

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

Lucille Patricia Smith, Respondent,

v.

The Heirs at Law of Benjamin Days a/k/a Ben Deas a/k/a Daise, the heirs at law of Samuel Daise, the heirs at law of Anna Daise, the heirs at law of Manny Daise, the heirs at law of George Daise, the heirs at law of Marie Daise Middleton, the heirs at law of Rose Middleton, the heirs at law of Charlie Middleton, the heirs at law of W.H. Deas, Howard Chaplin, Harriet Chaplin, and all other persons unknown, having or claiming any rights, title or interest in or lien upon the real property described in the complaint herein, being designated collectively as John Doe or Sarah Roe, including all minors, persons in the Armed Forces, and insane persons and all other persons under any other disability who might have or claim to have any right, title, estate or interest in or lien upon the real property described in the complaint herein,

Of whom Howard Chaplin and Harriet Chaplin are the Appellants.

Submitted
by
Referred
to
by
by
by
by

Appellate Case No. 2012-213578

RECEIVED

AUG 1 4 2014

Appeal from Beaufort County
Marvin H. Dukes, III, Master in Equity

SC Court of Appeals

APPELLANTS' PETITION FOR REHEARING

Pursuant to Rules 221(a) and 224(i), SCACR, the Appellants, Howard Chaplin and Harriet Chaplin, respectfully petition this Court for a rehearing in this matter on all issues regarding Opinion No. 2014-UP-299, filed July 30, 2014. Rehearing is warranted when the Court has overlooked or misapprehended an argument. Kennedy v. S.C. Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). When the Court fails to address some of the arguments raised in the appeal, "a *prima facie* case for rehearing has been made." Covar v. Sallat, 22 S.C. 265, 272 (1885).

In this regard, the subject Opinion states "As to whether Lucille had standing to bring an action to quiet title, we find the Chaplins did not preserve this issue for our review." But as stated in

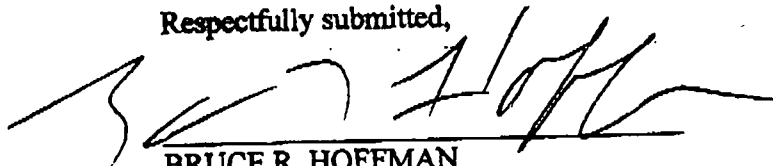
Appellants' initial brief, Plaintiff's standing, as it relates to subject matter jurisdiction, can be challenged at any time in the litigation, even for the first time on appeal, with Plaintiff having the burden on this issue throughout the litigation. See, e.g., Johnson v. State, 319 S.C. 62, 459 S.E.2d 840 (1995); GNOC Corp. v. Estate of Rhyne, 312 S.C. 86, 439 S.E.2d 274 (1994); State v. Gorie, 256 S.C. 539, 183 S.E.2d 334 (1971). With this in mind, it should not matter whether Appellants brought up Plaintiff's failure to prove she owned the property, and thus lack of standing, in the trial court or not, it could be brought up for the first time on appeal, and the Appellate Court failing to substantively address (overlooking, misapprehending) Appellants' argument on this issue, means a prima facie case for a rehearing has been made.

But further, the Chaplins did raise this standing issue in this trial court (R. p. 55-56), and the trial judge explicitly found, erroneously, that the Chaplins did not have standing to challenge Plaintiff's standing, in denying the motion for directed verdict that the Chaplins made at trial (R. p. 9). So if there was a requirement that the standing issue had been raised and ruled on below, it was raised and ruled on, and thus a proper subject for substantive appellate review. And no matter what the Chaplins contended below, if Plaintiff was unable to prove, ab initio, ownership of the property at issue, and thus standing to proceed, the trial judge had no subject matter jurisdiction to proceed, and should have dismissed Plaintiff's case. Plaintiff had the initial burden to prove her case (her standing) before she could be awarded any relief. As she was unable to do so, unable to prove she owned the property at issue, the trial judge should not have awarded her any relief in this case, let alone quiet title in her name to property she could not prove she owned. Instead, he should have dismissed her case - even if she had been the only party to the case, which she was not, she still had to prove her entitlement to the relief she was requesting, and she did not.

Wherefore, Appellants seek an Order granting rehearing on all issues, as this Court misapprehended and/or overlooked the standing argument Appellants made in their brief, which could be brought up for the first time on appeal (but was also brought up below), and failed to substantively rule on the argument that as Plaintiff never proved she owned the property at issue, she had no standing and should never have been awarded any relief in this case.

Dated: August 13, 2014

Respectfully submitted,



BRUCE R. HOFFMAN
LAW OFFICE OF BRUCE R. HOFFMAN, LLC
574 Sea Island Parkway
Saint Helena Island, South Carolina 29920
(843) 838-5290
Attorney for Appellants/Defendants