

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Chester County
Court of Common Pleas
Brian M. Gibbons, Circuit Court Judge

2015-CP-12-0179

Appellate Case No. 2015-001036

Robert H. Breakfield, as attorney in fact for John D. Hinson,
John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford
as Personal Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr. Respondent,

v.

Mell Woods Appellant.

Respondent's Return to Appellant's Petition for Rehearing and

Respondent's Motion for Rule 269, SCACR, Sanctions

Appellant's Petition for Rehearing is frivolous, as is the underlying appeal from Magistrate's Court, and is, by all discernible reasons, intended to harass the Respondent's principals, and to delay the Appellant's eventual removal from land owned by Respondent's principals. Various courts have been repeatedly advised of the Appellant's *pro se* abusive and frivolous misuse of the courts in a series of legal actions that have brought the parties to this particular appeal. Appellant continues to re-plead and reargue claims/theories that have been previously decided by the courts. The undersigned is again asking this court to take action to bring the Appellant's mischief to an end.

As a Return to Appellant's Petition for Rehearing

Incorporated herein by reference are the following:

- Magistrate's Court's Judgment Order dated March 27, 2015 that is the subject of this appeal.
(Exhibit A).
- Respondent's Motion to Dismiss Appeal in the above-captioned appeal, with exhibits;
- Appellant's Return to Respondent's Motion to Dismiss Appeal;
- Respondent's Reply to Appellant's Return, with exhibits.

Appellant filed and served a Notice of Appeal from a Magistrate's Court Judgment that found Appellant to be a trespasser on land owned by Respondent's principals. Thereafter, and within the permissible time, Appellant filed a Rule 59(e) motion for reconsideration of the magistrate's court's judgment order. The Circuit Court, sitting as an appellate court in an appeal from magistrate's court, entered an order dated May 1, 2015 dismissing Appellant's appeal, without prejudice, as provided for in Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 758 S.E.2d 483 (2014).

Appellant appealed the May 1, 2015 circuit court Order to this Court. Respondent moved to dismiss the appeal because the May 1, 2015 Order was not a final, appealable order because of Appellant's Rule 59(e) motion. This Court agreed and dismissed the appeal of the May 1, 2015 Order because it is not a final order.

This issue is straightforward. Appellant's Petition for Rehearing does not even address the issue of the finality and immediate appealability of the May 1, 2015 Order. But that is not Appellant's objective. He only seeks to keep litigation alive and to create procedural knots so that he can continue to reside on property he does not own, as already determined by the courts, and thereby delay his day of reckoning.

Conclusion: the Petition for Rehearing should be denied, the appeal itself should be dismissed, and sanctions should be imposed on Appellant, as addressed below, to put an end to this misuse of the courts.

Respondent's Motion for Rule 269 Sanctions

Respondent moves the court to sanction the Appellant by dismissing the underlying appeal from the Magistrate's Court's March 27, 2015 Judgment concluding that Appellant is a trespasser on Respondent's principals' land, and prohibiting Appellant from filing any further legal actions, claims or court submissions in any form in which Appellant claims title to 1537 Hinton Road, Great Falls, SC or challenges Respondent's principals' title to 1537 Hinton Road, Great Falls, SC.

The history of Appellant's frivolous and abusive litigation with the Respondent's principals involve five separate actions commenced by Appellant over the past five years, none of which resolved in Appellant's favor, and one appeal taken by Appellant in the below described eviction

case, also not decided in Appellant's favor. Appellant has always appeared *pro se*. He is now appealing an order from the Magistrate's Court that found him to be a trespasser, this being the above-captioned appeal. At the heart of the dispute is title to a residential lot on which Appellant resides, known as 1537 Hinton Road, Great Falls, SC. He claims title, without a deed. Respondent's principals (the Hinson family) received title to the lot as remaindermen to Reba Hinson's life estate (as determined by the courts in case no. 3 below).

1. 2010-CP-12-0168 (Appellant's claims against the Reba Hinson estate removed to circuit court from probate court). In this case Appellant filed claims against the Reba Hinson estate. The claims proceeding was removed to circuit court. After slogging through many procedural delays, Respondent Breakfield, as Personal Representative, was granted summary judgment by the circuit court. Appellant appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2013-UP-0257). Appellant's petition for writ of certiorari to the South Carolina Supreme Court was denied. All documents related to the appeal are filed with the appellate courts and are incorporated herein by reference.
2. 2010-CP-12-0201 (Appellant's appeal from probate court regarding estate administration in the Reba Hinson estate). In this case Appellant tried to insert himself into matters of probate estate administration in the estate of Reba Hinson. Appellant sought to have Respondent Breakfield removed as personal representative because, among other things, he was allegedly probating the wrong will. The probate court found the Appellant to be a stranger to the Reba Hinson estate and denied his various efforts to interfere in estate administration. Appellant appealed to circuit court where the probate court orders were affirmed. He appealed to the Court of Appeals where the circuit court and the probate court were affirmed

in a per curiam unpublished opinion. (2013-UP-0256). Appellant's petition for certiorari to the South Carolina Supreme Court was denied. All documents related to this appeal are filed with the appellate courts and are incorporated herein by reference.

3. **2011-CP-12-0323 (Appellant's quiet title action filed in circuit court).** This is the case that determined title to the disputed lot. It is ironic that Appellant commenced the case that determined that he did not have title to the land he claims, and he refuses to accept the outcome. In this case, Appellant described his action as one to quiet title to the land at issue by having the last will of Reba Hinson's husband, Levie Hinson, construed to have devised a fee interest in the land to Reba Hinson rather than having devised a life estate. Appellant claimed to have an interest/title to the land based on an agreement with Reba Hinson. Appellant is not a member of the Hinson family; he was neither a devisee in Levie Hinson's last will nor an heir of Levie Hinson. Nevertheless, Appellant had his day in court, and the circuit court granted summary judgment in favor of the Hinson family. Appellant appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. **(2014-UP-010).** Petitioner's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. All documents related to this appeal are filed with the appellate courts and are incorporated herein by reference. **The outcome of this appeal finally determined the question of Appellant's claim to title to the disputed lot. Reba Hinson owned only a life estate in the lot known as 1537 Hinton Road, Great Falls, SC. In Appellant's alleged agreement with Reba Hinson, if any, she could only have agreed to transfer her life estate interest. At best, Appellant could only have received a life estate measured by the life of Reba Hinson, and when Reba Hinson died, Appellant's life estate terminated.**

4. 2011-CP-12-0595 (Appellant's tort claim against the Reba Hinson estate and the Hinson family filed in circuit court). This case involved Appellant's claim against the Reba Hinson estate for various and sundry frivolous causes of action. The claims were removed to circuit court. The circuit court granted summary judgment in favor of the Reba Hinson estate. Appellants appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2014-UP-0158). Petitioner's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. All documents related to this appeal are filed with the appellate courts and are incorporated herein by reference.
5. In March 2011, the Hinson family commenced an eviction action in magistrate's court to have Appellant evicted as a hold-over tenant at will. Appellant appealed a pretrial order, dated June 2, 2011, to the Circuit Court, and to the Court of Appeals and to the Supreme Court. As with his other appeals, he was unsuccessful. (see Court of Appeals' unpublished opinion 2014-UP-076). All documents related to this appeal are filed with the appellate courts and are incorporated herein by reference.
6. In the course of his various appeals, Appellant represented to the various courts that his interest in the subject land is as an owner and not as a tenant. Having established that Reba Hinson owned only a life estate (case no. 3 above) and upon the tenant-eviction case returning to the magistrate's court following Appellant's unsuccessful appeal in case no. 4 above, and based on Appellant's express denial that he is a tenant, the Hinson family brought a new proceeding in magistrate's court to have Appellant put off the land as a trespasser. (2014CV1210400037). Respondent's Application for Notice to Quit Premises is attached and incorporated herein as **Exhibit B**. Appellant's Response/Answer is attached and incorporated as **Exhibit C**. Following a merits hearing on January 30, 2015, the Chester

County Magistrate's Court issued an Order dated and filed March 27, 2015, finding Appellant to be a trespasser and ordering him to vacate the subject property. (**Exhibit A.**) It is Appellant's appeal from the March 27, 2015 trespass Judgment Order that gives rise to the above-captioned appeal now before this court.

Appellant's Response, dated December 10, 2014, makes clear that notwithstanding the outcome of his quiet title case (**2014-UP-010, filed January 8, 2014**), he still intends to defend the trespass proceeding by claiming that he is "the fee simple owner of the land in question" (Exhibit C Response, ¶ 6 and 9) and that "the title to the real estate involved herein is contested and will be further contested by use of adverse possession, prescription, the English Common Law, and other South Carolina Statutes which involve title to land. . . ." (Exhibit C Response, p. 4, l. 18 to p. 5, l. 8.)

