmont, SC
October 2, 2008.

ATTORNEY FOR PLAINTIFF

EXHIBIT 1

Greenville County, SC



PIN / Tax Map #	0054000201000	Jurisdiction	1
Owner Name	MOUNTAIN VIEW BAPTIST CH TRS	Landuse	1100
Owner Name 2		Subdivision Lot Number	2
Mailing Address	111 Cagle St	Subdivision	
City	GREENVILLE	Site Address Number	108
State	SC	Site Address Street	TEMPLE
Zipcode	29601	Sales Price	\$14,000
In Care Of		Fair Market Value	\$40,734
Previous Owner	LOCKE RICHARD W	Taxable Market Value	\$40,734
Deed Date	19980709	Taxes	\$771.43
Deed Book	1774	Taxes Paid	Tuesday, January 15, 2008
Deed Page	211	Estimated Acres	0.234
Plat Book	A-	Square Footage	876
Plat Page	106	Number of Bedrooms	3
Tax District	500	Number of Bathrooms	1
Market Area	005100	Number of Half Baths	0

Disclaimer: This map is not a LAND SURVEY and is for reference purposes only. Data contained in this map are prepared for the inventory of Real Property found within this jurisdiction, and are compiled from recorded deeds, plats, and other public records. Users of this map are hereby notified aforementioned public primary information sources should be consulted for verification of the information contained in this map. Greenville County assumes no legal responsibility for the information contained in this map.

Map Scale
1 inch = 45 feet

BOOK 1774 PAGE 211

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Grantor's Address: 111 Cagle Street, Greenville, SC 29601

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that RICHARD W. LOCKE

in consideration of Fourteen Thousand and 00/100 (\$14,000.00) Dollars,

the receipt of which is hereby acknowledged, have (has) granted, bargained, sold, and released, by these presents do(es) grant, bargain, sell and release unto MOUNTAIN VIEW BAPTIST CHURCH TRUSTEES, their successors and assigns forever:

ALL that piece, parcel, or lot of land situate, and being in the City of Greenville, Greenville County, South Carolina, on the north side of Temple Street (formerly Mauldin Street), being known and designated as Lot No. 2 of Block E of the subdivision of property of W. E. Mauldin and I. W. Cagle as shown in a plat and recorded in the RMC Office for Greenville County, South Carolina, in Plat Book E, at Page 242; reference to which plat is hereby carved for the notes and bounds description thereof.

THIS being the same property conveyed to Richard W. Locke by deed of David R. Stone, dated January 18, 1996, and recorded in the RMC Office for Greenville County, South Carolina, on January 22, 1996, in Deed Book 1632, at Page 473.

together with all and singular the rights, appurtenances and appurtenances to said premises belonging or in any wise incident or appertaining, to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs or successors and against every person, whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 9th day of July, 1998

SIGNED, sealed and delivered in the presence of:

[Signature] (SEAL)
[Signature] (SEAL)
Richard W. Locke

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE

FILED FOR RECORD IN GREENVILLE
COUNTY SC F.O.D. OFFICE AT 01:17 PM
07/09/98 RECORDED IN DEED
BOOK 1774 PAGE 0211
DOC # 9806384

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 9th day of July, 1998

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: March 11, 2008

STATE 36.40
JUL 09 1998
COUNTY 15.40

56384

STATE OF SOUTH CAROLINA	)	
	)	IN THE MAGISTRATE'S COURT
COUNTY OF GREENVILLE	)	
Mountain View Baptist Church,	)	
	)	C. A. No: 2008-CV-23-10501624
Plaintiff,	)	
	)	ANSWER AND
vs.	)	UNDERTAKING OF DEFENDANT
	)	
Bobby Lee Burdine,	)	
	)	
Defendant.	)	

Comes now Defendant, Bobby Lee Burdine, responding to Plaintiff's Application for Ejectment, and undertaking as follows:

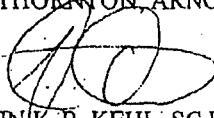
1. Defendant denies the allegations contained within Paragraph 1 of the Application for Ejectment.
2. Defendant denies that this action is within the jurisdiction of the Magistrate's Court, because the title to the subject real property is in question, and because as acknowledged by Plaintiff in its Application, no landlord/tenant relationship exists nor has ever existed between the parties.
3. Defendant admits the allegations of Paragraph 3 of the Application.
4. Defendant admits so much of Paragraph 4 as alleges that Defendant has resided and continues to reside in the house located at 108 Temple Street, Greenville, SC 29601 (Tax Map Number 0054000201000). Defendant further alleges that said occupancy is lawful and has continuously existed by Defendant and previously his parents for a period in excess of forty years.

Accordingly, any alleged claim of ownership of the subject property by Plaintiff is barred by the provisions of South Carolina Code §15-3-380.

5. Further, Defendant affirms and hereby undertakes that if Plaintiff shall within 20 days hereof deposit with the Magistrate a Summons and Complaint in an action filed in Circuit Court concerning title to the subject property, Defendant by and through undersigned counsel shall within 20 days accept service thereof.

WHEREFORE, Defendant requests that this Court dismiss the above captioned action for lack of jurisdiction, vacate the previously Writ of Ejectment herein, and grant such other and further relief as it deems appropriate.

LOVE, THORNTON, ARNOLD & THOMASON, P.A.

By: 

JOHN L. B. KEHL, SC Bar # 17264
Post Office Box 10045
Greenville, SC 29603
(864) 242-6360

Attorney for Defendant

Greenville, South Carolina

November 12, 2008.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mountain View Baptist Church,

☐ Respondent

v.

Bobby Lee Burdine,

☒ Appellant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-23-

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Respondent's Attorney:

Candy Kern-Fuller Bar No: 68283

Address:

3208 S.C. Hwy 153

Piedmont, SC 29673

phone: 864-295-9168 fax 864-295-9170

e-mail: candy@powdersvillelaw.com other:

Appellant's Attorney:

John L.B. Kehl Bar No. 17264

Address: P.O. Box 10045

Greenville, SC 29603

Phone: 864-242-6360 fax 864-271-7972

e-mail: jkehl@ltatlaw.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Stay **EXPEDITED HEARING REQUESTED**

Estimated Time Needed: 15 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached:

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ 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:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mountain View Baptist Church,

Respondent,

v.

Bobby Lee Burdine,

Appellant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2008-CP-23-

NOTICE OF MOTION AND MOTION
FOR SUPERSEDEAS AND STAY

(Expedited Hearing Requested)

TO: THE RESPONDENT NAMED ABOVE AND ITS ATTORNEY:

PLEASE TAKE NOTICE that the Appellant, by and through his undersigned attorneys, will move before the presiding judge in the Court of Common Pleas at the Greenville County Courthouse, Greenville, South Carolina, at the earliest date and time as may set by the Court for an order staying the execution and enforcement of the Writ of Ejectment issued by The Honorable Leila Foster on November 13, 2008.

This Motion is based upon the statutory and common law of the State of South Carolina and is made on the grounds that the Magistrate, in hearing this matter and issuing the Writ of Ejectment, was without jurisdiction to do so because the Appellant raised the issue both before the hearing and at the hearing that he owned the property in question. Once that issue was raised, the Magistrate had no jurisdiction to rule on this, and the matter should properly have been dismissed without prejudice or transferred to the Court of Common Pleas. However, the Magistrate proceeded to conduct a trial of the matter, and in issuing the Writ of Ejectment, improperly made a ruling on the merits of Appellant's claim of adverse possession.

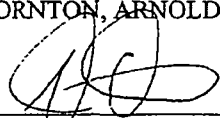
In support of this Motion, the Appellant submits the Affidavit of the Appellant [attached as Exhibit A], the Affidavit of Richard Locke [attached as Exhibit B], correspondence between the Appellant's attorney dated October 15, 2008 [attached as Exhibit C] and October 27, 2008 [attached as Exhibit D], the Affidavit of Lee Ruth Burdine [attached as Exhibit E], and the Answer and

Undertaking of Defendant [attached as Exhibit F].

Due to the fact that the Writ requires the Appellant to vacate the premises by 5:00 p.m. on Thursday, November 20, 2008, the Appellant requests an expedited hearing to rule on this motion prior to such time.

Counsel certifies that consultation with opposing counsel would serve no useful purpose.

Respectfully Submitted,
LOVE, THORNTON, ARNOLD & THOMASON, P.A.

By: 

John L.B. Kehl, SC Bar No. 17264
M. Kyle Thompson, S.C. Bar No. 68283
Post Office Box 10045, F.S.
Greenville, South Carolina 29603
(864) 242-6360
(864) 271-7972 facsimile
Attorneys for the Appellant

Date: 11/17/08
Greenville, South Carolina

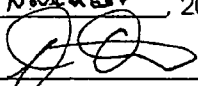
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2008-CP-23-
Mountain View Baptist Church,	)	
	)	
Respondent,	)	AFFIDAVIT OF BOBBY LEE BURDINE
	)	
v.	)	
	)	
Bobby Lee Burdine,	)	
	)	Case No: 2008CV2310501624
Appellant.	)	

Personally appeared before me the undersigned who being duly sworn deposes and states:

1. My name is Bobby Lee Burdine, and I have personal knowledge of the matters contained herein.
2. I was born August 5, 1956. My mother was Iemma Burdine, wife of Alonzo Burdine. I currently reside at 108 Temple Street in Greenville, South Carolina. I lived at 108 Temple Street with my mother and Alonzo Burdine during my entire childhood, for as long as I can remember. I specifically remember living at 108 Temple street with my parents when I attended first grade at the age of six years old, and I lived there prior to that time.
3. From the time of my early childhood, Alonzo Burdine and Iemma Burdine always lived at 108 Temple Street, except that my mother, shortly before her death, moved into a nursing home. She died June 4, 2000. Alonzo Burdine never moved out of 108 Temple Street, and resided there at the time of his death, shortly before the death of my mother. Alonzo Burdine never lived in a nursing home.
4. After the death of Alonzo Burdine, I lived at 108 Temple Street and have occupied and controlled the house ever since. I have the keys to the property, and have considered the house my home continuously since the time of Alonzo Burdine's death. I have made repairs to the property.
5. During the period since Alonzo Burdine's death, I have never paid rent to anyone, nor has anyone sought to collect rent from me.

Further the affiant sayeth not.

SWORN to before me this 15
day of November, 2008



Notary Public for South Carolina
My commission expires: 12/17/11

Bobby Lee Burdine
Bobby Lee Burdine

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2008-CP-23-
Mountain View Baptist Church,	)	
	)	
Respondent,	)	AFFIDAVIT OF RICHARD W. LOCKE
	)	
v.	)	
	)	
Bobby Lee Burdline,	)	
	)	Case No: 2008CV2310501624
Appellant.	)	

Personally appeared before me the undersigned who being duly sworn, deposes and states:

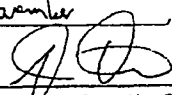
1. My name is Richard W. Locke, and I have personal knowledge of the matters contained herein.
2. On June 7, 1971, Irvine Street Realty Corp, of which I was a principal, purchased a parcel of real estate in Greenville County designated as lot 2 of Block E as shown on plat of survey of property of W. L. Mauldin and J. W. Cagle recorded in Plat Book E at Page 242 in the Greenville County Register of Deeds office. The deed for this conveyance is recorded in Deed Book 918 at Page 101, in the Greenville County Register of Deeds office.
3. Thereafter, on January 18, 1996, I purchased the same real property, individually, from Irvine Street Realty Corp, as reflected in a deed recorded in Deed Book 1632 at page 473 in the Greenville County Register of Deeds office.
4. Thereafter, on July 8, 1998, I conveyed the same property to Mountain View Baptist Church as reflected in a deed recorded in Deed Book 1774 at page 211 in the Greenville County Register of Deeds office.
5. Subsequent to my conveyance of the property to Mountain View Baptist Church, I became aware that the house known as 108 Temple Street was wholly situated on the property.
6. During the entire twenty-seven year period of my ownership of the property, both individually, and as a principal of Irvine Street Realty Corp, I never collected or sought rent from anyone residing at 108 Temple Street.

In fact, during that entire period, I was unaware that the house known as 108 Temple Street was situated on the lot.

Further the affiant sayeth not.


Richard W. Locke

SWORN to before me this 17
day of November 2008


Notary Public for South Carolina
My commission expires: 12/13/11

LOVE, THORNTON, ARNOLD & THOMASON, P.A.

WILLIAM M. HATHORN, III
DENALD H. MCALISTER
THEODORE E. CUTHBERT
MARION A. GOLDSMITH
S. ODAY WALSH
DAVID L. MOORE, JR.
JOHN H. THORNTON
JUDITH W. LINDHACK
ANDREW S. CUTLERGATH
JOHN L. B. KIRK
B. RYLEE THOMASON
ANDREW M. THOMSON
DANIEL C. HUGHES

*ALSO ADMITTED IN TEXAS

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FEIN: 57-0925508

Writer's Direct Dial: 864-298-2675

October 15, 2008

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(803) 870-0144
FAX (803) 870-0140

JAS. L. LOVE
1805-1972

JOHN C. THORNTON
1899-1908

W. H. ARNOLD
1907-1908

H. O. THOMASON, JR.
1920-1903

Ms. Candy M. Kern-Fuller
Attorney at Law
% Upstate Law Group, LLC
3207 SChwy 153
Piedmont, SC 29673

RE: Mountain View Baptist Church and Bobby Lee Burdine
108 Temple Street, Greenville, SC
Tms No. 0054.00-02-010.00

Dear Candy:

Recently Bobby Lee Burdine came to my office and expressed much concern about an eviction proceeding he had received concerning the above referenced property.

According to the documentation he presented me, Mountain View Baptist Church claims ownership to the lot on which his parents built their home approximately 50 years ago. According to the description of the property in the Deed from Richard W. Locke to Mountain View Baptist Church Trustees (Deed Book 1774 Page 211 recorded July 9, 1998) and the computer enhanced aerial photo of the property, it appears that the lot where the house sits was deeded to the Church.

I am informed by Mr. Burdine that when he was a very young boy, his mother and father bought a lot on Temple Street on which to build their home. Their house was constructed shortly thereafter with the aid of Mr. and Mrs. Broadus Bailey, Mr. Alonzo Burdine's employer. Bobby Lee Burdine informs me that he is 52 years of age and this is the only home he remembers living in.

My review of the public records indicates that Alonzo Burdine and R. Emma Edwards Burdine purchased a lot on the eastside of Temple or Meadow Street known as lot 124 as shown on plat recorded in Plat Book 0 at Page 21. This Deed was recorded December 6, 1958. The Tax Map No. of this property appears to be 0054.00-02-008.02. The tax records still list this property in the name of Mr. and Mrs. Burdine.

