

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

**RECEIVED**  
MAR 13 2015  
SC Court of Appeals

Belle Hall Plantation Homeowner's Association, Inc.....Respondent,

v.

John A. Murray, Trustee of John E. Murray & Gloria C. Murray Family Trust, Defendants,

Of whom David Conor Keys & Karen Keys.....Appellants.

REPLY TO RESPONDANT'S RETURN

The Appellants, David Conor Keys & Karen Keys (hereinafter "Appellants") by and through their undersigned counsel, hereby reply, pursuant to Rule 240, SCACR, to the Respondent John A. Murray, Trustee of John E. Murray & Gloria C. Murray Family Trust (hereinafter "Respondent" ), Return dated March 5, 2015, and received by Appellants on March 10, 2015. Respondent's Return states: "I cannot imagine why the appellant chose to file an initial brief even though he knew that the trial court had reserved jurisdiction to enter a formal written order. . . The Court should halt this conduct – either by dismissing this appeal until the trial proceedings are concluded or by holding the appellant to the brief he previously chose to file." Appellants would assert that with regard to this Appeal, and the filing of motions, notices and briefs, Appellants have followed the applicable Civil and Appellate Rules of Procedure,

applicable precedent, this Courts directive to file Appellants' Initial Brief. Additionally Appellants would assert that the current "dual tracking in two courts" as Respondent phrases it, is the result of actions on the part of Respondent and not Appellants. Appellants continue to contend that no prejudice will be suffered by Respondent if Appellants Motion to Amend their Brief and Designation of Matter is granted. Appellants additionally respectfully assert that they will be greatly prejudiced in this Appeal if this Court were to Deny Appellants Motion. Further Appellants would respectfully assert that it would not be in the interest of judicial economy to dismiss this action at thistime. Appellants would respectfully request that this Court granted its Motion withdraw its Initial Brief and Designation of Matter and to filed an Amended Initial Brief and Designation of Matter after that time which the Master has issued an order ruling on Appellants Motion to reconsider dated February 18, 2015. The relevant facts are as follows:

1. On **July 22, 2014**, the Master filed an Order Vacating the Order of Foreclosure, and the Sale of the Subject property to Appellants, David Conor Keys and Karen Keys (hereinafter "Appellants").

2. On **August 1, 2014**, Appellants filed a Motion to Reconsider the Order of July 22, 2014.

3. On **August 4, 2014**, the Respondent, John A. Murray, Trustee of John E. Murray and Gloria C. Murray Family Trust (hereinafter "Respondent"), filed a Motion to Amend the Order of July 22, 2014, to include additional findings of fact and law.

4. On **August 18, 2014**, the Master held a hearing upon Appellants' Motion to Reconsider; Appellants' Motion to Stay and for Order of Supercedeas; Appellants Motion to Strike Certain Affidavits; and Respondent's Motion to Amend the Order. At the hearing the Master denied all of Appellants' Motions and Granted the Respondents' Motion. The Master

stated: "I am going to deny the Motion to Reconsider of August 1, 2014. I'm going to grant - - to the extent it's necessary I'm going to grant the Defendant's Motion to Amend the Order to support that decision, and I'm asking Ms. Reece to prepare an order to that effect." (8/18/14, Tran, p. 35, line 10-p. 37, line 1).

5. On **August 20, 2014**, the Master filed a form four Order denying the Appellants Motion to Reconsider the Order of July 22, 2014; Denying Appellant's Motion to Stay and for Order of Supercedeas; Denying Appellants Motion to Strike certain Affidavits; and Granting the Respondent Trust's Motion to Amend the Order of July 22, 2014. The form four Order states: "Formal order to follow."

6. Within ten days of receipt of the Order, on **September 2, 2014**, Appellants, pursuant the requirements of Rule 59(e), SCRCPP, Rules 203 and 241, SCACR, and in order to preserve issues for appeal and further review Appellants filed a Motion to Reconsider the Order of August 20, 2014. The Order of August 20, 2014, denied Appellants Motion Reconsider Order of July 22, 2014, initiating the clock on Appellants time to file a Notice of Appeal pursuant to Rule 203, SCACR. As of September 2, 2014, Respondent had not submitted to the Master the proposed Order he requested on August 18, 2014.

7. The Court in Elam v. South Carolina Dept. of Transportation, held that the time for appeal is jurisdiction and the Court of Appeals lacks the jurisdiction the rule on appeal after the 30 day time period to appeal has run. The Court went on to state that a timely motion pursuant Rule 59, SCRCPP, stays the time for appeal until receipt of written notice of entry of the order granting or denying such motion. However, the Court also noted "that a second Rule 59(e) motion which raises the same issues and arguments made in the previous Rule 59(e) motion does not toll the time to appeal." 361 S.C. 9, 602 S.E.2d 772 (2004). On **September 19, 2014**, based

upon the Courts holding in Elam, Appellants out of an abundance of caution to protect their right to appeal filed a Notice of Appeal in this Matter, and served it on all parties as well as the Clerk of Court of Charleston County. On **September 19, 2014**, the Master also denied Appellants Motion to Reconsider filed on September 2, 2014. As of September 19, 2014, when Appellant served Respondent with the Notice of Appeal, Respondent had not submitted to the Master the proposed Order he requested on August 18, 2014, and now the Master had denied Appellants Motion to Reconsider the Order which provided that the Respondent was to provide the Master with a “Formal Order” to execute.

