THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0323

SUPREME COURT NUMBER: _____

Mell Woods . . . . . Appellant,

v.

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

. . . . . Respondents.

PETITION FOR A WRIT OF CERTIORARI

(Court of Appeals Internal Tracking Number 2012-212330)

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

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Certification Regarding Rehearing

Petitioner certifies that a Petition for Rehearing was ruled on by the Court of Appeals on February 20, 2014, as a final matter, with a copy of the Order attached hereto in the Appendix, Pages A-009-010.

QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court err in granting summary judgment where issues of fact remain? (Record, see footnote 1)

2. Is South Carolina Statute § 15-67-100 still the law in South Carolina? This issue is raised for a second time to the trial court in paragraph 14 of Appellant's Rule 59(e) SCRCP motion, *R.p. 710* and before that in Appellant's Response to Defendant's Motion for Summary Judgment ("statutory right to a jury trial in a title clearing case") immediately before the signature line, *R.p. 646.*

3. Does Mrs. Reba Hinson own the fee simple title to land in question? Appellant stands upon the ruling in case of Moore v. Sanders, 15 S.C. 440, (1881), a full bench decision of the South Carolina Supreme Court which has never been overruled, *R.pp. 713-717.* This issue was raised in the verified complaint to start with and again in the Rule 59(e) SCRCP motion, but ignored by the trial court. (Record, footnote 2)

4. **Did the trial court err in ruling in paragraph 10 of its order:**

"Plaintiff claims ownership by virtue of a 20-year presumption of a grant through Reba Hinson. This claim must fail, as a life tenant (Reba Hinson) cannot claim adverse possession against remaindermen." ***R.p. 704, R.p. 721.***

Appellant cited the case of Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992), at the oral hearing, and in the Rule 59(e) SCRCP motion, by stating the Ruling of the South Carolina Supreme Court in Miller which is: a color of title *starts* the running of the statute of limitation even against the remainderman of a life tenant, *R.pp. 690-692, R.pp. 705-717.*

Statement of the Case

This is an action for trespass to try title, or recovery of land as the Code calls it. Appellant seeks to have title to the described land established against all the world. (The land is described in the verified complaint, *R.pp. 598-599, R.p. 607, R.pp. 609-610*; the plat in the Chester County Courthouse stored in Plat Cabinet D, Slide 174, page 3B, *R.pp. 601-603*, also shown on the drawings included with Plaintiff's Response to Defendant's Motion for Summary Judgment, *R.pp. 648-649*, also filed in the South Carolina Secretary of State Office, file # UCC1:111229-1557344) *R.pp. 362-366*.

STANDARD OF REVIEW

Quoting Acting Justice Cole in the case of Madison v. Babcock Center, Inc., et al., (Bryant 26198), 371 S.C. 123, 638 S.E.2d 650 (2006),

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). Summary judgment is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

On appeal from an order granting summary judgment, the appellate court applies the same standard that governs the trial court. The appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

If all ambiguities, conclusions, and inferences arising in and from the depositions, interrogatories, and Affidavit are viewed in a light most favorable to the appellant, the non-moving party below, it is clear that there are true and genuine issues of fact. A jury trial was demanded from day one; the decision of the trial court should be reversed.

Argument as to Issue One:

1. In South Carolina, there are two standards of applying facts where a summary judgment motion is decided; the first is the federal standard, meaning not necessarily an action in federal court, but any action in a State court where a heightened burden of proof is required, all as explained by the South Carolina Supreme Court in Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 637 S.E.2d 801, (2009);

2. In addition to the federal standard, there is also the regular, South Carolina Standard, where only a scintilla of evidence is needed in order to defeat a motion for summary judgment, all as explained in Hancock, as above;

3. The Trial Court's summary judgment order, applies the federal standard; this case is a plain preponderance of evidence case, where only one scintilla of evidence is needed to send the case to a jury;

4. The record in this case is full of sworn, and admissible testimony in quantities enough to send the case to a jury, (Record, please see footnote 3)

Argument as to Issue Two:

SC Statute § 15-67-100 requires, (mandates), uses the word "shall" when preserving jury trials in title clearing cases:

> "Nothing in this article shall be construed or held to change the existing law in reference to trials by jury in all actions of trespass to try titles, trespass quare clausum fregit ejectment or other action to recover possession of real estate."

