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S.C. SUPREME COURT

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.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on April 25, 2011.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that the magistrate had subject matter jurisdiction in a summary ejectment proceeding where Respondent failed to show that the relationship between the parties invoked the application of the statute as required by this Court’s precedents?
2. Did the Court of Appeals err in holding that the magistrate had subject matter jurisdiction where Respondent’s witnesses demonstrated that there was a legitimate dispute regarding the title of the property?

STATEMENT OF THE CASE

1. Case facts.

In 1958 Bobby Lee Burdine’s parents purchased a parcel of real property located in Greenville, South Carolina and recorded the deed thereto. Shortly thereafter the Burdines built a home on a parcel located at 108 Temple Street, Greenville, South Carolina, which is several lots over from the parcel indicated in their recorded deed. When the home was completed the Burdines moved in the lived there for the remainder of their lives until 2000. Bobby Lee Burdine, born August 5, 1956, grew up in the home located at 108 Temple Street and possessed

and occupied the home subsequent to his parents deaths. Bobby Lee Burdine still possesses and occupies this home as of the date of filing this petition.

In 1998 Mountain View Baptist Church purchased the lot located at 108 Temple Street, from Richard W. Locke, who had purchased the property from David Stone in 1996, and recorded the deed thereto. When Richard W. Locke sold the property to Mountain View Baptist Church he had never been on the property and did not know that the Burdine home existed on the lot. Shortly after the church purchased the property from Mr. Locke, Bobby Lee Burdine informed Pastor Mills that his family in fact owned the property. Over the next ten years Pastor Mills continued to see and speak with Bobby Lee Burdine on occasion.

In the summer of 2008 the church purchased the property next to 108 Temple Street and began to prepare to construct a parking lot thereupon. Bobby Lee Burdine presented himself to the church and asserted that he claimed title to the property located at 108 Temple Street. The church subsequently filed an application for ejectment against Bobby Lee Burdine in the magistrate's court.

2. Procedural history.

On October 2, 2008, Mountain View Baptist Church [hereinafter "Respondent"] applied to the Greenville County Magistrate's Court for a Rule to Vacate or Show Cause against Bobby Lee Burdine [hereinafter "Petitioner"]. In the 'Application for Ejectment' Respondent claimed ownership of the premises located at 108 Temple Street, Greenville, South Carolina 29601 [hereinafter the "subject premises," or "subject property"], admitted that no landlord/tenant relationship existed between the parties, and alleged that petitioner "has unlawfully resided in the house located on the parcel of land ... and has failed to vacate the premises upon request of

[Respondent]” (ROA. p. 6). Attached to the application was a copy of a deed, filed July 9, 1998, indicating that Respondent purchased the subject property from Richard W. Locke on July 8, 1998. (ROA. p 10). The magistrate issued and served Petitioner a Rule to Vacate or Show Cause to which Petitioner did not respond.

On October 21, 2008, Judge Leila Foster issued a writ of ejectment “in accordance with S.C. CODE ANN. § 27-40-710, 27-40-735, and 27-37-160¹” against Petitioner requiring him to voluntarily vacate the premises by November 20, 2008. (ROA. p. 1). On October 27, 2008, counsel for Petitioner delivered a correspondence to Judge Foster requesting that she suspend the execution of the writ and schedule a hearing on the matter (ROA. pp. 22-23). Judge Foster set the matter for a summary ejectment proceeding before her on November 13, 2008.

On November 13, 2008, Petitioner filed an Answer denying Respondent’s title to the premises, admitting that he and his parents resided in the home thereon in excess of forty (40) years and that he continued to reside in the home, and asserting his own title to the premises. (ROA. pp. 11-12). Additionally, Petitioner submitted an undertaking affirming that if Respondent, within 20 days, returned to the magistrate a summons and complaint of a civil action concerning the title to the subject premises filed in the Circuit Court, the Petitioner would, by and through his counsel, within 20 days accept service thereof. (ROA. pp. 11-12).