The Magistrate's Court's Judgment Order dated March 27, 2015 describes Appellant's defense as raising "questionable title," (Exhibit A, p. 9, l. 8 to p. 10, l. 16.)

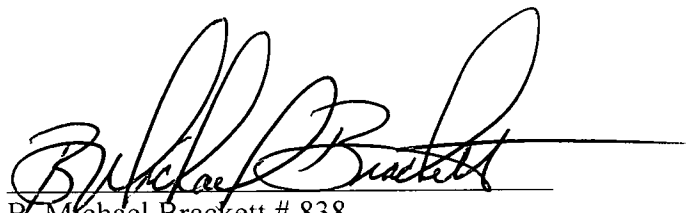
7. Most recently, Appellant commenced an action in the Chester County Probate Court, in the estate of Levie Hinson, against Respondent Breakfield in which Appellant sought to raise the many issues already decided adversely to him. Breakfield moved to dismiss Appellant's petition and moved for sanctions. A copy of Respondent Breakfield's motion is attached hereto and incorporated herein as **Exhibit D**. On the eve of the scheduled motion hearing, Appellant filed a voluntary Rule 41 dismissal. (attached and incorporated as **Exhibit E**).

This must end. Bringing and/or continuing a lawsuit based on allegations that prior court rulings have found to have no merit can be the basis for awarding sanctions, Holmes v. East Cooper Community Hospital, Inc., 758 S.E.2d 483 (S.C. 2014), including ordering the Appellant to pay the Respondent's attorney fees and other related litigation costs, and enjoining the Appellant from filing

any future legal proceedings against the Respondent and his principals that in any manner challenge Respondent's principals' title to 1537 Hinton Road, Great Falls, SC without first posting bond. Id. The Appellant may also be sanctioned and enjoined from filing any future legal proceedings against the Respondent and his principals that in any manner challenge Respondent's principals' title to 1537 Hinton Road, Great Falls, SC without representation on the pleadings by a licensed attorney. Id., fn. 18.

Conclusion

The Petition for Rehearing should be denied. Sanctions should be awarded for the Appellant's frivolous misuse of the courts, including dismissing the appeal from the Magistrate's Court's March 27, 2015 Judgment Order and enjoining the Appellant from filing any future legal proceedings against the Respondent and his principals that in any manner challenge Respondent's principals' title to 1537 Hinton Road, Great Falls, SC without first posting bond and from filing any future legal proceedings against the Respondent and his principals that in any manner challenge Respondent's principals' title to 1537 Hinton Road, Great Falls, SC without representation on the pleadings by a licensed attorney.

A handwritten signature in black ink, appearing to read "B. Michael Brackett", is written over a horizontal line.

B. Michael Brackett # 838

Adam T. Silvernail

Moses & Brackett, PC

P.O. Box 100261

Columbia, SC 29202

803.461.2312

Attorneys for Respondent Breakfield

July 20, 2015

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
Robert H. Breakfield,)
as attorney-in-fact, for)
John D. Hinson, John C.)
Hinson, Kathy Huffstickle,)
Robert H. Hinson,)
Darrell W. Hinson,)
Christina Jones as Trustee)
of the Lois Griffin Trust,)
George Stanford as Personal)
Representative of the)
Estate of Linda Stanford,)
William L. Hinson,)
and William C. Hinson, Jr.,)
)
Plaintiffs,)
)
-vs-)
)
Mell Woods,)
)
)
Defendant.)
)

IN THE MAGISTRATES COURT
2014CV1210400037 and
2014CV1210400002
RECEIVED
formerly 2011CV1210100148

2015 MAR 27 PM 3 51

CHESTER COUNTY
MAGISTRATE OFFICE
CHESTER, SC 29706

Certified to be a True and
Correct Copy of Original

Chester Co. Magistrate

[Signature]
Date March 27, 2015

FINAL ORDER AND JUDGMENT

The above-captioned matters were initially filed by the Plaintiffs upon the Defendant and have been consolidated for judicial economy. The case under 2011CV1210100148 was an eviction Action filed in Chester, subsequently transferred to the Rossville District Magistrate Court, Great Falls and re-numbered 2011CV1210400002. It came before me for a pre-trial hearing on May 12, 2011 following which the Court issued an interim Order covering some preliminary matters. The Defendant appealed the interim Order which appeal was heard by the Chester County Court of Common Pleas and ultimately, the Court of Appeals. The Supreme Court denied Certiorari. A related matter serving as the foundation of the position taken by the Plaintiffs was

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resolved by the Chester County Probate Court, which issued its Order and which in turn served as the foundation for a related case filed in the Chester County Court of Common Pleas by the Defendant in the instant case. The Court of Common Pleas issued its Order in that matter and the Defendant appealed. The Court of Appeals issued its Order and the Supreme Court denied Certiorari. The proceedings in this Court were suspended pending the final resolution of these related matters as the Defendant asserted title to the real estate was in question. Following these events, the Plaintiffs filed a new Action with this Court wherein they alleged the Defendant is a trespasser and should be ejected from the property upon that basis.

With the issues before the Court now ripe and clarified for adjudication, the above-captioned matters came before me for a hearing on January 30, 2015. The Plaintiffs were represented by B. Michael Brackett, Esquire. The Defendant represented himself. Pursuant to this Court's interim Order, the Defendant was required to pay bond to the Court in the amount of \$200.00 per month commencing June, 2011, with an initial payment of \$100.00 covering May, 2011, the hearing having taken place toward the middle of that month. The Defendant complied, making regular and timely payments of Bond. As of January 30, 2015, the Defendant had paid a total of \$8,900.00. The Court prepared a detailed accounting for the Defendant, who inspected and signed it accepting the accounting as complete and accurate. Copies were furnished to him and to counsel for the Plaintiffs. The Defendant has since made the required payments for February and March,

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2015 such that at the time this Order was issued, the grand total held by the Court as bond is \$9,300.00., well in excess of the Court's Jurisdictional Limit of \$7,500.00 plus costs.

The second preliminary matter was the election of the Plaintiffs as to which Action they wanted to pursue. The Plaintiffs chose to go forward upon their second filed Action, the one wherein and whereby they allege the Defendant is a trespasser and should be ejected from the property in question. They chose not to go forward upon the prior Action for eviction.

The third preliminary matter taken was amendment of the case caption due to changes among the Plaintiffs. These amendments were made in the caption of this Order. The interest previously held by Plaintiff Lois Hinson, a/k/a Lois Griffin, was conveyed to Tina Jones, a/k/a Christina Jones as Trustee of the Lois Griffin Trust. The interest previously held by Plaintiff Elaine Hensley was conveyed to Plaintiff Robert H. Hinson.

The next preliminary matter was the Defendant's Motion for a Jury Trial in the current Notice to Quit Action. He objected to the proceedings going forward as a bench trial citing Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985) so as to avoid waiving his rights. The Defendant has not in fact waived whatever right he may have had to a jury trial as no ruling had been made by the Court as to that issue up to that point. The Court heard the parties concerning this matter, notes that the issue was timely raised by the Defendant, and considers the Defendant protected on the Record. Jury trials are in fact widely

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available in this State for all sorts of cases. However, that right is not absolute and therefore does not apply in every instance. The right to jury trial is available to both sides in eviction matters as it is provided for by Statute. Were this matter going forward as originally filed, the Defendant would have been entitled to a jury trial. However, there is no statutory right to jury trial for an Action to eject a trespasser, which is the current situation. The Magistrate Court Rules make no such provision either. Although the Court has wide discretion in situations wherein a jury trial might prove helpful, the Defendant failed to demonstrate a need for one in the interests of justice or as an aid to the Court for resolution of this case. No valid reason having been presented by the Defendant for a jury trial, the Defendant having failed to demonstrate entitlement to one, the prayer for jury trial was and remains denied.

The Plaintiff presented exhibits for evidence asking the Court to take them by Judicial Notice. All were accepted and entered as such. Plaintiff's 1 is a True Copy of an Order issued by the Chester County Probate Court Case No. 1986-ES-12-188, Kathy H. Huffstickle, In the Matter of Levie Hoyt Hinson, Petitioner, v. Lois H. Griffin, Respondent (2007) which affirmed an amended real estate conveyance of March 8, 2007 and declared that the real property consisting of 92 acres on tax map number 158-0-0-3 is owned as tenants in common by the bodily heirs of Levie Hoyt Hinson. It further declared that the bodily heirs of Levie Hoyt Hinson are John C. Hinson, Lois H. Griffin, Kathy H. Huffstickle, and the heirs of William C. Hinson. It also

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declared the heirs of William C. Hinson are Charles Jerry Hinson, Robert Harold Hinson, William Calvin Hinson, Etta Elaine Hinson, Linda Kay Hinson, and Darrell Wayne Hinson. Plaintiff's 1 was accepted as evidence as it is proper to take Judicial Notice of relevant Court Orders of a Court of competent jurisdiction.