I am enclosing for your information and review a print out of the County tax maps which show both pieces of property and their proximity to one another. In addition, I am enclosing copies of various Deeds I have retrieved in the chains of title.

Mr. Burdine informs me that this house was occupied by his parents as their home until the last one died in approximately 2000. Since that time, Mr. Burdine has possessed and occupied the property. According to him, neither he nor his parents have ever paid rent to anyone on this property. In addition, he claims he has paid taxes every year on the house. This is why he was so perplexed by the Application For Ejectment.

I spoke with Dick Locke, the former owner of the property, and he informed me that during the period of time he personally owned the property (two years) and the twenty-five year period that Irvine Street Realty Corp. (Richard W. Locke and Judge H. Samuel Stilwell) owned the lot, no claim for rent or ownership of the house was asserted by them. It was my impression from talking with Dick Locke that he may not have thought the house was actually on the lot he owned. Regardless, it appears the house is located on this property. I feel assured that Dick Locke would be glad to discuss the matter with you and you may want to talk with him to make sure I have not misinterpreted his comments.

My speculation is that shortly after Mr. and Mrs. Burdine bought their lot in 1958, they began the construction of their house and somehow inadvertently built the house on the back of the Church lot as opposed to the lot they actually owned. As far fetched as that theory may be, it is the only one I can imagine. One of the things that may have added to the confusion concerning the placement of the house is that Bobby Lee tells me Temple Street never extended very far beyond the alley running in front of his house. The street where his parents lot is located was never graded or developed. He says that area has always been wooded.

Since Bobby Lee pays taxes on the lot listed in his mother and father's name, he thought he was paying taxes on the house. His tax bill in 2007 was \$73.35. In 2007 the Church paid taxes on the above referenced lot of \$771.43.

The purpose of my letter is merely to recite the facts to you as I understand them. As you know, there are probably a number of different legal theories to be considered if some sort of amicable solution to this dilemma cannot be decided upon between the parties.

I would respectfully request that any eviction hearing that might be scheduled in this matter be postponed until we have the opportunity to discuss the matter further.

I look forward to hearing from you in the very near future.

Very truly yours,

LOVE, THORNTON, ARNOLD & THOMASON, P.A.


By: S. Gray Walsh

SGW/tjg
Enclosures

P.S. your staff has just informed me that
no hearing has been requested or scheduled.

LOVE, THORNTON, ARNOLD & THOMASON, P.A.

WILLIAM M. HATHOOD, III
DONALD R. MCALISTER
THOMAS G. COTHMAN
MARVIN A. GOLDSHTEIN
S. BRAY WALSH
DAVID L. MOORE, JR.
JOHN W. HUGHES
JUDITH W. LINDEBACH
ANDREW S. CLAIRBOROUGH
JOHN L. B. KRIEHL
M. KYLIE THOMPSON
ANDERSON M. HORNES
DANIEL R. HUGHES

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DON C. THORNTON
(804) 1000
W. H. ARNOLD
(807) 1000
B. C. THOMASON, JR.
(804) 1000

*ALSO ADMITTED IN TEXAS

October 27, 2008

VIA FACSIMILE

Honorable Leila Foster
Greenville County Magistrate
4 McGee Street, Room 116-A
Greenville, 29601-2256

RE: Mountain View Baptist Church Trustees vs. Bobby Lee Burdine
CA No. 2008-CV-23-10501624
Ejectment Proceeding

Dear Judge Foster:

Recently Bobby Lee Burdine came to my office concerned about an application for ejectment in an Eviction Proceeding he received concerning his home at 108 Temple Street in the city. His concern centered around the fact that his parents built the house which is the subject of this eviction proceeding approximately fifty years ago and he did not understand how he could be evicted from his own home.

After speaking with him, I wrote the Attorney representing the Church and expressed our concerns about this action. A copy of my letter dated October 15, 2008 is enclosed and, I believe, sets forth the situation from Mr. Burdine's standpoint.

Subsequent to sending this letter, I spoke with Attorney Kern-Fuller and was under the impression that this matter would not go forward until we had the opportunity to discuss the matter further.

Today (October 27, 2008) Mr. Burdine informed me that he had found a Writ of Ejectment attached to the door of his house at 108 Temple Street giving him twenty-four hours to vacate the premises.

I would respectfully request that this Writ be suspended or quashed due to the fact that there is a real controversy as to actual ownership of this house and I believe a hearing on this matter is the only reasonable means of resolving the rights of the parties. In addition, the codes section cited in the Writ seems to indicate that there is some sort of landlord and tenant relationship between the

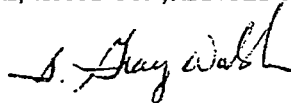
Church and Mr. Burdine. Such is not the case, as has been acknowledged by the Church. Mr. Burdine informs me that neither he nor his parents have ever rented this house from anyone.

I will be out of town later this week, but will make every effort to accommodate the Court and the Church for a hearing anytime beginning Thursday, November 6, 2008.

Your favorable consideration to this request would be most greatly appreciated.

Very truly yours,

LOVE, THORNTON, ARNOLD & THOMASON, P.A.



By: S. Gray Walsh

cc:

Candy M. Kern-Fuller

Attorney at Law

candy@upstatelawgroup.com

SGW/tjg
Enclosures

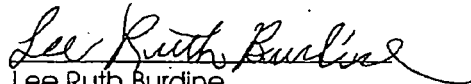
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2008-CP-23-
	)	
Mountain View Baptist Church,	)	
	)	
Respondent,	)	AFFIDAVIT OF LEE RUTH BURDINE
	)	
v.	)	
	)	
Bobby Lee Burdine,	)	
	)	Case No: 2008CV2310501624
Appellant.	)	
	)	

Personally appeared before me the undersigned who being duly sworn deposes and states:

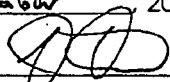
1. My name is Lee Ruth Burdine, and I have personal knowledge of the matters contained herein.
2. I was born May 2, 1927, and have resided in West Greenville for my entire life. I currently reside at 33 Endell Street in Greenville.
3. In 1947, I married Andrew Burdine, the brother of Alonzo Burdine, and I have known Bobby Lee Burdine since he was a small child. During his early childhood, I often took care of Bobby Lee, and at that time he was residing with his parents at 108 Temple Street.
4. I am familiar with the house known as 108 Temple Street in Greenville, South Carolina. The house was built by Alonzo and Emma Burdine in the 1950s, and I visited the property during the time it was being built.
5. Alonzo Burdine and Emma Burdine moved into 108 Temple Street after the house was built. I knew and visited regularly with Alonzo and Emma Burdine during their lifetimes. Emma lived there until she moved into a nursing home shortly before she died in the year 2000. After moving into 108 Temple Street Alonzo lived at 108 Temple Street for the remainder of his life, and was living there at the time of his death. Alonzo Burdine never lived in a nursing home.
6. Bobby Lee Burdine lived at 108 Temple Street throughout his childhood. After the death of Alonzo Burdine, Bobby Lee Burdine lived at 108 Temple Street, and has lived there ever since. I have visited with Bobby Lee Burdine at 108 Temple Street several times, including shortly after Alonzo.

Burdines death. During one or more of these visits, Bobby Lee showed me improvements he was making to the house.

Further the affiant sayeth not.


Lee Ruth Burdine

SWORN to before me this 15
day of November, 2008



Notary Public for South Carolina
My commission expires: 12/19/11

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mountain View Baptist Church,
☒ Plaintiff

v.

Bobby Lee Burdine,
☐ Defendant.

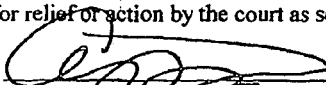
IN THE COURT OF COMMON PLEAS

CASE NO.
2008-DR-23-8598
CP

2008 DEC 12 P 4:45

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DAVID WICKENSIMMER

Plaintiff's Attorney: Candy M. Kern-Fuller, Bar No. 11392 Address: 3208 S.C. Hwy. 153 Piedmont, SC 29673 phone: (864) 295-9168 fax: (864) 295-9170 e-mail: candy@upstatelawgroup.com other:	Defendant's Attorney: John L.B. Kehl, Bar No. Address: P.O. Box 10045 Greenville, SC 29603 phone: (864) 242-6360 fax: (864) 271-7972 e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Alter or Amend Estimated Time Needed: 15 mins. Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant December 12, 2008 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ 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: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Case Number: 2008-CP-23-8598

Mountain View Baptist Church,)

2008 DEC 12 P 4: 45

Plaintiff,)

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENSIMMER

v.)

Bobby Lee Burdine,)

Defendant.)

NOTICE OF MOTION TO ALTER OR AMEND

TO THE DEFENDANT, Bobby Lee Burdine, BY AND THROUGH HIS ATTORNEY, John L. B. Kehl:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned attorney, will move before the presiding Judge of the Greenville County Court of Common Pleas, at the Greenville County Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order altering or amending the Order issued November 26th, 2008.

UPSTATE LAW GROUP, LLC


Candy Kern-Fuller

3208 S.C. Hwy. 153

Piedmont, SC 29673

(864) 295-9168

(864) 295-9170 Facsimile

S.C. Bar # 11392

ATTORNEY FOR PLAINTIFF

Piedmont, South Carolina
December 12, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. NO.: 2008-CP-23-8598
Mountain View Baptist Church,	)	2008 DEC 12 P 4:45
Respondent,	)	
v.	)	<u>MOTION TO ALTER OR AMEND</u>
Bobby Lee Burdine,	)	<u>JUDGMENT</u>
Appellant.	)	

Pursuant to SCRCP 59(e), Plaintiff moves to Alter or Amend the Judgment this Court entered on February 27, 2007. The bases for this motion are as follows:

A. FACTS/PROCEDURAL HISTORY

This action was before the Court on appeal from the Magistrate's Court Order of Magistrate Leila Foster.

As outlined at the appeal hearing, Plaintiff and Defendant do not now have, nor have they ever had, a landlord/tenant relationship. Rather, the Magistrate's Court ejectment action was brought pursuant to S.C. Code Ann. § 15-67-620, as amended which provides that:

If the person in possession shall, before the expiration of the five days, appear before such magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him, by any of the modes of proceeding now provided by law, the magistrate shall not issue his warrant as provided in § 15-67-610.

(Emphasis added)

As presented at the appeal hearing, the procedural history and timeline of the

Ejectment action was as follows:

10/2/2008 *Action filed*

10/8/2008 *Affidavit of service*

10/13/08 *5 calendar days – no Answer and Undertaking filed*

10/15/08 *5 business days – no Answer and Undertaking filed*

10/16/08 *Counsel for Defendant's letter mailed to Plaintiff's Counsel (the original envelope with postmark was handed up at the hearing)*

10/21/08 *Writ of Ejectment issued by Magistrate*

10/27/08 *Counsel for Defendant writes Court (evincing knowledge by Defendant that Court was proceeding on Plaintiff's action) and Court decides to hold a hearing*

11/7/08 *Answer DUE 30 days after service – no Answer and Undertaking filed*

11/13/08 *Answer and Undertaking finally filed day of hearing and Counsel for Plaintiff served 10 minutes before hearing.*

11/13/08 *Magistrate's hearing on ejectment held and ejectment ordered*

Defendant did not raise a colorable claim of title within five (5) days after service. Defendant did not file an Answer or Undertaking within thirty (30) days. Defendant did not post any surety bond.

**B. THE COURT MISAPPLIED SOUTH CAROLINA
CODE § 22-3-20(2), AS AMENDED**

In its Order, this Court held that "[t]he Magistrate, pursuant to South Carolina Code § 22-3-20(2), does not have jurisdiction to rule on issues relating to title to real property. Therefore, the Magistrate was without subject matter jurisdiction to rule on the Application or issue the Writ of Ejectment, as cases in which the title to real property are raised may only be heard in the Circuit Court." 11/26/08 Order of the Honorable John C. Few.

S.C. Code Ann. § 22-3-20 provides that:

No magistrate shall have cognizance of a civil action:

(1) In which the State is a party, except an action for a penalty and not exceeding one hundred dollars; or

(2) When the title to real property shall come in question, except as provided in Article 11 of this chapter.

(Emphasis added)

Article 11 of Title 22 provides for the following procedures regarding when title to real property shall come into question and what jurisdiction the Magistrate retains to require adherence to those statutory procedures:

§ 22-3-1110. Defense of questionable title in defendant's answer.

When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.

(Emphasis added)

§ 22-3-1120. Written undertaking by defendant in cases where title to real property will come in question.

At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

(Emphasis added)

§ 22-3-1140. Procedure if undertaking not delivered.

If such an undertaking be not delivered to the magistrate he shall have

jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.

(Emphasis added).

The system created by these statutes provides that a party in possession must timely and properly raise a colorable claim of title and post a surety bond before the Magistrate is required to dismiss the case brought by the record owner and relinquish his/her jurisdiction.

First and foremost, the Magistrate has concurrent civil jurisdiction over the following cases:

(2) in actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed seven thousand five hundred dollars;

(10) in all matters between landlord and tenant and the possession of land as provided in Chapters 33 through 41 of Title 27;

(12) in all actions provided for in this section when a filed counterclaim involves a sum not to exceed seven thousand five hundred dollars, except that this limitation does not apply to counterclaims filed in matters between landlord and tenant and the possession of land;

(Emphasis added)

Pursuant to §15-67-620, the party in possession can raise a “colorable claim of title”, within five (5) days of being served and then posting a surety bond. Given that the time period is less than seven (7) days, intervening weekends and holidays are not counted. *S.C.R.Civ.P 6*. An affidavit of service was entered by the Magistrate on October 8, 2008.¹ No contact was made with the Magistrate’s Court by the Defendant within either five (5) calendar days or business days. So, Defendant waived any right to defend

¹ The Action was served directly by the Magistrate Court. The Court’s docket indicates an Affidavit of Service was entered on October 8, 2008, though the action may have been served before that date. For the purposes of this argument, October 8, 2008, is the latest date the action could have been served.

based on a colorable title under §15-67-620.

Next, Defendant could have timely raised a colorable title defense in an Answer pursuant to S.C. Code Ann. § 22-3-1110. If Defendant had wished to do so, he would have been required to "set forth in his answer any matter showing that such title will come in question." S.C. Code Ann. § 22-3-1110. Any such Answer was required "to be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall [also] be served on the plaintiff or his attorney." *Id.* The Answer Defendant filed was not filed within thirty (30) days after receipt of the summons and complaint, but, rather, was filed nearly a week later, on the morning of the hearing. Plaintiff's counsel received a copy of the Answer approximately fifteen (15) minutes before the hearing. Had Defendant timely filed such an Answer, he would then have been required to "deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate." S.C. Code Ann §22-3-1120. Defendant also never posted any surety.

