

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  Hobby Respondent

vs.

Mary T. Hobby Appellant

APPELLANT'S FINAL REPLY BRIEF

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for the Appellant

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SC Court of Appeals

Having read the Respondent's Initial Brief, a response is necessary.

1. The Appellant has asked the Court to resolve and reconcile a question of subject matter jurisdiction where two statutes are in direct conflict. Section 22-3-20 states in clear and unambiguous terms that a magistrate has no jurisdiction to determine questions of title to real property. However, Section 15-67-610 requires the magistrate to determine questions of title to real property. Respondent has not addressed the conflict in the statutory provisions.

2. The Appellant has asked the Court to determine whether the magistrate has subject matter jurisdiction to set a bond for an amount in excess of \$7,500.00. This was not an issue addressed by Judge McMahon. The bond amount was raised for the first time before the magistrate. Respondent testified that his damages were \$23,400.00 for purposes of a security bond. The magistrate required the Appellant to post a bond in the amount of \$10,000.00. However, neither the magistrate nor Judge Addy identify a statutory basis for exceeding the magistrate court's jurisdictional limitation of \$7,500.00. If the magistrate can require a security bond of \$10,000.00, the magistrate could set one for any amount. The Respondent failed to address this issue in his brief.

3. The Appellant has asked this Court to determine the magistrate's authority to overrule a circuit court judge and order ejectment when the circuit court judge has previously found that the status quo should be maintained. The Respondent has failed to address this issue.

4. The Respondent has argued that the law of the case doctrine, res judicata, collateral estoppel and judicial estoppel bar the re-litigation of the issue of the subject matter jurisdiction of the magistrate's court. However, Judge McMahon's Order cannot be read to

say anymore than it does and it in no way ruled on the issues set forth above.

Judge McMahon held that the circuit court did not have subject matter jurisdiction to order ejectment pursuant to Section 15-67-610 *et. seq.* Judge McMahon also held that the circuit court's jurisdiction was appellate jurisdiction and that ejectment and bond setting were within that exclusive jurisdiction of the magistrate court. Obviously, the magistrate court has subject matter jurisdiction under Section 15-67-610 to order ejectment and to set security bonds. However, that subject matter jurisdiction is not without other jurisdictional limitations which are discussed above. Judge McMahon did not rule on whether the magistrate could make a finding related to title to real property or whether the magistrate can set a security bond in an amount exceeding \$7,500.00. These issues relate to subject matter jurisdiction and are open questions for this Court.



Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (Fax)
pope@popejohnsonlaw.com
Attorney for Appellant

Columbia, South Carolina
August 12, 2014

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for Appellant

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PROOF OF SERVICE

I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Benjamin C. Bruner, attorney for the Respondent, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 13th day of August, 2014.

COUNSEL SERVED:

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

PLEADINGS:

Appellant's Final Reply Brief

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SC Court of Appeals

Sherry W. Wise
Sherry W. Wise