

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APR 9 2015

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

Marvin H. Dukes, III, Master in Equity and Circuit Court Judge

Court of Appeals Appellate Case No.: 2012-213579  
Unpublished Opinion No. 2014-UP-430 (S.C. Ct. App. filed Nov. 26, 2014)

Cashman Properties, LLC

Respondent,

vs.

WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o  
Louise Lightsey Baughman; the Trust under Will of E.  
Oswald Lightsey dated August 8, 1958, and Codicil  
dated March 23, 1976, for the Benefit of Lilian Lightsey  
Drawdy; and the Trust Under Will of E. Oswald Lightsey  
for the Benefit of Claudia Lightsey Ware

Petitioners.

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**Petition for Writ of Certiorari**

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## **CERTIFICATE OF COUNSEL**

Counsel for Petitioners certify that they filed a Petition for Rehearing on February 9, 2015, and the South Carolina Court of Appeals denied the petition on March 10, 2015. (App. 838-839.)

### **Question Presented**

- I. Did the court of appeals err in affirming the trial court's grant of a declaratory judgment in favor of Respondent when, under South Carolina law, the Uniform Declaratory Judgments Act does not create any substantive rights or duties and each of the substantive legal theories raised by Respondent was either voluntarily withdrawn by Respondent or decided in favor of Petitioners?

## Introduction

This petition presents the novel question of law whether the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (2005) (“the Act”), is a source of substantive legal rights or simply provides a procedural remedy that protects rights arising under substantive law. This Court has heretofore recognized that the Act does not create substantive rights, and is remedial in nature. *Felts v. Richland Cnty.*, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct. App. 1989), *aff’d* 303 S.C. 354, 400 S.E.2d 781 (1991). *See also State ex rel. Edmisten v. Tucker*, 323 S.E.2d 294, 308 (1984) (“[T]he Act creates a new remedy, not a new source of legal rights and obligations.”).

In the present case, however, the court of appeals read the Act as authorizing the creation of substantive rights from the Act itself, and held that the Act “provides trial courts are authorized to declare rights, status, and other legal relations whether any further relief is or could be claimed.” *Cashman Props., LLC v. WNL Props.*, Op. No. 2014-UP-430, 2014 WL 6682469, at \*3 (S.C. Ct. App. filed Nov. 26, 2014) (citing S.C. Code Ann. § 15-53-20 (2005)).

On this basis, the court of appeals affirmed a declaration that the Cashmans have ownership rights in the property that is the subject of this case even though every substantive claim for ownership advanced by the Cashmans was withdrawn or decided against them. Thus, in the absence of any legal basis to award ownership, the trial court declared, and the court of appeals affirmed, co-ownership *ex nihilo*. This decision transforms the Declaratory Judgments Act into a source of undefined substantive rights rather than a procedural mechanism “to establish a party’s entitlement to a preexisting right.” *Harvey v. S.C. Dep’t of Corr.*, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App.

1999) (citing *Noisette v. Ismail*, 299 S.C. 243, 247 n.1, 384 S.E.2d 310, 312, n.1 (Ct. App. 1989), *rev'd in part by* 304 S.C. 56, 403 S.E.2d 122 (1991)). This result is contrary to the established law of South Carolina, as well as the law of every other state that has a similar declaratory judgment statute. If uncorrected, it will create a dangerous precedent by which a court could use the Act to establish substantive rights even though the long established necessary elements of those rights are absent. This case therefore presents a novel question of law that this Court should resolve with finality. Accordingly, this Court should grant Petitioners' petition and reverse the decision of the court of appeals.

#### **Statement of the Case**

This an appeal from an action granting a declaratory judgment in favor of Respondent Cashman Properties, LLC (“the Cashmans”) against Petitioners WNL Properties, LLC; E. Oswald Lightsey Trust f/b/o Louise Lightsey Baughman; the Trust under Will of E. Oswald Lightsey dated August 8, 1958, and Codicil dated March 23, 1976, for the Benefit of Lilian Lightsey Drawdy; and the Trust Under Will of E. Oswald Lightsey for the Benefit of Claudia Lightsey Ware (collectively “the Lightseys”) declaring that the Cashmans and the Lightseys are tenants on common with respect to certain property—a pier, pierhead, and two floating docks (“Dock 3”)—located in Beaufort County, South Carolina.