Since Defendant did not raise a colorable claim of title within 5 days, as required by S.C. Code Ann. §15-67-620, and didn't timely answer as required by S.C. Code Ann. §22-3-1110, and did not post the surety required by §15-67-620 or for an undertaking as required by S.C. Code Ann. §22-3-1120, the Magistrate "shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question." S.C. Code Ann. § 22-3-1140. Accordingly, the Court's finding that the Magistrate was "without subject matter jurisdiction to rule on the Application or issue the Writ of Ejectment" is in error and should be altered or amended to find that Magistrate's decision was supported by the law and the ejectment should be

upheld by this Court.

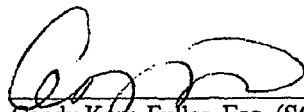
**C. THE COURT'S RULING EFFECTIVELY INVALIDATES
S.C. CODE ANN. §§ 22-3-1110 AND 22-3-1140**

The Court's Order, interpreted in its strictest sense, could invalidate S.C. Code Ann. §22-3-20(2), §22-3-1110, §22-3-1120, and §22-3-1140. "[A]ll statutes are [to be] presumed constitutional and will, if possible, be construed so as to render them valid." *Burriss v. Anderson County Bd. of Educ.*, 369 S.C. 443, 451 (2006) (quoting *Horry County Sch. Dist. v. Horry County*, 346 S.C. 621, 631 (2001)).

S.C. Code Ann. §22-3-20(2) sets forth that jurisdiction is not withdrawn from the Magistrate as outlined in Article 11 of Chapter 3. In Article 11, the legislature provided that an answer must be filed with the Magistrate. S.C. Code Ann. §22-3-1110. If that Answer asserts that title will come in question, then an undertaking must also be filed and surety posted. S.C. Code Ann. §22-3-1120. "If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question". S.C. Code Ann. §22-3-1140.

By determining that a Magistrate's Court has no subject matter jurisdiction at all once a Defendant raises in any fashion that the title is at issue in an ejectment, the Court effectively invalidates the clear provisions in S.C. Code Ann. §22-3-20(2), §22-3-1110, §22-3-1120, and §22-3-1140.

Accordingly, the Court's finding that the Magistrate was "without subject matter jurisdiction to rule on the Application or issue the Writ of Ejectment" is in error and should be altered or amended to find that Magistrate's decision was supported by the law and the ejectment should be upheld by this Court.



Candy Kern-Fuller, Esq. (SC Bar #11392)
Upstate Law Group, LLC
3208 S.C. Hwy. 153
Piedmont, SC 29673
(864) 295-9168
(864) 295-9170 (facsimile)
Candy@UpstateLawGroup.com

Date: 12/12/08

ATTORNEYS FOR PLAINTIFF

1 STATE OF SOUTH CAROLINA) 2008CV2310501624
2) CIVIL CASE NUMBER
3 COUNTY OF GREENVILLE) IN THE MAGISTRATE'S COURT
4) ORIGINAL
5 MOUNTAIN VIEW BAPTIST
6 CHURCH TRUSTEES,
7 _____
8 Vs.
9 BOBBY LEE BURDINE.
10 108 Temple Street
11 Greenville, SC 29601
12 _____
13

14 Transcription of five audio cassette tapes
15 recorded in the Magistrate Court for the
16 hearing in the above-styled case, held on
17 the 13th day of November, 2008 before The
18 Honorable Judge Leila Foster, and
19 transcribed by the firm of Judy Comp &
20 Associates, Inc., 301 North Main Street,
21 Suite 1703, Greenville, South Carolina
22 29615.
23 - - - - -

JUDY COMP & ASSOCIATES, INC.

1 THE COURT: Right. Do you have
2 any Motions before The Court?

3 MS. KERN: The only Motion we
4 have before The Court, Your Honor,
5 is a Motion for a Judgment.

6 THE COURT: Okay. Mr. Kehl?

7 MR. KEHL: Thank you, Your Honor.

8 THE COURT: And I will ask if
9 everybody will speak up. This air
10 conditioning unit is so loud, so if
11 you would please speak up. Okay.
12 Thank you.

13 MR. KEHL: I will try to do my
14 best, Your Honor. If I speak
15 softly, please remind me. May it
16 please The Court. Good morning.
17 By way of background, Your Honor,
18 this is Bobby Lee Burdine, and his
19 parents bought a lot in 1958. They
20 built a house on it. They moved
21 in, and they lived there for the
22 remainder of their lives. It would
23 now appear that the house was built
24 on the wrong lot. The lot that
25 they actually purchased and has a

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1 record title to to this day is a
2 couple of lots over from the
3 subject property. Now Mr. Burdine,
4 who is present, lived in the house
5 (inaudible) and he is occupying and
6 (inaudible) the house that the
7 (inaudible) parents have.
8 Throughout that entire period
9 neither Bobby Lee nor his parents
10 had ever paid rent to anyone, nor
11 has the rent ever been sought by
12 anybody. We are now aware that the
13 church is seeking to eject Mr.
14 Burdine from the property. We're
15 here today seeking to vacate
16 (inaudible) and dismiss this case.
17 The reason for that, Your Honor, is
18 first of all, that the writ that
19 has previously been issued in this
20 case was issued under the South
21 Carolina Landlord and Tenant Act,
22 but that remedy that that statute
23 provides which was granted
24 previously is not appropriate in
25 this case. And the reason for that

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1 is the Landlord and Tenant Act does
2 not apply. Section 27-40-110 of
3 the Landlord and Tenant Act states
4 that the Landlord and Tenant Act
5 applies to rights under a rental
6 agreement. As I mentioned, no
7 rental agreement exists in this
8 case, nor has it ever.
9 Furthermore, Section 27-37-20 of
10 the statute, which is what provides
11 for ejectment, states very clearly
12 that any tenant may be ejected with
13 the procedures set forth in that
14 statute. There again, Your Honor,
15 Mr. Burdine is not a tenant, and,
16 in fact, the plaintiffs acknowledge
17 in this case in their application
18 for ejectment that no landlord/
19 tenant relationship exists nor has
20 ever existed in this matter, in the
21 history of it, never existed.
22 Furthermore, Section 27-40-210,
23 which is also the Landlord and
24 Tenant Act, defines the tenant as
25 one who under a rental agreement is

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1 entitled to occupy as well. Then,
2 Your Honor, we believe that should
3 you hear evidence in this matter
4 the evidence would show --- and
5 again, the plaintiffs, in fact,
6 acknowledge that there is no
7 landlord/tenant relationship in
8 this matter. So this is not an
9 appropriate remedy for this matter.
10 Now equally importantly and as
11 previously raised to this court by
12 my partner, Mr. Gray Walsh, in his
13 correspondence to The Court, and in
14 the Answer as undertaken that I
15 filed this morning, I think it's
16 very clear that in this matter the
17 title to real estate is implicated,
18 and that is because the long
19 possession and occupation of the
20 property by Mr. Burdine, and
21 previously his parents, that has
22 been for a period in excess of 40
23 years. So not only the ten year
24 statute for adverse possession but
25 the 20 years for presumption of

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1 credit, of common law, as well as
2 the 40 year statute would apply in
3 this matter for adverse possession.
4 And it is also the law in this
5 state under Watson v Suggs, it
6 states a prima facie showing of
7 paper title is not enough to
8 establish title.. It has to be more
9 because there is a dispute.
10 Because of all this, Your Honor,
11 respectfully we would submit that
12 this Court lacks jurisdiction to
13 rule on this matter because the
14 title to real property is
15 implicated, and that is a statutory
16 matter clearly, Your Honor, as
17 shown by Section 22-3-1, which
18 states, "That no magistrate shall
19 have cognizance of civil action
20 where title to real property shall
21 come into question." So for those
22 reasons, Your Honor, respectfully
23 we would request that The Court
24 grant our Motion to vacate and the
25 writ that has previously been

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1 issued, and also to dismiss this
2 matter providing jurisdiction.

3 THE COURT: Thank you.

4 MS. KERN: Thank you, Your Honor.
5 And, Your Honor, I can enter these
6 exhibits into evidence now, and if
7 we have a trial on the matter, I
8 have testimony to back up the
9 evidence, Your Honor. But what we
10 believe the evidence will show,
11 Your Honor, is that the Burdines
12 did build on a piece of property
13 --- they purchased a piece of
14 property that was over on a
15 different side of the road. This
16 area, for Your Honor's knowledge,
17 is located downtown and kind of
18 tucked back in an area over there
19 off of Washington Street. It used
20 to be a mill community. And if you
21 take everything except for the
22 facts that we can dispute that the
23 party has said, if these parties
24 actually bought the lot in 1958,
25 they did not have 40 years of

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1 remainder is the structure here.

2 Q. Okay. And that's the one that Mr.
3 Burdine asserts that he's living in?

4 A. Correct.

5 Q. Okay. And do you recall when this
6 house got torn down?

7 A. To my knowledge it was 1998.

8 THE COURT: Can you speak up,
9 please?

10 A. To my knowledge it was 1998.

11 THE COURT: Thank you.

12 Q. Do you recall ---

13 A. These three.

14 Q. All three of these houses got torn down
15 in 1998.

16 A. Yes.

17 Q. And do you recall who tore them down?

18 A. Personally, the City of Greenville
19 because they were condemned.

20 Q. And have you-all been using the
21 property since that time?

22 A. Yes. We use this property here as a
23 parking lot.

24 Q. Okay.

25 MR. KEHL: We're just trying to

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1 continued to be married up until the
2 time of Alonzo Burdine's death?

3 A. Yes.. As far as --- as far as I know.

4 Q. All right. Come forward a little bit.

5 When did the church start having

6 problems with Bobby Lee Burdine?

7 A.. Our church is seeking to improve the
8 community at large around the church,

9 so we decided to purchase any

10 properties that came available, and

11 properties fronting Temple Street and

12 some along Cagle Street came available,

13 and we decided to go ahead and

14 aggressively pursue the purchase of the

15 properties. And in that we bought a

16 lot that contained or included the

17 house where Mr. Burdine is saying that

18 he lived. Until that time we had no

19 problems. I would speak to Mr.

20 Burdine, and continue to do so to this

21 day. In the community I see myself as

22 a person who is to bridge the community

23 and make relationships well and

24 certainly assure our relationship to be

25 that way. In 1998 when we purchased

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1 the property in question we immediately
2 had an arrangement --- the City
3 condemned those houses. Jones Brothers
4 Grading Company came and tore those
5 houses down. During that time we were
6 having Vacation Bible School. Mr.
7 Burdine apparently got some notion of
8 our owning the property, and he came
9 over into the basement area where we
10 had women and children preparing for
11 the Vacation Bible School, and he was
12 making a ruckus about us owning that
13 property. And I went down, and I
14 wanted to make sure that everything was
15 okay, and that the people that were
16 involved on behalf of the church (tape
17 runs out)

18 A. There was nothing further that took
19 place in there, and, in fact, we just
20 continue to see each other and speak,
21 and he always does, and I always speak
22 back. Well, in fact, I recall him
23 coming into the church and our
24 counseling, and he asking if he could
25 pray at the altar, and I had no problem

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1 with that. And he was calm. I --- I
2 could detect the presence of alcohol,
3 but I did not prevent him from having
4 access to the church. But recently
5 this year, and around July/August of
6 this year we purchased another piece of
7 property which is right next door to
8 the property in question, 110 Temple
9 Street, and we have been preparing to
10 formalize a parking area. As the early
11 testimony was given, it's grass, and
12 our member have been parking there
13 since we purchased and razed the other
14 houses over there, and we would like to
15 have a formalized parking area so that
16 they can park, and we can continue to
17 use the property and have a nice
18 environment with curbing and sufficient
19 lighting, which isn't there now. We
20 want to improve the property. And when
21 we began to move in that direction is
22 when Mr. Burdine, presented himself
23 again to us that he had rights and
24 claim to that property, and that is
25 when we decided to seek legal action to

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- 1 find out what our interests are and to
2 protect the interests of the church.
3 We personally have no issue with Mr.
4 Burdine at all. We want to, you know,
5 have full use of what belongs to us.
- 6 Q. And you purchased this property when in
7 1998, do you recall?
- 8 A. I do not recall exactly when we
9 purchased the property. I wouldn't
10 want to speculate.
- 11 Q. Okay. I'm going to show you deeds to
12 the property, and you purchased two
13 pieces of property; isn't that correct?
- 14 A. Uh-huh. (affirmative).
- 15 Q. Lot 10 and lot 11?
- 16 A. (inaudible)
- 17 Q. And in reviewing this deed can you now
18 recall the date that the church
19 purchased the property?
- 20 A. Yes. July 8th, 1998.
- 21 Q. Okay. And the church purchased the
22 property from who?
- 23 A. We purchased the property from Richard
24 Locke.
- 25 Q. Mr. Locke who is here in the courtroom

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- 1 today?
- 2 A. Yes.
- 3 Q. And the deeds that you received were
- 4 general warranty deeds?
- 5 A. As far as I can tell, yes.
- 6 Q. And do you happen to know when Alonzo
- 7 and I. Emma Burdine got the deed to the
- 8 other lot that they own on the other
- 9 street?
- 10 A. I --- I do not know, and I certainly
- 11 wouldn't want to speculate on it.
- 12 Q. And your testimony is that as soon as
- 13 the church received the deed to these
- 14 properties that the city condemned the
- 15 houses, and they were torn down?
- 16 A. That's correct.
- 17 Q. When did you start having a problem, if
- 18 you have, with Mr. Burdine?
- 19 A. Personally I don't have a problem with
- 20 Mr. Burdine.
- 21 Q. When did the church start having a
- 22 problem?
- 23 A. Immediately following having purchased
- 24 the property the first incident of him
- 25 coming over to the church to assert his

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- 1 opinion about our having purchased the
2 land.
- 3 Q. So he knew that you-all owned it?
- 4 A. Right. Correct.
- 5 Q. When was the next time you had issues
6 with him over the land?
- 7 A. Specifically I really can't recall
8 until we purchased this last piece of
9 property, 110 Temple Street. After
10 that point we began to have surveys,
11 and get bids from other companies to
12 come in and give us a quote on actually
13 making it a formal parking area.
14 That's when he began to present again
15 as the owner of the property.
- 16 Q. And when did you purchase the property
17 of 110 Temple Street?
- 18 A. We purchased 110 Temple Street in July
19 or August of 2008.
- 20 Q. So this past year?
- 21 A. Yes.
- 22 Q. And 110 Temple Street is the property
23 that he's been evicted from a bunch of
24 times; correct?
- 25 A. Yes.