Appellant asked for a jury trial from day one, (in the verified complaint,) *R.p. 606* in the pleadings, *R.pp. 599, 605, 606, 692,* and at oral argument:

(Record, Hearing Transcript pg. 40, *R.p. 692* lines 14-25, other specific page numbers will be supplied when the Record on Appeal is Assembled)

Appellant has a statutory right to a jury trial in this case which has been ignored by the trial court. Appellant can prove in excess of twenty years of adverse possession in front of a jury. In addition, the issue of paramount title is ordinarily a question of fact to be decided by a jury, Garrett v. Locke, 309 S.C. 94, 419 S.E.2d 842, (Ct.App. 1992).

Argument as to Issue Three:

In the Verified Complaint filed in this case, plaintiff below swore to the following facts:

(1) Plaintiff is the owner of the land in question; *R.pp. 591, 593, 595.*

(2) Plaintiff purchased the land in good faith from Mrs. Hinson, and is a bona fide purchaser for value without notice of any adverse claim, or remainder interest; *R.p. 596.*

(3) Plaintiff claims title through Reba P. Hinson, and Levie Hoyt Hinson, the common grantor of the land in suit; *R.p. 593.*

(4) There are no remaindermen, *R.pp. 596-598.*

(Record, Verified Complaint, paragraphs 11 & 12, 15, also 5, 7 & 8, and the plats attached to the complaint as exhibits).

If nothing else, the pleadings in this case create a genuine issue of material fact.

Argument as to Issue Four:

Appellant points to page seven of the Rule 59(e) Motion filed in this action in which Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992) is discussed, *R.p. 711.* Miller stands for the proposition that once a statute of limitation in land has started to run, no subsequent disability will arrest it. Miller holds that once the statutory period for adverse possession is activated, the *subsequent* creation of a life estate will not suspend the running of such period. This ruling is relevant in this case because the Will (of Mr. Hinson) in the present case used the wording "In Fee Simple". Then the Mr. Hinson will went on to discuss other things *after* the fee was granted. These extra, *super-added* words cause the present controversy. But there is no controversy at all because under Miller, as above, the words *"In Fee Simple"* are inserted in the document first and are therefore in a mechanically superior place to control what is added afterward, *R.pp. 620, 711;*

Even if the Mr. Hinson Will

is construed as not being a grant, then Mrs. Hinson still had at least a color of title through the use of the words *"In Fee Simple"* which were placed in the Will well before any super-added words which Respondents are trying to use to defeat the will.

RECORD FOOTNOTES

fn. 1: Plaintiff's Response to Defendant's Motion for Summary Judgment, (Verified), all seven pages of it, *R.pp. 644-650*, sets up several fact issues which are jury issues.

One of which is: Who is telling the truth? It is the position of appellant that the entire defense case is built upon lies, because affiant Breakfield lied (under oath) to get a bogus will admitted to probate in the first place, R.p. 105, line 12, R.pp. 106-107, R.p. 109. Appellant would refer to the Breakfield affidavit by page number, but the respondent counsel had the audacity to number the pleading in some sort of a *foreign* language, appellant reads only English, but in general the entire Breakfield affidavit contains many lies and half-truths. And all of this was brought up at the oral hearing, transcript pg. 40, lines 8-10, "red marks around what they did" (in the probate court) *R.p. 692*. The probate record shows the full truth, and shows lying to get into court -- a jurisdictional defect which may be raised at any time, *R.pp. 02-588*.

