

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland, Master-in-Equity for Richland County

71795

Case No. 2010-CP-40-06592

Bernard Richardson. Respondent,

v.

Deloris Nelson Appellant.

**MOTION TO DISMISS
AND
SUSPEND BRIEFING SCHEDULE**

NOW COMES THE RESPONDENT, Bernard Richardson, by and through its undersigned counsel and pursuant to Rule 203(b)(1) and (4) FCACR, who hereby respectfully move to dismiss the instant Appeal.

This Motion is based upon the following:

1. The above-referenced matter was tried before the Honorable Joseph M. Strickland, Master-in-Equity for Richland County, on June 17, 2013.
2. On February 7, 2014, the Master-in-Equity issued an Order ("Order") in favor of Respondent, the same being recorded on February 10, 2014. **See Exhibit A.**
3. Thereafter, Counsel for Respondent served a copy of the Order on Counsel for the

Appellant by correspondence dated February 11, 2014. **See Exhibit B.**

4. The Certificate of Service was filed with the Clerk of Court for Richland County on February 28, 2014 verifying that the Order was served on Counsel for the Appellant by U.S. Mail. **See Exhibit C.**

5. Rule 203(b) (1) and (4), FCACR, requires that a Notice of Appeal be served on all Respondents within thirty (30) days after receipt by the Appellant of written notice of the entry of the Order for Judgment for which an Appeal is sought.

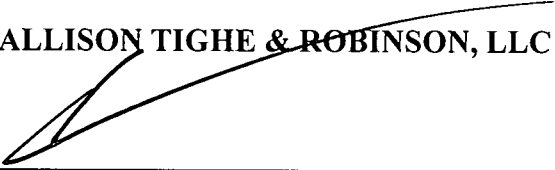
6. Further, Rule 5(b)(1), SCRCR provides “[w]henver under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by the delivering a copy to him or by mailing it to him at his last known address or if no address is none, by leaving it with the Clerk of Court....Service by mail is complete upon mailing of all pleadings and papers subsequent to the service of the original Summons and Complaint.”

7. Respondent would respectfully submit that the above-referenced Appeal is not timely and therefore should be dismissed. See USAA Property & Casualty Insurance Company v. Deborah J. Clegg, et. al, 377 S.C. 643, 661 S.E. 2d 491 (2008). (“Rule 203(b), SCACR, requires a party to serve his Notice of Appeal within thirty (30) days after receiving written notice of the entry of a Final Order or Judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal. The requirement of service of the notice of appeal is jurisdictional, i.e. if a party misses the deadline, the Appellate Court lacks jurisdiction to consider the Appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”)(Internal citations omitted).

WHEREFORE, the Respondent would respectfully request that the Court dismiss the Appeal of the Appellant.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC



Ian D. McVey, SC Bar No. 71196
1812 Lincoln Street
P.O. Box 1390
Columbia, South Carolina 29202
Tel. (803) 404-6900
Fax (803) 404-6902
E-mail: ianmcvey@callisontighe.com

Hugh M. Cooper, SC Bar No. 1384
1812 Lincoln Street, First Floor
Columbia, SC 29201
Tel. (803) 779-3456
Fax (803) 929-3544

Attorneys for Respondent Bernard Richardson

April 2, 2014
Columbia, South Carolina

Bernard Richardson

Deloris Nelson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Ian D. McVey, Esquire

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- 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
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

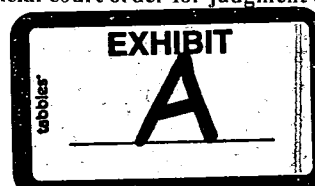
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.



2014 FEB 10 AM 8:55
 FILED
 RICHLAND COUNTY
 CLERK OF COURT
 LEANETTE WOODRIDGE
 C.C.P. & S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Bernard Richardson)
)
 Plaintiff,)
)
 v.)
)
 Deloris Nelson)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-06592

ORDER

JEANETTE W. McBRIDE
 C.C.P. & G.S.
 2014 FEB 10 AM 8:55
 FILED
 RICHLAND COUNTY

THIS MATTER CAME BEFORE THE COURT for trial on the merits. Present at the trial were the Plaintiff, Bernard Richardson, and his counsel, Ian D. McVey and Hugh M. Cooper. Defendant Deloris Nelson was not present; however, her father, Napoleon Deveaux, was present along with counsel for the Defendant, Nathaniel Roberson. At trial, the Plaintiff testified on his own behalf as did his surveyor, Ben Whetstone. Mr. Deveaux took the stand on behalf of the Defendant. Based upon the evidence present including the exhibits admitted into evidence and the testimony presented by the witnesses, I find, order and conclude as follows:

PROCEDURAL HISTORY

This matter was commenced by the filing of a Summons and Complaint for Trespass in the Magistrate's Court in Eastover, South Carolina. Defendant filed her Answer and Counterclaim wherein she asserted title to the property which is the subject of this Action. Thereafter, the Eastover Magistrate issued an order removing the case to the Circuit Court for Richland County pursuant to S.C. Code Ann. §22-3-20.

By consent of the parties, the matter was referred to the undersigned, and this Court jurisdiction over this matter pursuant to said Consent Order of Reference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiff is the owner of the following described real property ("Subject Property") by virtue of that certain deed from Thelma Scott Nance to Bernard Richardson and Brian Richardson dated May 14, 2007 and recorded on June 21, 2007 in the office of the Register of Deeds for Richland County in Book 1327 at page 2201:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the Town of Eastover, County of Richland, State of South Carolina, being shown and delineated on a plat prepared for Bernard Richardson and Brian Richardson by Donald G. Platt, RLS, dated May 14, 2007 and recorded on June 21, 2007 in the office of the Register of Deeds Richland County in Plat Book 1327 at page 2203; said lot having such metes and bounds as shown on said plat, which is being incorporated herein by reference as part of this description.