Plaintiff's 2 is a True Copy of a Complaint filed by the current Defendant in the Chester County Court of Common Pleas under Case No, 2011-CP-12-00323, captioned Mell Woods, Plaintiff v. John D. Hinson, Christine Jones, John C. Hinson, Kathy Huffstickle, Charles J. Hinson, m William L. Hinson, Lois Hinson, Robert Breakfield, as Personal Representative of the Estate of Reba P. Hinson, Elaine H. Hensley, Robert H. Hinson, George Stanford, as Personal Representative of the Estate of Linda H. Stanford, m William C. Hinson, Jr., Darrell W. Hinson, MARY ROE, and JOHN doe, fictitious names used to designate all other parties whose names are unknown, AND ANY and ALL OTHER PERSONS claiming any right, title, estate, interest, or lien upon the real estate described in this Complaint. Attached to the foregoing and part of the exhibit is an Action for Trespass to Try Title, bearing the same case number and caption which contains 3 photocopies of a plat. Inasmuch as this exhibit is on file with the Clerk of Court of Chester County directed to the Chester County Court of Common Pleas and is relevant to the within Action, it is proper to accept it by Judicial Notice and was received in evidence.

Plaintiff's No. 14 is a True Copy of the same plat attached by the within Defendant in Plaintiff's 2, and is a complete plat

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containing some material cut off by the copier the within Defendant had attached in his Complaint. As this is a document on file with the Clerk of Court and is relevant to this matter, it is proper to accept it by Judicial Notice, the Plaintiff herein having labeled it Exhibit 14. It was received as such.

Plaintiff's 3 is a True Copy of the Answer and Counterclaim filed by the Defendants in the same case, No. 2011-CP-12-0323 and bearing the same case caption, offered as evidence by Judicial Notice. Attached thereto is a copy of the Last Will and Testament of Levie Hoyt Hinson and a copy of what has already been accepted herein as Plaintiff's 1. As this document is on file with the Clerk of Court and is relevant to the within Action, it is proper to accept it by Judicial Notice and was received as such.

Plaintiff's 4 is a True Copy of the Circuit Court Order in Case No. 2011-CP-12-0323 bearing the same caption, dated December 29, 2011, wherein and whereby the Defendants' Motion for Summary Judgment was granted and the Plaintiff's Complaint was dismissed. This is an authenticated copy of an Order issued by a Court of competent jurisdiction and is relevant to the within Action. It is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 5 is a copy of the Order issued by the South Carolina Court of Appeals bearing the same caption and recorded as Appellate Case No. 2012-212330, Unpublished Opinion N. 2014-UP-010 (2014). As this is an official Order of the South Carolina Court of Appeals, it

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is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 6 is a copy of the Order issued by the South Carolina Supreme Court bearing the same case caption, bearing Appellate Case No. 2014-000660 (2014) denying Certiorari. As this is an official Order of the Supreme Court it is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 7 is a copy of the original Rule to Vacate issued by Chester County Magistrate Court with the Plaintiff's attached Complaint for Possession of Real Property/Application for Ejectment in Case No. 2011CV1210100148, above-captioned, with attachments thereto. As this is already on file with this Court and it is relevant to the within Action, it is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 8 is a copy of the Defendant's Answer with attachments in Case No. 2011CV1210100148, which is already on file with this Court, is relevant to the within Action. It is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 9 is the interim Order of the Court in the original Action renumbered 2011CV1210400002, which Order was issued by this Court. It is proper to take by Judicial Notice the Court's own prior Orders. This one is relevant to the issues in the within Action and the exhibit was accordingly received into evidence.

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Plaintiff's 10 is a True Copy of an Order of the Court of Common Pleas, for Case No. 2011-CP-12-0291, bearing the caption: Robert H. Breakfield, as attorney-in-fact v. Mell Woods and called Order Affirming Magistrate Order, dated January 12, 2012. It is proper to accept it by Judicial Notice as it is relevant to the issues herein and the exhibit was received into evidence.

Plaintiff's 11 is an Opinion from the South Carolina Court of Appeals upholding Plaintiff's 10, Robert H. Breakfield, as attorney-in-fact, Respondent v. Mell Woods, Appellant, Unpublished Opinion No. 2014-UP-076 (2014).

Plaintiff's 12 is an Order of the Supreme Court of South Carolina denying certiorari in Plaintiff's 11.

Plaintiff's 13 is a listing of the owners with percentages owned regarding the property in question.

During the course of the hearing, the Defendant presented several exhibits to the Court which were received as evidence.

Defendant's 1, accepted by the Court as evidence, is a UCC Filing Statement listing the Defendant as debtor and Reba Hinson as secured party of: "Manufactured home existing at #10 North Adams Road; this same lot is also known as 1537 Hinton Road, Great Falls, South Carolina 29055, along with Real Estate described a in #14 of this UCC filing." The exhibit consists of 5 pages and includes a hand drawn map and a land sales agreement between Reba P Hinson and Mell Woods.

Defendant's 2, accepted by the Court as evidence, is a true copy of a Notice of Lis Pendens and Action for Trespass to Try Title and

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an Amendment of Lis Pendens Notice filed by the Defendant against the Plaintiffs in this matter together with attachments.

Defendant's 3, accepted by the Court as evidence, is a true copy of a letter dated June 27, 2007 to Cheste County Probate Court Judge Lois Roddey seeking copies of records in connection with regard to the Estate of Reba Hinson.

The Defendant raises the defense of questionable title in Defense Exhibit 1, which includes a land sales agreement dated May 7, 2005 between himself and Reba Hinson, deceased, and by his testimony. This defense, if it could be established, would deprive this Court of subject matter jurisdiction given that the rights to real estate must be determined by the Court of Common Pleas and may not be determined in Magistrate Court. Such a situation would require dismissal of the original Action for Eviction and would require dismissal of this Action for ejectment of a trespasser (Notice to Quit). However, the mere claim that there is a cloud upon the title to the realty subject to this Action is insufficient grounds upon which to find that this Court has no subject matter jurisdiction. The Defendant had already instituted suit concerning this very issue in the Court of Common Pleas under Civil Action No. 2011-CP-12-0323, and the Court, The Honorable Brooks P. Goldsmith, presiding, granted Summary Judgment to the Defendants in that case, who are Plaintiffs in this one. Judge Goldsmith found, "Plaintiff claims ownership by virtue of a 20-year presumption of a grant through Reba Hinson. This claim must fail, as a life tenant (Reba Hinson) cannot claim adverse possession against

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remaindermen." Mell Woods v. John D. Hinson, et al, December 29, 2011 (Plaintiff's 4). Mr. Woods appealed this Order, which was upheld by the South Carolina Court of Appeals, Mell Woods v. John D. Hinson, et al, Ct. Appeals Unpublished Opinion 2014-UP-010 (2014), Plaintiff's 5, a copy of which is attached hereto and incorporated herein by reference. The Supreme Court denied Certiorari in Appellate Case No. 2014-000660 on July 24, 2014 (Plaintiff's 6). Accordingly, the Defendant in the current matter before this Court lost this issue and is estopped from asserting it here pursuant to the doctrine of res judicata and this is also the law of the case. The Court further notes that the Defendant had a right to jury trial in the matter he took to the Court of Common Pleas but did not have one because he lost on Summary Judgment, such that there is no good faith reason to believe his rights were or are being violated by denying a jury trial and conducting a bench proceeding. It should be noted that the facts are not really disputed. This case turns upon the Law.

I find this Court devoid of power to over-rule the Court of Common Pleas, the Court of Appeals, and the Supreme Court, and rather that this Court must accept the rulings from the higher Courts as final. The Defendant may not raise the defense of questionable title to defeat this Court's subject matter jurisdiction in the current Notice to Quit Action or as a valid defense against it

The Defendant shows every sign of being both intelligent and articulate such that there is no reason to question his mental competence. Quite to the contrary, he has demonstrated considerable

skill in reading, research, and comprehension. In Court he was attentive and focused. He demonstrated good command of his information and the position he took. His writing and reasoning skills are impressive given that he is not a lawyer. During the proceedings as he presented his case he attempted to collaterally attack the orders and rulings of the higher courts in this case concerning ownership of the real estate and he attempted to impugn the integrity of Plaintiff's counsel personally. This clearly impermissible effort was cut off by the Court. Given the overwhelming evidence in this matter I find that the Defendant's position has no merit and that he has failed to raise a single scintilla of competent evidence or any type of admissible colorable reason supporting it. The Plaintiff has proven the Defendant a trespasser who should be ejected from the property in question and I so find.

