

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2013-CP-36-332

Raymond D. Hobby Respondent

vs.

Mary T. Hobby Appellant

APPELLANT'S INITIAL BRIEF

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SC Court of Appeals

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STATEMENT OF THE CASE

This is an action filed in the Magistrate's Court for ejectment of Appellant Mary T. Hobby ("Ms. Hobby") from the former marital residence. Respondent Raymond D. Hobby ("Mr. Hobby") brought the action pursuant to S.C. Code Ann. §15-67-610 et.seq. Ms. Hobby was served with a Notice to Quit Premises on or about May 14, 2012. The action, which is part of the ongoing litigation between the parties since their divorce in 2010, involves the trustee's decision to sell to Mr. Hobby the former marital residence where Ms. Hobby resides.

In the divorce action, the parties created a liquidating trust to liquidate marital assets and to distribute the sales proceeds to the parties. The trustee sold the marital residence to Mr. Hobby and his authority to do so was disputed by Ms. Hobby.

Ms. Hobby challenged the sale by bringing an action in the family court in which she sought, among other relief, (1) a declaration that the trustee's deed to Mr. Hobby for the Crowder Road property is void ab initio, (2) a determination of whether Ms. Hobby or Mr. Hobby should be allowed to purchase the Crowder Road property, (3) exclusive possession of the property until all of the trust assets are liquidated, and (4) an order prohibiting Mr. Hobby from pursuing eviction proceedings against Ms. Hobby during the pendency of the case. The family court judge dismissed these claims for lack of subject matter jurisdiction, finding:

"Actions related to the administration of a Trust are within the exclusive jurisdiction of the Probate Court pursuant to S.C. Code §62-1-302. As such, the Family Court lacks jurisdiction to hear and decide the issues set forth in Plaintiff's Complaint concerning the Crowder Road property.

NOW, THEREFORE, IT IS ORDERED Plaintiff's Complaint filed May 15, 2012, as it relates to the Crowder Road Property is dismissed."

Mr. Hobby brought an action in the circuit court to evict Ms. Hobby as a holdover tenant and to enjoin her use of the marital property. He also sought damages and summary ejection pursuant to S.C. Code Ann. §15-67-610. The circuit court judge denied the motion for summary ejection pursuant to §15-67-610, et. seq., ruling as follows:

“S.C. Code Ann. §15-67-610 et seq. specifically grant the magistrate court the authority to issue warrants pursuant to this section. Further, S.C. Code Ann. §15-67-640 specifically provides that ‘Either party to these proceedings shall have the right of appeal Pending the determination of his appeal by the circuit court.’ ‘The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.’ Media Gen. Commc’ns, Inc. v. S.C. Dept of Revenue, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529 (2010). Where the statute’s language is plain, unambiguous and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Here, the statute’s language is plain, unambiguous, and conveys a clear, definite meaning. The legislature intended to grant the magistrate the exclusive jurisdiction to hear motions and issue warrants pursuant to this section, and intended the Circuit Court to have appellate jurisdiction. Therefore, pursuant to Article V, Section 11 of the South Carolina Constitution, this Court lacks jurisdiction and declines to hear this matter.”

He also denied the motion for a temporary injunction.

Thereafter, a hearing was held by Magistrate Judge Ronald C. Halfacre on June 28, 2013. Judge Halfacre issued an Order of Judgment dated June 28, 2013 in favor of Mr. Hobby and a Return dated July 19, 2013.

Ms. Hobby filed a Notice of Intention to Appeal on July 2, 2013 in which she raised the following, among other issues:

1. The Magistrate erred as a matter of law in failing to dismiss this action for lack of subject matter jurisdiction.
2. The Magistrate erred as a matter of law in failing to grant the motion to dismiss and/or in failing to grant judgment in favor of the defendant based

upon the doctrine of *res judicata*, which bars the plaintiff's claim since the plaintiff has sought the relief in the circuit court proceeding.