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1 Honor wants to swap the one that
2 doesn't have the markings on it for
3 the one that is in evidence.

4 THE COURT: Okay.

5 MR. KEHL: No objection.

6 THE COURT: Without objection.

7 Q. And you've said that since this summer
8 when the church purchased 110 Temple
9 Street you've had problems with Mr.
10 Burdine. Can you tell me the problems
11 that you've had with Mr. Burdine since
12 the summer of 2008?

13 A. Again, I have no personal problems with
14 Mr. Burdine at all. Acting as an agent
15 for our --- our church it is my concern
16 of the presence --- we have had
17 community events where we followed all
18 of the procedures required by the city
19 to get permits to block off the street,
20 and we had to serve notice to all of
21 the residents in the neighborhood, and
22 we did that. Mr. Burdine must not have
23 been --- may not have been present to
24 receive notice because right in the
25 middle of our event he would come

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1 prior to the summer of 2008 with
2 respect to any occupant of that house?

3 A. I'm sorry. I couldn't really
4 understand what you said.

5 Q. Did the church take any action
6 whatsoever regarding the house at 108
7 Temple Street prior to the summer of
8 2008?

9 A. Other than, you know, seeking to have
10 an amicable agreement about it, no,
11 sir, with the Burdines themselves prior
12 to their passing.

13 Q. Okay. And what was the agreement that
14 you were seeking?

15 A. We --- we sought to have an amicable
16 agreement with them about the --- the
17 property to find out more about their
18 having lived there, or what was
19 transpiring, because there was no deed.
20 We tried to research all of that to
21 find out titles and exactly when did
22 they build their house. We were trying
23 to find out more information, but
24 that's the extent, but I'm not sure if
25 the Burdines, either of them, you know,

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1 were physically diagnosed with
2 Alzheimer's or not, but we did not seek
3 to pursue anything legally with them
4 because they were in a care facility,
5 and not being their minister I did not
6 have privy to anything that was going
7 on with their family at all.

8 Q. Did you ever --- or were you made aware
9 during any of that conversations with
10 the Burdines that they were contending
11 that they owned the property?

12 MS. KERN: Your Honor, I'm going
13 to object. That violates the Dead
14 man's Statute. He cannot testify as
15 to anything that a decedent has
16 said. (inaudible)

17 THE COURT: That's correct.

18 MR. KEHL: I think he can answer
19 the question based on --- I'm not
20 going to be offering it for its
21 truth but just to get to the state
22 of mind of the church at the time.

23 MS. KERN: Your Honor, that's not
24 what the exception is there. That's
25 not a hearsay exception. The

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1 Deadman's Statute is very clear,
2 you can't ask a witness to testify
3 to what somebody who is now
4 deceased has (inaudible)

5 THE COURT: That's correct. I
6 won't allow it.

7 Q. Do you have --- of your personal
8 knowledge, do you have the ability of
9 your personal knowledge to contradict
10 Mr. Burdine's assertion that the
11 Burdines have lived on the property
12 since 1958?

13 MS. KERN: Your Honor, he's
14 asking my client to testify
15 contrary to another witness that
16 has not testified yet, and that
17 also violates the rule.

18 MR. KEHL: Okay. Well, let me
19 restate the question.

20 Q. Do you know where the Burdines, that's
21 Alonzo and Emma lived from 1958 to 2000
22 and their death?

23 A. I can say for a portion of that that
24 they were at Westside Nursing facility,
25 and prior to that they lived in the

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1 house that is in --- that fronts the
2 house that is built on the property
3 that we own, the one that is in
4 question. So that's about all I know. I
5 do not recall Mr. Burdine, Mrs. Burdine
6 ever in the neighborhood at the time
7 that I came to pastor the church. I've
8 only known her to be at the nursing
9 facility. Very shortly thereafter Mr.
10 Burdine went there as well. And I
11 gained that knowledge from Mr. Bobby
12 Burdine.

13 Q. All right.

14 MR. KEHL: That's all I have,
15 Pastor. Thank you.

16 MS. KERN: I have one redirect,
17 Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. KERN:

20 Q. What you just said, Pastor Mills, is
21 that you knew that they had been in the
22 house that fronts the one in questions?
23 Is that the house that has the
24 (inaudible)

25 A. That is the house that has the

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1 THE COURT: Mr. Burdine. If
2 you'll stop by the bench, sir, I'll
3 swear you in.

4 BOBBY LEE BURDINE,
5 being first duly sworn/affirmed, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KEHL:

9 Q. Bobby Lee, could you please state your
10 full name for the record.

11 A. Bobby Lee Burdine.

12 Q. And what is your date of birth, sir?

13 A. The eighth month the fifth day of '56.

14 Q. So that's August?

15 A. August the 5th.

16 Q. August the 5th?

17 A. Yes, sir.

18 Q. Of 1950?

19 A. '56.

20 Q. That makes you 52 years old?

21 A. Yes, sir.

22 Q. All right. Who were your parents?

23 A. Alonzo Burdine and I. Emma Burdine.

24 Q. Are either of them still alive?

25 A. No, sir.

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- 1 Q. And when did they did?
- 2 A. My father died January 2000. My mother
- 3 died in July of 2000.
- 4 Q. Do you have any brothers or sisters?
- 5 A. No, sir.
- 6 Q. Do you have any half brothers or
- 7 stepbrothers or sisters?
- 8 A. Yeah.
- 9 Q. Who are they?
- 10 A. Claude Burdine and David Burdine. A
- 11 couple of them I can't remember because
- 12 I don't see them that often.
- 13 Q. Okay. And where did your parents live?
- 14 A. At 108 Temple Street.
- 15 Q. And is that the house that we've been
- 16 talking about shown on this drawing
- 17 right here?
- 18 A. Yeah. Yes, sir.
- 19 Q. How long did they live there?
- 20 A. Three years after I was born maybe.
- 21 Before I was born really.

22 MS. KERN: Your Honor, he can't

23 testify to that. He doesn't have

24 knowledge of what happened before

25 he was born.

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- 1 A. I know when I was born.
- 2 Q. Okay. Well, let me ask you this
- 3 question, Bobby: Did you live with
- 4 your parents as a child?
- 5 A. Yes, sir.
- 6 Q. Where did you live with them as a
- 7 child?
- 8 A. At 108 Temple Street.
- 9 Q. Do you have any specific memories of
- 10 living with them back when you were a
- 11 child in that house?
- 12 A. Yes, sir.
- 13 Q. And what do you remember about that?
- 14 A. Going to school, church, store.
- 15 Q. Did you go to the first grade?
- 16 A. Yeah.
- 17 Q. What school did you go to then?
- 18 A. (inaudible) Street.
- 19 Q. Okay. How old were you when you were
- 20 in the first grade?
- 21 A. Six.
- 22 Q. Six years old. That would have been
- 23 1962; is that correct?
- 24 A. Right.
- 25 Q. Is the math right there? So you can

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1 clearly recall at least that you were
2 living in the house?

3 MS. KERN: Your Honor, I object.

4 MR. KEHL: (inaudible)

5 THE COURT: Okay.

6 Q. But you recall specifically living in
7 the house when you were in first grade?

8 A. Yes.

9 Q. Have you lived there ever since?

10 A. Yes.

11 Q. You don't stay there every night
12 though?

13 A. No, sir.

14 Q. Where do you live at the present time?

15 A. 108 Temple Street.

16 Q. Do you pay rent there?

17 A. No, sir.

18 Q. Have you ever paid any rent there?

19 A. No, sir.

20 Q. Have you ever had to pay rent?

21 A. No, sir.

22 Q. Okay. Now were your parents ever in a
23 nursing home?

24 A. My mother was.

25 Q. Okay. What nursing home is that?

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- 1 A. 108 Temple Street.
- 2 Q. Have they always been there?
- 3 A. Always.
- 4 Q. What address is on your driver's
- 5 license?
- 6 A. 108 Temple.
- 7 Q. Have you ever used another address on
- 8 your driver's license?
- 9 A. No.
- 10 Q. All right. Now I would like to ask you
- 11 a couple of questions about some of
- 12 these ejectments that have be
- 13 referenced by Ms. Kerns. I see one
- 14 here at 110 Temple Street. Did you
- 15 ever live at 110 Temple Street?
- 16 A. No. Not to purchase it.
- 17 Q. Not to purchase it?
- 18 A. Yes. I rented it.
- 19 Q. You rented it?
- 20 A. Right.
- 21 Q. Why did you rent the house?
- 22 A. I rented it for a young lady named
- 23 Betsy Gilchrist. She took care of my
- 24 daddy.
- 25 Q. So she was living there?

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- 1 A. No. No, sir.
2 Q. Have you ever lived anywhere else?
3 A. Yeah, but when my parents was here off
4 and on.
5 Q. Okay. Do you stay at 108 Temple Street
6 every night?
7 A. Not every night.
8 Q. Okay. Where else do you stay?
9 A. Sometimes in Spartanburg with a friend.
10 Q. (inaudible)
11 A. Yes.
12 Q. That's not your home?
13 A. That's not my home.
14 Q. Do you own 108 Temple Street?
15 A. I do.

16 MS. KERN: Your Honor, I object.
17 That calls for a legal conclusion.

18 THE COURT: I'll allow it. Go
19 ahead. What is your answer, sir?

- 20 A. The question was?
21 Q. Do you own 108 Temple Street?
22 A. As far as I know.

23 MR. KEHL: Your Honor, that's all
24 I have.

25 THE COURT: Thank you.

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1 finish my sentence ---

2 THE WITNESS: I'm sorry.

3 THE COURT: --- before you ---

4 THE WITNESS: I apologize. I'm
5 just a little upset here.

6 THE COURT: I understand that
7 you're upset, but you still need to
8 answer the question.

9 THE WITNESS: Okay.

10 THE COURT: And not be facetious.
11 Okay? Thank you.

12 Q. More than three times a week?

13 A. Sometimes.

14 Q. Your attorney produced to me a copy of
15 the deed that you-all received that you
16 assert this is the property that your
17 parents bought. Have you seen those
18 documents before?

19 A. Not until this here come up.

20 Q. Have you seen those documents before
21 today?

22 A. I've seen them before today, yes.

23 Q. Okay.

24 A. I seen them about a week ago.

25 Q. All right. And is it true that Alonzo

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- 1 Burdine and R. (sic) Emma Edwards
2 Burdine received the deed to the
3 property that was (inaudible) number
4 0054000200802 on December 6th of 1958?
5 Do you know that to be true?
6 A. About a deed? Yes, I paid for it.
7 Q. Okay. So they were deeded some
8 property on December 6th of 1958.
9 MS. KERN: And I'll hand Your
10 Honor a copy.
11 THE COURT: Thank you.
12 Q. And the property that they actually
13 received the deed for was the property
14 that I've surrounded in blue; is that
15 correct?
16 A. I can't --- I can't really see it.
17 Being honest. I ain't got my glasses.
18 Q. Okay.
19 A. But it is 108, yes.
20 Q. Okay. And you've paid taxes on the
21 other property that your parents owned,
22 didn't you? On this property.
23 A. I only paid --- I only paid property on
24 what I understood, 108.
25 Q. Which is this one (tape runs out on

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1 side A and there is nothing recorded on
2 side B of tape 4)
3 (tape 5)

4 Q. of the tax received, and the tax number
5 shown on those copies were 008.02. Did
6 you ask your attorney to provide me
7 copies of this?

8 A. I did if we've got them, I guess.

9 Q. Okay. So your parents got this
10 property in December of 1958, and the
11 church bought this property in July of
12 1998, didn't they?

13 A. If that's what the statement say. I
14 didn't know when they bought it.

15 Q. Your parents did not buy the property
16 (inaudible)

17 A. Excuse me?

18 Q. Your parents did not buy this property
19 (inaudible) years; did they?

20 A. Yes, they did.

21 Q. They did?

22 A. You said --- wait a minute. Make
23 yourself a little clearer because I
24 can't understand you.

25 Q. Your parents bought property they

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1 been a floor in the house?

2 A. Yeah. Until I tore it out and put a
3 new floor in.

4 Q. When did you do that?

5 A. I did it on a particular night that
6 Reverend told me about. The night that
7 he said he came down, that's the day I
8 was putting another floor in.

9 Q. And that was the time that Officer
10 Bradley served you with something?

11 A. He didn't serve me with anything.

12 Q. (inaudible)

13 MS. KERN: I don't have any
14 further questions, Your Honor.

15 THE COURT: Thank you.

16 MR. KEHL: I just want to clarify
17 a little bit, Bobby Lee.

18 REDIRECT EXAMINATION

19 BY MR. KEHL:

20 Q. Do you pay taxes every year on some
21 piece of property?

22 A. Yes, I do.

23 Q. Your understanding is that you have
24 been paying them for 108; is that
25 correct?

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1 A. Yes.

2 Q. This is what counsel previously showed
3 you, the tax bill. What is the address
4 on that? Can you see it?

5 A. Yeah.

6 Q. No. The address right there.

7 A. 108 Temple Street.

8 MR. KEHL: I believe that's all I
9 have, Your Honor.

10 THE COURT: Thank you.

11 MS. KERN: I have one follow up,
12 Your Honor.

13 **RECROSS-EXAMINATION**

14 **BY MS. KERN:**

15 Q. Mr. Burdine, where it says down here
16 "Real description of the property," can
17 you see that it says, "Lot tract unit
18 number 124"?

19 A. Now point it out to me again.

20 Q. Sure.

21 THE WITNESS: May I stand up,
22 Your Honor?

23 THE COURT: Why certainly you
24 can.

25 Q. Right here.

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STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF GREENVILLE	) Case No(s) : 08-CP-23-8598
	)
Mountain View Baptist Church,	)
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Bobby Lee Burdine,	)
	)
Defendant.	)

November 20, 2008
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

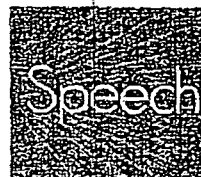
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P R O C E E D I N G S

THE COURT: All right. Good morning.

MR. KEHL: Good morning, Judge. May it please the Court. Your Honor, Mr. Kyle and I are here this morning on behalf of Bobby Lee Burdine. We are filing an appeal from a writ of ejectment that was issued in the magistrate's court. We filed a motion, this motion for supersedeas stay. The writ of ejectment calls for Mr. Burdine to vacate the premises by 5 p.m. today.

Briefly, Your Honor, Mr. Burdine lives at 108 Temple Street in Greenville, South Carolina. This is the home that he has grown up in. He is in his 50's. This is the home that he has grown up in. His parents lived in this home beginning in 1958 and lived there continuously until their deaths in the year 2000. At that time, Mr. Burdine became the primary resident as well.