The Cashmans filed their Complaint on May 29, 2009 and the Lightseys filed their Answer on August 10, 2009. (App. 676-704.) The Cashmans filed an Amended Complaint on September 8, 2009, and the Lightseys filed a Third Amended Answer to Amended Complaint on September 10, 2010. (App. 22-45; App. 46-53.) The Amended Complaint sets forth three claims for co-ownership of the dock: adverse possession,

prescriptive easement, and resulting trust. On July 27, 2011, the trial court transferred this matter to the Master in Equity and Special Circuit Court Judge for Beaufort County.

A trial was held on October 31 and November 1, 2011. On December 19, 2011, the trial court signed an order finding that although the substantive theories that the Cashmans contended gave them a right to use Dock 3—adverse possession, prescriptive easement, and resulting trust—were either voluntarily dismissed or resolved in the Lightseys' favor, the Cashmans and the Lightseys were nonetheless co-owners as tenants in common of Dock 3. (App. 1-11.) The trial court also ordered that a supplemental hearing be held for the purposes of determining a method of payment for the maintenance and upkeep of Dock 3, and for determining the amount of expenses to be paid to the Lightseys by the Cashmans. (*Id.*) The Lightseys filed a Motion to Reconsider or in the Alternative Alter Judgment on January 5, 2012. (App. 54-55.) The supplemental hearing was held on April 19, 2012, and the trial court subsequently issued an Order on Costs on July 10, 2012. (App. 666-675.) Following this hearing, on August 3, 2012, the Lightseys filed a Supplement to Motion to Reconsider or in the Alternative Alter Judgment. (App. 56-57.)

The trial court held a hearing on the Lightseys' supplemental motion on August 15, 2012. Following the hearing, on November 5, 2012, the trial court issued an Amended Declaratory Judgment, and on November 15, 2012, the trial court issued a Supplement to Amended Declaratory Judgment. (App. 12-20; App. 21.)

The Lightseys filed a Notice of Appeal in the court of appeals on December 5, 2012, and the Cashmans filed a Notice of Appeal on December 10, 2012. On November 26, 2014, in an unpublished opinion, the court of appeals affirmed the trial court's order

granting a declaratory judgment. (App. 816-821.) The Lightseys now petition this Court for a writ of certiorari.

### **Facts**

In 1930, Fred Lightsey purchased property on Oyster Street in Beaufort County, South Carolina in the area known as the Brighton Beach development. (R. p. 339; R. pp. 341-343.) Ownership of the property ultimately passed to the Lightsey Trusts. (R. pp. 22-45; R. p. 32; R. p. 426; R. pp. 428-429.)

By 1931, J.O. Cashman had also purchased property on Oyster Street in the Brighton Beach development. (R. pp. 341-343.) By 1977, ownership of the property purchased by J.O. Cashman had passed to his son, Eugene K. Cashman, Sr. (“Cashman, Sr.”). (R. pp. 119-120; R. p. 179.) In 1994, Cashman, Sr. transferred the property to his children, Eugene K. Cashman, Jr. (“Cashman, Jr.”), and Betty Cashman Davis. (R. pp. 119-120; R. p. 185.) The property was subsequently deeded to Cashman Properties. (R. p. 179.)

Neither the Lightsey property nor the Cashman property abuts the May River. Oyster Street itself and a strip of property separate the two properties from the May River. Ownership of the strip of property that abuts the May River was not an issue in this case, (R. pp. 22-45; R. pp. 46-53; R. pp. 626-655), although the court of appeals ultimately ruled that the property was commonly owned by the Lightseys and the Cashmans. *Cashman Props., LLC*, 2014 WL at \*3.

At least four different docks were alleged to have been built by the parties on the May River. In the 1930s, the Cashmans built a dock (Dock 1) on the May River in front of the parties’ Oyster Street Properties. (R. pp. 85-86; R. p. 89.) Dock 1 was replaced by

a second dock (Dock 2), which was also claimed to have been built by the Cashmans in 1941. (R. p. 89.) At some point in time prior to 1942, the Lightsey family built a dock beside Dock 2 (the “spare dock”). For at least ten years, the Lightsey’s “spare dock” existed alongside Dock 2. (R. pp. 626-655.)

On February 18, 1946, Thomas O. Lawton, the original developer of the Brighton Beach development, gave written permission to a Mr. Sanders to build a dock in the area of Dock 2. The note instructed Sanders to build his dock “any where [sic] to the right of the Lightsey dock will be satisfactory to me. Do not build it to the left of the Carter-Cashman dock.” (R. pp. 357-362.)