fn. 2: The entire case of Moore v. Sanders, 15 S.C. 440, (1881), was attached to the Rule 59(e) SCRCP motion, and made available for the use of the trial court, *R.pp. 713-717.*

fn. 3: "The record in this case is full of sworn, and admissible testimony in quantities enough to send the case to a jury," namely:

(1) Complaint for Land, all pages and exhibits, Verified, (Personal Knowledge), *R.pp. 591-610.*

(2) Response to Defendant's Motion for Summary Judgment, all pages and exhibits, Verified (Personal Knowledge), *R.pp. 644-650.*

(3) Rule 59(e) SCRCP Motion, *R.pp. 705-721.*

Petitioner does not agree with the trial court finding, or the Ruling of the Court of Appeals that no genuine issue as to any material fact exists, and continues to appeal this point. This case is about a fully matured land title by prescription to the land described in the complaint and as such petitioner is entitled to at least a jury trial under the statutory and case law cited herein, and in the Record.

1. Petitioner Mell Woods hereby incorporates by reference the entire Record in this case and the Appendix pages A01-A096 which is now referenced.

2. Throughout the litigation below, and in this appeal it has been the position of petitioner, and plaintiff below that Mrs. Reba Hinson acquired full title to her land after holding the land in an actual, hostile, and exclusive manner *with continuous possession for twenty years.*

3. And that, "actual, hostile, exclusive, and continuous possession" is a jury question especially where the issue of paramount title is raised:

> "When an allegation of paramount title is raised in the answer, the case should be sent to the jury. (issue of title to real estate can be raised by complaint or by answer and if it is so raised, it must go to the jury)." *footnote 1 in the Dissent,* Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992), *citing:* Van Every v. Chinquapin Hollow, Inc., 265 S.C. 474, 219 S.E.2d 909 (1975).

4. The Record shows that Mrs. Reba Hinson lived for *twenty* years after her husband Mr. Hinson, died on August 01, 1986, *R.p. 551,* in fact Mrs. Hinson lasted 20 1/2 more years, and then passed January 03, 2007, *R.p. 393.*

5. The Record further shows Mrs. Hinson's ownership by the properly recorded plats *R.pp. 601-603* and the wills of Mrs. Hinson *R.pp. 159-163* which Mrs. Hinson made on her own after hiring a lawyer to draw a first will which she revoked after the discovery of language in a prepared will which suggested that she had only a "life" estate, *R.pp. 387-390* [showing the marks of obliteration placed on the purported will drawn for Mrs. Hinson as evidence that Mrs. Hinson claimed a fee simple estate instead of any lesser right.]

6. Petitioner cited Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992) during the summary judgment hearing, R.*pp. 690-691;*

The following three paragraphs are directly from Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992):

It is well established that adverse possession does not run against a remainderman until the death of the life tenant. Phipps v. Hardwick, 273 S.C. 17, 253 S.E.2d 506 (1979). Similarly, presumption of grant will not be acquired against a remainderman who is unable to assert his rights until an intervening life estate is extinguished and the remainderman is entitled to possession. See Phipps v. Hardwick, supra; 10 S.C.L.Q. 292, 302 (1958) (citing Bolt v. Sullivan, 173 S.C. 24, 174 S.E. 491 (1934)). *However, once the statute of limitations has commenced to run, no subsequent disability will arrest it. Milton v. Pace, 85 S.C. 373, 67 S.E. 458 (1910); Sutton v. Clark, 59 S.C. 440, 38 S.E. 150 (1901)*

In Kubiszyn v. Bradley, 292 Ala. 570, 298 So.2d 9 (1974), the Alabama Supreme Court held that once the statutory period for adverse possession commences to run against a landowner, the running of the statutory period is not suspended by the subsequent creation of a life estate and remainders in the property. In accord with the Bradley Court is the Restatement of the Law of Property, ~~which states in pertinent part:~~

[Restatement part left out]

Then, the *South Carolina* Supreme Court held:

Accordingly, we hold that once the statutory period for adverse possession is activated, the subsequent creation of a life estate will not suspend the running of such period. ~~The findings of the special referee are affirmed. Appellants' remaining exceptions are disposed of pursuant to Supreme Court Rule 23.~~

[Italics added, strike-through added]

7. So, it is respectfully shown that where the Court of Appeals decision in this case failed to address Miller, but instead discussed only Phipps v. Hardwick, as above, and Ruled: ("[A]dverse possession . . . cannot run against

remaindermen until the death of the life tenant.").; that such a Ruling is in error because the same does not square with Miller, as above.