Notwithstanding the foregoing, however, the Defendant has been on the property for a very extended period of time such that it is appropriate, in the interests of justice, to provide the Defendant a reasonable amount of time to terminate his occupation of the premises and leave, the Court having some reasonable discretion. Accordingly, I find it reasonable to order the Defendant to vacate the premises no later than the close of business April 15, 2015, after which time, if the Defendant remains, a Writ of Ejectment will issue from the Court. I further find given the limit that can be awarded in potential damages by this Court is \$7,500.00 plus filing fees, which in this case is \$65.00, \$7,565.00 should be retained by the Court at present

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but all other monies should be refunded to the Defendant. \$9,300.00 having been collected from the Defendant, he should receive a refund in the amount of \$1,735.00, The obligation to make any further payments should be terminated pending further Order of the Court. It is uncontroverted that the Defendant owns a mobile home together with improvements to it currently located on the property and that the Defendant lives there and has lived there for an extended time. The Plaintiffs not only desire that he leave their property but also desire that he remove the mobile home with improvements from their land. I find that the Plaintiffs have the right to so require. Because this task may reasonably require more time than the Court allotted for the Defendant to vacate the property, it is appropriate to allow some additional time to remove the mobile home plus improvements. Therefore, I find it reasonable to require that the mobile home plus improvements be removed from the property of the Plaintiffs by the close of business Monday, June 1, 2015 following which, if it remains on their property they shall be permitted to take action have it removed themselves. Now, therefore, it is

ORDERED:

1. That the Defendant shall vacate the premises in question no later than the close of business, April 15, 2015 and further, that should he remain on site after that date, a Writ of Ejectment shall issue from this Court.

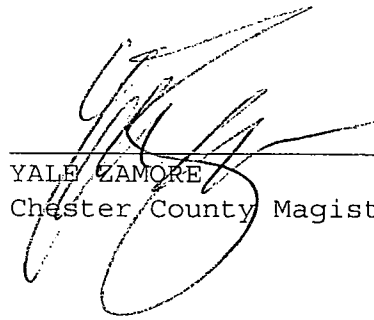
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2. That the Defendant shall not be obligated to make any further payments to this Court for Bond and that all sums collected from him in excess of \$7,565.00 shall be refunded to him.

3. That the sum of \$7,565.00 already collected as bond from the Defendant as Bond shall be retained by the Court pending further Order of the Court.

4. That the Defendant shall remove his mobile home and improvements thereto no later than the close of business, Monday, June 1, 2015 and, should he fail to comply, the Plaintiffs shall be permitted to have it removed pursuant to the provisions of South Carolina Law for such a purpose and the Defendant shall have no recourse against them for doing so provided that they shall have acted in accordance with South Carolina Law.

AND IT IS SO ORDERED.



YALE ZAMORE
Chester County Magistrate

Great Falls, South Carolina

March 27, 2015

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Mell Woods, Appellant,

v.

John D. Hinson; Christine Jones; John C. Hinson;
William L. Hinson; Lois Hinson; Robert Breakfield, as
Personal representative of the Estate of Reba P. Hinson;
Elaine H. Hensley; Robert H. Hinson; George Stanford,
as Personal Representative of the Estate; Linda H.
Stanford; William C. Hinson, Jr.; Darrell W. Hinson; and
Mary Roe and John Doe, fictitious names used to
designate all other parties, whose names are unknown,
and any and all other persons claiming any right, title,
estate interest or lien upon the real estate described in the
complaint, Respondents.

Appellate Case No. 2012-212330

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2014-UP-010
Submitted November 1, 2013 – Filed January 8, 2014

AFFIRMED

Mell Woods, of Lancaster, pro se.



B. Michael Brackett, of Moses & Brackett, PC, of
Columbia, for Respondents.

PER CURIAM: Mell Woods appeals the circuit court's order granting summary judgment in favor of Respondents. Woods argues the circuit court erred in: (1) granting summary judgment when issues of material fact remained; (2) denying his right to a jury trial in violation of section 15-67-100 of the South Carolina Code (2005); (3) finding Reba Hinson acquired a life estate under Levie Hinson's will; and (4) finding Reba Hinson, as a life tenant, could not claim adverse possession against the remaindermen to the life estate. We affirm.¹

1. As to issue one and issue three, the circuit court did not err in granting summary judgment because Woods failed to create a genuine issue as to any material fact. *See S. Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012) ("When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."). First, no evidence supports Woods's argument that the circuit court applied an improper standard in granting summary judgment. The circuit court's order does not specifically state the standard it applied in granting summary judgment. The circuit court apparently treated the issues presented as questions of law, which was proper because the interpretation of a will is a question of law to be decided by the court. *See* 96 C.J.S. *Wills* § 901 (2011) ("Generally, the interpretation or construction of a will, or so much thereof as is applicable to the case under consideration, is a question of law for the court and not one of fact for the jury" (footnotes omitted)). Moreover, although Levie Hinson's will was ambiguous, any ambiguity in the will was a patent ambiguity; therefore, the circuit court properly resolved the issue as a matter of law. *Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 526, 709 S.E.2d 85, 95 (Ct. App. 2011) (stating "[a] patent ambiguity is one that arises upon the words of a will, deed, or contract"); 96 C.J.S. *Wills* § 901 ("When a patent ambiguity exists in a will, a court must resolve such ambiguity as a matter of law."); *see also United Nat. Ins. Co.*, 392 S.C. at 526, 709 S.E.2d at 95-96 (recognizing, in the context of an insurance policy, the

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

interpretation of a policy with a patent ambiguity is for the court). Furthermore, Woods's conclusory allegations of title to the property in question are insufficient to withstand summary judgment. *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 389, 701 S.E.2d 776, 779 (Ct. App. 2010) ("As Rule 56(e), SCRCP, states, a party 'may not rest upon the mere allegations or denials of his pleading[s].'" (citation omitted)); *see also Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994) ("A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.").

Additionally, the circuit court properly determined Reba Hinson acquired a life estate under Levie Hinson's will. "The cardinal rule in the construction of any will is to determine the intent of the testator as gleaned from the written instrument itself; technical rules or interpretation are subservient to that principle." *Wise v. Poston*, 281 S.C. 574, 577, 316 S.E.2d 412, 414 (Ct. App. 1984). Here, Levie Hinson's will states: "I will, devise and bequeath unto my beloved wife, [Reba Hinson,] all my real estate, *in fee simple, as long as she lives then to our bodily heirs forever.*" (emphasis added).

[W]hen a gift is made in one clause of a will in clear and unequivocal terms, the quality or quantity of the estate given should not be cut down or qualified by *words of doubtful import* found in a subsequent clause. To have that effect, the subsequent words should be at least as clear in expressing that intention as the words in which the interest is given.

Wates v. Fairfield Forest Prods. Co., 210 S.C. 319, 322, 42 S.E.2d 529, 530 (1947) (emphasis added).

Although Levie Hinson's will uses the term "fee simple," the will also includes words of limitation indicating Reba Hinson is entitled to the property "as long as she lives." The words of limitation are not of doubtful import; rather, they are as clear as the term "fee simple" and demonstrate Levie Hinson's intent to create a life estate. *See Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005) (stating no special language is required to create a life estate, rather courts will look to the intention of the creator of the estate); *Epting v. Mayer*, 283 S.C. 517, 519, 323 S.E.2d 797, 798 (Ct. App. 1984) ("If the intention of the testator is to be given effect, as it must be, courts must be permitted . . . to disregard words of absolute gift and to declare the estate created to be a limited estate where a clear

intention to that effect appears."). Moreover, if we interpreted this will as vesting Reba Hinson with a fee simple interest in the property, it would require us to ignore the provision of the will, which provided for a remainder in the parties' heirs. *See Blackmon*, 366 S.C. at 250, 621 S.E.2d at 44 (stating "a construction which gives meaning to all should be preferred over one which renders some provisions meaningless"). Therefore, because Reba Hinson inherited a life estate under Levie Hinson's will, any interest Woods acquired in the property from Reba Hinson extinguished when Reba Hinson died because "a life tenant can convey no more than his life estate." *Poston*, 281 S.C. at 579, 316 S.E.2d at 415.

Accordingly, the circuit court did not err in granting summary judgment because Woods failed to show any genuine issue of material fact.

2. As to whether the circuit court violated section 15-67-100 in denying Woods a jury trial, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised and ruled upon by the [circuit court]."); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e)[,SCRCP,] to present to the court an issue the party could have raised prior to judgment but did not.").