On February 21, 1961, the Lightsey family received a permit to build another dock (Dock 3) on the May River in front of the Oyster Street properties. (R. p. 391.) The Lightsey family permitted, built, and paid for Dock 3. (R. p. 89; R. p. 125.) After the Lightseys built Dock 3, they gave the Cashman family permission to use Dock 3. (R. p. 426.) The permission to use Dock 3 included written permission from Oswald Lightsey for J.O. Cashman to add a floating dock to Dock 3 owned by the Lightsey Brothers. (R. p. 385; R. p. 542, Dep. p.42, lines 12-16.) The written permission reads, in part, “I, Oswald Lightsey, do hereby give permission to Eugene K. Cashman, to attach floating dock and ramp to dock as mentioned in the above application for permit. (R. p. 385; R. p. 387; R. pp. 116-119.)

Since 1961, the Lightseys have spent \$89,550.66 to build and maintain Dock 3 and to pay property taxes associated with Dock 3. (R. pp. 599-624.) The Cashmans could not identify any receipts solely for Dock 3, (R. pp. 134-138), and conceded that they had never paid property taxes related to Dock 3. (R. p. 123; pp. 126-127.)

On September 15, 2004, the Lightseys held a regularly scheduled meeting to discuss their jointly owned property. During the meeting, which occurred before there was any dispute over Dock 3, the Lightseys acknowledged that they had allowed the Cashmans to attach a floating dock to the left side of Dock 3's pier. (R. p. 426.)

By November of 2004, the small floating dock that the Cashmans were given permission to add to Dock 3 had blown away, and thus was not in usable condition. (R. p. 426; R. p. 476, Dep. p. 53, lines 6-12; R. p. 544, Dep. p. 54, lines 7-13.) Photographs taken of Dock 3 on November 23, 2004, as part of a routine appraisal of the Lightsey Trust's property, show that the floating dock installed by the Cashmans was no longer attached to Dock 3. (R. pp. 431-438.)

Between November 2004 and February 2005, the Lightseys placed a lock on the gate of Dock 3 to keep trespassers off of Dock 3. (R. p. 469, Dep. p.26, lines 16-22.) In February 2005, Cashman, Jr. asked a member of the Lightsey family for a key so that the Cashman family could continue to use Dock 3. A member of the Lightsey family sent the key without consulting with the rest of the Lightsey family. (R. p. 472, Dep. p.38, lines 8-11; R. p. 544, Dep. p. 55, lines 3-20.) However, on March 16, 2005, the Lightsey family asked the Cashman family to return the key and stop using Dock 3. (R. pp. 442-444; R. p. 446; R. p. 472, Dep. p. 37, lines 3-5.) Cashman, Jr. voluntarily returned the key on March 28, 2005 with a note that stated that if he needed to make the Cashmans' use of Dock 3 a "business relationship," he was willing to do so. (R. p. 106; R. pp. 448-449; R. p. 544, Dep. p. 55, line 21-R. 545, Dep. p. 56, line 3.)

From 2005 through May 2009, Dock 3 was exclusively used by the Lightseys. The Cashmans did not have a key, and did not otherwise object to being excluded from

Dock 3. *Id.* Four years and two months later, on May 29, 2009, the Cashmans filed their complaint for declaratory judgment.

### Argument

#### **I. The Court of Appeals Erred in Affirming the Trial Court's Grant of a Declaratory Judgment.**

The Declaratory Judgments Act “is remedial and procedural in nature and does not create substantive rights and duties.” *Felts v. Richland Cnty.*, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct. App. 1989), *aff'd* 303 S.C. 354, 400 S.E.2d 781 (1991). *See also State ex rel. Edmisten v. Tucker*, 323 S.E.2d 294, 308 (1984) (“[T]he Act creates a new remedy, not a new source of legal rights and obligations.”). Rather, the Act “authorizes an action to establish a party’s entitlement to a preexisting right.” *Harvey v. S.C. Dep’t of Corr.*, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 1999) (citing *Noisette v. Ismail*, 299 S.C. 243, 247 n.1, 384 S.E.2d 310, 312, n.1 (Ct. App. 1989), *rev’d in part by* 304 S.C. 56, 403 S.E.2d 122 (1991)).