Ms. Hobby's appeal was heard on September 4, 2013 by Frank R. Addy, Jr., Circuit Court Judge. By an Order dated September 26, 2013, Judge Addy affirmed the Magistrate's Court ruling. Ms. Hobby thereafter filed a Motion to Alter or Amend on October 11, 2013 in which she raised the following issues:

1. The Court should reconsider its ruling on subject matter jurisdiction and reverse the Magistrate and dismiss the action for lack of subject matter jurisdiction. A determination as to whether the trustee violated the terms of the trust or whether the plaintiff has good title necessarily requires a review of the trust, the actions of the trustee, and the internal workings of the trust. More importantly, if the plaintiff does not have good title, then he is not "the owner of land" who is entitled to seek ejectment under S.C. Code Ann. §15-17-610. The Court, apparently in frustration, found:

"In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere."

This is factually incorrect. The defendant sought relief in the Family Court and plaintiff successfully moved to dismiss. The defendant objected to the jurisdiction of the circuit court to proceed under §15-17-610 and Judge McMahon agreed. This Court, as a matter of caution, suggested re-filing in probate court. Defendant should not be unfairly judged for raising subject matter jurisdiction issues, particularly when certain of those issues have been determined favorably to defendant.

2. The Court should reconsider its ruling affirming the Magistrate that the defense of *res judicata* did not apply because "Judge McMahon's Order did not constitute an adjudication on the merits" because the Magistrate made no such finding. See attached pages 32 and 37 of the Transcript.
3. The Court should reconsider its ruling affirming the Magistrate that the defense of *res judicata* did not apply because Judge McMahon's Order was not a determination on the merits. A temporary injunction was sought and denied on the merits that being that there was no irreparable harm and plaintiff could recover damages. The effect of the Magistrate's Order is the reversal of the Order of Judge McMahon who found that the status quo, that is, defendant remaining in the [residence], should be maintained.

4. The Court ruled on the bond issue had not been determined with finality (see defendant's motion to reconsider), had not yet been appealed (see attached Notice of Appeal), and was not before the circuit court. All findings related to the bond issue should be set aside.

Judge Addy issued an Order dated October 28, 2013 wherein he ruled:

"THIS MATTER CAME BEFORE THE COURT ON Defendant's motion to alter or amend the court's order of September 26, 2013. Having considered Defendant's motion, the court alters the order as follows:

The final sentence, which begins 'In every venue ...' and which appears in the first full paragraph on page two (2), is deleted. Defendant is correct that jurisdiction was successfully challenged by various parties at various stages of the litigation.

In all other respects, the order of September 26, 2013 remains unchanged."

On November 11, 2013, Ms. Hobby filed her Notice of Appeal of the Orders dated September 26, 2013 and October 28, 2013.

ARGUMENT

I.

SINCE THIS ACTION CALLED INTO QUESTION TITLE TO REAL ESTATE, THE MAGISTRATE HAD NO SUBJECT MATTER JURISDICTION TO PROCEED.

This action called into question title to real estate. The action was brought pursuant to §15-67-610, which provides:

"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, the owner of the land so trespassed upon may apply to any magistrate to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such magistrate shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary."

Under §15-67-620, the party in possession can stay in possession pending a trial provided the party satisfies the magistrate that the party has “a bona fide color of claim to the possession of such premises.” Section 15-67-620 provides:

“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 Section 15-67-610.”

In this case, the title to real property was called into question. Mr. Hobby, who only held a quitclaim deed to the property in question, testified that he was the legal owner of the property in question. The following exchanges took place in the Magistrate’s Court:

“THE COURT: Okay. All right. You are the – you are the legal owner of the property?
MR. HOBBY: Yes, sir.
THE COURT: Is that correct? I think, did you present this –
MR. HOBBY: I brought the quit claim deed.
THE COURT: Are you entering that as evidence, Mr. Hobby?
MR. HOBBY: Yes, sir.” (Transcript p.40, lines 2-10).

Mr. Hobby asked that Ms. Hobby be found to be a trespasser.

“Q: No, he didn’t. Then after he issued – let me be sure I’m correct. In this action in Circuit Court, you were asking that Ms. Hobby be found to be a trespasser, weren’t you?
A: Correct.
Q: And you were asking that the Court enjoin her from trespassing on the property?
A: Correct.
Q: And you were seeking – and in this action, you were asking that she be declared a trespasser?
A: Requesting her to be ejected from the property.
Q: Mr. Hobby, you’re asking that she be declared a trespasser and, therefore, ejected from the property?