At the call of the case, Petitioner moved, pursuant to S.C. CODE ANN. § 22-3-20², to dismiss the summary proceeding for lack of subject matter jurisdiction based on the fact that Petitioner and his parents had possessed and occupied the property since 1958. Petitioner argued that because such possession was adverse to all other ownership claims he therefore asserted a

¹ S.C. Residential Landlord Tenant Act, S.C. CODE ANN. § 27-40-10, et. seq. (2007) (SCRLTA); and Eviction of Tenants, 27-37-10 et seq. (2007). It is unclear why the magistrate issued a writ of ejectment pursuant to the SCRLTA when it is undisputed that the parties did not have a landlord/tenant relationship.

² “No magistrate shall have cognizance of a civil action: (2) When the title to real property shall come in question, except as provided in Article 11 of this chapter.” S.C. CODE ANN. § 22-3-20(2) (2007).

legitimate claim regarding the title to the property pursuant to S.C statutory and common law. (ROA. pp. 26-41). The Court, without making any findings on the record, denied Petitioner's motion and continued the summary ejectment proceeding. At the conclusion of the proceeding the magistrate found in favor of Respondent and issued a writ of ejectment.

On November 17, 2008, Petitioner applied to the Circuit Court of Greenville County for an order staying the execution and enforcement of the writ of ejectment (ROA. pp. 13-15). On November 20, 2008, Circuit Court Judge John C. Few heard Petitioner's motion and issued an order setting aside the writ of ejectment. (ROA. pp. 2-3). Judge Few found that because sufficient evidence existed that raised a legitimate question regarding the title to the subject property, the magistrate lack of subject matter jurisdiction to issue the writ of ejectment pursuant to summary ejectment proceedings (ROA. pp. 66-73). His order was subsequently filed on November 26, 2008, and received by Respondent on December 2, 2008. On December 12, 2008, Respondent filed a motion for reconsideration which was denied by Judge Few by order dated December 18, 2008.

On January 8, 2009, Respondent filed a notice of appeal to the South Carolina Court of Appeals. On February 16, 2011, the Court of Appeals filed an unpublished, per curium opinion, Op. No. 2011-UP-061, reversing Judge Few's order setting aside the writ of ejectment. The Court of Appeals found the magistrate had subject matter jurisdiction because Petitioner's undertaking was not executed by a surety and, therefore, did not comply with the statutory provisions relating to the magistrate's jurisdiction. *Mountain View Baptist Church v. Burdine*, Unpublished Opinion No. 2011-UP-061 (Filed February 16, 2011).

On March 2, 2011, Petitioner filed a petition for rehearing with the South Carolina Court of Appeals who denied the petition on April 25, 2011. Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. THE MAGISTRATE DID NOT HAVE SUBJECT MATTER JURISDICTION BECAUSE RESPONDENT FAILED TO MAKE A *PRIMA FACIE* SHOWING NECESSRY TO INVOKE SUMMARY EJECTMENT PROCEEDINGS

South Carolina property law attempts to reconcile the policy of prohibiting state magistrates from hearing cases involving issues regarding the title to real property, with affording property owners an expedited process for expelling trespasser and tenants. As a result, in order for a magistrate to assume jurisdiction of a summary ejectment proceeding, this Court requires property owners to make a preliminary showing that the action brought comes within the particular statute plead upon. Because the evidence presented to the magistrate at the commencement of the proceeding in this case indicated, on its face, that a legitimate issue existed between the parties regarding the title to the subject property, the magistrate erred in continuing with the summary ejectment of trespassers proceeding. The S.C. Court of Appeals should have, therefore, affirmed the Circuit Court's holding that the magistrate lacked subject matter jurisdiction to decide the matter. Because the Court of Appeals's decision is in conflict with this Court's precedents, this Court should grant Petitioner's petition for writ of certiorari.