Thus, a court’s authority to issue a declaratory judgment must fall within the parameters of an established legal theory, and the rights a court can declare in a declaratory judgment action must be found in some other place in the law. That success on a declaratory judgment action is necessarily dependent on success of an underlying claim is widely recognized in other jurisdictions. *See Becker v. Kroll*, 340 F. Supp. 2d 1230 (D. Utah 2004), *aff’d in part, rev’d in part by* 494 F.3d 904 (10th Cir. 2007) (observing that “Plaintiff’s causes of action for declaratory judgment and injunction are, of course, dependent on the success of the underlying claims”); *Days Inn Worldwide, Inc. v. Sai Baba*, 300 F. Supp. 2d 583 (N.D. Ohio 2004) (holding that a “request for declaratory judgment must accompany the substantive claim for which declaratory

judgment is sought” and defendants “failed to state a claim on which relief can be granted by failing to link their request for declaratory judgment to an underlying substantive claim for relief”); *Econ. Opportunity Comm’n of Nassau Cnty., Inc. v. Cnty. of Nassau*, 106 F. Supp. 2d 433 (E.D.N.Y. 2000) (stating that “a court may only enter a declaratory judgment on favor of a party who has a substantive claim of right to such relief”); *Matos v. First Nat’l Bank*, No. 092681B, 2010 WL 3327725, at \*4 (Mass. Super. June 16, 2010) (finding that because plaintiff’s declaratory judgment claim is “dependent on the success” of plaintiff’s underlying claims, the “failure of the Plaintiff’s previous claims” means that the declaratory judgment claim “must also fail”); *Repwest Ins. Co. v. Praetorian Ins. Co.*, 890 F. Supp. 2d 1168, 1183-84 (D. Ariz. 2012) (finding that “[d]eclaratory judgment is a remedy that is dependent on Plaintiff’s success on an underlying cause of action. Because the Court has dismissed Plaintiff’s only cause of action against Defendant Aon, its claim for declaratory relief must also be dismissed”). Even under South Carolina law, whether a declaratory judgment arises in equity or in law is dependent on the underlying issue. *See Noisette*, 299 S.C. at 246, 384 S.E.2d at 312 (“A declaratory judgment is like a chameleon. Its color is determined by its background, *i.e.*, the underlying action.”); *Felts v. Richland Cnty.*, 303 S.C. 354, 546, 400 S.E.2d 781, 782 (1991) (“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.”).

The court of appeals therefore erred when it affirmed the trial court’s grant of a declaratory judgment in the absence of any substantive basis of ownership having been established. According to the court of appeals, the trial court’s grant of a declaratory judgment was “in full conformity with the true intent and meaning of the [Declaratory

Judgments] Act because the Act “provides trial courts are authorized to declare rights, status, and other legal relations whether any further relief is or could be claimed.” *Cashman Props., LLC v. WNL Props., Op. No. 2014-UP-430, 2014 WL 6682469, at \*3* (S.C. Ct. App. filed Nov. 26, 2014). This statement is correct, and the Act authorizes a court to declare rights whether any further relief is or could be claimed. However, it does not authorize a court to create rights that do not exist under substantive legal principles. In the present case, the Cashmans’s ownership rights in Dock 3 had to come from somewhere—*e.g.*, adverse possession law, prescriptive easement law, resulting trust law, but they could not come from the Act.

The Cashmans could not be declared co-owners of the dock unless they established a substantive right of ownership under one or more of the three theories that they pled/raised and relied on at trial. Because each legal theory upon which the Cashmans claimed ownership of Dock 3 was either dismissed by the trial court or voluntarily withdrawn by the Cashmans there was no substantive basis to issue a declaratory judgment.

The claim that the Cashmans had a prescriptive easement over the dock was denied by the trial court. (R. p. 21 (“To the extent not stated, the Court denies Plaintiff’s claim for prescriptive easement.”)). The claim for a resulting trust (*see* R.pp. 27-28), was also denied by the trial court. (R. pp. 316-17). The claim for adverse possession was withdrawn by Plaintiff and as to which the trial court concluded, “this is not an adverse possession case.” (R. pp. 215-218.)

Prescriptive easement, resulting trust, and adverse possession are the only substantive theories upon which the Cashmans contended they had ownership rights in,

or gave them the right to use, Dock 3. These were the theories the Cashmans argued (*see* R. p. 80), the Lightseys defended, and the trial court resolved in favor of the Lightseys. The Cashmans did not plead or argue any other method that could possibly result in co-ownership of a dock under South Carolina law.<sup>1</sup> It was therefore error for the trial court to declare, and for the court of appeals to affirm, that the Cashmans had ownership rights in Dock 3 when the only theories that could result in ownership were either withdrawn or decided in favor of the Lightseys. The Act did not authorize the trial court or the Court of Appeals to declare a right of ownership except under one of the theories asserted by the Cashmans. This Court should grant the Lightsey's petition and reverse the decision of the court of appeals.