A: I'm only pleading in this case for her to be ejected from the property.
Q: So you don't claim in this case that she's a trespasser?
A: She is a trespasser.
Q: So you do claim she's a trespasser?
A: Now, I claim she's a trespasser and I'm asking this Court not just based on trespass, on ownership, that she be ejected from the property."
(Transcript p.50, line 16 to p.51, line 14).

"Q: Let me get my question out. Isn't it true that in the Magistrate Court case you're asking the Magistrate to determine her to be a trespasser?
A: By his authority, yes, sir.
Q: And you're asking the Magistrate to eject her from the property?
A: Per his authority, yes, sir.
Q: And that's the very thing you asked the circuit court judge to do on your temporary motion – motion for temporary injunction and the Judge declined it, didn't he?
A: Yes, sir." (Transcript p.67, lines 6-18).

The Magistrate, as shown by the Judgment and his Return, ruled on the question of title to the real estate, finding that Mr. Hobby had proved his case and was the legal owner of the property. See p.78, line 17 to p.82, line 23. The Magistrate implicitly found that Ms. Hobby had a colorable claim to possession of the real property because he allowed Ms. Hobby to post a bond to stay in possession pending the appeal, which is allowed by §15-67-620.

By statute, the Magistrate had no jurisdiction to determine the question of title. §22-3-20 makes this clear.

"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."

Section 22-3-1110, et.seq., Article II, sets forth the procedures to be followed when title to real estate is involved. Section 22-3-1150 provides that when the plaintiff's own showing establishes that title to real estate is in question, as it did here, the Magistrate shall dismiss

the action. Section 22-3-1150 provides as follows:

“If, 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.”

While this specific argument regarding subject matter jurisdiction was not made before the Magistrate, that is of no consequence. The issue of subject matter jurisdiction can be raised at any time. McCain v. Brightharp, 399 S.C. 240, 730 S.E.2d 916 (2012) (subject matter jurisdiction can be raised at any time). Since title to real property was called into question, the Magistrate did not have subject matter jurisdiction. This Court should set aside and dismiss the Magistrate’s Court action and order for lack of subject matter jurisdiction.

II.

SINCE THE AMOUNT OF DAMAGES WHICH MR. HOBBY HAS CLAIMED BY REASON OF POSSESSION BEING WITHHELD FROM HIM EXCEEDS \$7,500.00, THE ACTION SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

Section 15-67-620 provides:

“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 Section 15-67-610.”

Mr. Hobby claimed that he was damaged in the amount of \$23,000.00 by reason of possession being withheld from him. The Magistrate required Ms. Hobby to deposit

\$10,000.00 as the damages Mr. Hobby would suffer by possession being withheld from him. (T. p.8, line 19 to p.9, line 7). The S.C. Constitution authorizes the General Assembly to provide for the civil and criminal jurisdiction of the Magistrate's Court. S.C. Const. Art. V Section 26. Pursuant to this authority, the General Assembly enacted Title 22 of the South Carolina Code to establish the jurisdiction of magistrate courts and the proceedings utilized to exercise jurisdiction. S.C. Code Ann. §22-1-10 and §22-8-50 (2007 & Supp. 2010).

S.C. Code Ann. §22-3-10 provides for magistrate's concurrent civil jurisdiction. Although §22-3-10 does not specifically mention ejectment actions under §15-67-610, in every action listed where money can be recovered, the amount claimed cannot exceed \$7,500.00. Section 22-3-10(2) would arguably cover security for claims for damages by reason of possession of real estate being withheld. Section 22-3-10(2) provides:

"Magistrates have concurrent civil jurisdiction in 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;"

The General Assembly has not given magistrates, most of whom are not lawyers, jurisdiction over matters in which the amount in controversy exceeds \$7,500.00.

Interestingly, the Court's webpage information describes the magistrate's court civil jurisdiction as follows:

"There are approximately 319 magistrates in South Carolina, each serving the county for which he or she is appointed. They are appointed by the Governor upon the advice and consent of the Senate for four year terms and until their successors are appointed and qualified. (Art. V, §26, S.C. Const., and S.C. Code Ann. §22-1-10). Anyone seeking an initial appointment as magistrate must pass an eligibility examination before they can be recommended to the Governor by the senatorial delegation. S.C. Code Ann. §22-2-5. Magistrates must also attend an orientation program, pass a certification examination within one year of their appointment, and attend a specified number of trials prior to conducting a trial.