Historically the South Carolina Constitution precluded state magistrate's from having jurisdiction to decide actions involving the title to real property. S.C. CONSTITUTION OF 1895.³ Upon amendment the constitution authorized the General Assembly to provide for the civil jurisdiction of the magistrate's courts. S.C. CONST. ART. V, § 26. Thereafter, the S.C. legislature

³ The S.C. Constitution did not intend to allow the magistrate in any case to oust a man from the possession of his real estate and throw upon him the burden of proving his title. *Bamberg Banking Co. v. Matthews*, 132 S.C. 130, 128 S.E. 718 (S.C. 1925) (Watts, J., dissenting).

codified the well- established exclusion of actions involving the title to real property from magistrate's courts subject matter jurisdiction. S.C. CODE ANN. § 22-3-20(2) (2007). Article 11 under this chapter provides a statutory safeguard to ensure that magistrates do not decide actions involving legitimate questions as to the title of real property. S.C. CODE ANN. § 22-3-1110, et seq. (2007). Pursuant to Article 11 such cases either get automatically transferred to the Circuit Court, or the parties are prohibited from raising the issue of title to real property. *Id.*

Equally historic is the S.C. legislature's statutory policy of providing real property owners an expedited procedure in magistrate's court to expel trespassers and tenants from their property. *See, e.g., Baldwin vs. Cooley*, 1 S.C. 256, 1870 Lexis 30 (S.C. 1870) ("The magistrate, in this case, has proceeded ... under the Act of 1866 entitled 'An Act to provide an expeditious mode of ejecting trespassers'"). Under the statutory scheme,⁴ 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 alleged trespasser, nor the alleged tenant are required to file a written answer to the notice or the rule; rather, if they contest the ejection they must simply make an appearance within the statutory period and show either: (1) a bona fide claim to *possession* in the case of an alleged 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).

In order to reconcile affording property owners the convenience of summary proceedings while ensuring that magistrate's do not decide actions involving the title to real property, this Court has consistently required plaintiffs attempting to utilize summary ejection proceedings to

⁴ The language of which has essentially remained unchanged even into the modern S.C. Code of Laws, *see infra* fn 4.

make a preliminary *prima facie* showing that the action they bring falls within the particular ejectment statute. *Richland Drug Co. v. Moorman*, 71 S.C. 236, 50 S.E. 792 (S.C. 1905) (“The plaintiff claiming right of summary ejectment must bring himself within the statute by at least making before the magistrate a *prima facie* showing that he is the owner of the premises and that defendant is a trespasser.”); *Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 121 S.E. 374 (S.C. 1924) ([n]ecessarily, therefore, it is competent [for the magistrate to determine as a fact whether the relation of landlord and tenant exists ... [because] it is 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”).

In *Moorman*, the plaintiff initiated summary ejectment proceedings, pursuant to Code 1902, section 2972⁵, against the defendant by serving a notice to quit on the defendant concerning the premises described in the notice. *Moorman*, 71 S.C. 236, 237 (S.C. 1905). The day after he was served, the defendant appeared before the magistrate and presented a deed to the premises as evidence of his title and requested a hearing to determine the matter. *Id.* The magistrate did not inspect the deed, but agreed to set a day for the hearing and contacted the attorney’s for plaintiff accordingly. *Id.* at 238. Instead of agreeing to a hearing date, the plaintiff asserted that the proceeding was summary, and, because more than five days passed with the defendant failing to give a bond, the duty of the magistrate was limited to ejecting the defendant

⁵ “If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, it shall be lawful for the owner of the land so trespassed upon to apply to any magistrate to serve notice on such trespasser to quit the premises; and if after the expiration of five days from personal service of such notice such trespasser refuses or neglects to quit, it shall then be the duty of such magistrate to issue his warrant to any sheriff or constable, requiring him forthwith to eject such trespasser, using such force as may be necessary; *Provided however*, That if the person in possession shall, before the expiration of the said five days, appear before the 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 surety, 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 lands may incur in the successful establishment of his claim by any of the modes of proceeding now provided by law, the said magistrate shall not issue his warrant as aforesaid.” The language of this provision is essentially the same language of the current code section authorizing summary ejectment of trespassers. See S.C. CODE ANN. § 15-67-610 and 620 (2007).

from the property. *Id.* The magistrate declined to summarily eject the defendant without a hearing and the plaintiff applied to the Circuit Court for a writ of mandamus compelling the magistrate to issue the warrant of ejectment. *Id.*

The Circuit Court held that the summary ejectment of trespassers statute contemplates that *only if* the alleged trespasser satisfies the magistrate that a bona fide color or claim to possession exists *and* enters into a bond, then the person bringing the action is relegated to his action of law, during which the question of trespass is determined. *Id.* at 239. The Court determined that more than five days elapsed since the plaintiff initiated the proceedings and the defendant failed to enter into the bond and concluded, therefore, that the magistrate should have issued the warrant of ejectment as a matter of law. *Id.* The Circuit Court issued the writ of mandamus and the defendant appealed to the S.C. Supreme Court to set aside the writ.