3. As to whether the circuit court erred in finding Reba Hinson, as a life tenant, could not claim adverse possession against the remaindermen to the life estate, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009) ("The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time."); *id.* at 15, 681 S.E.2d at 14 ("A person claiming adverse possession must have personally held the property for ten years, and tacking is *allowed only* between ancestor and heir." (emphasis added)); *Phipps v. Hardwick*, 273 S.C. 17, 25, 253 S.E.2d 506, 510 (1979) ("[A]dverse possession . . . cannot run against remaindermen until the death of the life tenant.").

AFFIRMED.

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

EXHIBIT B

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF CHESTER

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Application for Notice to Quit Premises

Applicant,

v.

Mell Woods,

Respondent-Trespasser.

1. This verified application is filed pursuant to S.C. Code Ann. § 15-67-610 seeking the issuance and service of a Notice to Quit Premises requiring the above-captioned respondent-trespasser to vacate and relinquish possession to the Plaintiff(s) of the real property known as 1537 Hinton Road, Great Falls, SC, located in Chester County. The undersigned deponent is the personal representative of the estate of Reba Hinson and the attorney-in-fact for the above-named owners of the subject property.
2. Plaintiffs were remaindermen to the life estate held by Reba Hinson in and to certain real property on Fishing Creek Lake in Chester County, including the lot identified and known as 1537 Hinton Road, Great Falls, SC.
3. The property at 1537 Hinton Road was part of larger tract owned by Reba Hinson's spouse, Levie Hoyt Hinson, containing 97 acres, more or less, that is identified as Chester County TMS# 158-0-0-003.

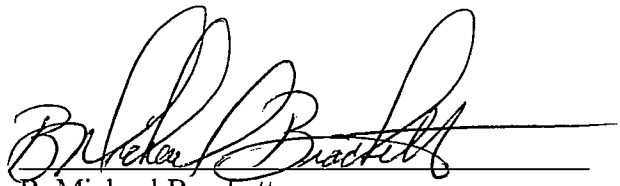
4. The Last Will and Testament of Levie Hoyt Hinson dated April 21, 1977 and probated in the Chester County Probate Court, devised to his spouse Reba Hinson a life estate in all real property owned by Levie Hoyt Hinson with the remainder interest to pass to their bodily heirs upon the termination of the life estate.
5. By Order of the Chester County Probate Court dated October 15, 2007, it was determined that the above-named persons are the bodily heirs to whom title to the real estate passed upon the death of Reba Hinson on January 3, 2007. A copy of said Order is attached hereto and incorporated herein as **Exhibit A**.
6. During her life estate Reba Hinson leased the lot at 1537 Hinton Road to the Respondent-Trespasser. The terms of the lease agreement are not clear, except that Mr. Woods was to pay rent to Reba Hinson. Mr. Woods was and is the owner of the improvement/residence located on the lot now owned by the Applicants.
7. When Reba Hinson died, her life estate terminated by operation of law, and the lease agreement with Mr. Woods immediately terminated by operation of law.
8. The remaindermen successors to the property immediately became the fee owners of the property, including the lot at 1537 Hinton Road.
9. Since the death of Reba Hinson, Mr. Woods has denied that he is a tenant and has affirmatively alleged that he holds fee title to the lot at 1537 Hinton Road. In his verified Answer filed in this Court in 2011CV1210100148 he alleged: "there is no landlord-tenant relationship between Defendant and the purported landlords [Second Defense- Count I]. . . Mrs. Hinson held a fee estate, and full ownership estate, not a 'Life Estate' as stated [Third Defense] . . . It is not true that the will in question [Levie Hinson last will] created a 'Life

Estate' [Third Defense] . . . as stated earlier, Mrs. Hinson had full ownership of all of the property formerly owned by her husband, Mr. Levie Hoyt Hinson, the agreement defendant [Mr. Woods] had with Mrs. Hinson was a type of land contract, and when fulfilled, defendant will be the owner of the land where the building sits [Third Defense] . . .”

10. Mr. Woods has heretofore participated in various legal proceedings in which he claimed fee ownership of 1537 Hinton Road. He attempted to insert himself into the administration of Reba Hinson's probate estate in an effort to cause a certain last will to be probated in lieu of other last wills. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit B**. The Court of Appeals' unpublished opinion is attached as **Exhibit C**.
11. Applicants herein commenced an eviction action to have Mr. Woods ejected from the property. Mr. Woods claimed that he was not a tenant and that the magistrate court therefore had no jurisdiction over the proceeding. Selected portions of his Answer in the eviction case are set out in paragraph 9 above. The appeal in the eviction case involved pretrial procedural matters and not substantive findings and conclusions.
12. Most notably, Mr. Woods commenced an action to have Levie Hinson's last will construed, alleging therein that Levie Hinson's last will devised fee ownership to Reba Hinson (not a life estate) and that Reba Hinson had conveyed, or contracted to convey, fee title to 1537 Hinton Road to Mr. Woods. He alternatively claimed title by adverse possession. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit D**. The Court of Appeals' unpublished opinion is attached as **Exhibit E**.

13. Having admitted under oath that his possession of the property at issue since the death of Reba Hinson was as the alleged owner and not as a tenant, and having failed in his attempts to prove ownership of the fee as evidenced by the aforementioned court orders, and having refused to vacate the property at the demand of the Applicants, Mr. Woods is now a trespasser. His present possession of the land known as 1537 Hinton Road is without title, and is without the consent of the Applicant-owners.
14. Applicants admit that Mr. Woods is the owner of the improvement on the property at issue, and Applicants make no claim to the improvement, unless Mr. Woods fails or refuses to remove the improvement within the time the court determines to be reasonable.
15. Applicant is informed and believes that he is entitled to the relief provided in and by S.C. Code Ann. § 15-67-610, namely to have the magistrate serve a notice on the Respondent to quit the premises.

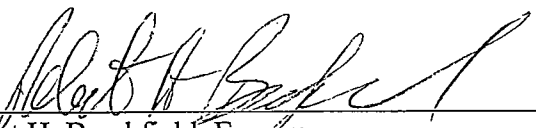
November 13, 2014



B. Michael Brackett
Moses & Brackett, PC
P.O. Box 100261
Columbia, Sc 29202
803.461.2312
Attorney for Applicant

Verification

_____ Personally appeared before me Robert H. Breakfield, Esquire, who being first duly sworn on oath, says that he, in his capacity as attorney-in-fact, is the Applicant in the foregoing action and has read the allegations in the foregoing Application, and the same are true of his own knowledge, except those matters stated on information and belief, and as to those matters he believes them to be true.



Robert H. Breakfield, Esquire

Sworn to before me this 13th day
of November, 2014.



Notary for South Carolina
My Commission Expires: 1/16/2019

EXHIBIT C

State of South Carolina

In the Magistrate Court
Rossville District

Chester County

Number: 2014CV1210400037

Robert H. Breakfield, for
himself and others listed
as "Applicant"

v.

Mell Woods,

Respondent.

Jury Trial Demanded

Response to the "Application to Quit Premises"

VERIFIED Answer of Respondent is as follows:

1. Paragraph one of the verified application contains lies; Breakfield, the deponent, is NOT the attorney-in-fact for all the "applicants" listed in the caption of this case -- at least one of the applicants has died and Robert Breakfield is not the attorney-in-fact for all of the applicants and in particular one of the dead ones; this is just another example of how Robert

Breakfield commits the crime of perjury on a daily basis and is the same Robert Breakfield who is not worthy of belief by anyone.

2. Paragraph two of the "Application" is not true.
3. Paragraph three of the "Application" is not true.
4. Paragraph four of the "Application" is not true.
5. Paragraph five of the "Application" is false -- the court order referred to was obtained by artifice, lies and perjury.
6. Paragraph six of the "Application" is only partially true, number six leaves out the part that respondent is actually the fee-simple owner of the land in question.
7. Paragraph seven of the "Application" is not true.
8. Paragraph eight of the "Application" is not true.
9. Paragraph nine is only partially true -- the pleader leaves

Pg 2

out the material part that respondent is actually the fee-simple owner of the land in question.

10. Paragraph ten is only partially true -- the court orders referred to were wrongfully decided.
11. Paragraph eleven is not responded to.
12. Paragraph twelve is not true -- the court orders referred to are incorrectly decided because the court orders are based on perjury supplied by an officer of the court.
13. Paragraph thirteen of the "Application" is not true.
14. Paragraph fourteen is not responded to.
15. Paragraph fifteen of the "Application" is not true.

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South Carolina Statute § 15-67-20:

A plaintiff is limited to one, AND ONLY ONE action for "recovery" of real property. SC § 15-67-20 is a statute of repose, or statute of limitation in regard to land suits.

A defendant under South Carolina law is not required to have to continually defend attacks on a land title. A plaintiff only gets ONE chance and in this case an "Application" for a "Notice to Quit Premises" is a new case and is not allowed under South Carolina law, and is in fact a guise to try and defeat defendant's common law right to a jury trial.