8. Since this is a law case and not an equity case, the fact finders, a jury in this case, could easily find that Mrs. Hinson truly believed that she was the *fee* owner of the property in question, since that is what the Will said to start with, and all of the other wording about "during her life" was merely an inept choice of words by a layman instead of a skilled wordsmith, an ordinary lawyer.

9. It is petitioner's position that the 10 years, or even the 20 years needed for the presumption of a grant started running the minute Mr. Hinson died and left a will with the wording *in fee simple* inserted in the will *before* anything was mentioned about anyone's life. The law, (not equity) always favors the *earliest* vesting of an estate and a condition subsequent which undermines an already granted fee is repugnant to the fee and as a general rule, void, please see Moore v. Sanders, 15 S.C. 440 (1881), and

the Record in this case, *R.pp. 713-717.*

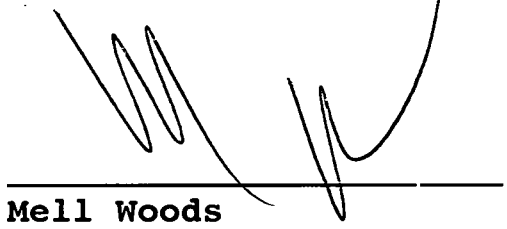
10. The Court of Appeals decision in this case also held: ("A person claiming adverse possession must have personally held the property for ten years, and tacking is *allowed only* between ancestor and heir." (emphasis added)); -- this ruling is mere surplusage; there was no need to tack as Mrs. Hinson had already held the property for at least 10 years when petitioner started dealing with Mrs. Hinson in a formal way, *R.pp. 362-366.*

11. The Court of Appeals decision also rules that South Carolina Code Section 15-67-100 was never raised to the trial court; this is not true, the Record shows that it was raised, and raised in more than one place, *R.p. 646, R.p. 692 (bottom of the page), R.p. 710, R.p. 712,* and raised prior to the summary judgment hearing, *R.p. 646* (statutory right to a jury trial), placed just above the signature line of the pleading; in any event a jury trial is just what a litigant gets where an allegation of paramount title is raised based on the case law cited above, Cummings, and Van Every v. Chinquapin Hollow and the statute itself SC § 15-67-100.

Conclusion

Summary judgment "should be cautiously invoked so that no person will be improperly deprived at trial of disputed factual issues." Baughman v. American Telephone and Telegraph Co., 306 S.C. 101, 410 S.E.2d 537 (1991). The awarding of summary judgment, though justified in some instances, is a somewhat anticipatory method of resolving a lawsuit. Therefore, in reviewing a summary judgment, all evidence and reasonable inferences to be drawn therefrom are construed in a light most favorable to the party opposing the motion. If the facts of this care are evaluated and weighed in the light most favorable to the appellant, then the motion for the summary judgment should fail and the summary judgment granted be reversed. This case must be decided by the fact finders, petitioner Mell Woods has a right to a day in court in front of a jury.

This 24 day of March, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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. . . . . Respondents.

CERTIFICATE OF SERVICE

(Court of Appeals Internal Tracking Number 2012-212330)

I hereby certify that I have served the Respondents with a copy of the within and foregoing *Petition for a Writ of Certiorari* by placing the copy in the U.S. Mail with sufficient postage and addressed to the Counsel of Record for Respondents, to wit: B. Michael Brackett P.O. Box 100261 Columbia, South Carolina 29202.

This 24 day of March, 2014.

Mell Woods

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Lancaster, SC 29721