This Court reversed the writ of mandamus and found that the summary ejectment statute did not apply to someone with an ownership interest in the premises, but, rather to an alleged trespasser who, nevertheless, has a bona fide color of claim to *possession*.⁶ *Id.* at 240. According to the Court, the statute gives such alleged trespasser the privilege of demonstrating such a claim to possession to the magistrate within five days and executing a bond, which in turn operates to prevent the court from issuing the warrant of ejectment.⁷ *Id.* It did not follow, however, that the magistrate, as a matter of law, is compelled to issue a warrant in all cases where a person served with a notice to quit failed to comply with the provisions of the statute. *Id.*

In some cases, the Court reasoned, a defendant in possession, even though he does not avail himself of the privilege of executing the bond within five days after notice to quit, and

⁶ See, e.g., *Sires v. Moseley*, 60 S.C. 504, 39 S.E. 7 (S.C. 1901) (Court upheld ejectment of trespasser where defendant did not claim title to the property and failed to prove a bona fide color of claim to possession).

⁷ In the case where the defendant avails himself of the privilege, the magistrate would determine the issue of defendant's claim to possession and each party has the right to appeal the decision to the Circuit Court. S.C. CODE ANN. § 15-67-640 (2007).

thereby preventing the warrant from being issued, will appear and demand a hearing as to whether the case is one falling within summary ejectment proceedings. *Id.* When this occurs the magistrate must conduct a hearing on the matter to determine if the plaintiff can make a least a *prima facie* showing that he is the owner of the premises and that defendant is a trespasser. *Id.* If it initially appears, however, that the defendant has an ownership interest in the property and for that reason refuses to quit the premises, the statute does not apply and the magistrate must dismiss the summary ejectment proceeding. *Id.* at 239. The plaintiff would then be left to the ordinary remedy for recovery of possession of land.⁸ *Id.*

Accordingly, in this case, in order for the magistrate to have maintained the summary ejectment proceeding against Petitioner held on November 13, 2008, the magistrate would have had to make a preliminary finding that that the action was governed by the summary ejectment of trespassers statute.⁹ Necessarily, then, the magistrate was required to determine that Respondent initially demonstrated a valid claim of ownership over the subject premises and required to have found facts that facially showed that Petitioner was an unlawful, tortuous trespasser thereupon. S.C CODE ANN. § 15-67-610 (2007); *Baldwin vs. Cooley*, 1 S.C. 256, 870 LEXIS 30, (S.C. 1870) (finding that defendants who were heirs possessing the property at the acquiescence of the executor of the grantor's will prior to executor selling the land to satisfy a debt of the grantor were not, then, trespassers in an action brought by purchaser. "They did not enter against the consent of the party have the fee, and ... hence the [summary ejectment] Act is not applicable to

⁸ See, e.g., *Little vs. Little*, 223 S.C. 332, 75 S.E.2d 871 (S.C. 1953) ('Trespass to try title.' Action filed in the Circuit Court where "plaintiff alleged that he was owner of and in lawful possession of described premises and that defendant had trespassed thereon, and defendant denied both plaintiff's possession and title, and set up an affirmative defense that the land was owned by the mother of the parties, cause became one of trespass to try title"). See, *Dargan v. Tankersley*, 380 S.C. 480, 671 S.E.2d 73 (S.C. 2008) (Quiet title action brought in Circuit Court, and subsequently transferred to the Master-in-Equity, seeking to establish ownership of a parcel of real property).