Magistrate's have criminal trial jurisdiction over all offenses which are subject to the penalty of a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both. (S.C. Code Ann. §22-3-550). In addition, S.C. Code Ann. §22-3-545 provides that magistrates may hear cases transferred from general sessions, the penalty for which does not exceed one year imprisonment or a fine of \$5,000.00, or both, upon petition by the solicitor and agreement by the defendant. **Magistrates have civil jurisdiction when the amount in controversy does not exceed \$7,500. (S.C. Code Ann. §22-3-10).** In addition, magistrates are responsible for setting bail, conducting preliminary hearings, and issuing arrest and search warrants. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrates courts are summary. (S.C. Code Ann. §22-3-730)."

Judge Addy, in his order on appeal, did not identify any statute authorizing the magistrate to exercise jurisdiction over actions where amount in controversy exceeds \$7,500.00. He addressed the issue in a footnote.

"At the hearing of September 4, 2013, the court was not entirely clear on whether Defendant was contesting jurisdiction based on the value of the real estate involved in this dispute, which clearly exceeded \$7,500, or whether Defendant was contesting the setting of bond in the sum of \$10,000, or both. The court cannot find any reference to this objection in the transcript. However, because the jurisdictional limit relates to subject matter jurisdiction, the issue may be raised at any time, even on appeal. Rock Hill Body Co. v. Rainey, 294 S.C. 426, 429, 365 S.E.2d 228, 230-31 (Ct. App. 1987) (holding that the amount in controversy limits under 22-3-10 implicate subject matter jurisdiction). To the extent Defendant's argument is that the value of the real estate exceeded \$7,500, thereby depriving the magistrate's court of jurisdiction under 22-3-10, the court rejects this argument, as the vast majority of habitable real estate in this State possesses a value exceeding \$7,500. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ('Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.)."

Therefore, since the amount in controversy clearly exceeds \$7,500.00, this action should be dismissed for lack of subject matter jurisdiction.

III.

THE CIRCUIT COURT JUDGE ERRED IN FAILING TO FIND THAT THE CLAIM IN MAGISTRATE'S COURT WAS BARRED UNDER THE DOCTRINE OF RES JUDICATA.

Mr. Hobby, in his circuit court action, sought a temporary injunction requiring Ms. Hobby to vacate the property. This was heard by Judge McMahon, who denied the temporary injunction, stating:

"The purpose of an injunction is the preservation of the status quo. Levine v. Spartanburg Reg'l Servs. Dist., Inc., 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). A temporary injunction is used to preserve the subject of controversy in the condition which it is at the time of the order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation. *Id.*

Plaintiff alleges the Property was transferred to him by general warranty deed on or about April 11, 2012, and that Defendant has been trespassing on the property for more than one year. It further appears from the record before this Court that the Defendant has been living on the Property since at least 2005 when the parties initially separated. **To preserve the status quo during the pendency of the litigation requires the Defendant remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff's Motion for Temporary Injunction is DENIED.**" (emphasis supplied)

Mr. Hobby, in the magistrate court action, sought to summarily eject Ms. Hobby as a trespasser even though the circuit court judge had ruled as follows:

"To preserve the status quo during the pendency of the litigation requires the Defendant remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff's Motion for Temporary Injunction is DENIED."

The Magistrate found that Mr. Hobby was the owner of the property and he had proved his case. The Magistrate allowed Ms. Hobby to post a security bond pursuant to Section 15-67-620 and to remain in possession pending the outcome of the appeal. This claim, however,

is barred and precluded by the doctrine of res judicata.

The Supreme Court has recently spoken on the doctrine of res judicata in the case of Catawba Indian Nation v. State of South Carolina, Opinion No. 27374, filed April 2, 2014 wherein the Court stated:

"The doctrine of res judicata is a distinguishable concept. [from collateral estoppel] Beall v. Doe, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 190 n.1 (Ct. App. 1984). Res judicata encompasses both issue preclusion and claim preclusion. Crestwood Golf Club, Inc., 328 S.C. at 216, 493 S.E.2d at 834. However, res judicata is more commonly referred to simply as claim preclusion. Garris v. Governing Bd. Of S.C. Reinsurance Facility, 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). Claim preclusion bars plaintiffs from pursuing a later suit where the claim (1) was litigated or (2) could have been litigated. Crestwood Golf Club, Inc., 328 S.C. at 216, 493 S.E.2d at 835.

