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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Stonewall Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-46-1425
Appellate Case No. 2014-002578

Ryan Powell, Appellant,

v.

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their individual and official capacities, Respondents.

PETITION FOR WRIT OF MANDAMUS

To the Justices of the Supreme Court of South Carolina:

Comes now, Appellant Ryan Powell ("Ryan" hereinafter), who requires this Court to grant this petition for writ of mandamus which the lower court refused to grant. This petition is being brought under the authority of Art. V, § 5 of the Constitution of the State of South Carolina and Rule 266 SCRAP. The Record on Appeal, the Final Brief of Appellant, and the Final Reply Brief of Appellant filed into this case are all incorporated fully herein by reference. Ryan shows the following in support of this petition:

I. Refusal of the Lower Court to Grant Ryan's Motion for Writ of Mandamus

1. Ryan's complaint for this action on appeal contains a request for a writ of mandamus [R. pg 10-11, #15-26].
2. Ryan's motion for a writ of mandamus was scheduled to be heard on June 19, 2014 during the hearing of Respondents' motions to dismiss and to substitute defendants [R. pg 59 line 3; R. pg 64, lines 3-7; R. pg 75, lines 3-10; R. pg 74, lines 24-25 to pg 75, lines 1-10; R. pg 75 lines 20 - 22].
3. During that hearing the trial judge determined that Ryan's motion for a writ of mandamus was "frivolous" [R. pg 84, lines 7-13]. Notwithstanding, the trial judge never made a ruling in his written order to dispose of Ryan's motion [R. pgs 2-5].
4. Ryan requested a second time that the trial judge rule on Ryan's motion for writ of mandamus in Ryan's Rule 59(e) SCRPC motion to alter or amend [R. pg 56, #9].
5. On October 23, 2014 the order denying Ryan's Rule 59(e) SCRPC motion to alter or amend was entered. In that order the trial judge again refused to dispose of Ryan's motion for writ of mandamus thereby denying Ryan the relief he requested [R. pgs 6-7].

II. Essential Elements Needed for the Issuance of a Writ of Mandamus

6. "Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal.", Wilson v. Preston, 662 SE 2d 580 (SC Sup Ct 2008).

i. The Act

7. Since Ryan did not record a deed for his property, then according to S.C. Code of Laws § 12-37-610 Ryan is not a person liable for the payment of any taxes or assessments on his property [see Final Brief of Appellant, pgs 1-21].
8. As evidence that Ryan is not liable, he has never been assessed with any taxes on his property. [R. pgs 8-21]
9. Respondents tacitly agreed that Ryan is not liable for any taxes by their silence. Notably, Respondents brief does not even address the issue of Ryan's liability for any taxes on his property [see Appellant's Final Reply Brief pgs 3-7].
10. Respondents have refused to correct their records after having received a signed, witnessed, and recorded notice evidencing that Ryan's property is no longer owned by it's previous owner [R. pg 22]. Respondents are pretending that since Ryan did not record a deed for his property that they can ignore evidence showing the previous owner no longer owns Ryan's property.
11. As long as Ryan's property continues to be erroneously listed in Respondents records as still being owned by its previous owner, Respondents are going to continue to illegally assess taxes against the previous owner and continue to seize and sell Ryan's property to pay those illegal assessments in violation of Respondents' statutes, the criminal laws, and Ryan's rights [R. pgs 8-28].
12. Respondents must correct their records to remove all references to Ryan's property, as his property is no longer owned by a person liable for any taxes.

ii. Respondents' duty to perform the act

13. Everyone has an absolute duty to not commit crimes.
14. Everyone has an absolute duty to not harm another.

15. Every employee of every company (private, public, or municipal) has an absolute duty to keep their financial records accurate.
16. Every debt collector has an absolute duty to collect delinquent debts only from those persons who owe the debts being collected.
17. Every public officer who has sworn an oath to uphold the Constitution of the State of South Carolina and of the United States has an absolute duty to not violate their oath.
18. Every officer of every municipal corporation has an absolute duty to act only within the statutes that they have been given the authority to enforce.

iii. The ministerial nature of the act

19. Respondents have the authority to assess and collect taxes **ONLY** from persons who are liable for those taxes. The following statutes clearly show that Respondents are acting outside their authority and show Respondents duties in this case are ministerial as these statutes call for no discretion¹.
20. S.C. Code of Laws § 12-49-10² shows that all taxes assessed are payable **by the person** against whom the taxes have been assessed. Since Ryan has never been assessed with any taxes, then Respondents have no authority to take or sell Ryan's property to pay the debt allegedly owed by another person. Respondents refuse to cease their illegal attempts to take Ryan's property, instead they continue to "pretend" that Ryan's property belongs to another person.

