THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact ..... Respondent,

v.

Mell Woods ..... Appellant.

Respondent's Return to Appellant's
Petition for Rehearing

This Return is submitted pursuant to Rule 240(e), SCACR. The purpose of a petition for rehearing is not to have the case or order tried or argued to the appellate court a second time. Hon. Jean Hoefer Toal et al., Appellate Practice in South Carolina 293 (2d ed. 2002); Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). Appellant-Petitioner (hereafter "Appellant") must demonstrate that the appellate court has overlooked or misapprehended Appellant's arguments. Id. Additionally, the Court will not grant rehearing to consider points not presented in the briefs and arguments raised in the

appeal and that is now being raised for the first time by the petition for rehearing. Darby v. Southern Ry. Co., 194 S.C. 421, 10 S.E.2d 465 (1940.) By this standard, the petition should be denied.

1. Appellant asserts that the Court relied on the case of Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E.2d 3 (1940) for the principle of law that a tenant cannot oust the magistrate of jurisdiction in summary ejectment proceedings by the assertion of superior title in himself, but overlooked and did not cite or apply the law in Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244 (1897). Neither party cited the Metropolitan Life Ins. Co. or Carlisle opinions in their appellate briefs, however, Respondent cited Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) for the same principle of law found in Metropolitan.

Appellant argues that Carlisle holds that a defendant in an ejectment proceeding who is in possession of the premises under a contract to purchase places the title of the real property in question, and he cannot be ejected in a summary proceeding. Appellant herein claims title to the real property in dispute and alleges that he is an owner and not a tenant, and therefore, the magistrate's court did not have subject matter jurisdiction.

Appellant argument fails for three reasons: (1) the Carlisle v. Prior argument was not made in Appellant's briefs previously filed in this appeal and cannot be raised for the first time in a petition for rehearing, Darby v. Southern Ry. Co., 194 S.C. 421, 10 S.E.2d 465 (1940.) (2) the magistrate's court has jurisdiction to first determine if a landlord-tenant relationship exists. On this subject, from Respondent's Final Brief:

The case of Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) is

dispositive. It addresses the Magistrate's Court's jurisdiction in a summary ejectment proceeding when the Defendant-alleged tenant denies that the plaintiff is the owner of the premises and denies that the relation of landlord and tenant exists.

The relevant holdings of the Stewart-Jones Co. opinion are:

- the issue of the plaintiff's title cannot properly arise in a summary ejectment proceeding because a summary ejectment proceeding is one that requires a landlord and tenant relationship, and a tenant is estopped by the relationship to deny his landlord's title;
- it is essential to a summary ejectment proceeding that the relation of landlord and tenant exist, and the existence of the conventional relation of landlord and tenant is a prerequisite to the assumption and exercise of jurisdiction by the magistrate;
- therefore, the magistrate must first determine its jurisdiction by determining as a fact whether the relation of landlord and tenant exists;
- if the relation of landlord and tenant exists, the tenant is estopped to deny plaintiff-landlord's title and may not inject that issue to deprive the magistrate of jurisdiction;
- if the relation of landlord and tenant does not exist, the Magistrate Court has no jurisdiction to proceed with an ejectment action.

Therefore, had the Appellant chosen to proceed in Magistrate's Court rather than pursuing an appeal, the Magistrate's Court would first have been required to determine if the relationship of landlord and tenant exists between the parties, which itself, would determine the Magistrate's Court's jurisdiction.