The interesting fact, Judge, is that in 1958, Mr. Burdine's parents actually bought a lot. It was a block over and subsequently built a house. We admit that they built the house on the block. But they lived at the house on 108 Temple Street continuously from 1958 until the year 2000 at which time Mr. Burdine, Bobby Lee Burdine, took

1 over the house.

2 Judge, the church purchased -- the church got
3 title to the property in 1998 and didn't do
4 anything with regard to Mr. Burdine's house being
5 on this property until October 2nd of this year.
6 They filed an application for ejectment in
7 magistrate's court seeking to have him ejected.

8 Judge, our position that we raised with the
9 church and their counsel and with the Court was
10 that by adverse possession, under any of the
11 adverse possession statutes, 40 years, 20 years,
12 10 years, Mr. Burdine has an interest in the
13 title to the real property in question and the
14 magistrate did not have jurisdiction to rule on
15 that issue. Judge, magistrates don't have
16 jurisdiction to rule on issues related to title
17 of real property. The magistrate is without
18 jurisdiction to issue the writ or hear the
19 matter.

20 We are appealing that. Judge, our primary
21 purpose today is to stay the writ of ejectment.
22 This is Mr. Burdine's home. If he is ejected at 5
23 o'clock today, he's going to be homeless. This is
24 the home that has been his residence for at least
25 the last eight years. This property, this house

1 has been his family's home for the last 50 years.
2 Judge, we are seeking to have the writ of
3 ejectment stayed until our appeal can be fully
4 heard.

5 MRS. KERN-FULLER: Thank you, Your Honor.
6 Your Honor, may I approach? I have several items
7 that I want to pass up. It's important for the
8 Court to understand the time line of the
9 magistrate's action.

10 Your Honor, Mr. Burdine had no right to
11 present an answer in undertaking. He waived his
12 right to make any kind of claim regarding
13 ownership of this property by failing to actually
14 file that in time. Your Honor, they raised at the
15 lower court that the court was without
16 jurisdiction. And they were saying that the lower
17 court -- please understand, Your Honor, it's been
18 really difficult trying to get my hands around
19 this case. It was first an adverse possession
20 case. Then they said it was a lapse of time case.
21 Then they said it was a lapse of time 40 years.
22 Then when I proved that they did not have a house
23 there for 40 years, they had a deed to a
24 different piece of property on the same street.

25 I will pass up to Your Honor -- I'm a visual

1 sentence where it says the Defendant may set
2 forth in his answer any matter showing that such
3 title would come into question. A magistrate's
4 jurisdiction here is statutory.

5 **MRS. KERN-FULLER:** Yes, Your Honor.

6 **THE COURT:** And what jurisdiction is not
7 granted to the magistrate in the statute, the
8 magistrate does not have. When 22-3-20 says in
9 subsection 2 that the magistrate has no
10 cognizance of a civil action when the title to
11 real property shall come into question, except as
12 provided in Article 11. So unless the
13 magistrate's jurisdiction comes in under Article
14 11 which is where we've just been talking about,
15 he doesn't have jurisdiction period. And the
16 Defendant doesn't have to do a thing to defend
17 himself at all. The magistrate has no
18 jurisdiction in the first place.

19 **MRS. KERN-FULLER:** Your Honor, I would
20 disagree for one reason. They have to raise the
21 defense of --

22 **THE COURT:** They don't have to raise a
23 defense of jurisdiction. You can raise it
24 anything anytime you want to. They can raise it
25 right now.

1 **MRS. KERN-FULLER:** Subject matter
2 jurisdiction, you are correct, Your Honor. Title
3 15 divest a party of raising that after that
4 period of time. He had the right to raise it at
5 that period of time, Your Honor, but he did not.

6 **THE COURT:** Where in Title 15?

7 **MRS. KERN-FULLER:** I pulled up the
8 statute. I'm sorry, Your Honor. I will look. But
9 it says -- it's in Title 15-67-620 of when the
10 warrant shall not be issued. If the person shall
11 before the expiration of five days appear before
12 such magistrate and satisfy him that a bona fide
13 color of claim to possession of such premises and
14 enter into a bond. What happens, Your Honor, is--

15 **THE COURT:** Well, I'm, uh, -- that's -- I
16 don't think that's -- that's a totally different
17 situation. That tells the, that tells somebody
18 who wants to kick somebody off of a piece of
19 property that they can go to a magistrate and do
20 it civilly instead of doing it by force and say
21 I own this property. There's a squatter out
22 there. Would you please issue a formal notice to
23 the squatter to get off my property? That's
24 section 15-67-610. That doesn't relate to whether
25 there is a claim to title, a claim to a lease, a

1 claim under adverse possession or anything. That
2 just means anybody. You can formally ask them to
3 leave the property in the fashion set forth right
4 here.

5 The next section says, however, if the person
6 who has just been given notice by the magistrate
7 comes in and shows the magistrate that they have
8 a colorable claim to possession, it doesn't say
9 title. It says possession. It could be under a
10 lease. It could be under a deed. It could be
11 under adverse possession. It could be anything.
12 Then it says the magistrate won't go to the next
13 step and issue a formal command to the property.
14 I don't think that has a thing to do with this.

15 For example, if the person comes in and says
16 I don't have to leave, I have a deed. Then you go
17 back to 22-3-20 subsection 2 that says not a
18 magistrate court case. It's a circuit court case.
19 Two ways of dealing with that. The person can
20 just sit there like the tar baby and do nothing
21 because the magistrate has no jurisdiction to
22 kick them off the property which is what happened
23 here or they can follow the procedures set forth
24 in 22-3-1110 which is nothing more than a
25 formalized way of taking the case to circuit

1 court.

2 The way I read this is as long as there is a
3 claim that the person occupying the property has
4 title as opposed to a tenancy, then the
5 magistrate has to step back and let the circuit
6 court deal with it.

7 MRS. KERN-FULLER: So I understand the
8 Court's understanding of this. But a party who is
9 not a lease holder, who is alleged to be a
10 trespasser, they can not file within 5 days, not
11 answer the complaint within 30 days, walk in on
12 the day of court and say I have a colorable claim
13 of title and the magistrate has to say, Okay.
14 This goes to circuit court.

15 THE COURT: No, that's not what I'm
16 saying. That's what the legislature said.

17 MRS. KERN-FULLER: Okay. Well, Your Honor,
18 we can file -- it gives us the process that we
19 can come back and we can file --

20 THE COURT: And I think that, if there is
21 a -- when a magistrate's order exists, the person
22 who claims title can't just stand on their front
23 porch and holler it. You've got a court order
24 that says get out. What they can do is they can
25 go to the magistrate or they can come here. If

1 **THE COURT:** So I grant the motion to stay
2 the writ of ejectment.

3 **MRS. KERN-FULLER:** Your Honor, you're
4 going to ask them to post bond?

5 **THE COURT:** Uh-huh. There's no need to
6 post bond. The magistrate does not have
7 jurisdiction. So there is no need for a bond. The
8 magistrate, the acts of the magistrate in this
9 circumstance is of no legal significance
10 whatsoever. There's no bond to post. The
11 magistrate has no power to ask for a bond.

12 Now, if the fellow had chosen to do it that
13 way, he could do it that way. But he didn't
14 choose that. He chose to deny, to dispute
15 jurisdiction. So somebody's going to have to file
16 an action to quiet title in the circuit court.
17 The church can do it. Mr. Burdine can do it. Or
18 perhaps the person who conveyed the title to the
19 church can do it if they, uh, can show that they
20 have a personal stake in the matter.

21 **MRS. KERN-FULLER:** Your Honor, if I could
22 refer you back to Title 22, it says when the
23 title of real property shall come into question
24 except as provided in Article 11, since they did
25 file an answer in undertaking pursuant to Title

1 22-3-1120, they were suppose to execute with at
2 least one sufficient surety and prove by the
3 magistrate a bond. We would ask again for the
4 Court to please issue a bond. If the procedure
5 had occurred as they contemplated under Title 22,
6 they come in, they say this is a matter that
7 involves the title of a real property, take it up
8 to the circuit court, then that procedure would
9 have kicked in, Your Honor, and they still would
10 have had to file a bond.

11 **THE COURT:** It's a funny statute. It would
12 be nice perhaps if all of our statutes make
13 perfect sense. But our experience tells us that
14 that is not the case. It does not maybe make a
15 whole lot of sense that it says that. But the
16 procedure that you are asking me to make them
17 follow is a procedure that the statute requires
18 them to follow only if they choose to, as I read
19 it. And since they did not choose to, they don't
20 have to follow it. Jurisdiction, the concept of
21 jurisdiction does not need the teaching of this
22 statute to tell us how to behave when a
23 magistrate acts without power. The magistrate
24 does not have power to kick these people out of
25 their home. Only the circuit court can.

Certificate of Counsel

Candy M. Kern-Fuller, Attorney for Appellant, does hereby certify, pursuant to Rule 210 of the SCACR, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Dated: _____

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Circuit Court of Common Pleas

John C. Few, Circuit Court Judge

C.A. NO.: 2008-CP-23-8598

Mountain View Baptist Church Appellant

v.

Bobby Lee Burdine. Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- A. DID THE COURT ERR IN FINDING THAT "THE MAGISTRATE WAS WITHOUT SUBJECT MATTER JURISDICTION TO RULE ON THE APPLICATION FOR ISSUE THE WRIT OF EJECTMENT, AS CASES IN WHICH THE TITLE TO REAL PROPERTY ARE RAISED MAY ONLY BE HEARD IN THE CIRCUIT COURT," CONSIDERING RESPONDENT FAILED TO FILE AN ANSWER AND UNDERTAKING WITHIN THE TIME REQUIRED BY S.C. CODE ANN. §15-67-620, FAILED TO POST THE REQUIRED BOND PURSUANT TO S.C. CODE ANN §22-3-1120, AND S.C. CODE ANN §22-3-1140 CLEARLY PROVIDES THAT "[I]F SUCH AN UNDERTAKING BE NOT DELIVERED TO THE MAGISTRATE HE SHALL HAVE JURISDICTION OF THE CAUSE AND SHALL PROCEED THEREIN AND THE DEFENDANT SHALL BE PRECLUDED, IN HIS DEFENSE, FROM DRAWING THE TITLE IN QUESTION."
- B. DID THE COURT ERR BY FINDING THAT "THE MAGISTRATE WAS WITHOUT SUBJECT MATTER JURISDICTION TO RULE ON THE APPLICATION OR ISSUE THE WRIT OF EJECTMENT, AS CASES IN WHICH THE TITLE TO REAL PROPERTY ARE RAISED MAY ONLY BE HEARD IN THE CIRCUIT COURT" BECAUSE THE COURT'S RULING WOULD EFFECTIVELY INVALIDATE S.C. CODE ANN. §22-3-20(2), §22-3-1110, §22-3-1120, AND §22-3-1140?

STATEMENT OF THE CASE

This matter was before the Circuit Court on appeal from the Magistrate's Court Order of Magistrate Leila Foster evicting Respondent from real property located at located at 108 Temple St., Greenville, SC 29601 (Tax Map #0054000201000).

On October 2, 2008, Appellant brought a Magistrate's Court ejectment action (R. pp. 6-10). No landlord-tenant relationship existed between the parties and the action was subject to S.C. Code Ann. §15-67-620, as amended which provides that:

If the person in possession shall, before the expiration of the five days, appear before such magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him, by any of the modes of proceeding now provided by law, the magistrate shall not issue his warrant as provided in § 15-67-610.

(Emphasis added)

On October 8, 2008 an affidavit of service was filed regarding service on Respondent of the Appellant's Application for Ejectment.¹ As of October 15, 2008 (five business days after the latest date the action would have been served on Respondent) no Answer and Undertaking had been filed with the Court by the Respondent. On Thursday, October 16, 2008, counsel for Respondent mailed a letter to Appellant's Counsel, which was received on Monday, October 20, 2008, outlining his view of the case and requesting Appellant's counsel review Respondent's version of the facts of the case (R. pp. 20-21).

¹ The Action was served directly by the Magistrate Court. The Court's docket indicates an Affidavit of Service was entered on October 8, 2008, though the action may have been served before that date. For the purposes of this argument (and the argument made at the Circuit Court), October 8, 2008, is the latest date the action could have been served.

Respondent still filed no Answer and Undertaking with the Court. On Tuesday, October 21, 2008, the Magistrate issued the Writ of Ejectment. Thereafter, on October 27, 2008, Counsel for Defendant wrote the Court and requested the Court hear the matter (R. pp. 22-23). The Magistrate thereafter scheduled a hearing for November 13, 2008. As of November 7, 2008 (thirty days after the latest date the action would have been served) an Answer and Undertaking had still not yet been filed with the Court. After nearly another week passed, on November 13, 2008, the day of the hearing, an Answer and Undertaking was finally filed twelve minutes before the scheduled hearing (R. pp. 11-12). Appellant's counsel was thereafter served with the same. No bond or surety was ever posted by Respondent. At the conclusion of the hearing, the Magistrate ordered Respondent's ejectment, ruling that Respondent must vacate the premises by 5:00 p.m. on November 20, 2008 (R. p.1).

On November 17, 2008, Respondent appealed to the Circuit Court, requesting a Stay of Ejectment. (R. pp. 13-25). The Circuit Court heard the matter on November 20, 2008. At the conclusion of the hearing, the Court held that the Magistrate was without jurisdiction to eject Respondent because Respondent asserted a claim to title. As a result, the Court granted the Respondent's motion to stay the ejectment. (R. p. 73, lines 1-2). The Court also denied Appellant's request that Respondent be required to post a bond pursuant to S.C. Code Ann. §22-3-1120. (R. p. 73, line 21 – R. p. 74, line 25).

Due to the Thanksgiving Holiday, appellant received the Court's formal order on December 2, 2008. (R. pp. 2-3). On December 12, 2008, Appellant filed its Motion for Reconsideration. (R. pp. 26-34). The Order denying the Motion for Reconsideration was

entered by The Honorable John C. Few on December 18, 2008. (R. pp. 4-5). This appeal followed.