⁹ Respondent admits no landlord/tenant relationship existed between the parties and its Brief to the S.C. Court of Appeals appears to accept the premise that Respondent initiated the action under S.C. CODE ANN. § 15-67-610, et seq. (2007), however the application for ejectment filed with the magistrate does not specifically state the code section upon which they rely. (ROA. p. 6).

such a case ... nor was it intended to reach such cases. It was to reach open, flagrant trespassers”). Furthermore, if the initial facts presented to the magistrate showed that Petitioner did not quit the premises because of a valid claim to ownership of the property, the magistrate was required to dismiss the proceeding. *Moorman*, 71 S.C. 236, 237 (S.C. 1905). Here, the information initially presented to the magistrate clearly showed that not only was Petitioner not a flagrant trespasser, but that he had a legitimate claim regarding the title to the subject property through adverse possession.

Because the information the magistrate had at the commencement of the action clearly demonstrated a legitimate issue regarding the title to the subject property, the magistrate erred in finding that the relationship between the parties brought the action within the jurisdiction of the summary ejectment proceeding. First, in the application for ejectment, Respondent presented that it purchased the subject property in July 1998. (ROA. p. 6). Respondent admits that Petitioner was residing in the house located on the subject property when they brought the action in October 2008, but that a landlord-tenant relationship did not exist, and never existed, between the parties. (ROA. p. 6). Petitioner did not respond to the Rule to Vacate issued by the magistrate, but was granted a hearing concerning the writ of ejectment issued thereafter. (ROA. pp. 22-23).

On the day of the hearing, Petitioner submitted an answer stating that he resided and continued to reside on the subject premises and that his occupancy was lawful and had continuously existed by him and his parents for a period in excess of forty (40) years. (ROA. p. 11). Additionally, Petitioner informed that court, pre-trial, that in 1958 his parents mistakenly built a home on the subject property that Respondent claimed to have purchased in 1998. (ROA. p. 36). He also informed the magistrate that he grew up in this home and that his parents lived in

the home until 1999 or 2000 at which time he began occupying and exclusively possessing the home and that such possession continued through the day of trial—a fact corroborated by Respondent’s application. (ROA. pp. 36-37). Petitioner asserted, therefore, a claim to the title of the subject property pursuant to adverse possession. *Miller v. Leaird*, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (S.C. 1992).

Acquiring title by adverse possession requires proof of actual, open, notorious, hostile, continuous, and exclusive possession by the claimant, or by one or more persons through whom he claimed, for the full statutory period. *Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (S.C. Ct. App. 2009) quoting *Miller*, 307 S.C. at 61. In South Carolina, adverse possession may be established if the elements of the claim are shown to exist for at least ten years. S.C. CODE ANN. § 15-67-210 (2007). Here, the Burdine’s used, occupied, and claimed ownership of the subject property actually, openly and notoriously, exclusively, continuously and hostilely from 1958 until at least 1998 or 1999. They did everything required by S.C. law to effectuate ouster of any other entity’s claim to the subject property and to claim title to the property in themselves through adverse possession. Even the fact that the Burdine’s possession of the subject property was based on an apparent erroneous belief in their ownership of the property does not defeat their claim to title through adverse possession. *Perry v. Heirs at law and Distributees of Gadsden*, 316 S.C. 224, 449 S.E.2d 250 (S.C. 1994); *Wigfall v. Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (S.C. 1988). Accordingly, because Petitioner’s parents acquired title to the property by adverse possession between 1958 and 1998, Petitioner had a claim to an interest in the subject property as their heir. *Clark v. Hargrove*, 323 S.C. 84, 473 S.E.2d 474 (S.C. Ct. App. 1996).

Petitioner argued that based on the long possession and occupation of the property by him and previously his parents, he had an apparent interest in the title to the property through adverse

possession pursuant to “ten year statute, ... the 20 years for presumption of credit, of common law, as well as the forty (40) year statute.” (ROA. pp. 39-40). Because the facts initially presented to the magistrate indicated a clear issue regarding the title to the subject property, Petitioner moved to dismiss because the magistrate did not have jurisdiction to proceed with a summary ejectment. (ROA. p. 39). Even when presented with these preliminary facts the magistrate assumed jurisdiction and proceeded to hear the case.

