

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

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Unpublished Opinion No. 2014-UP-466  
(S.C. Court of Appeals-Filed December 17, 2014)

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**RECEIVED**

APR 16 2015

**S.C. Supreme Court**

John Sherrill and Estate of Gaye Marie Reynolds.....Petitioner

vs.

Gary Moore.....Respondent

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**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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**QUESTIONS PRESENTED  
BY PETITIONER**

I. Did the Court of Appeals err in holding that if the Plaintiff was a bidder he must offer cash in an amount equal to the homestead exemption?

II. Did the Court of Appeals err in not holding that the South Carolina Constitution trumps the homestead exemption and as a result Moore was not entitled to the homestead exemption?

III. Did the Court of Appeals err in holding that the Plaintiff could not raise additional grounds as to why the homestead exemption should not apply in subsequent supplemental proceedings?

IV. Is the homestead exemption inequitable in a case in which the Plaintiff attempts to collect a civil judgment from a criminal defendant for his crime?

V. Is *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C. App. 2002) unfair as a matter of law and contra to S.C. Code Ann. §15-41-10?

**RESPONDENT'S COUNTER-STATEMENT  
OF QUESTIONS PRESENTED**

I. Whether the Court of Appeals correctly applied *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C. App. 2002) to this case.

II. Whether the Court of Appeals correctly ruled that Petitioner could not raise new issues for the first time in his motion to reconsider.

**COUNTER-STATEMENT OF THE CASE**

Petitioner in this action is seeking to collect on a money judgment obtained in a civil case. Petitioner obtained a judgment against Respondent in a civil action (Case No. 2003-CP-26-5790) for wrongful death. On October 2, 2008, Petitioner filed a second civil complaint (Case No. 2008-CP-26-7941) against Respondent, among others, for the

purpose of collecting on Petitioner's judgment in the first case; the second complaint sought a declaratory judgment that Respondent was the sole owner of real property located at 5848 Creekside Drive and the property should be sold at public auction.

The case was referred to the Master-in-Equity for Horry County. As a result of a hearing in May, 2010, the Master-in-Equity issued an Order dated June 10, 2011, ruling that Robert Moore was the joint owner of the real property by way of a resulting trust, and that Respondent, Gary Moore, was not the sole owner of the property, but a joint owner as tenant in common with Robert Moore. The Master also ruled that the Petitioner's judgment attached to Respondent's one-half interest in the property, and that if a judicial sale was needed to satisfy Petitioner's judgment, the Respondent's one-half interest would be sold.

On November 10, 2011, Petitioner filed a motion in Case No. 2008-CP-26-7941 for an order authorizing the judicial sale of the property.

On November 22, 2011, Respondent filed a motion in that case seeking an order declaring that Respondent's interest in the property was subject to the homestead exemption set forth in S.C. Code Ann. § 15-41-30 (1976 & Supp. 2012), and that if the property was sold at judicial sale, the minimum bid must be in the amount of the homestead exemption. Respondent's motion was supported by an affidavit of the Respondent, who is incarcerated with a projected release date of July 18, 2018; Respondent stated in his affidavit that prior to his being incarcerated, he resided at the property, and he intends to return there to live upon his release.

The Master-in-Equity for Horry County heard both of these motions at a hearing on May 15, 2012. At the hearing, Respondent made an additional motion in open court,

based upon conversation with Petitioner's counsel prior to the hearing, for an order requiring that the successful bidder at a judicial sale, even if it were the Petitioner, be required to pay cash in an amount equal to the homestead exemption. Petitioner argued that a judgment creditor is required merely to put in a credit bid up to the amount of his judgment, and should not have to pay any cash to satisfy the homestead exemption.

The Master issued an Order on April 15, 2013 ruling that the property is the Respondent's residence under the meaning of S.C. Code Ann. § 15-41-30(A)(1), and that the Respondent is entitled to the homestead exemption in his one-half interest in the property; and further ruling that the successful bidder at a judicial sale of Respondent's interest in the property should be required to pay the selling officer cash in an amount equal to the homestead exemption, even if the successful bidder was the judgment creditor.

The Petitioner filed a Motion for Reconsideration in which he argued, for the first time, that permitting the Respondent to claim the homestead exemption violated the "Victim's Bill of Rights" contained in Article I, § 24 of the South Carolina Constitution. This argument was not raised to the Master in Equity at the hearing.

Respondent filed a Reply requesting that the motion for reconsideration be denied because the issue contained in the motion was not presented to the trial court at the hearing.