## **II. Practical Reasons Exist to Grant Petitioners' Petition.**

Allowing the decision of the court of appeals to stand would create significant confusion in the law and turn the Uniform Declaratory Act into a source of unstated and far reaching substantive rights. When confronted with a complaint for a declaratory judgment, a defendant will not know what he must defend against or what the plaintiff must prove in order to prevail. For example, how should the Lightseys have defended a declaration of co-ownership, what evidence would have defeated it, and what was the burden of proof? In addition to being seriously prejudicial to defendants, such an application of the Act would lead to inconsistent and unpredictable results. Motions to

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<sup>1</sup> The Cashmans did not plead or argue that they purchased Dock 3, had a constructive trust over Dock 3, that Dock 3 was gifted to them, or any other legal theory that would result in ownership rights over Dock 3. Moreover, a review of the record reveals that neither the trial court nor the court of appeals cited a single case to support the declaration of co-ownership. The only statute cited was the Uniform Declaratory Judgment Act, generally.

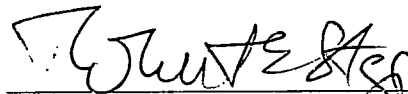
dismiss and motions for summary judgment would become difficult to raise because precedents based on established legal theories may not be controlling in a declaratory judgment action.

These concerns are easily resolved, however, by a straightforward decision of this Court that the Act does not create new rights, but only provides a procedural basis for the declaration of rights arising under substantive law. The court of appeals erred in affirming the trial court's grant of a declaratory judgment. This Court should therefore grant this Petition for Writ of Certiorari.

### **Conclusion**

For the reasons set forth above, Petitioners respectfully request that this Court grant this Petition for Writ of Certiorari and reverse the decision of the court of appeals.

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Columbia, South Carolina

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APPEAL FROM BEAUFORT COUNTY  
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Drawdy; and the Trust Under Will of E. Oswald Lightsey  
for the Benefit of Claudia Lightsey Ware

Petitioners.

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**Proof of Service**

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I certify that I have caused the Petitioners' Petition for Writ of Certiorari and Appendix to be served on Respondents by U.S. Mail on April 9, 2015, addressed to their attorneys of record, and mailed to the following:

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*Attorneys for Petitioners*

April 9, 2015

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APR 9 2015

S.C. Supreme Court

**BY HAND-DELIVERY**

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1231 Gervais Street  
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Re: Cashman Properties v. WNL Properties, LLC; E. Oswald Lightsey Trust, et al.  
Court of Appeals Appellate Case No. 2012-213579  
SGS&L File No.: 6732/1500

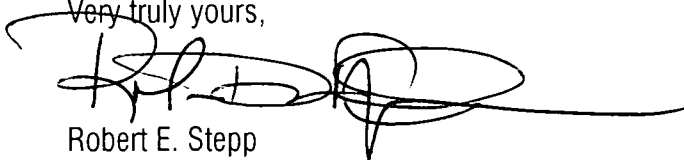
Dear Mr. Shearouse:

Enclosed please find the original and seven (7) copies of Petioners' Petition for Writ of Certiorari and the original and five (5) copies of the Appendix along with Proof of Service. Also enclosed is a check in the amount of \$100.00 in payment of the filing fee.

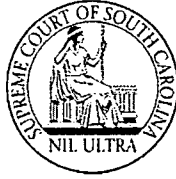
I would appreciate your filing as appropriate and returning a clocked-in copy of each via our courier.

By copy of this letter, and as evidenced by the Proof of Service, I am serving same upon counsel for the Respondent.

Very truly yours,

  
Robert E. Stepp

cc: J. Ashley Twombly, Esquire  
Roberts Vaux, Esquire  
James P. Scheider, Jr., Esquire  
Mark S. Berglind, Esquire  
John S. Nichols, Esquire  
Norris L. Laffitte



# The Supreme Court of South Carolina

Sowell Gray Stepp & Laffitte

04/10/2015

## RECEIPT #75633

**Case No:** 2015-000736  
**Case Short Title:** Cashman Properties v. WNL Properties  
**Event:** Petition for Writ of Certiorari and Responses - Petition and Appendix  
**Fee Type:** Case Initiation Fee  
**Amount:** \$100.00  
**Payment Type:** Check  
**Reference No:** 20767  
**Check/Money Order Date:** 04/09/2015  
**Comments:**