¹ "The duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion.", Redmond v. LEXINGTON CTY. SCHOOL DIST., 445 SE 2d 441 (SC Sup Ct 1994).

² S.C. Code of Laws § 12-49-10 "All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State **by the person against whom they shall be charged**".

21. S.C. Code of Laws § 12-37-610³ shows that it is the owner of recorded property that is liable for taxes and assessments. The previous owner of Ryan's property no longer owns Ryan's property and has not owned it since December 19, 2012 [R. pg 10, #11]. Accordingly, the previous owner cannot be legally assessed with any taxes. Further, since Ryan has not recorded a deed for his property, then Ryan does not owe any taxes. There is no longer any person liable to pay any taxes that can be listed in Respondents records for Ryan's property.
22. S.C. Code of Laws § 12-51-40⁴ gives Respondent Kiser the authority to **ONLY** levy property belonging to a defaulting taxpayer's estate. Since Ryan is not a defaulting taxpayer, nor does his property belong to any defaulting taxpayer's estate, then Respondent Kiser is without any legal authority to levy Ryan's property for someone else's alleged contractual obligation.
23. S.C. Code of Laws § 12-49-85⁵ gives Respondent Kiser the duty to cease collections when the debt become uncollectible for reasons including that the "delinquent taxpayer" does not have "sufficient property" to pay their debt. Since the alleged "defaulting taxpayer" in this case [the previous owner] does not own any property (nor do they even exist), Respondent Kiser has the duty to write off that alleged (and illegal) debt and he refuses to do so.

³ S.C. Code of Laws § 12-37-610 "Each person is liable to pay taxes and assessments on the real property that, as of **December thirty-first of the year preceding the tax year, he owns** in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located".

⁴ S.C. Code of Laws § 12-51-40 "After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction... requiring him to levy the execution by distress and sale **of the defaulting taxpayer's estate, real or personal, or both**"

⁵ S.C. Code of Laws § 12-49-85 (A) If the person officially charged with the collection of ad valorem taxes on real or personal property for a county determines that the tax, assessment, or penalty is uncollectible, he shall record that determination and the reason for it on a list he maintains. ... (B) The reasons for removal of a tax, assessment, or penalty from the duplicate list may include, but are not limited to: (1) **insufficient property of the person charged with the uncollectible tax**, assessment, or penalty to collect it;

24. S.C. Code of Laws § 12-39-260(A)⁶ gives Respondent Boheler the duty to keep a record of all sales and conveyances of real property in the county and update the county duplicate list [list of taxable persons and **their** property] at least annually. Respondent Boheler has refused to update the duplicate list after receiving notice that the previous owner of Ryan's property sold and no longer owns Ryan's property.
25. S.C. Code of Laws § 12-39-250⁷ gives Respondent Boheler the duty to correct the duplicate list when errors are found that invalidate or make void the collection of taxes. Respondent Boheler is obligated to correct her duplicate list to remove Ryan's property, as it no longer belongs to a person liable for the payment of any taxes. Respondent Boheler has refused to execute this duty.

iv. Ryan's specific legal rights for which discharge of Respondents' duty are necessary

26. Ryan has a natural right to own property which includes his unrestricted right of use, enjoyment and disposal of his property without interference from **anyone**.
27. Ryan has a natural right to exist and own property free of any taxation.
28. Ryan has a natural right to be let alone.
29. Ryan has a natural right to privacy.
30. Ryan has a right to expect that the State will protect his property, not steal it.