South Carolina Statute § 22-3-1130:

A South Carolina magistrate does not have jurisdiction of, and cannot hear a proceeding where the title to real estate is involved and the defending party posts the required \$100.00 cost bond and undertaking under SC § 22-3-1120; the defending party in this case, MELL WOODS, hereby swears under oath that the title to the real estate involved herein is contested and will be further contested by use of

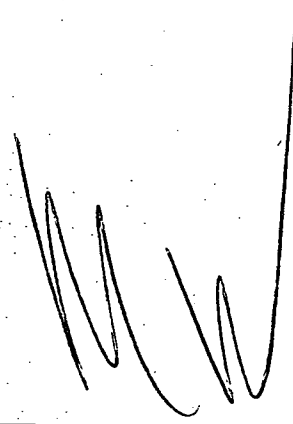
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adverse possession, prescription, the English Common Law,
and other South Carolina Statutes which involve title to
land, and in addition the defending party, Mell Woods,
hereby pleads the
defense of questionable title; all claims to the land in
question asserted by the moving
parties are false and have been obtained by perjury and
extrinsic fraud upon South Carolina Courts.

The required cost bond and undertaking is attached;
wherefore, the defending party, Mell Woods, asks that
this action be dismissed.

Respectfully submitted,

this 10 day of December, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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2014CV12104000 37
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

COUNTY OF Chester

Robert Breakfield

PLAINTIFF(S)

IN THE MAGISTRATE'S COURT

VS.

Mehl Woods

DEFENDANT(S)

BOND UNDERTAKING
AND ORDER

Mehl Woods

, plaintiff/defendant (circle one) desires to give an undertaking

for the purpose of:

In order to comply with SC § 22-3-1120,
defendant will at all times render himself
amendable to the process of the court and
abide by any judgment; in addition if the
plaintiff should decide to continue on in
circuit court, defendant will admit service
if plaintiff will serve its papers on the
Magistrate Judge.

as provided by Section 22-3-1120, Code of Laws (1976), in the amount of \$ 100.00

We, the undersigned sureties, do hereby obligate ourselves, jointly and severally as follows:

Name U.S. Postal Service

Name

Mehl Woods

Business Address WASH., D.C.

Business Address

P.O. Box 2603

LANCASTER, SC 29721

Amount \$100.00

Amount

\$100.00

M.O. # 22147897050

I declare under penalty of perjury that the foregoing is true and correct.

U.S. Postal Service
M.O. # 221 478 97050

(Signature of Surety)

Will Wood

(Signature of Surety)

ORDER

The above undertaking by surety(ies) is hereby approved by this court.

Dated: _____

MAGISTRATE

UNITED STATES POSTAL SERVICE		POSTAL MONEY ORDER	
Serial Number	Year Month Day	Post Office	U.S. Dollars and Cents
22147897050	2014-1-07	2603	4100 00
Amount		ONE HUNDRED DOLLARS & 00C *****	
Pay to	From		
Address	Address		
Memo	Address		
© 2003 United States Postal Service. All Rights Reserved.		SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS	
1:000008002:		22147897050	

VERIFICATION BY DEFENDING PARTY MELL WOODS:

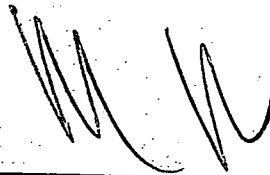
State of South Carolina

In the Magistrate Court

Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, first being duly sworn, and as affiant herein, hereby states upon his oath that affiant has examined the within and foregoing pleading entitled *Response to the Application to Quit Premises*, and UPON HIS OWN PERSONAL KNOWLEDGE, swears that all statements and allegations in the *Response* are correct, and the truth.

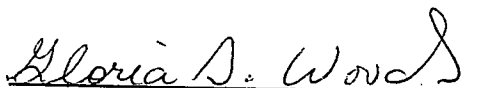


Mell Woods

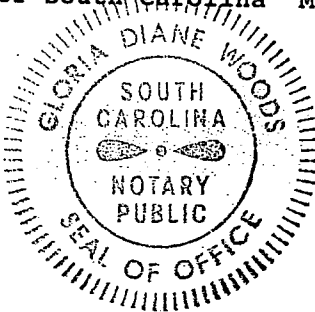
Sworn to, and subscribed before me,

This 10 day of December, 2014.

Gloria D. Woods Notary Public for South Carolina My Comm. Expires
01/08/2018



Gloria D. Woods



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Certificate of Service:

State of South Carolina

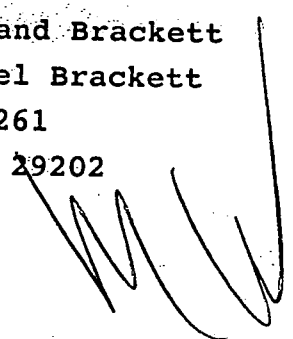
In the Magistrate Court

Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the moving parties with a copy of the within and foregoing pleading and supporting documents by placing copies of the same in the U.S. Mail addressed to the counsel of Record for the parties, to wit:

Moses, Koon and Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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EXHIBIT D

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHESTER

1986-ES-12-0188
(Estate of Levie Hinson)

Mell Woods,

Petitioner,

v.

Robert H. Breakfield, plus 3
Unknown Parties,

Respondent Breakfield's Motion to
Dismiss Petitioner's Amended Petition/
Rule 60(b) Independent Action and
Demand for Jury Trial; and
Respondent's Motion for Sanctions

Respondents.

This is as frivolous a proceeding as the undersigned has seen in the past 32 years. It is time for the courts to put a stop to the Petitioner's vexatious litigation. The history of Petitioner's use of the courts as a means to harass Respondent Breakfield and members of the Hinson family (the Levie and Reba Hinson heirs and devisees) is well documented, as reviewed below.

It is important to recognize just what the Petitioner is alleging in the above-captioned "independent action" in order to grasp the emptiness of the action. He is asking that the Chester County Probate Court's October 15, 2007 Order in the Levie Hinson estate be vacated because of alleged fraudulent conduct on the part of Respondent Breakfield, which is expressly denied, in the administration of the Reba Hinson estate some 15 months after entry of the October 15, 2007 Order. (¶ 6 and 8).

Background

Petitioner alleges that he contracted with Reba Hinson to buy a small residential lot, which was part of a larger parcel of land devised to Reba Hinson in and by her late husband's (Levie

Hinson) last will. (Petition, ¶ 2 and 3). However, despite his repeated efforts to establish his title in the courts, he has failed, usually by trial court summary judgments and unpublished per curiam opinions from appellate courts. This independent action is but the latest effort to claim title to the disputed lot, notwithstanding his previous failed legal actions.¹

Petitioner has heretofore commenced four cases naming Breakfield and/or the Hinson heirs/devisees as parties. They are:

1. 2010-CP-12-0168 (Petitioner's claims against the Reba Hinson estate removed to circuit court from probate court)
2. 2010-CP-12-0201 (Petitioner's appeal from probate court regarding estate administration)
3. 2011-CP-12-0323 (Petitioner's quiet title action filed in circuit court)
4. 2011-CP-12-0595 (Petitioner's tort claim against the Reba Hinson estate and the Hinson family filed in circuit court)

In case no. 1, Petitioner filed claims against the Reba Hinson estate. The claims proceeding was removed to circuit court. After slogging through many procedural delays, Respondent Breakfield, as Personal Representative, was granted summary judgment by the circuit court. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2013-UP-0257). Petitioner's petition for writ of certiorari to the South

¹ All of the facts relevant to this are established in the myriad filings in prior trial court and appellate court proceedings, and are subject to judicial notice in this proceeding. Courts may take judicial notice of matters of public record, Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F. Supp. 2d 553 (W.D.N.C. 1998); prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993); decisions of other courts, Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd., 181 F.3d 410 (3d Cir. 1999); and reliable sources found on the Worldwide Web. In re Yahoo Mail Litigation, 7 F.Supp. 3d 1016,1024 (N.D.Cal. 2014), and Rule 201, SCRE.

Carolina Supreme Court was denied. (all documents are available on the South Carolina Judicial Department website.)

In case no. 2, Petitioner Woods tried to insert himself into matters of probate estate administration in the estate of Reba Hinson. Most significantly for the above-captioned Rule 60(b) independent action, Woods sought to have Breakfield removed as personal representative because, among other things, he was probating the wrong will. The probate court found the Petitioner to be a stranger to the Reba Hinson estate and denied Petitioner's various efforts to interfere in estate administration. Petitioner appealed to circuit court where the probate court orders were affirmed. Petitioner appealed to the Court of Appeals where the circuit court and the probate court were affirmed in a per curiam unpublished opinion. (2013-UP-0256). Petitioner's petition for certiorari to the South Carolina Supreme Court was denied. (all documents are available on the South Carolina Judicial Department website.)