Our Court has recently affirmed the following statement of the doctrine:

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (alteration in original) (citations omitted), *cited with approval in* Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011).

Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994). The doctrine of res judicata is not an 'ironclad bar,' however, to a later lawsuit. Judy, 393 S.C. at 167, 712 S.E.2d at 412; Garris, 333 S.C. at 449, 511 S.E.2d at 57; Clark v. Aiken Cnty. Gov't, 366 S.C. 102, 109, 620 S.E.2d 99, 102 (Ct. App. 2005)."

Here, the issue in both courts was whether Ms. Hobby would be ejected from the former marital home. The parties were identical in both actions, and the subject matter was

the same. The circuit court, a court of competent jurisdiction, adjudicated the issue before the Magistrate did. This Court should apply the doctrine of res judicata and find that it bars the claim in Magistrate Court.

IV.

SINCE JUDGE MCMAHON FOUND THAT A TEMPORARY INJUNCTION SHOULD NOT BE GRANTED AND THAT MS. HOBBY SHOULD REMAIN IN THE HOUSE PENDING A FULL INVESTIGATION, THE MAGISTRATE ERRED IN MAKING FINDINGS INCONSISTENT WITH JUDGE MCMAHON'S ORDER.

Mr. Hobby brought an action in circuit court alleging a cause of action, among others, that Ms. Hobby should temporarily and permanently be restrained from residing on the property. The circuit court judge, in his order, stated:

“Plaintiff alleges the Property was transferred to him by general warranty deed on or about April 11, 2012, and that Defendant has been trespassing on the property for more than one year. It further appears from the record before this Court that the Defendant has been living on the Property since at least 2005 when the parties initially separated. To preserve the status quo during the pendency of the litigation requires the Defendant remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff’s Motion for Temporary Injunction is DENIED.”

The Magistrate was bound by the Order of the circuit court judge and had no authority to rule otherwise. The orders of the circuit court judge should be reversed.

V.

THE CIRCUIT COURT JUDGE ERRED IN AFFIRMING THE MAGISTRATE'S ORDER WHICH, IN ESSENCE, REVERSED THE ORDER OF JUDGE MCMAHON

Judge McMahon denied Mr. Hobby’s request for a temporary injunction to require Ms. Hobby to vacate the property. Judge McMahon, in doing so, held:

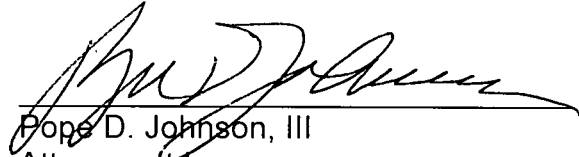
"Plaintiff alleges the Property was transferred to him by general warranty deed on or about April 11, 2012, and that Defendant has been trespassing on the property for more than one year. It further appears from the record before this Court that the Defendant has been living on the Property since at least 2005 when the parties initially separated. To preserve the status quo during the pendency of the litigation requires the Defendant remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff's Motion for Temporary Injunction is DENIED."

The Magistrate, in disregard of the Order of the Circuit Court Judge, proceeded forward, finding that Mr. Hobby held title and was the owner of the property and Ms. Hobby had to vacate unless she posted security "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. Section 15-67-610.

One circuit court judge cannot overrule another circuit court judge. Cook v. Taylor, 272 S.C. 536, 252 S.E.2d 923 (1979) (one circuit court judge cannot review or reverse the order of another circuit court judge). The Magistrate's Court is an inferior court to the circuit court. Obviously a magistrate court judge cannot overrule a circuit court judge. However, that is exactly what occurred, the circuit court judge held that Ms. Hobby could remain on the property until a full investigation could be had and the magistrate proceeded to summarily eject Ms. Hobby, subject to her posting security to remain in the property pending the appeal. The orders of the circuit court should be reversed.

CONCLUSION

The Magistrate's Court can have no jurisdiction except as granted by the General Assembly. The Magistrate's Court has no jurisdiction when title to real estate is in question or when the amount in controversy exceeds \$7,500.00. This action must be dismissed.



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