The magistrate was required, however, to refuse summary ejectment jurisdiction over the matter and dismiss the action accordingly. The pleadings and evidence presented to the magistrate at the commencement of the summary proceedings demonstrate that Petitioner and his predecessors occupied and possessed the subject property up to forty (40) years before Respondent’s claim to the title in 1998 and that Petitioner was occupying the premises at the time Respondent brought the action in 2008. Because Petitioner raised a legitimate claim to title to the subject premises, the preliminary facts, even in the light most favorable to Respondent, failed to establish the necessary *prima facie* showing that the relationship of the parties came within the summary ejectment of trespassers statute. The magistrate was required, therefore, to dismiss the application pursuant to § 22-3-20(2) so that Respondent or Petitioner, could bring an action to determine title in Circuit Court.¹⁰ Accordingly, the S.C. Court of Appeals should have affirmed Judge Few’s holding that because the case presented a legitimate question of title of the subject property it therefore followed that the magistrate did not have jurisdiction “to kick these people out of their home. [That] only the circuit court can.”

This Court has held that property owners invoking summary proceedings must bring themselves within the statute by initially demonstrating the relationship between the parties is one contemplated by the respective statute. Because the facts presented at the commencement of

¹⁰ See *supra* fn 7.

this action demonstrated that Petitioner had a legitimate ownership interest in the subject property, the magistrate could not have decided the summary ejectment of trespasser proceeding without determining the issue of title to the subject property.¹¹ Magistrates are precluded from determining title to real property in summary ejectment proceedings and it was, therefore, error for the magistrate to assume jurisdiction in this action. The Circuit Court was correct, then, in setting aside the writ of ejectment because the magistrate did not have subject matter jurisdiction.

The Court of Appeals decision held that the magistrate had subject matter jurisdiction because Petitioner failed to comply with Article 11. Because plaintiff failed to present a prima facie case showing that a summary ejectment proceeding was appropriate; however, the provisions of Article 11 were not implicated and could not have therefore determined the magistrate's exercise of jurisdiction in this case. The Court of Appeals therefore erred in reversing Judge Few's stay of the writ of ejectment due to the lack of the magistrate's subject matter jurisdiction. Because the Court of Appeals' decision conflicts with the precedent set by this Court, this Court should grant Petitioner's petition for a writ of certiorari.

2. THE MAGISTRATE DID NOT HAVE SUBJECT MATTER JURISDICTION BECAUSE RESPONDENT'S OWN SHOWING BROUGHT THE TITLE TO THE SUBJECT PROPERTY INTO QUESTION.

To ensure that plaintiffs do not bring actions involving title to real property into magistrate's courts, Article 11 of Title 22 requires magistrates to dismiss actions where a plaintiff's own showing brings the title of real property into question. S.C. CODE ANN. 22-3-1150 (2007). Because Respondent's presentation of its case-in-chief clearly demonstrated that a legitimate question existed regarding the title to the subject property, the Court of Appeals erred

¹¹ See, e.g. *Ex Parte Wingate*, 166 S.C. 440, 165 S.E. 176 (S.C. 1932) (Finding that the determination of the matter necessary relied upon the issue of title to the property and that because the court did not have jurisdiction to decide the question of title to real property, the court's adjudication was without authority of law).

in finding that the magistrate had subject matter jurisdiction of the summary ejectment proceeding pursuant to Article 11.

The Code of Laws of South Carolina enumerates the numerous cases over which a magistrate has jurisdiction. S.C. CODE ANN. § 22-3-10 (2007). The Code specifically excludes, however, magistrate's jurisdiction over civil actions "when the title to real property shall come in question, except as provided in Article 11 of this chapter." S.C. CODE ANN. § 22-3-20(2) (2007). Article 11's eight sections, when read together, ensure that magistrates do not decide legitimate issues of title to real property in actions brought in their court. In fact, in the cases heard by the magistrate under the exception provided by Article 11, the defendant is precluded from bringing the issue of title as a defense. S.C. CODE ANN. § 22-3-1140 (2007). In those cases, the magistrate can proceed with the action, but is still prohibited from considering the issue of title to real property to decide the matter. Furthermore, as a failsafe, in cases where the magistrate proceeds under Article 11, if the plaintiff's case-in-chief raises a question as to the title of real property, then the magistrate is required to dismiss the action. S.C. CODE ANN. § 22-3-1150 (2007).