In case no. 3, Petitioner described his action as one to quiet title to the land at issue by having the last will of Reba Hinson's husband, Levie Hinson, construed to have devised a fee interest in the land to Reba Hinson rather than having devised a life estate. Petitioner is not a member of the Hinson family; he was neither a devisee in Levie Hinson's last will nor an heir of Levie Hinson. Nevertheless, Petitioner had his day in court, and the circuit court granted summary judgment in favor of the Hinson family. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2014-UP-010). Petitioner's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. (all documents are available on the South Carolina Judicial Department website.)

Case no. 4 involved Petitioner's claim against the Reba Hinson estate for various and sundry frivolous causes of action. The claims were removed to circuit court. The circuit court granted summary judgment in favor of the Reba Hinson estate. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2014-UP-0158). Petitioner's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. . (all documents are available on the South Carolina Judicial Department website.)

There is also a fifth action pending between the Hinson family and Mr. Woods. The Hinson family commenced an eviction action in magistrate's court to have Mr. Woods evicted as a hold-over tenant at will. Mr. Woods appealed a pretrial order to the Circuit Court, and to the Court of Appeals and to the Supreme Court. As with his other appeals, he was unsuccessful. (see Court of Appeals' unpublished opinion 2014-UP-076). However, in the course of his appeals, Mr. Woods asserted to the various courts that his interest in the subject land is as an owner and not as a tenant. Upon the tenant-eviction case returning to the magistrate's court, and based on Mr. Woods' express denial that he is a tenant, the Hinson family brought a new proceeding to have Mr. Woods put off the land as a trespasser. (2014CV1210400037). The Chester County Magistrate's Court recently issued an Order dated and filed 27, 2015, finding Mr. Woods to be a trespasser and ordering him to vacate the subject property.

Of particular relevance to the above-captioned Rule 60(b) independent action are cases 2 and 3 described above.

Case 2 - Reba Hinson Estate Administration

Case 2 involved the same issues and allegations that are made in Petitioner's independent action filed herein, only the allegations were then made in proceedings in the Reba Hinson estate,

and he sought to have probate court orders in the Reba Hinson estate vacated via Rule 60(b). Petitioner claimed that Breakfield was probating the wrong will and that he and others had committed a fraud on the court. He moved for Rule 60(b) relief in the form of vacating the Order appointing Breakfield as personal representative and vacating the order admitting Reba Hinson's June 23, 1998 last will to probate. Petitioner is now trying to relitigate herein those very same allegations by claiming that they somehow relate to the October 15, 2007 Order in the Levie Hinson estate.

From the Statement of the Case in Respondent's (Breakfield as personal representative) Brief to the Court of Appeals in case no. 2, Petitioner's case (in the Reba Hinson estate) was described as follows (Appellant is Mell Woods, the Petitioner herein) :

The action involved in this appeal was commenced by the Appellant's Petition in probate court for Removal of Personal Representative dated January 22, 2010. (Appellant's Petition for Removal of Personal Representative dated January 22, 2010, including the attached Motion for Removal of Personal Representative). Attached to the Petition was a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration [sic] of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was made, and other "mis-management items," not identified in the motion with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal to Circuit Court." (Appellant's Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal to Circuit Court, dated February 17, 2010). This pleading was dated February 17, 2010.²

²Although the Probate Court denied the relief sought in the Petition to Vacate Order and the Motion to Remove the proceeding to the Circuit Court, as explained hereinbelow, the Appellant did not appeal those rulings.

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. (Respondent's Answer to the Petition for Removal of Personal Representative). The Personal Representative also filed and served a consolidated Motion to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court. (Respondent's consolidated Motion to Dismiss the Petition to Vacate Order and Return to the Motion to Remove the Petition to Vacate to Circuit Court).

Appellant appealed the April 19, 2010 Probate Court Order to Circuit Court. In his Notice of Appeal filed on April 30, 2010, Appellant identified two subjects as "partial grounds" for the appeal: (1) the Probate Judge did not recuse himself from the matter when he had knowledge that a family member had some past involvement in the matter, and (2) that the Probate Judge refused to issue subpoenas for witnesses that the Appellant wanted to subpoena to the hearing. (Appellant's Notice of Appeal (to Circuit Court) filed on April 30, 2010).

On June 4, 2010 the Appellant filed two "additional grounds" for his appeal: (3) that the probate court erred in not removing the Personal Representative for his failure to provide bond, and (4) that the probate court erred in failing to rule that the wrong will is being probated.³ (Appellant's Additional Grounds for Appeal filed June 4, 2010).

The first hearing on Appellant's grounds of appeal was held on September 8, 2010, Judge Clifton Newman presiding. At the hearing the Appellant objected to going forward with the hearing because the Probate Court had not made its Return to the Circuit Court pursuant to §62-1-308(b). Judge Newman ordered that the probate court deliver its entire Reba Hinson estate file to the circuit court courtroom for use during the hearing. The file was delivered for the use of the parties, attorneys and the circuit court.

By Order dated September 30, 2010 the Circuit Court affirmed the Probate Court's April 19, 2010 Order and dismissed the appeal. (Circuit Court Order dated September 30, 2010). Appellant filed and served a Rule 59(e) motion for reconsideration raising, among other arguments, that the appeal had been "heard without benefit of a certified record from the Probate court." (Appellant's Motion for Reconsideration of the Order dated September 30, 2010). By Order dated January

³ The Appellant's issue on appeal no. 4 to the circuit court is actually misstated. The Probate Court Order that admitted the particular Last Will to probate (the Last Will that Appellant labels the "wrong will") was the Probate Court's Order dated February 18, 2009. Appellant tried to vacate that Order, but in the April 19, 2010 Order, the Probate Court denied such relief because Appellant had no standing to seek the vacate the Order and, alternatively, he made an insufficient showing for Rule 60 (b) relief. Appellant has not appealed that portion of the April 19, 2010 Order. In the appeal now pending, the Appellant is really appealing the Probate Court's refusal to remove the Respondent as PR because he is probating the wrong will. [this footnote appeared in the brief that is being quoted.]

27, 2011, Appellant's motion for reconsideration was granted on the ground that a proper return was not made by the Probate Court." (Circuit Court Order dated January 27, 2011). The undersigned as attorney for Respondent took the initiative to have the Probate Court's Return delivered to the Circuit Court. (Respondent's Letter to Probate Court regarding the Probate Court's Return). The Probate Court confirmed that the Return was delivered. (Probate Court's Letter confirming the filing of the Return). By Order dated May 18, 2011, Judge Newman amended his January 27, 2011 Order to not only grant the Motion for Reconsideration but to also vacate the September 30, 2010 Order and to return the appeal to the circuit court roster for a new hearing. (Circuit Court Order dated May 18, 2011).

The second hearing on Appellant's appeal from Probate Court was held on July 8, 2011. By Order dated July 17, 2011 the circuit court affirmed the Probate Court's April 19, 2010 Order. (Circuit Court Order Affirming Probate Court dated July 17, 2011).

Appellant served his Notice of Appeal on October 1, 2011.

That is a long explanation of Petitioner's first effort at alleging that Breakfield and others committed fraud on the probate court by offering the wrong will for probate. The key to all of this is Judge Gettys' April 19, 2010 Order in the Reba Hinson Estate (2008-CP-12-0297 Chester County and 2010-ES-46-0265 York County.)⁴ With respect to Petitioner's purported Rule 60(b) relief, the Order stated:

"Mr. Woods' Petition to Vacate the February 18, 2009 Order of Formal Testacy, in which the court ordered that the decedent's last will dated June 23, 1998 be admitted to probate, is treated by the Court as a Rule 60(b) motion. The Court gleans from the motion that Mr. Woods alleges fraud with respect to matters presented to the Court that resulted in said order ordering the June 23, 1998 last will be admitted to probate.

...
With respect to the motion to vacate the February 18, 2009 Order of Formal Testacy, it too must be denied. Mr. Woods, the movant, was not a party to the proceeding that resulted in the issuance of the February 18, 2009 Order he now tries to challenge pursuant to Rule 60(b). A person who was not a party to the underlying proceeding lacks standing to make a Rule 60(b) motion. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2865, citing among other authorities, U. S. v. 8136 S. Dobson St., Chicago, Ill., 125 F.3d 1076 (7th Cir. 1997), *cert. den.* 523 U. S. 1111;

⁴ There is also a York County estate file number because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

King v. State Bd. of Elections, 979 F. Supp. 582 (N. D. Ill. 1996). A more recent opinion very clearly explains that the plain language of Rule 60(b) only allows relief to a party or a party's legal representative, and a nonparty has no right to use Rule 60(b) to modify [or vacate] a consent decree agreed upon by the parties when no such relief is sought by any of the parties themselves. Ericsson, Inc. v. Interdigital Communications Corp., 418 F.3d 1217 (Fed. Cir. 2005).⁵

Other considerations with respect to Mr. Woods' lack of standing are addressed hereinabove, and are equally applicable to his Rule 60 motion.

