

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 30 2014

S.C. Supreme Court

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

Trial Court Case Number 2010-CP-12-00595

SUPREME COURT NUMBER 2014-001246

Mell Woods, Petitioner,

v.

John D. Hinson, Christine E. Jones,
John C. Hinson, Kathy Huffstickle,
Robert H. Hinson, Darrell W. Hinson,
Charles J. Hinson, William L. Hinson,
Elaine H. Hensley, William C. Hinson, Jr.,
John Does, (1-5), Jane Does, (1-2), Respondents.

Petition for Certiorari

Court Of Appeals Internal Tracking Number: 2012 212429

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

6/30/14

Certification Regarding Rehearing

Petitioner certifies that a Petition for Rehearing was ruled on by the Court of Appeals on May 08, 2014, as a final matter, with a copy of the Order attached hereto in the Appendix, Page A48.

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a trial court may rely solely on arguments of counsel when making a procedural/form decision on a motion for summary judgment.

2. As a subsidiary question, may a trial court grant a summary judgment where material issues of fact remain to be decided by fact finders?

STATEMENT OF THE CASE

The trial court decided this case solely on the arguments of counsel and so stated from the bench without allowing time for inspection of the Record:

"and in making the ruling,
the court adopts the arguments made by defendant on that motion." (Hearing transcript, pg. 42 lines 12-13), R. 751.

In addition, the trial court ignored the genuine issues of fact contained within the Record and proceeded to grant a "procedural/form" type of summary judgment without regard for the facts within the Record.

ARGUMENT

Question One (above) has already been answered by the South Carolina Supreme Court in McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933).

In addition, the Court of Appeals did go by McManus when it decided Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180; however in the present case the Court of Appeals ignored Gilmore and allowed the trial court to grant a summary judgment without any inspection of the Record.

Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180, proscribes the type of ruling made by the trial court in the present case,

(from Gilmore)

"In determining whether a genuine issue of material fact exists, a court must consider everything in the record -- pleadings, depositions, interrogatories, admissions on file, affidavits, etc."

(Argument continued)

Statements of counsel are not evidence, and when a trial court bases a decision on argument, instead of facts, reversible error occurs. Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180; also in regard to statements of counsel, (Headnote 6) from McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933).

Question Two (above) was answered by the South Carolina Supreme Court in Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801, (2009).

Petitioner and appellant Mell Woods hereby adopts by reference the entire Record in this case, *both Volumes* of the Record, the final Appellant Brief, Reply Brief of the Appellant, Petition for Rehearing filed in the Court of Appeals, the replies concerning the Petition for Rehearing, and the papers and Briefs filed by respondent, and incorporates the listed documents as part of this Petition for Certiorari.

CONCLUSION

Based on the cases cited in this Petition, the Record in this case, past Rulings of the South Carolina Supreme Court and the facts contained within the Record, petitioner asks that a Writ of Certiorari be issued to further examine the Ruling of the Court of Appeals.

Respectfully submitted,

this 19 day of June, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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SUPREME COURT OF SOUTH CAROLINA

Case Number 2014-001246

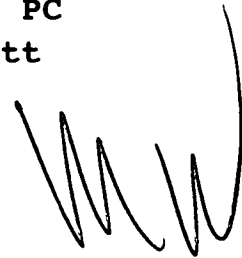
Proof of Service

Trial Court Case Number: 2010-CP-12-00595

Court of Appeals Internal Tracking Number: 2012 212429

I hereby certify that I have on the 19 day of June, 2014, served the respondents with a true copy of the within and foregoing *Petition for Certiorari with Appendix attached*, by placing the copy in the U.S. Mail with sufficient postage addressed to:

Moses Koon & Brackett, PC
C/O: B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202




Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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