8. Not until **November 3, 2014**, did Respondent submit to the Master the proposed “Formal Order” he had initially requested on August 18, 2014. This dilatory behavior created the procedural issues Respondent refers to.

9. On **November 24, 2014**, Appellants sent this Court notice that Appellants had received a copy of the second transcript of hearing on November 11, 2014, and therefore Appellants initial brief would be due December 11, 2014. Rule 208, SCACR, states that Appellants shall file their initial brief with 30 days of receipt of the transcript of hearing.

10. On **December 8, 2014**, Respondent sent this Court a correspondence asserting pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986), Appellants Appeal was premature. Respondent stated: “I though it prudent to advise the court of this in light of the appellants’ manifest intent to file his initial brief by December 11.”

11. On **December 10, 2014**, Appellants served their first Motion for an Extension to file their initial brief upon this Court.

12. On **December 23, 2014**, this Court requested that Appellants respond to Respondent's December 8, 2014, letter. On **December 23, 2014**, Appellants served a response to Respondent's letter per this Courts request.

13. On **December 29, 2014**, the Respondent sent the Master's Clerk an email requesting if he was going to issue the "Formal Order."

14. On **January 7, 2015**, Appellants served a motion for second extension based upon the asserted outstanding issue raised by Respondent's December 8, 2014, Letter.

15. On **January 21, 2015**, this Court sent the Parties a letter which stated that the Court was satisfied that the Master had "issued an ruling on the Rule 59 motion to alter or amend" when it filed the Order of September 19, 2014, which denied the Appellants second Motion to reconsider. This Court stated "Accordingly, this appeal may proceed." This Court went on to grant the Appellants' motions for extension.

16. On **February 1, 2015**, as a result of this Court January 21, 2015, Correspondence Appellants served their Initial Brief in this Appeal.

17. On **February 4, 2015**, Respondent sent the Master's Clerk an email inquiring if the Master was going to issue the "Formal Order" Respondent stated in the email "[Appellants'] initial appellate brief is due for service on February 11<sup>th</sup> so we do appreciate your attention to the matter."

18. On **February 10, 2015**, the Master filed an Order amending the Order of July 22, 2014.

19. On **February 18, 2015**, Appellants filed a Motion to Reconsider the Order of February 10, 2015, in order to preserve the issues for appeal pursuant to Rule 59, SCRCP, and Rule 203, SCACR.

20. On **February 26, 2015**, Appellants served an Amended Notice of Appeal to include the Order February 10, 2015. The Notice stated: “written notice of was received by Appellants February 12, 2015. *Thereafter Appellants filed a Motion to Reconsider the Order which was filed with the lower court on February 18, 2015.*” The February 18, 2015, Motion to Reconsider is the only motion filed subsequent to the Notice of Appeal in this matter and Appellants’ provided notice the Clerk of this by their Amend Notice of Appeal.

21. On **February 26, 2015**, Appellants filed a Motion to withdraw their Initial Brief and Designation of Matter and file an Amended Brief and Designation of Matter. Appellants filed the motion as a result of the Order of February 10, 2015, being filed after Appellants served their Initial Brief.<sup>1</sup>

22. On **February 27, 2015**, Appellants and Respondent received notice the Master had scheduled Appellants’ February 18, 2015, Motion to Reconsider to be held on April 8, 2015. However, both parties continue to query whether the Master will issue a ruling on Motion without holding the hearing and as the Master did with Appellants previous motion to reconsider. As the Respondent noted in its Return “That motion is currently docketed for April 8<sup>th</sup> if the Judge does not issue a ruling without a hearing.”

23. On **March 6, 2015**, after receiving notice of the April 8, 2015 Motion hearing, Appellants served an Amended Motion to withdraw their Initial Brief and Designation of Matter and to file an Amended Brief and Designation of Matter. The Amended Motion requests that Appellant be allowed to file the Amended Brief and Designation after the Master issues an Order on the February 18, 2015, Motion to Reconsider.

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<sup>1</sup> At the time Appellants served the Motion Appellants believed that the Master would rule on February 18, 2015, Motion to Reconsider because the Master had denied Appellants second Motion to Reconsider without holding a hearing.