Article 11, then, contemplates that a plaintiff's initial filing in magistrate's court is pursuant to one of the statutorily enumerated actions and does not bring title to real property into question. Once sued, the statute requires the defendant to present the issue of title of real property as a defense to plaintiff's action in writing. S.C. CODE ANN. § 22-3-1110 (2007). Additionally at the time of answering the defendant must deliver to the magistrate a written undertaking that has been executed by a sufficient surety and approved by the magistrate. S.C. CODE ANN. § 22-3-1120 (2007).¹² The undertaking must state that if the plaintiff delivers to the

¹² The statute continues: "In case of failure to comply with the undertaking the surety shall be liable for not exceeding one hundred dollars." S.C. CODE ANN. § 22-3-1120 (2007)

magistrate within twenty days a copy of a summons and complaint for the same cause of action filed in circuit court, then the defendant will within twenty days after such deposit accept service thereof. S.C. CODE ANN. § 22-3-1120 (2007). When the defendant files the answer and undertaking with the magistrate the magistrate is required to dismiss the pending action. S.C. CODE ANN. § 22-3-1130 (2007). Plaintiff is then allowed to bring an action in Circuit Court, but the action filed, and subsequently accepted by defendant pursuant to the undertaking, must be the exact action plaintiff filed in magistrate's court. *High v. Wingo*, 84 S.C. 246, 66 S.E. 185 (S.C. 1909).¹³

In situations where the defendant does not deliver the required undertaking to the magistrate, the magistrate retains jurisdiction of the action and proceeds with hearing the matter accordingly. S.C. CODE ANN. § 22-3-1140 (2007). Furthermore, during such proceedings the defendant is precluded from bringing the title of real property into question as a defense against plaintiff's claims. S.C. CODE ANN. § 22-3-1140 (2007). When the case is heard, however, and the plaintiff's own showing brings title to real property into question, and the defendant disputes such title, the magistrate is then required to dismiss the action. S.C. CODE ANN. § 22-3-1150 (2007); *Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 121 S.E. 374 (S.C. 1924) (“[I]t appeared on the trial from the plaintiff's own showing that the title to real property was in question, and that such title was disputed by the defendant, and hence that the magistrate was without jurisdiction”).¹⁴

¹³ S.C. CODE ANN. § 15-67-610 (2007) gives magistrate courts exclusive jurisdiction over summary ejectment of trespasser actions with the Circuit Courts serving in an appellate capacity. Because a plaintiff could not file an application pursuant to § 15-67-610 with the Circuit Court, as would be required under *High*, arguably Article 11 was not intended to apply to applications made to the magistrate under the summary ejectment of trespassers statute.

¹⁴ The court in *Stewart-Jones Co.* found that even though the Circuit Court found that the plaintiff introduced the question of title to the real property, the magistrate, as a preliminary matter could not have found that a landlord/tenant relationship existed to invoke summary ejectment proceedings. *Id.*

In this case, Respondent brought a summary ejectment of trespasser action against Petitioner. Petitioner did not respond to the Rule to Vacate or Show Cause that was issued by the magistrate. Instead, subsequent to the magistrate's issuance of the writ of ejectment, Petitioner, alleging title to the subject property, requested a hearing on the matter. Petitioner filed an answer and undertaking which denied Respondent's title and in fact claimed title to the property based on the lengthy occupation and possession of the premises by Petitioner and his parents. Additionally, prior to trial, Petitioner moved to dismiss based on the lack of subject matter jurisdiction because there was a legitimate question as to the title of the subject property. The magistrate denied Petitioner's motion and proceeded to hear Respondent's case. Therefore, presumably because Petitioner failed to comply with the statute, pursuant to § 22-3-1140, Petitioner was precluded from introducing evidence relating to the title of the subject property in his defense. Because Respondent brought the title of the subject property into question, however, the magistrate should have dismissed the action pursuant to § 22-3-1150.