The Master issued an Amended Order Denying Plaintiff's Motion for Reconsideration on June 10, 2013. The Petitioner appealed; the Court of Appeals affirmed the Master in Equity's ruling in Unpublished Opinion No. 2014-UP-466.

## ARGUMENT

- I. **The Court of Appeals correctly applied Holden v. Cribb to this case and correctly affirmed the Master-in-Equity's ruling that the successful bidder at a judicial sale of the property must pay cash in an amount equal to the homestead exemption.**

This section will address Petitioner's arguments enumerated in I, IV, and V of the Questions Presented on page 1 of his Petition for Writ of Certiorari.

The homestead exemption is a right established by the South Carolina Constitution in Article III, §28, which requires the General Assembly to "enact such laws as will exempt real and personal property of a debtor from attachment, levy and sale under any mesne or final process issued by any court or bankruptcy proceeding." "The legislature carried out this constitutional mandate under the 'Homestead and Other Exemptions' statute," Scholtec v. Estate of Reeves, 327 S.C. 551, 554, 490 S.E.2d 603, 604 (Ct.App. 1997). The South Carolina Homestead and Other Exemptions statute is found in S.C. Code Ann. §§15-41-10, *et seq.* Among the types of property exempted from attachment and levy by the statute is "the debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property that the debtor or a dependent of the debtor uses as a residence." S.C. Code Ann. §15-41-30(A)(1).

In South Carolina, as elsewhere, the homestead exemption is to be liberally construed to benefit the debtor. Scholtec v. Reeves, 327 S.C. at 558, 490 S.E.2d at 607; Wells Fargo Financial Leasing, Inc. v. D&M Cabinets, 99 Cal.Rptr.3d 97 (Ca.Ct.App.Dist. 2009). In the latter case, the California Court of Appeals stated that "a homestead exemption does not preclude sale of the home but entitles the homesteader to receive the value of the exemption if the property is sold to satisfy a judgment lien" so the

debtor can use the proceeds to acquire another residence. 99 Cal.Rptr.3d at 104, *citing* 5 Miller & Starr, Cal. Real Estate (3d ed. 2000 §13:43, p. 87).

Petitioner argues that as the judgment creditor, he should not have to pay cash in an amount equal to the homestead exemption if he is the successful bidder at a judicial sale of the property in execution of his judgment. The case of Holden v. Cribb, 349 S.C. 132, 561 S.E.2d 634 (Ct.App. 2002) is directly on point. In that case, Holden had obtained a civil judgment against the judgment debtor, Singleton, for assault and battery. 349 S.C. at 135, 561 S.E.2d at 636. Holden sought an order compelling the Sheriff of Georgetown County to accept her non-cash bid entered at a judicial sale of Singleton's property to satisfy her judgment. The property was subject to the homestead exemption. 349 S.C. at 135-136, 561 S.E.2d at 636. The trial court ruled that the Sheriff had acted properly in rejecting Holden's non-cash bid. 349 S.C. at 138, 561 S.E.2d at 638. On appeal, the Court of Appeals rejected Holden's argument and upheld the trial court's ruling. 349 S.C. at 139, 561 S.E.2d at 638.

Petitioner also argues that S.C. Code Ann. §15-41-30(A)(13) allows "the homestead exemption to be trumped for certain criminal acts;" however, §15-41-30(A)(13) does not deal with a debtor's exemption in property that is his residence (or with any criminal acts), but rather with a debtor's right to an exemption from attachment or levy on his right to receive certain individual retirement accounts as described in portions of the Internal Revenue Code. Section 15-41-30(A)(13) provides that such claimed exemptions may be reduced or eliminated by the amount of a fraudulent conveyance into such an account. This section appears to be intended to prevent judgment debtors from evading creditors by transferring funds into a protected retirement

account. It is not applicable to (and makes no sense in respect to) a debtor's exemption in property that is his primary residence, as set forth in §15-41-30(A)(1) of the statute.

Petitioner also states that Holden v. Cribb is "unfair as a matter of law and contra with S.C. Code Ann. §15-41-10" (Numeral V of the "Questions Presented" on page 1 of the Petition). S.C. Code Ann. §15-41-10 states:

When selling property in which a debtor has an exemption as provided in Section 15-41-30, the sheriff or other officer conducting the sale, in the advertisement of the sale, also shall state that the minimum bid for the property must be in the amount of the exemption and no bid less than the amount of the exemption may be accepted.