(3) The issue of Appellant's claim to title pursuant to a contract to purchase was

decided adversely to the Appellant in this Court's unpublished opinion (2014-UP-010) in Appellate Case No. 2012-212330. Appellant's claim in that case was that he purchased the land (the same lot that is involved in the above-captioned eviction case) from Reba Hinson who had received fee simple title to the land pursuant to her deceased husband's last will. However, various Hinson family members asserted that Reba Hinson had received only a life estate in the land from her husband's last will, and they claimed title to the land as remaindermen to Reba Hinson's life estate. The trial court granted summary judgment to the Hinson family members, and in 2014-UP-010 this court affirmed the trial court. The opinion includes the following: "Therefore, because Reba Hinson inherited a life estate under Levie Hinson's will, any interest Woods acquired in the property from Reba Hinson extinguished when Reba Hinson died because 'a life tenant can convey no more than his life estate.'" [1]

2. In his ground no. 2, Appellant recounts his view of the evidence before the magistrate's

court and the circuit court, sitting as an appellate court, that shows that he was an owner and not a tenant. However, this particular issue (owner or tenant) has never been decided by a lower court in this case and was not an Issue on Appeal presented to or decided by this Court in it's opinion, 2014-UP-076.[2] This issue cannot be considered now for the first time on a petition for rehearing.

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[1] Appellant has filed a Petition for Writ of Certiorari with respect to 2014-UP-010 that has not yet been ruled on.

[2] Nevertheless, as addressed above, it is an issue recently decided adversely to Appellant by 2014-UP-010 in Appellate Case No. 2012-212330.

3. In ground no. 3 Appellant revisits Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10

S.E.2d 3 (1940) and Carlisle v. Prior, 48 S.C. 183, 26 S.E. 244 (1897), with the argument that sharecropping contracts, such as was addressed in Metropolitan, are different from the contract to purchase mentioned in Carlisle. Respondent incorporates herein by reference the argument set forth above in response to ground no. 1. Respondent also asserts that Appellant's contract to purchase argument, from Carlisle, is not relevant and no longer applies due to the Court's opinion in 2014-UP-010 in Appellate Case No. 2012-212330. Appellant is neither an owner with fee simple title nor a purchaser with equitable title.

4. In ground no. 4, Appellant again attempts to distinguish the case of Metropolitan Life Ins.

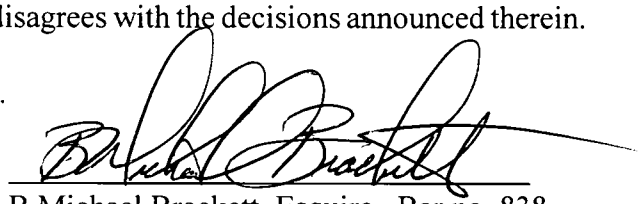
Co. v. Stuckey, 194 S.C. 469, 10 S.E.2d 3 (1940) from the facts of the above-captioned case. Respondent's argument in no. 3 above is incorporated herein by reference.

5. In ground no. 5, Appellant states that he "continues to appeal on the constitutional grounds

addressed by the Court of Appeals, and marked as "2." and "3." by the Court of Appeals" without stating with particularity what the Court overlooked or misapprehended in the opinion. A petition for rehearing must state with particularity the points supposed to have been overlooked or misapprehended by the court. Hon. Jean Hoefer Toal et al., Appellate Practice in South Carolina 293 (2d ed. 2002), citing Rule 221(a), SCACR. Without particulars, there is nothing to be reconsidered.

CONCLUSION

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



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April 3, 2014

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IN THE COURT OF APPEALS

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

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact ..... Respondent,

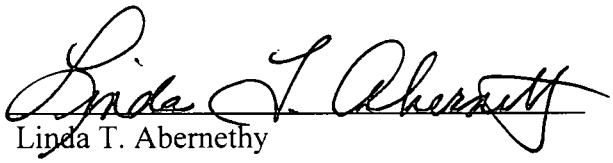
v.

Mell Woods ..... Appellant.

Respondent's Certificate of Service

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondent's Return to Appellant's Petition for Rehearing** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 3rd day of April, 2014 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Plaintiff, pro se



Linda T. Abernethy

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April 3, 2014

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

Re: Breakfield, as Attorney-in-Fact v. Woods
2011-CP-12-0291
Appellate Case No. 2012-212318
Our File No. 12085.3

Dear Ms. Kitchings:

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

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

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

Very truly yours,

B. Michael Brackett

cc. Robert H. Breakfield, Esquire
Mell Woods