15. On **March 10, 2015**, Appellants received Respondent's March 5, 2015, Return to Appellant February 26, 2015, Motion, in which Respondent again cites Hudson asserting as a basis for arguing that this Court "should halt [Appellants] conduct – either by dismissing this appeal until the trial proceedings are concluded or by holding the appellant to the brief he previously chose to file." However, Appellants have complied with the precedent in Hudson, as set forth above, and would assert that it is not in the interest of judicial economy to dismiss this matter at this time.

16. The Motion to Reconsider currently scheduled to be heard by the Master on April 8, 2015, addresses only the Master's Order Granting the Motion to Amend. The Motion does not address the other Orders involved in this appeal, including the Master's Order of July 22, 2014, Vacating the Order of Foreclosure and Sale; the Master's August 20, 2014, Order denying Appellants Motion to Reconsider the Order of July 22, 2014; Appellants' Motion to Stay the Order and for Order of Supersedes; and Appellants Motion to Strike Certain Affidavits. All of these Orders are presently ripe for Appeal and it were to dismiss this Appeal it would also be dismissing the Appeal of all of these Order's for which there are no pending subsequent motions to reconsider filed. These are final orders subject to appeal. Appellants acknowledge that because the Master denied a Motion to Reconsider the Order of July 22, 2015, while simultaneously granting a Motion to Amend said Order, and then six months later filing an Order amending said Order, the procedural facts of this case are unique.

17. Appellants would assert that in proceeding with this Appeal Appellants, at all times, have sought only to protect their right to appeal, and have proceed in compliance with the rules of civil procedure and the appellate rules of procedure. Appellants would respectfully asserted that will be prejudiced if this appeal is dismissed. Appellants did not "chose to file"

their Initial Brief as Respondent asserts in its Return, rather Appellants filed their Initial Brief pursuant to the Order of this Court. Appellants would further assert that they will be prejudiced in their appeal of this matter if they are not permitted to amend their initial brief and designation of matter to account for the Amended Order filed after Appellants served their Initial Brief and as a result of no fault or action on the part of Appellants.

18. For the reasons set forth above please permit Appellants' to proceed forward with this Appeal and to withdraw their Initial Brief and Designation of Matter and to Substitute said documents with an Amend Initial Brief and Designation of Matter, at that time which the Master has issued an Order on Appellants' Motion to Reconsider of February 18, 2015.

RESPECTFULLY SUBMITTED,



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*Individually and as  
Attorney for Appellant.*

March 11, 2015  
Charleston, SC

Other Counsel of Record:

Amanda Reece  
Reece Law Firm, LLC  
871 Low Country Blvd. #200  
Mt. Pleasant, SC 29464  
*Attorney for John A. Murray,  
Trustee of the John E. Murray and  
Gloria C. Murray Family Trust*

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v.

John A. Murray, Trustee of John E. Murray & Gloria C. Murray Family Trust, Defendants,

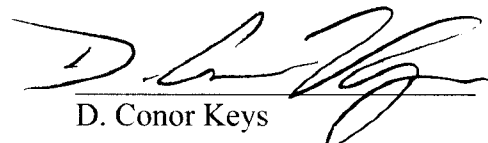
Of whom David Conor Keys & Karen Keys.....Appellants.

PROOF OF SERVICE

I certify that on this 11th day of March 2015, I have served Appellants' Motion upon all counsel of record by depositing a copy in the United States Mail, postage prepaid addressed as follows:

Amanda Reece  
Reece Law Firm, LLC  
871 Low Country Blvd., Suite 200  
Mt. Pleasant, SC 29464  
*Attorney for John A. Murray,  
Trustee of the John E. Murray and  
Gloria C. Murray Family Trust*

Stephanie C. Trotter  
McCabe Trotter & Beverly, P.C.  
P.O. Box 212069  
Columbia, SC 29221  
*Attorney for Belle Hall Plantation  
Homeowner's Association, Inc.*

  
D. Conor Keys

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March 11, 2015,

The Honorable Jenny Abbott Kitchings  
Clerk of Court, SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RE: Belle Hall Plantation Homeowner's Association, Inc. v. John A. Murray,  
Trustee of John E. Murray Gloria C. Murray Family Trust  
Appellate Case No.: 2014-002018**

Madam Clerk,

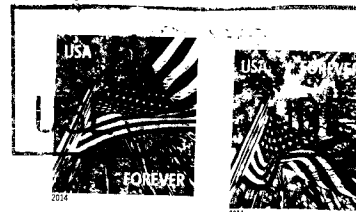
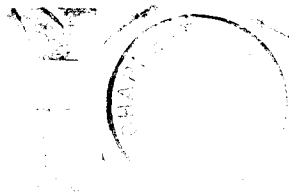
Please find enclosed Appellants Reply to Respondent's Return. I kindly request that you file the same.

With kind regards

  
D. Conor Keys

Enclosures:  
(as stated)  
CC:  
Amanda Reece  
Stephanie Trotter

D. Conor Keys  
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