The intent of this obviously is to protect the exemptions enumerated in Section 15-41-30; Holden v. Cribb is entirely consistent with these statutes in protecting a judgment debtor's homestead exemption.

Allowing a judgment creditor to make a non-cash bid for homestead property, as Petitioner seeks to do, would be against the precedent of Holden v. Cribb and would entirely defeat the purpose of the homestead exemption, which is "to protect from creditors a certain portion of the debtor's property and to prevent citizens from becoming dependent on the State for support. Holden v. Cribb, 349 S.C. at 140, 561 S.E.2d at 639; citing Scholtec v. Estate of Reeves, 327 S.C. 551, 490 S.E.2d 603. *See also* Andrews v. Security Nat. Bank of Wichita Falls, 50 S.W.2d 253 (Tex. 1932) (stating "Homestead laws are not only based on a tender regard for the welfare of the citizen, but have for their object the stability and welfare of the state.") (citations omitted).

Petitioner also argues that the homestead exemption is inequitable in this case because Respondent was convicted of a crime, but does not cite any law or precedent in support of this position. Again, Petitioner is seeking to enforce a money judgment

obtained in a civil lawsuit. Holden v. Cribb is on point again in that it involved a judgment creditor seeking collection of a money judgment that she obtained in a civil lawsuit for assault and battery (also a criminal act). 349 S.C. 132, 561 S.E.2d 634. The South Carolina Court of Appeals found that the judgment debtor was entitled to the homestead exemption in that case.

**II. The Court of Appeals correctly ruled that Petitioner could not raise new arguments for the first time in a motion for reconsideration**

a. Petitioner's constitutional argument was not preserved for appeal.

The argument set forth by Question II of the Questions Presented in the Petition for Writ of Certiorari was not raised to the Master in Equity at the hearing.<sup>1</sup> This constitutional issue was raised for the first time in a motion for reconsideration.

This argument is not preserved for review according to well-established precedent. "In order to preserve an issue for appellate review, a matter may not be raised for the first time on appeal but must have been raised to and ruled upon by the trial court." Hill v. South Carolina Dept of Health and Environmental Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010), citing Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998).

Petitioner appears to argue in the Petition for Writ of Certiorari that, because the underlying action is an attempt to collect a judgment, Petitioner may raise new issues at any stage of the proceedings, but offers no support for this argument, which contradicts existing precedent. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct.App. 1999) (cited by the South Carolina Court of Appeals in the

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<sup>1</sup> Petitioner's Petition for Writ of Certiorari states on p. 4 that "At the hearing before the Master-in-Equity, Petitioner made a Constitutional argument pursuant to Art. I, Section 24 entitled Victim's Bill of Rights." Petitioner did not make this argument at the hearing but raised it for the first time in a motion for reconsideration.

unpublished opinion in this case), which involved an appeal from supplemental proceedings, the Court of Appeals found that an issue was not preserved for appellate review because the record did not indicate that it had been raised prior to a motion for reconsideration. 334 S.C. at 186, 512 S.E.2d at 129.

b. Even if Petitioner's constitutional argument was preserved for appeal, the Victim's Bill of Rights does not apply

Even if the issue were preserved for appellate review, the Victim's Bill of Rights does not apply in this case. The underlying lawsuit is an action to collect on a judgment in a *civil* case. The Victim's Bill of Rights does not affect civil proceedings; rather, it enumerates rights of victims with respect to criminal proceedings only. S.C. Const. art. I, § 24. For example, the Victim's Bill of Rights gives to crime victims rights to be informed during criminal proceedings, to confer with the prosecution, and to be informed when an accused or convicted person is arrested or released from custody. S.C. Const. art. I, § 24. The South Carolina Supreme Court, in tracing the history of the Victim's Bill of Rights, notes that it grew out of a victim's rights movement that 'focused on integrating the crime victims' concerns into *the criminal justice process*." Ex parte Littlefield, 343 S.C. 212, 217, 540 S.E.2d 81, 83 (2000) (emphasis supplied). "Once a criminal case has been resolved and the defendant is sentenced, the alleged victim loses his victim status under the Victim's Bill of Rights." Littlefield, 343 S.C. at 221, 540 S.E.2d at 86.

Although Petitioner makes several references to restitution in his Petition and states that the judgment is "akin to restitution," this judgment is in fact a judgment in a civil lawsuit, not an order of restitution granted in a criminal proceeding, and is subject to laws governing civil judgments, including the homestead exemption provided by the South Carolina Constitution in Article III, §28 and by S.C. Code Ann. §15-41-10 *et seq.*

- c. Petitioner's argument that the Respondent should be limited to a homestead exemption of \$25,000.00, \$5,000.00, or \$2,500.00 for appeal.