The application for ejectment indicated that Respondent purchased the property in 1998. At trial Respondent's primary witness, pastor Stacy Mills, testified that immediately upon purchasing the subject property, Petitioner "apparently got some notion of our owning the property and her came over ... and he was making a ruckus about us owning the property." (ROA. pp. 43-44). Even after Petitioner asserted an issued regarding the title to the property, Respondent waited ten years to file this summary action. Additionally, during this time Respondent did not exercise any form of possession over the subject property as Respondent offered no evidence of possession and Pastor Mills testified that he had never even been inside the home located thereon. Pastor Mills further testified that:

"After that point [purchasing surrounding property in 2008] we began to have surveys and get bids from other companies to come in and give us a quote on actually making it a

formal parking area. That's when [Petitioner] began to present again as the owner of the property." (ROA. p. 48).

He went on to testify that:

"[A]round July/August of this year [2008] we purchased another piece of property which is right next door to the property in question ... and we have been preparing to formalize a parking area ... And when we began to move in that direction is when **Mr. Burdine, presented himself again to us that he had rights and claim to that property**, and that is when we decided to seek legal action to **find out what our interests are** and to protect the interests of the church." (Emphasis added.) (ROA. pp. 45-46).

Furthermore, when asked upon cross-examination whether Respondent had taken any action whatsoever regarding the subject property prior to the summer of 2008, Pastor Mills testified that:

"Other than, you know, seeking to have an amicable agreement about it, no sir, with the Burdines prior to their passing." (ROA. p. 50)

"We --- we sought to have an amicable agreement with them about the --- the property to find out more about their having lived there, or what was transpiring, because there was no deed. We tried to research all of that to find out titles and exactly when did they build their house. We were trying to find out more information." (ROA. P. 50).

It is obvious from Pastor Mills' testimony that Respondent was uncertain of its property interest in the subject property from the time it purchased the property in 1998 until the time it brought a summary ejectment action against Petitioner in 2008. Not only was Respondent aware of the possession by Petitioner's parents prior to allegedly purchasing the subject property in 1998, but at the time of purchase they became aware that Petitioner claimed an ownership in the subject property as well. Furthermore, Respondent never assumed any actual or constructive ownership of the subject property at any time subsequent to the alleged purchase and prior to bringing this action in 2008. In fact, prior to this action, Respondent sought to enter into an amicable agreement with Petitioner's parents concerning the subject property because there was no deed concerning the Burdine's ownership. It was not until the Burdines had long been dead

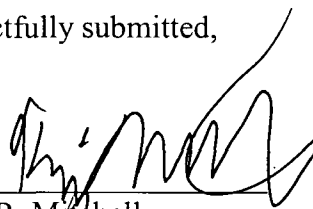
and Petitioner again asserted his ownership of the subject property in the summer of 2008 that Respondent decided to seek legal advice to determine what their interests in the subject property were.

This evidence presented by Respondent clearly indicates that there was and is a legitimate question as to the title of the subject property. The Court of Appeals, nonetheless found that the magistrate had summary ejectment jurisdiction to hear the matter because Petitioner's undertaking was not secured by a surety not exceeding one-hundred dollars (\$100.00), and did not, therefore, comply with § 22-3-1140. Furthermore, according to this provision the magistrate retained jurisdiction to hear the matter and Petitioner was precluded from raising the issue of title as a defense. The very next section, § 22-3-1150, however, requires the magistrate to dismiss the action if the evidence introduced by the Respondent's own showing brings the title of real property into question. Because Respondent's witness testified that title to the subject property was in question, § 22-3-1150 required the magistrate to dismiss the summary ejectment action. Accordingly, because the Court of Appeals' decision conflicts with prior precedent of this court, this Court should grant Petitioner's petition for a writ of certiorari.

CONCLUSION

For the reasons stated, Petitioner asked the Court to grant the petition for a writ of certiorari.

Respectfully submitted,



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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.

PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari on Mountain View Baptist Church by depositing a copy of it in the United States mail, on May 25, 2011, addressed to their attorney of record, Candy Kern-Fuller of Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640.


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May 25, 2011
JUN 10 2011
S.C. SUPREME COURT