ARGUMENT

- A. **THE COURT ERRED IN FINDING THAT “THE MAGISTRATE WAS WITHOUT SUBJECT MATTER JURISDICTION TO RULE ON THE APPLICATION OR ISSUE THE WRIT OF EJECTMENT, AS CASES IN WHICH THE TITLE TO REAL PROPERTY ARE RAISED MAY ONLY BE HEARD IN THE CIRCUIT COURT,” CONSIDERING RESPONDENT FAILED TO FILE AN ANSWER AND UNDERTAKING WITHIN THE TIME REQUIRED BY S.C. CODE ANN. §15-67-620, FAILED TO POST THE REQUIRED BOND PURSUANT TO S.C. CODE ANN §22-3-1120, AND S.C. CODE ANN. §22-3-1140 CLEARLY PROVIDES THAT “[I]F SUCH AN UNDERTAKING BE NOT DELIVERED TO THE MAGISTRATE HE SHALL HAVE JURISDICTION OF THE CAUSE AND SHALL PROCEED THEREIN AND THE DEFENDANT SHALL BE PRECLUDED, IN HIS DEFENSE, FROM DRAWING THE TITLE IN QUESTION.”**

S.C. Const. Ann. Art. V, §1 provides that “[t]he judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.” More specifically, “[t]he General Assembly shall provide for [Magistrates’] terms of office and their civil and criminal jurisdiction.” S.C. Const. Ann. Art. V, §26.

The South Carolina legislature has provided for the jurisdiction of Magistrates through a series of statutes. S.C. Code Ann. § 22-3-20 dictates provides that:

No magistrate shall have cognizance of a civil action:

(1) In which the State is a party, except an action for a penalty and not exceeding one hundred dollars; or

(2) When the title to real property shall come in question, except as provided in Article 11 of this chapter.

(Emphasis added)

Article 11 of the chapter then provides for the following procedures and jurisdiction when title to real property shall come into question and what jurisdiction a Magistrate retains and what procedures a litigant must follow:

§ 22-3-1110. Defense of questionable title in defendant's answer.

When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.

(Emphasis added)

§ 22-3-1120. Written undertaking by defendant in cases where title to real property will come in question.

At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

(Emphasis added)

§ 22-3-1140. Procedure if undertaking not delivered.

If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.

(Emphasis added).

The Circuit Court held that the Magistrate's ejectment of Respondent was "void and without effect" because "[t]he Magistrate, pursuant to South Carolina Code §22-3-20(2), does not have jurisdiction to rule on issues relating to title to real property. Therefore, the Magistrate was without subject matter jurisdiction to rule on the

Application or issue the Writ of Ejectment, as cases in which the title to real property are raised may only be heard in the Circuit Court.” (R. pp. 2-3).

At the hearing on the matter, the Circuit Court went further to state that the Magistrate lacked subject matter jurisdiction to hear an ejectment action when ownership or title was raised at anytime because, the Court opined, anytime a litigant raises a claim of title then the matter becomes a Circuit Court matter. (R. p. 69, line 6-p. 70, line 5). The Court further opined that such a defense could be raised at “anytime.” *Id.*

Subject matter jurisdiction is defined as “the power of a court to hear and determine cases of the general class to which the proceedings in question belong.” McCullar v. Estate of Campbell, 381 S.C. 205, 206 (2009).

Contrary to the Circuit Court’s view, the Magistrate did have the power to hear and determine a case of this nature and S.C. Code Ann. §22-3-1140 clearly states that “if such an undertaking [as envisioned by S.C. Code Ann, §§22-3-1110 and 22-3-1120] be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.” (Emphasis added).

Clearly, the interdependent structure created by these statutes provides that a challenged party in possession, pursuant to S.C. Code Ann. §15-67-620, can raise a “colorable claim of title” only within five (5) days of being served and then must post a surety bond after doing so. Given that the time period is less than seven (7) days, intervening weekends and holidays are not counted. S.C.R.Civ.P 6.

The timeline of the Ejectment action was as follows:

10/2/2008 *Action filed*

10/8/2008 *Affidavit of service on Respondent filed with the Court*

10/15/08 *5 business days – no Answer and Undertaking filed*

10/16/08 *Counsel for Respondent mailed a letter to Appellant's Counsel outlining Respondent's position on the action, but no Answer and Undertaking delivered to Appellant or the Magistrate*

10/21/08 *Writ of Ejectment issued by Magistrate*

10/27/08 *Counsel for Defendant writes Court (evincing knowledge by Defendant that Court was proceeding on Plaintiff's action) and Court decides to hold a hearing*

11/7/08 *Answer DUE (30 days after service). Still no Answer and Undertaking filed*

11/13/08 *Answer and Undertaking filed day of hearing, 12 minutes before hearing and Counsel for Plaintiff served 10 minutes before hearing.*

11/13/08 *Magistrate's hearing on ejectment held and ejectment ordered*

An affidavit of service was entered by the Magistrate on October 8, 2008.² No written answer showing that title would be called into question was filed by Respondent or delivered to the Magistrate on or before October 15, 2008, as required by S.C. Code Ann. §22-3-1110. No copy of such answer under S.C. Code Ann. §22-3-1110 was served on the Appellant or his attorney on or before October 15, 2008. So, Respondent failed to defend based on a colorable title, as permitted under S.C. Ann. §15-67-620.

Defendant might argue that he could have raised a colorable title defense in an Answer filed at least thirty days after service pursuant to S.C. Code Ann. § 22-3-1110. If Defendant had wished to do so, he would then have been required to "set forth in his answer any matter showing that such title will come in question." S.C. Code Ann. § 22-3-

² The Action was served directly by the Magistrate Court. The Court's docket indicates an Affidavit of Service was entered on October 8, 2008, though the action may have been served before that date. For the purposes of this argument, October 8, 2008, is the latest date the action could have been served.

1110. Any such Answer was required "to be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall [also] be served on the plaintiff or his attorney." *Id.* The Answer Defendant filed was not filed within thirty (30) days after receipt of the Application for Ejectment, but, rather, was filed nearly a week later, only twelve minutes before the scheduled hearing. Plaintiff's counsel received a copy of the Answer approximately ten minutes before the scheduled hearing. Had Defendant timely filed such an Answer, he would then have been required to "deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate." S.C. Code Ann §22-3-1120. To this day, Defendant has never posted any surety.

At the hearing, the Court stated that its interpretation of the legislative acts described above was that a party who was not a lease holder, who is alleged to be a trespasser, can choose not to file an answer or undertaking within the five (5) days described in S.C. Ann. §15-67-620, then can choose not to even answer the application for ejectment within thirty (30) days (S.C. Code Ann. § 22-3-1110), but can walk in the day of court and assert that they have a colorable claim of title and the Magistrate is then divested of jurisdiction and must transfer the matter to the Circuit Court. (R. p. 70, line 7-p.72, line 19). In its formal order, the Court specifically held that "[t]he Magistrate, pursuant to South Carolina Code § 22-3-20(2), does not have jurisdiction to rule on issues relating to title to real property. Therefore, the Magistrate was without subject matter jurisdiction to rule on the Application or issue the Writ of Ejectment, as cases in which the title to real property are raised may only be heard in the Circuit Court." (R. pp. 2-3).

The Court's interpretation of the Magistrate's jurisdiction is clearly at odds with the specific statutory grant of jurisdiction in S.C. Code Ann. § 22-3-1140, which provides that "[i]f such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question." (Emphasis added).

Defendant did not raise a colorable claim of title within five (5) days, as required by S.C. Code Ann. §15-67-620, did not timely answer pursuant to S.C. Code Ann. §22-3-1110, did not post the surety required by S.C. Code Ann. §15-67-620 for an undertaking as required by S.C. Code Ann. §22-3-1120, and, therefore, the Magistrate correctly precluded Respondent's success on a title defense in the cause and properly issued the ejectment. Accordingly, the Circuit Court's finding that the Magistrate was "without subject matter jurisdiction to rule on the Application or issue the Writ of Ejectment" was in error. Accordingly, the Magistrate's decision was fully supported by the law and the ejectment should be upheld by this Court and the Circuit Court's stay should be REVERSED AND VACATED and the decision of the Magistrate UPHELD.

B. THE COURT ERRED IN FINDING THAT "THE MAGISTRATE WAS WITHOUT SUBJECT MATTER JURISDICTION TO RULE ON THE APPLICATION OR ISSUE THE WRIT OF EJECTMENT, AS CASES IN WHICH THE TITLE TO REAL PROPERTY ARE RAISED MAY ONLY BE HEARD IN THE CIRCUIT COURT" BECAUSE THE COURT'S RULING WOULD EFFECTIVELY INVALIDATE S.C. CODE ANN. §22-3-20(2), §22-3-1110, §22-3-1120, AND §22-3-1140?

As stated previously, the interdependent structure created by S.C. Code Ann. §§15-67-620, 22-3-20(2), 22-3-1110, 22-3-1120, and 22-3-1140 provides that a party in possession facing an eviction or ejectment must timely and properly raise a colorable

claim of title and then post a surety bond before the Magistrate is required to relinquish his/her jurisdiction.

The Circuit Court's view that a litigant can at anytime simply raise a colorable claim of possession, at any stage in the proceeding, and then circumvent a Magistrate's jurisdiction is not only unsupported in the law, but when interpreted to its logical extension, would invalidate S.C. Code Ann. §22-3-20(2), §22-3-1110, §22-3-1120, and §22-3-1140.

"[A]ll statutes are [to be] presumed constitutional and will, if possible, be construed so as to render them valid." Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 451 (2006) (quoting Horry County Sch. Dist. v. Horry County, 346 S.C. 621, 631 (2001)). "[T]he primary rule of statutory construction is to ascertain and effectuate the intent of the Legislature. [A] statute should not be construed by focusing on an isolated phrase." Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 43 (2008) (internal citations omitted). Specifically, "[t]he goal of statutory construction is ... to prevent an interpretation that would lead to a result that is plainly absurd. Hodges v. Rainey, 341 S.C. 79, 91 (2000).

The Circuit Court failed to construe S.C. Code Ann. §§15-67-620, 22-3-20(2), 22-3-1110, 22-3-1120, and 22-3-1140 in such a way as to harmonize them and give them their logical and ordinary meaning.

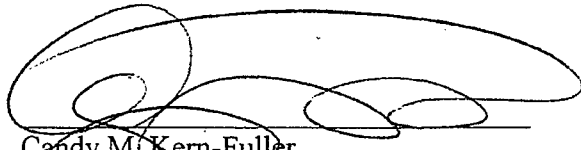
S.C. Code Ann. §22-3-20(2) sets forth that jurisdiction is not withdrawn from the Magistrate as outlined in Article 11 of Chapter 3. In Article 11, the legislature provided that an answer must be filed with the Magistrate. S.C. Code Ann. §22-3-1110. If that Answer asserts that title will come in question, then an undertaking must also be filed and

surety posted. S.C. Code Ann. §22-3-1120. "If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question". S.C. Code Ann. §22-3-1140 (emphasis added).

By determining that a Magistrate's Court has no subject matter jurisdiction at all once a Defendant raises in any fashion, at any time, that the title is at issue in an ejectment, the Circuit Court effectively invalidated the clear provisions in S.C. Code Ann. §22-3-20(2), §22-3-1110, §22-3-1120, and §22-3-1140. The Court evinced an opinion about what it mused (incorrectly) as a lack of clarity in the statutes when it said, "It's a funny statute. It would be nice perhaps if all our statutes make perfect sense. But our experience tells us that that is not the case. It does not maybe make a whole lot of sense that it says that. But the procedure that you are asking me to make them follow is a procedure that the statute requires them to follow only if they choose to, as I read it. And since they did not choose to, they don't have to follow it. Jurisdiction, the concept of jurisdiction does not need the teaching of this statute to tell us how to behave when a magistrate acts without power. The magistrate does not have the power to kick these people out of their home. Only the circuit court can." (R. p. 74, lines 11-25). The Court's opinion as stated appears to infer that the Court disregarded the clear jurisdictional grant to the Magistrate as provided in S.C. Code Ann. §§22-3-20(2), 22-3-1110, 22-3-1120, and 22-3-1140. Accordingly, the Circuit Court's stay should be reversed and vacated and the decision of the Magistrate upheld.

CONCLUSION

For the reasons stated, the Circuit Court's Order staying the ejectment should be vacated and the Magistrate's decision upheld.



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Certificate of Counsel

Candy M. Kern-Fuller, Attorney for Appellant, does hereby certify, pursuant to Rule 211(b) of the SCACR, that the Final Brief of Appellant contains all material proposed to be included by any of the parties and not any other material.



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Dated: 10/8/09

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Case No. 2008-CP-23-8598

Mountain View Baptist Church..... Appellant

v.

Bobby Lee Burdine.....Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. THE CIRCUIT COURT PROPERLY HELD THAT THE MAGISTRATE COURT LACKS SUBJECT MATTER JURISDICTION UNDER S.C. CODE ANN. § 22-3-20.**
- II. THE CIRCUIT COURT PROPERLY INTERPRETED S.C. CODE ANN. § 22-3-1110 TO BE AN OPTIONAL PROCEDURE FOR RESPONDENT AND NOT A MANDATORY PROCEDURE FOR RAISING HIS DEFENSE OF “CLAIM OF TITLE” TO THE APPELLANT’S EVICTION / EJECTMENT ACTION.**
- III. THE CIRCUIT COURT PROPERLY FOUND S.C. CODE ANN. § 15-67-610 IS NOT THE APPLICABLE LAW UNDER THE CIRCUMSTANCES PRESENT IN THIS CASE.**

STATEMENT OF THE CASE

On October 2, 2008, Mountain View Baptist Church [hereinafter “Appellant”] filed an eviction / ejectment action against Bobby Lee Burdine [hereinafter “Respondent”] in the magistrate court of Judge Leila Foster, seeking to have Respondent ordered out of the house at 108 Temple Street, Greenville, South Carolina. A hearing was held by Magistrate Judge Leila Foster on November 13, 2008. Respondent argued that the magistrate court lacked subject matter jurisdiction of this case, but at the conclusion of the hearing Magistrate Judge Leila Foster ordered Respondent’s ejectment. Respondent timely filed a motion to stay his eviction / ejectment in the Greenville County Circuit Court.

On November 20, 2008, Circuit Court Judge John C. Few conducted the requested Circuit Court hearing on Respondent’s motion to stay and heard arguments from both Appellant and Respondent regarding this case. At the conclusion of the Circuit Court hearing, Circuit Court Judge John C. Few vacated Magistrate Judge Foster’s eviction / ejectment order, and granted Respondent’s motion to stay on the basis that, pursuant to S.C. Code Ann. § 22-3-20(2), the Magistrate Court does not have subject matter jurisdiction based on the circumstances present in this case.

Appellant’s timely motion for reconsideration to Circuit Court John C. Few was denied on December 18, 2008, and this appeal followed.

ARGUMENT

III. THE CIRCUIT COURT PROPERLY HELD THAT THE MAGISTRATE COURT LACKED SUBJECT MATTER JURISDICTION UNDER S.C. CODE ANN. § 22-3-20.