Petitioner argues for the first time on appeal that the amount of the exemption Respondent is entitled to claim in his homestead property should be limited to less than the statutory amount of \$50,000.00. S.C. Code Ann. §15-41-10(A)(1) provides that a judgment debtor's interest "not to exceed fifty thousand dollars in value"<sup>2</sup> in real property that he uses as a primary residence is exempt from attachment, levy, and sale.

Petitioner asserts that Respondent's exemption in the property would be no more than \$25,000.00, because Respondent owns a half interest in the property, although Petitioner cites no support for this and it contradicts the statutory language. Petitioner also appears to argue that the Respondent's exemption should be limited to \$5,000.00 (or \$2,500.00), because the order approving the settlement in the civil case was signed on May 22, 2008,<sup>3</sup> which Petitioner asserts is the date that the General Assembly increased the amount of the homestead exemption from \$5,000.00 to \$50,000.00.<sup>4</sup>

These arguments were not raised to the Master-in-Equity; they were raised for the first time on appeal, and are therefore not preserved for review. Hill v. South Carolina Dept of Health and Environmental Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623.

## CONCLUSION

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<sup>2</sup> Section 15-41-30(B) provides for the dollar amounts set forth in §15-41-30(A) to be adjusted beginning on July 1, 2008 and each even-numbered year thereafter to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the Department of Labor Bureau of Labor Statistics.

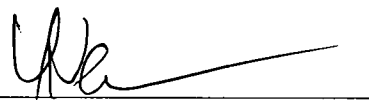
<sup>3</sup> The order was filed on May 20, 2008. The Respondent's confession of judgment was filed on June 2, 2008.

<sup>4</sup> In fact, the amount of the homestead exemption was increased to \$50,000.00 by 2006 Act No. 300, §2, which became effective on May 25, 2006.

Respondent respectfully submits that the Petition for Writ of Certiorari does not meet the criteria set forth in Rule 242 of the South Carolina Rules of Appellate Procedure. The opinion of the Court of Appeals in this case is supported by precedent that is directly on point (Holden v. Cribb, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002)), by the South Carolina Homestead and Other Exemptions Act (§§15-41-10 *et seq*), and by the South Carolina Constitution (S.C. Const. art. III, § 28). Petitioners' argument that the Victim's Bill of Rights operates to preclude Respondent from claiming the homestead exemption was not preserved for appeal. Even if it were preserved for appeal, it is unsupported by any legal authority. Further, the Victim's Bill of Rights simply does not apply: This is a proceeding to collect a judgment obtained in a civil action; it is not a criminal case. Moreover, Respondent's right to the homestead exemption derives from the South Carolina Constitution (S.C. Const. art. III, § 28); to deny Respondent that right, as Petitioner urges the Court to do, would itself violate the Constitution.

Based upon the foregoing, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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April 14, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

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Unpublished Opinion No. 2014-UP-466  
(S.C. Court of Appeals-Filed December 17, 2014)

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John Sherrill and Estate of Gaye Marie Reynolds.....Petitioner

vs.


Gary Moore.....Respondent

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PROOF OF SERVICE

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I certify that I have served the Respondent's Return to the Petition for Writ of Certiorari on Petitioner by depositing a copy of the Return in the United States Mail, postage prepaid, addressed to the Petitioner's attorney of record, Gene M. Connell, Jr., P.O. Drawer 14547, Surfside Beach, SC 29587 on April 14, 2015

  
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April 14, 2015

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April 14, 2015

Daniel E. Shearouse, Clerk  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**  
APR 16 2015  
S.C. Supreme Court

Re: John Sherrill and Estate of Gaye Marie Reynolds v. Gary Moore and Robert Moore  
Appellate Case No. 2-15-000552

Dear Mr. Shearouse

I enclose the original and seven copies of the Respondent's Return to the Petition for Writ of Certiorari, and Certificate of Service. I also enclose a self-addressed, stamped envelope; I would be most grateful if you would return one file-stamped copy of the Return to me in the enclosed envelope.

By copy of this letter, I am serving a copy of the documents listed above on counsel for Petitioner.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Kimberley Campbell

Encs.

cc: Gene M. Connell, Jr.  
P.O. Drawer 14547  
Surfside Beach, SC 29587