This being a major portion of the property conveyed to Thelma Scott Nance by Deed of Blanche S. Dickerson, Blondell S. Thornton, Gloria S. Hight and Jeffery D. Scott recorded on August 1, 1988 in the office of the Register of Deeds for Richland County in Deed Book D898 at Page 705.

TMS #: 36802-01-01

2. Defendant claims an interest in the following described property by virtue of a deed from D.F. Deschamps to Emma Rawlinson dated December 17, 1924 and recorded on December 30, 1924 in the office of the Register of Deeds for Richland County in Book CQ at page 84:

All that certain piece, parcel or lot of land in the Town of Eastover, County of Richland, State of South Carolina known as Lot #11 in Block R on a plat of the Ray Subdivision made by J.C. Covington, C.E., November 2nd, 1918 for C.G. Rowland measuring and bounding as follows, to wit: North by Lot #10 on which it measures 180 feet, more or less, South by Lot #12 on which it measures 180 feet, more or less; East by a Fifty (50) foot street on which it measures 70 feet, more or less; and on the West by a Twenty (20) foot street or alley on which it measures 70 feet, more or less.

3. Ms. Rawlinson died intestate leaving behind no will or other form of devise.

4. As is indicated by the Richland County Assessor's office, Defendant is the owner of

that certain mobile home ("Mobile Home") described as 1996 Fleetwood, Serial Number NCFLT41A3544OFE11 which is currently located on the Subject Property.

5. Ms. Nelson claims she is entitled to locate the Mobile Home on the Subject Property by virtue of being a Fourth (4th) generation heir of Ms. Rawlinson.

6. As a threshold matter, none of the heirs of Ms. Rawlinson have any claim to the Subject Property. Any claim they may have is to Lot 11 as indicated above which is located directly to the North of the Subject Property and does not encompass any portion of the Subject Property.

7. Further, Defendant has no claim to Lot 11. According to the testimony of Mr. Deveaux, Defendant's mother is a descendant of Emma Rawlinson and still living. As such, any interest Ms. Nelson may have in Lot 11 has not yet vested.

8. Therefore, I find the Plaintiff has prevailed on the merits as is entitled to the relief requested in the Complaint and a finding that Defendant and any others claiming through her is trespassing on the Subject Property.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is the owner in fee simple along with Brian Richardson of the Subject Property free and clear of any claims of the heirs of Emma Rawlinson.

2. Defendant has no claim or interest in the Subject Property.

3. Defendant shall remove the Mobile Home and all personal belongings and structures within fifteen (15) days of the entry of this Order.

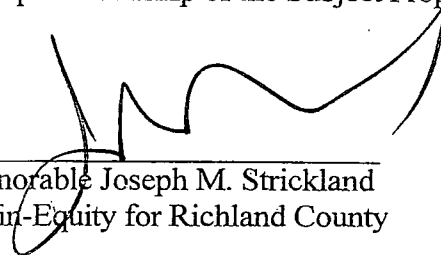
4. Any tenants of the Defendant, persons claim through her or any others occupying the Subject Property shall likewise vacate the Subject Property within fifteen (15) days of the entry of this order taking with them all their belongings.

5. The Sheriff of Richland County is directed to take such steps as are necessary to effectuate the intent of this Order and place the Plaintiff in peaceable possession of the Subject Property.

6. The Clerk of Court and Register of Deeds shall index said order in the records for Richland County so as to reflect the Plaintiff's fee simple ownership of the Subject Property.

AND IT IS SO ORDERED.

Feb. 7, 2014
~~September 2, 2013~~
Columbia, South Carolina



The Honorable Joseph M. Strickland
Master-in-Equity for Richland County

Tamekia A. Hunter - Paralegal
803-404-6900 ext. 3024
tamekiahunter@callisontighe.com

FILE COPY
CALLISON TIGHE

February 11, 2014

Nathaniel Roberson, Esquire
Law Office of Nathaniel Roberson
1708 Richland Street
Columbia, SC 29201

RE: Bernard Richardson vs. Deloris Nelson
Case No. 2010-CP-40-6592
Our File No. 5564.001

Dear Mr. Roberson:

Enclosed please find a clock copy of Judge Strickland's Order regarding the trial of the merits in the above-referenced matter.

With kind regards, I am

Yours very truly,

CALLISON TIGHE & ROBINSON, LLC


Tamekia A. Hunter,
Paralegal to Ian D. McVey

TAH/
Enclosure
cc: (w/encls.) Hugh Cooper, Esquire



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Bernard Richardson)
)
)
Plaintiff,)
)
)
v.)
)
Deloris Nelson)
)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
Case No.: 2010CP4006592


CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2014 FEB 28 PM 12: 25
JENNIFER M. HOBRIDE
C.C.P. & G.S.

I, Tamekia A. Hunter, an employee of Callison Tighe & Robinson LLC, Attorneys for the Plaintiff, do hereby certify that I have served a **clocked** copy of the **ORDER** signed by Judge Strickland dated February 7, 2014 and filed February 10, 2014 in this matter on Counsel for the Defendant by causing copies to be placed in the United States Mail, first-class postage affixed, addressed as follows, on **February 11, 2014**:

PARTIES SERVED:

**Nathaniel Roberson, Esquire
Roberson Law Firm
1708 Richland Street
Columbia, SC 29201**



Tamekia A. Hunter,
Paralegal to Ian D. McVey, Esquire

February 26, 2014
Columbia, South Carolina