The issues on appeal turn solely on whether the magistrate court had subject matter jurisdiction to make an order of any kind regarding this case. The court below correctly ruled that because this case involves a dispute over title to land, the magistrate court lacked jurisdiction pursuant to S.C. Code Ann. § 22-3-20(2). Moreover, because the issue of subject matter jurisdiction is fundamental and can be raised at any time, Appellant's procedural arguments that the issue was not properly preserved are without merit.

An initial determination of subject matter jurisdiction is a fundamental inquiry in every case. "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this court. It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this court." State v. Knuckles, 348 S.C. 593, 560 S.E.2d 426 (Ct. App. 2002); Zaragoza v. Zaragoza, 309 S.C. 149 (1992) (citing Rule 12(h)(3), SCRCP). The action of a court, regarding a matter to which it has no jurisdiction, is void. State v. Funderburk, 259 S.C. 256, 261, 191 S.E.2d. 520, 522 (1972).

In S.C. Code Ann. § 22-3-20 (entitled "Civil actions in which magistrate has no jurisdiction") there are two specific types of civil actions listed when no magistrate in South Carolina shall have jurisdiction:

No magistrate shall have cognizance of a civil action:

(1) In which the State is a party, except an action for a penalty and not exceeding one hundred dollars; or

(2) When the title to real property shall come in question, except as provided in Article 11 of this chapter.

Circuit Court Judge John C. Few specifically found the magistrate court lacks subject matter jurisdiction of this case under S.C. Code Ann. § 22-3-20(2) (R. p.3). Accordingly, the circuit court vacated the eviction / ejectment order of the magistrate court, stating its reasoning as follows: “[Respondent] alleges he has a claim of title to the property at 108 Temple Street and has set forth some evidence to support that allegation. The magistrate, pursuant to South Carolina Code § 22-3-20(2), does not have jurisdiction to rule on issues relating to title to real property.” (R. p.3).

Here, Appellant has never identified a jurisdictional basis to proceed in magistrate’s court. Appellant freely admits this is not a dispute between a tenant and a landlord (Appellant’s Brief, p. 2), so it is clear that subject matter jurisdiction is not conferred on the magistrate court here through S.C. Code Ann. § 22-3-10(10), or through the South Carolina’s Residential Landlord Tenant Act (S.C. Code Ann. § 27-40-110, et seq.).

This Respondent consistently and timely contested the fundamental issue of the magistrate court’s subject matter jurisdiction both at the beginning of the bench trial before Magistrate Judge Leila Foster (R. pp. 36-41), and then again before Circuit Court Judge John C. Few (R. pp. 66-68). The issue of subject matter jurisdiction is such a critical and fundamental inquiry, any and every court in South Carolina must allow Respondent to bring up this issue at any time and in any manner, and the issue “can be raised *sua sponte* by the court.” Eagle

Container Co., LLC v. County of Newberry, 366 S.C. 611 (S.C. Ct. App. 2005) (quoting All Saints Parish v. Protestant Episcopal Church, 358 S.C. 209, 238, 595 S.E.2d 253, 269 (Ct. App. 2004)) reversed on other grounds in Eagle Container Co., LLC v. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (2008). Further, Rule 12(h)(3) of the South Carolina Rules of Civil Procedure states “whenever it appears by suggestion of the parties or otherwise that the court lack jurisdiction of the subject matter, the court shall dismiss the action.” Rule 12(h)(3), SCRCP. In this case, Respondent did, in fact, timely raise the issue of subject matter jurisdiction.

Here there is ample evidence in this record to support the lower court’s finding that this is a complicated dispute relating to title to real property. Respondent’s parents bought a lot and built a house at 108 Temple Street, Greenville, in 1958 (R. pp. 55, 60-61). Respondent, who was born in 1956, grew up in this house, paid taxes on it, and considered it his home all his life (R. pp. 54, 57-59, 61-64). Only around the time of his parents’ deaths in 2000 did the issue of a possibility of an error or some type of cloud on the title to 108 Temple Street from decades before arise (R. p. 55). Thus, for there to be a legitimate legal and equitable judicial resolution of this set of facts and circumstances, a quiet title action in the circuit court pursuant to S.C. Code Ann. § 15-67-10 (2008) is the appropriate action.

Appellant complains that, under the circuit court’s reading of the law “the defendant can walk in the day of court and assert that they have a ‘colorable claim of title’ and the magistrate is then divested of jurisdiction and must transfer the matter to the circuit court.” (Appellant’s brief, p. 8, 10; R. p. 72, ll. 11-13). In so arguing, Appellant demonstrates a basic misunderstanding of the nature of subject matter jurisdiction. First, this is not actually a ‘divesting,’ since the magistrate court never had jurisdiction in the first place. Second, and most fundamentally, what

Appellant is protesting remains the well-settled law of South Carolina: subject matter jurisdiction can clearly be brought up at any time. State v. Knuckles, 348 S.C. 593, 560 S.E.2d 426 (Ct. App. 2002); Zaragoza v. Zaragoza, 309 S.C. 149 (1992) (citing Rule 12(h)(3), SCRCPP).

Appellant's protest here is akin to being upset that, for example, a South Carolina family court or a Georgia probate court are similarly without subject matter jurisdiction to decide this title dispute over 108 Temple Street, Greenville, South Carolina. Just as is the case for Judge Leila Foster's magistrate court, neither a South Carolina family court nor a Georgia probate court have subject matter jurisdiction in these parties' title dispute. Appellant was well aware of the unique and involved circumstances present in this case before choosing to file its action in the magistrate court on October 2, 2008 (R. pp. 42-53). Appellant certainly could have and should have filed a quiet title action in the Greenville County circuit court instead of an eviction / ejectment action in the magistrate court. In fact, should the South Carolina Court of Appeals affirm the circuit court's ruling in this case, either the Appellant or Respondent or any interested party can promptly initiate a quiet title action in the circuit court.

Based on the evidence presented, the circuit court properly concluded the magistrate court lacks subject matter jurisdiction under S.C. Code Ann. § 22-3-20 and the circuit court's ruling should be affirmed.

IV. THE CIRCUIT COURT PROPERLY INTERPRETED S.C. CODE ANN. § 22-3-1110 TO BE AN OPTIONAL PROCEDURE FOR RESPONDENT AND NOT A MANDATORY PROCEDURE FOR RAISING HIS DEFENSE OF "CLAIM OF TITLE" TO THE APPELLANT'S EVICTION / EJECTMENT ACTION.

Without citing any supporting authority, Appellant argued below, and again on appeal, that Article 11 of Title 22 outlines a mandatory procedure for bringing title to real property into question in a case like this one (Appellant's brief, pp. 5, 7-10). According to Appellant, S.C. Code Ann. § 22-3-1110 is the procedure a "litigant must follow" (Id., p. 5). From this hypothesis, Appellant argues that because Respondent did not follow the procedure specified in S.C. Code Ann. § 22-3-1110 in raising his defense of "claim of title," the magistrate had authority to eject Respondent (Id., p. 9).

The circuit court correctly held that Appellant's argument is erroneous and contradicted by the plain language of the statute itself. The issue of interpretation of a statute is a question of law for the court. Charleston County Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995) overruled on other grounds by Farmer v. Monsanto Corp. 353 S.C. 553, 579 S.E.2d 325 (2003). The appellate court is free to decide this issue with no particular deference to the trial court. Catawba Indian Tribe of S.C. v. State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

The statute S.C. Code Ann. § 22-3-1110 reads:

When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.

In interpreting S.C. Code Ann. § 22-3-1110, the circuit court properly focused on the actual language in the first sentence of S.C. Code Ann. § 22-3-1110: "...the defendant **may** set forth in his answer any matter showing that such title would come into question." (**emphasis added**). By drafting this statute with the word "may," the General Assembly created an optional

procedure for a defendant wishing to raise the defense of “claim of title.” The General Assembly could have used the word “shall” instead of “may” here if the General Assembly intended for S.C. Code Ann. § 22-3-1110 to create one mandatory procedure for a defendant wishing to raise a “claim of title” defense. The General Assembly, however, did not use mandatory language, and did not use the word “shall”; instead, the General Assembly chose the word “may.” The circuit court appropriately focused on the actual language in S.C. Code Ann. § 22-3-1110 in interpreting the drafters’ legislative intent. This focus on the actual language leads to the reasonable conclusion that the procedure outlined in S.C. Code Ann. § 22-3-1110 is optional (“may”) rather than mandatory (“shall”). Accordingly, the fact that Respondent did not follow this procedure is irrelevant and cannot serve to grant the magistrate jurisdiction where none existed.

The procedure in S.C. Code Ann. § 22-3-1110 is simply one way of saying that defendant has a claim to the land involved which would lead to questioning the magistrate court’s subject matter jurisdiction. Whether we call this: (A) Respondent’s “claim of title” defense, or (B) Respondent’s challenge to the magistrate court’s jurisdiction, in layman’s terms this Respondent is simply saying: “Hey! Wait a minute! I’m not a trespasser, I’m not squatter! I’ve got a legitimate legal claim to this property!” The immediate practical effect of Respondent making that “Hey!” statement is that it declares this case to be a title dispute, and thus, a case that under South Carolina law must be heard in the circuit court and not the magistrate court. S.C. Code Ann. § 22-3-20 (2008). As Rule 12(h)(3) of the S.C. Rules of Civil Procedure makes clear, there is, in fact, no particular procedure or formalized manner in which this fundamental “Hey!” statement needs to be made by Respondent (“whenever it appears by suggestion of the parties or otherwise that the court lack jurisdiction of the subject matter, the court shall dismiss

the action.” Rule 12(h)(3), SCRCF). As Circuit Court Judge John C. Few correctly noted at the circuit court hearing: “...they don’t have to raise a defense of jurisdiction. You can raise it anything anytime you want to. They can raise it right now.” (R. p. 69, ll. 22-25).

Thus, the statute offers one method for challenging the court’s subject matter jurisdiction, but given the continued and absolute requirement of subject matter jurisdiction, this necessarily is not and cannot be the only method. As Judge Few noted, a defendant standing in Respondent’s shoes has two basic ways of responding to the eviction / ejectment action: “The person can just sit there ... and do nothing because the magistrate has no jurisdiction to kick them off property which is what happened here or they can follow the procedures set forth in S.C. Code Ann. § 22-3-1110 which is nothing more than a formalized way of taking this case to circuit court.” (R. p. 15, ll. 19-25, p. 16, ll. 1).

Neither of these two basic ways of responding is mandatory; each is legitimate, and the defendant has the option to choose either method. In the case at hand, Respondent chose not to follow the optional procedure found in S.C. Code Ann. § 22-3-1110. Nonetheless, Respondent properly and timely yelled “Hey!” – he raised his defense of “claim of title” to Appellant’s eviction / ejectment action; or if you prefer, he yelled “Hey!” and challenged the magistrate court’s subject matter jurisdiction. Either way, Respondent’s timely “claim of title” called into question the subject matter jurisdiction of the magistrate court. The circuit court’s interpretation of S.C. Code Ann. § 22-3-1110 as an optional procedure rather than a mandatory one is the correct interpretation and should be affirmed.

III. THE CIRCUIT COURT PROPERLY FOUND S.C. CODE ANN. § 15-67-610 IS NOT THE APPLICABLE LAW UNDER THE CIRCUMSTANCES PRESENT IN THIS CASE.

Appellant argues that Respondent was precluded from raising the lack of subject matter jurisdiction of the magistrate court because he did not raise a colorable claim of title within five days under S.C. Code Ann. § 15-67-610, a statute that addresses the summary ejectment of trespassers. Not only is Appellant's argument again an attempt to end run the unwaivable requirement of subject matter jurisdiction, this statute is plainly inapplicable to the facts and circumstances of this case.

According to Appellant, the very short time period of "within five days of being served" found in S.C. Code Ann. § 15-67-610 is the applicable time limit for this Respondent, or for any defendant, to raise a "colorable claim of title" when served with a magistrate court eviction / ejectment action like the one Appellant filed in this case on October 2, 2008 (Appellant's brief, p. 6). Appellant argues that because Respondent did not file an answer within those five days, Respondent should be summarily ejected. The circuit court quickly and correctly dismissed this argument by Appellant because Appellant's reliance here on the 5-day time limit found in S.C. Code Ann. § 15-67-610 is completely misplaced with the circumstances present in this case. S.C. Code Ann. § 15-67-610 is a statute intended to provide a summary proceeding for a landowner to deal with a trespasser. The statute itself is found in Title 15 under Article 7, and is entitled: "Summary Ejectment of Trespassers."

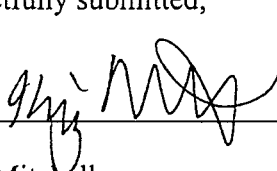
In no way can this Respondent be accurately or fairly described as a trespasser on this Appellant's land. Because the Respondent is not and has never been a tenant of anyone at 108 Temple Street, Greenville, South Carolina (R. p. 57), there is no way he can be characterized as trespassing as a 'hold-over tenant' or 'squatter tenant' or any other kind of unlawful tenant. Further, there is no evidence in the record to make out a prima facie case that Appellant has clear

title to the property in question at 108 Temple Street, Greenville. Respondent has timely and repeatedly raised his legitimate claim to title to the property at 108 Temple Street, Greenville, South Carolina. For this reason, S.C. Code Ann. § 15-67-610 is not the applicable law in this case, and the circuit court's dismissal of Appellant argument on this point is correct.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Circuit Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirby Mitchell", is written over a horizontal line.

October 6, 2009

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In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Case No. 2008-CP-23-8598

Mountain View Baptist Church:..... Appellant

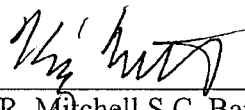
v.

Bobby Lee Burdine:.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
SCACR.

October 6, 2009



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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

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

Mountain View Baptist Church, Appellant,

v.

Bobby Lee Burdine, Respondent.

Appeal From Greenville County
John C. Few, Circuit Court Judge

Unpublished Opinion No. 2011-UP-061
Submitted January 4, 2011 – Filed February 16, 2011

REVERSED

Candy M. Kern-Fuller, of Easley, for Appellant.

Kirby Mitchell, of Greenville, for Respondent.

PER CURIAM: Mountain View Baptist Church (the Church) appeals a circuit court's holding a magistrate's writ of ejectment against Bobby Lee Burdine was void. We reverse and reinstate the writ.¹

In 1958, Burdine's parents bought an unimproved lot of real property, but they mistakenly built and lived in a house on a lot owned by another person. In 1998, the Church bought the lot on which the Burdines built their house. Burdine's parents died in 2000, and Burdine subsequently moved into the house, living in it until this action. In 2008, the Church filed an application to eject Burdine from the lot. Burdine filed an answer, asserting he owned the lot and the magistrate lacked subject matter jurisdiction because title was in question. The answer also included a promise Burdine would accept service of a summons and complaint for an ejectment action in circuit court if the Church deposited those documents with the magistrate within twenty days of Burdine's answer.