⁶ S.C. Code of Laws § 12-39-260 "(A) Each county auditor shall keep a record of all sales or conveyances of real property made in the county ... and from such record he shall correct the county duplicates annually."

⁷ S.C. Code of Laws § 12-39-250 "...At any time prior to payment of the tax the auditor shall also correct upon the duplicate for any tax year any errors that may be discovered that were made by county or state officers. At any time during the current tax year and before payment of the tax the auditor further shall correct other errors that may appear in the duplicate. At any time before the tax is paid **the auditor shall also correct other errors in the duplicate when such errors invalidate or make void the collection of the tax** reflected by reason of such error."

31. Ryan has a natural right not to be forced into commerce against his will to pay someone else's alleged contractual obligation.
32. Ryan has a natural right guaranteed to be protected by the Constitution of the State of South Carolina and of the United States to: not have his property taken from him *without due process of law*; not have his private property taken for private use *without his consent* or taken from him for public use *without just compensation* being first paid to him; not be *involuntarily enslaved*; and not have *his home unreasonably seized*.

v. Ryan's lack of any other legal remedy

33. Respondents are in the process of making their **third** illegal attempt to possess, seize, trespass on, post threatening notices on, advertise for sale, and sell Ryan's property **pretending** that Ryan's property belongs to another person; Respondents are taking these actions without any legal authority to do so.
34. The US Supreme Court has held that Constitutional violations cause irreparable injury and monetary awards alone cannot make the victim whole. See, Elrod v. Burns, 427 U.S. 347, 373 (1976); Sampson v. Murray, 415 U.S. 61 (1974).
35. A monetary award could never make Ryan and his family whole as their health has been compromised and their lifespan shortened by the tremendous and on-going mental and emotional stress and anxiety Respondents continuing attempts to steal Ryan's home and forcibly have Ryan, his family, and his personal belongings thrown onto the curb without any warning or ability to stop that theft.
36. Ryan's action against Respondents in their individual capacity for damages is entirely a separate issue from this request for mandamus in their official capacity.

Further, a initial search of Respondents' assets reveals that they have insufficient assets to cover the damages that have already been alleged in Ryan's complaint and those damages have doubled since Ryan filed his action. Damages will triple, should this Court allow Respondents' criminal wrongdoing against Ryan and his family to continue.

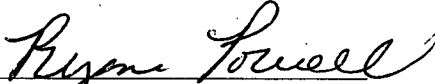
III. Conclusion

This Court must issue a writ of mandamus requiring Respondent Kiser to write-off the alleged debt of the previous owner of Ryan's property, as that "delinquent taxpayer" (which doesn't even exist) clearly has "insufficient property" to pay its alleged and illegally assessed debt and require Respondent Boheler to correct her duplicate list to remove all references to Ryan's property as it is no longer owned by a person liable to pay any taxes or assessments.

In the alternative, should this Court refuse to grant the above relief, Ryan moves this Court to expedite this appeal so as to minimize further damages to Ryan. Respondents have succeeded only in delaying resolution of Ryan's action (requiring this appeal which they have also unnecessarily delayed) with their game playing, lies, deception, misrepresentation of the facts and law of the case, and making only frivolous and nonsensical arguments to the lower court and to this Court.

Respectfully Submitted,

May 7, 2015


Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina

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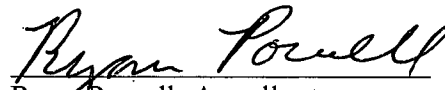
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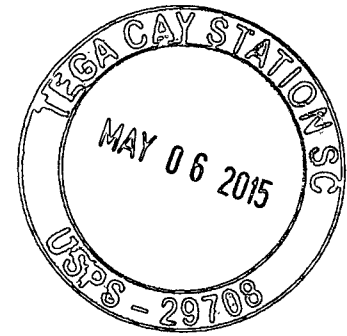
Certificate of Service

I certify that I have served on all Respondents the Petition for Mandamus by and through their attorney of record by First Class Mail with proper postage affixed on the date below shown addressed to W, Keith Martens of HAMILTON, MARTENS, BALLOU & CARROLL, LLC, P.O. Box 10940, Rock Hill, SC 29731

May 6, 2015


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