The Church argues the circuit court erred in holding the magistrate lacked subject matter jurisdiction to issue the writ. We agree and reverse for the reasons set forth below.

"[I]ssues relating to subject matter jurisdiction . . . should be taken notice of by this court on our own motion." Bunkum v. Manor Props., 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct. App. 1996). Pursuant to article V, section 1 of the South Carolina Constitution, the South Carolina legislature has established the subject matter jurisdiction of magistrates in ejectment proceedings through a series of statutes. Section 22-3-20 of the South Carolina Code (2007) provides, "No magistrate shall have cognizance of a civil action . . . [w]hen the title to real property shall come in question, except as provided in Article 11 of this chapter."

Article 11 provides, "When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may . . . set forth in his answer any matter showing that such title will come in question." S.C. Code. Ann. § 22-3-1110 (2007). "At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

by at least one sufficient surety and approved by the magistrate, to the effect" the defendant would accept service of a summons and complaint for an ejectment action in circuit court if the plaintiff deposited those documents with the magistrate within twenty days of the defendant's answer. S.C. Code Ann. § 22-3-1120 (2007). "If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause . . . and the defendant shall be precluded, in his defense, from drawing the title in question." S.C. Code Ann. § 22-3-1140 (2007).

Here, the magistrate had subject matter jurisdiction to hear the action. Burdine did not comply with the statutory provisions relating to the magistrate's subject matter jurisdiction because Burdine's undertaking was not executed by a surety. Therefore, the circuit court erred in holding the magistrate's writ of ejectment was void.

REVERSED.

HUFF and LOCKEMY, JJ., and GOOLSBY, A.J., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Case No. 2008-CP-23-8598

Mountain View Baptist Church, ... Appellant,

v.

Bobby Lee Burdine, ... Respondent.

PETITION FOR REHEARING

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Daniel R. Unumb
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TO: HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS
CANDY M. KERN-FULLER, ATTORNEY FOR APPELLANT

PLEASE TAKE NOTICE that the undersigned, acting as attorney for the Respondent, Bobby Lee Burdine, hereby petitions this Court for rehearing pursuant to Rule 221(a) of the South Carolina Rules of Appellate Procedure.

Respondent respectfully requests the rehearing of the above appeal. A written opinion was filed by the South Carolina Court of Appeals on February 16, 2011. This instant petition is timely.

Rehearing is justified on the following grounds:

- (1) The Court of Appeals erred by overlooking the mandatory statutory provisions relating to the magistrate's court subject matter jurisdiction under Title 22, Chapter 3, Article 11, specifically: SC CODE ANN. § 22-3-1150.
- (2) The Court of Appeals erred in completely misapprehending the application of Title 22, Chapter 3, Article 11 to the question of magistrate's court subject matter jurisdiction involving summary ejectment proceedings.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

INTRODUCTION

In the case on appeal, Circuit Court Judge John C. Few ruled the magistrate's writ of ejectment void because, pursuant to S.C. Code Ann. § 22-3-20(2), the magistrate court lacks subject matter jurisdiction over actions where title to real property is in dispute. Burdine [Respondent] was summarily evicted from the home he and his family had lived in continuously at 108 Temple Street in Greenville for 50 years after a trial before a magistrate judge where the Church's [Appellant's] own proof called into question the issue of title. Circuit Court Judge John C. Few reversed that writ, holding that the magistrate court lacked subject matter jurisdiction. In a per curiam opinion, the Court of Appeals reversed the Circuit Court, relying exclusively on S.C. Code Ann. § 22-3-1120 and the fact that at the time an answer was ultimately filed in the magistrate court action, the undertaking filed therewith was not executed by a surety. In so holding, the Court of Appeals overlooked S.C. Code Ann. § 22-3-1150 which provides that even where an undertaking is not perfected, it if appears at trial by the plaintiff's own evidence that title is in question the court is required to dismiss the action. In addition, the Court of Appeals misapprehended the statutory scheme of Title 22, Chapter 3, Article 11 which indicates that S.C. Code Ann. § 22-3-1110, et seq., does not apply in summary ejectment proceedings where answers are not required and not typically filed. Accordingly, having met the requirements for rehearing, Respondent respectfully requests that his Petition for Rehearing be granted and that the Court of Appeals give full and due consideration to the critical arguments and statutes overlooked and misapprehended in the per curiam opinion.

ARGUMENT

The Court of Appeals erred by overlooking the mandatory statutory provisions relating to the magistrate's court subject matter jurisdiction under Title 22, Chapter 3, Article 11, specifically: SC CODE ANN. § 22-3-1150.

The undisputed facts of this case – as briefly summarized in the Court of Appeals' own two-page opinion – support Respondent's petition for a rehearing. The Court of Appeals wrote that "in 1958, Burdine's [Respondent's] parents bought an unimproved lot of real property, but they mistakenly built and lived in a house on a lot owned by another person. In 1998, the Church [Appellant] bought the lot on which the Burdines built their house. Respondent's parents died in 2000, and Respondent subsequently moved into the house, living in it until this action. In 2008, the Appellant filed an application to eject Respondent from the lot. Respondent filed an answer, asserting he owned the lot and the magistrate lacked subject matter jurisdiction because title was in question." Order of Court of Appeals, p. 1.

Section 22-3-20 of the South Carolina Code (2007) provides, "No magistrate shall have cognizance of a civil action ... [w]hen the title to real property shall come in questions, except as provided in Article 11 of this chapter." Article 11 provides, "When the title to real property shall come in question in an action brought in a court of a magistrate the defendant **may** ... set forth in his answer any matter showing that such title will come in question." SC CODE ANN. § 22-3-1110 (2007) (emphasis added). "At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summon and complaint in an action in the circuit court for the same cause the

defendant will within twenty days after such deposit give an admission in writing to the service thereof.” SC CODE ANN. § 22-3-1120 (2007). “If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause ... and the defendant shall be precluded, in his defense, from drawing the title in question.” SC CODE ANN. § 22-3-1140 (2007).

The Court of Appeals concluded that, because Respondent’s undertaking was not executed by a surety and therefore did not comply with Section 22-3-1120, the magistrate had subject matter jurisdiction to hear the action pursuant to Section 22-3-1140. The Court of Appeals, however, overlooked the very next section of this statutory scheme, Section 22-3-1150, which provides, “[i]f, however, it appear on the trial from the Plaintiff’s own showing that the title to real property is in question and such title shall be disputed by the defendant the magistrate **shall** dismiss the action and render judgment against the plaintiff for the costs” (emphasis added). Dismissal of the action is not optional under these facts – it is required.

A quick review of the undisputed facts from this record here make it clear that title to real property was in dispute from the Plaintiff’s own showing in this case from the beginning:

Appellant’s witnesses acknowledge that the title to real property that is the subject to this action is in question. (Record, p. 43, ll. 15-18); (Record, p. 45, ll. 22-24); (Record, p. 48, ll. 14-15); (Record, p. 50, ll. 15-22). Furthermore, such title was disputed by Respondent. (Record, p. 55, ll. 14-21); (Record, p. 57, ll. 6-21); (Record, p. 59, ll. 14-15). Considering these undisputed facts – presented by the Appellant at trial – and considering the requirements of SC CODE ANN. § 22-3-1150, it was error for the Court of Appeals to reverse the Circuit Court’s voiding of the magistrate’s writ of ejectment.

The Court of Appeals erred in completely misapprehending the application of Title 22, Chapter 3, Article 11 to the question of magistrate's court subject matter jurisdiction involving summary ejectment proceedings.

The Court of Appeals misapprehended the application of Title 22, Chapter 3, Article 11 to magistrate's court subject matter jurisdiction involving summary ejectment proceedings. The South Carolina Legislature created summary ejectment proceedings to allow real property owners an expedited procedure in magistrate court for expelling trespassers and tenants from their property. Under this statutory scheme, the property owner does not file a summons and complaint, but, rather, makes an application for a notice to quit, in the case of a trespasser, or a rule to vacate or show cause, in the case of a tenant. S.C. CODE ANN. § 15-67-610 (2007); S.C. CODE ANN. § 27-37-20 (2007). Neither the trespasser, nor the tenant are required to file a written answer to the notice or rule; rather, if they contest the ejectment they must simply make an appearance within the statutory period and show either: (1) a bona fide color of claim to possession in the case of a trespasser; or (2) cause as to why they should not have to vacate the premises as a tenant. S.C. CODE ANN. § 15-67-620 (2007); S.C. CODE ANN. § 27-37-20,60 (2007).

When parties are before the magistrate pursuant to summary ejectment proceedings, the magistrate, as a preliminary matter, must determine the relationship of the parties as a prerequisite to the exercise of the magistrate's jurisdiction in such proceedings. *Stewart-Jones v. Shehan*, 127 S.C. 451, 121 S.E. 374 (S.C. 1924) ("Necessarily, therefore, it is competent for the magistrate to determine as a fact whether the relation of landlord and tenant exists. ... [I]t is equally apparent that by merely asserting the claim that another is in possession of real estate as

his tenant a party may not be permitted to use the summary statutory proceeding to eject the true owner of the premises or one in possession under the true owner”). If the parties stand as real property owner versus trespasser or tenant, then the magistrate assumes jurisdiction and proceeds with the summary ejectment determination. If, on the other hand, no such relationship exists between the parties, the magistrate does not exercise his jurisdiction and dismisses the summary ejectment proceeding.

Here, the magistrate court failed to make the initial determination of the relationship between the parties to confirm whether jurisdiction of a summary ejectment proceeding was appropriate. Respondent grew up in the house located on the property that his parents had built in 1958. He also lived exclusively in the house since 2000, eight years prior to Appellant applying for a notice to quit with the magistrate court. It is undisputed that the parties did not have a landlord and tenant relationship. As a preliminary determination the magistrate could not have found that Respondent was a trespasser or a tenant of Appellant and therefore the magistrate did not have jurisdiction to proceed with a summary ejectment against Respondent.

Furthermore, Title 22, Chapter 3, Article 11 does not apply to summary ejectment proceedings in magistrate court, but rather more formal actions initiated by the filing of a summons and complaint. SC CODE ANN. § 22-3-1120 (2007). Section 22-3-1110 states that “[w]hen the title to real property shall come in question in an action brought in a court of a magistrate the defendant may ... set forth in his answer any matter showing that such title will come in question. Such answer **shall be in writing** ... and delivered to the magistrate” (emphasis added). Neither the notice to quit, nor the rule to vacate issued by the magistrate court in summary ejectment proceedings inform the recipient of such notice that if she questions the title to the subject property that she must file an written answer and deliver it to the magistrate

court. Instead, as stated above, the recipient of such notice is simply required to either vacate the premises or make an appearance to the court and show why they have a claim of possession or are entitled to remain as a tenant. If the recipient of the notice appears, the court is then required to make the preliminary determination of whether the court's exercise of jurisdiction over a summary proceeding is proper.

In the case at hand, on or about October 8, 2008, Respondent was served with a notice to quit issued by the magistrate court. The notice to quit informed Respondent that he was required to vacate the premises or contact the court within five (5) days to show a bona fide color of claim to possession of the premises. The notice did not inform Respondent that he had to file an answer with the court or, if he questioned titled to the property that he had to file a written answer to the court along with a written undertaking executed by at least one sufficient surety. Respondent was never served with a summons and complaint that informed him that he was required to file an answer within thirty days of service. On October 21, 2008, the magistrate issued not a warrant against a trespasser pursuant to the notice to quit but a writ of ejectment against a tenant. On October 27, 2008, Respondent contacted the court which decided to hold a hearing on the matter. On November 13, 2008, the matter was heard before the magistrate at which time Respondent filed an answer and undertaking with the court.

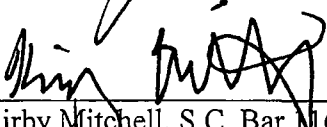
The Court of Appeals ruled that the magistrate court had jurisdiction to hear this matter because Respondent's undertaking filed on November 13, 2008, did not comply with Section 22-3-1120. However, because the specific statutory grant of jurisdiction in Article 11 does not apply to summary ejectment proceedings, the magistrate's jurisdiction does not turn on whether Respondent filed an undertaking executed by a sufficient surety on November 13, 2008, but rather, whether the requisite relationship between the parties existed at the time of filing: October

2, 2008. It was an error for the Court of Appeals to apply the law otherwise. Because the Court of Appeals misapplied Article 11 in its determination of the magistrate's jurisdiction in this case, the Court of Appeals should now grant Respondent's petition for rehearing.

Respectfully submitted:



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March 2, 2011

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Case No. 2008-DR-23-8598

Mountain View Baptist Church..... Appellant

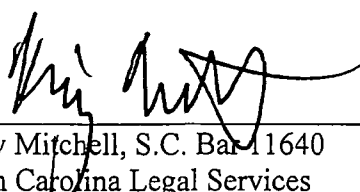
v.

Bobby Lee Burdine..... Respondent.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Candy M. Kern-Fuller by depositing a copy in the U.S. mail, postage prepaid, on March 2, 2011, addressed to: 200 East Main Street, Easley, SC 29640.

March 2, 2011



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The South Carolina Court of Appeals

Mountain View Baptist Church,

Appellant,

v.

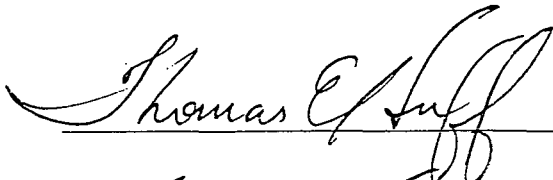
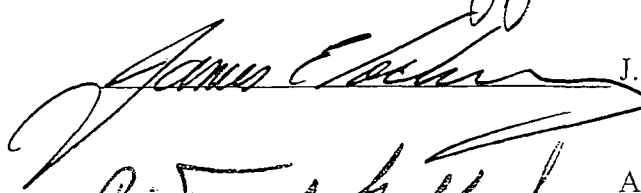
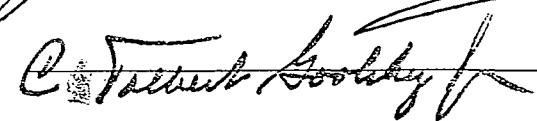
Bobby Lee Burdine,

Respondent.

The Honorable John C. Few
Greenville County
Trial Court Case No. 2008-CP-23-08598

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

 J.
 J.
 A.J.

Columbia, South Carolina

FILED

April 25, 2011