And, even if Mr. Woods had standing to make the motion, he did not present sufficient evidence to prove that the February 18, 2009 Order of Formal Testacy was the product of a fraud on the Court. A Rule 60 motion is addressed to the discretion of the court. Thompson v. Hammond, 362 S.E.2d 879 (S.C. App. 1987). The burden is on the party seeking relief to show the applicability of one of the qualifying grounds. Paul Davis Systems, Inc. v. Deepwater of Hilton Head, LLC, 607 S.E.2d 358 (S.C. App. 2004). Mr. Woods presented no witnesses and no admissible documentary evidence other than calling the Court's attention to documents already in the court's file. Accordingly, it is ORDERED that Mr. Wood's Motion for Rule 60 relief is denied.

The above-described ruling on Petitioner's Rule 60(b) motion was not appealed and is the law of the case.

Case 3 - Action to Quiet Title by Construction of Levie Hinson's Last Will

Petitioner herein seeks Rule 60(b) relief from the Probate Court's October 15, 2007 Order in the Levie Hinson Estate. That Order declared who the heirs of Levie and Reba Hinson are and, therefore, who the remaindermen were with respect to the life estate devised to Reba Hinson in and by Levie Hinson's last will. In 2011 Petitioner Mell Woods brought an action in circuit court to have the court quiet title to the land he claims by formally construing the Levie Hinson last will. (Case 3). The circuit court granted summary judgment in favor of the Hinson heirs/remaindermen, and that judgment was affirmed by the Court of Appeals. Decided in that case was that Reba Hinson was

⁵ Where South Carolina cases have not specifically addressed a matter governed by the South Carolina Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

devised only a life estate in 1986, meaning by implication that she could not have entered an enforceable agreement with Petitioner to convey the fee title to Mr. Woods in 2003. Also decided was that after Reba Hinson's death the land at issue was owned by the bodily heirs of Levie Hoyt Hinson as tenants in common.⁶ Being dissatisfied with that outcome, Mr. Woods has commenced the above-captioned Rule 60(b) proceeding seeking to have the October 15, 2007 Order in the Levie Hinson estate vacated on the ground of fraud based on matters related to the administration of the Reba Hinson estate (the same grounds that were pursued unsuccessfully by Petitioner in Case 2.)

Petitioner's Rule 60(b) Independent Action

Rule 60(b), SCRCP, provides inter alia:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.⁷

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken

⁶ Neither Woods nor Breakfield was a party to the 2007 proceeding in the Levie Hinson estate.

⁷ Sections 1 to 5 are Rule 60(b) motions that are not involved herein.

...

This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment order, or proceeding, or to set aside a judgment for fraud upon the court.⁸

Petitioner self-described this proceeding as an “independent action for relief . . . under Rule 60(b) SCRPC for relief from the order entered in Case No. 1986-ES-12-188, dated October 15, 2007” (Amended Petition page 1, 2d ¶) on the ground that Breakfield and others wrongfully admitted the wrong will for probate in the Reba Hinson estate (Amended Petition, ¶ 8 and 9)⁹ and that the October 15, 2007 Order in the Levie Hinson estate was “obtained by fraud.” (Amended Petition, ¶ 11.) It is not a motion under Rule 60(b)(3). He also expressly alleges that Breakfield “lied under oath in order to get a bogus will admitted to probate.” (Amended Petition, p. 2, l. 1-5). How an alleged misrepresentation¹⁰ to the probate court in January or February 2009 to get a “bogus will” admitted to probate relates to an order dated October 15, 2007 in another estate and in a proceeding to which neither Breakfield nor Woods was a party, is left to the conspiratorial imaginations of the Petitioner.

All of Petitioner’s allegations, claims and charges of wrongdoing having to do with the admission to probate of Reba Hinson’s June 23, 1998 last will have heretofore been heard and decided by the Probate Court, Circuit Court, Court of Appeals, and the Supreme Court. All orders and opinions were unfavorable to Petitioner.

⁸ The unnumbered provision of Rule 60(b) relied on by the Petitioner herein is a Rule 60(b) independent action.

⁹ Petitioner also alleges that others included in the scheme to probate the wrong will were Chester County Probate Judge Lois Roddey (¶ 5) and attorney Ned Gregory (¶ 7). However, they are not named Respondents in this action.

¹⁰ Respondent Breakfield flatly denies that he misrepresented anything to the probate court with respect to the Reba Hinson estate.

Motion for Dismissal of Independent Action

Pursuant to Rule 12(b), SCRCP, Respondent Breakfield moves the Court to dismiss Petitioner's Rule 60(b) independent action to vacate the October 15, 2007 Order in the Levie Hinson estate. Rule 12(b)(6) promotes the early and simultaneous presentation and determination of preliminary defenses. 5B Wright & Miller, Federal Practice and Procedure: Civil 3d §1349 (2004). In considering a Rule 12(b)(6) motion, the Court may consider items subject to judicial notice without converting the motion to a summary judgment motion, 5B Wright & Miller, Federal Practice and Procedure: Civil 3d §1357. Courts may take judicial notice of matters of public record, Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F. Supp. 2d 553 (W.D.N.C. 1998); prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993); decisions of other courts, Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd., 181 F.3d 410 (3d Cir. 1999); and reliable sources found on the Worldwide Web. In re Yahoo Mail Litigation, 7 F.Supp. 3d 1016,1024 (N.D.Cal. 2014), and Rule 201, SCRE. The grounds for the motion are:

1.. Rule 12(b)(6) - the Amended Petition fails to state facts sufficient to constitute a cause of action against Respondent Breakfield.

(A) Breakfield had nothing to do with the 2007 proceeding or the October 15, 2007 Order in the Levie Hinson estate, as shown by the following chronology:

January 3, 2007	Date of Reba Hinson's death.
2007	Levie Hinson estate reopened for the Huffstickle proceeding re heirs and remaindermen.
October 15, 2007	Order in Levie Hinson estate re heirs and remaindermen to life estate
date unknown	Levie Hinson estate re-closed.
December 15, 2008	Petition for Formal Testacy and Appointment filed in probate court, and Reba

Hinson probate estate opened.

February 18, 2009 Date of order appointing Breakfield as personal representative of the Reba Hinson estate and admitting Reba Hinson's June 23, 1998 last will to probate.

April 19, 2010 Judge Gettys' Order denying Rule 60(b) relief to Petitioner Woods in the Reba Hinson estate. (case 2.)

2011 Petitioner filed his quiet title action involving the construction of Levie Hinson's last will (case 3).

Petitioner tries to tie Breakfield to the 2007 probate court proceedings and the October 15, 2007 Order in the Levie Hinson estate by alleging that Breakfield was appointed personal representative of the Reba Hinson estate in the "Fall of 2007." (See ¶ 6 of Petitioner's Rule 60 petition). **This is blatantly false, and Petitioner knows it.** The probate court's file shows that Breakfield was appointed personal representative of the Reba Hinson estate by Order of Judge Roddey dated February 18, 2009. The Petition for Formal Testacy and Appointment which led to Breakfield's appointment was executed in November, 2008 and was filed on December 15, 2008, at which time the Reba Hinson estate was opened. Breakfield was neither a party to the 2007 Levie Hinson estate proceeding nor represented any party to that proceeding.

(B) There was no misconduct on the part of Breakfield in the Reba Hinson estate. As established in Judge Gettys' April 19, 2010 Order in the Reba Hinson Estate, Petitioner was, and still is, a stranger to the Reba Hinson estate. Likewise, he was also a stranger to the Levie Hinson estate. Levie Hinson's estate was administered in 1986, and Petitioner did not move to South Carolina and meet Reba Hinson until 2001. Generally, a person who was not a party to the underlying proceeding lacks standing to seek Rule 60(b) motion relief with respect to that proceeding. Wright, Miller &

Kane, Federal Practice and Procedure: Civil 2d §2865¹¹, citing among other authorities, U. S. v. 8136 S. Dobson St., Chicago, Ill., 125 F.3d 1076 (7th Cir. 1997), *cert. den.* 523 U. S. 1111; King v. State Bd. of Elections, 979 F. Supp. 582 (N. D. Ill. 1996); Ericsson, Inc. v. Interdigital Communications Corp., 418 F.3d 1217 (Fed. Cir. 2005); U.S. v. 140.80 Acres of Land, 32 F.R.D. 11 (E.D. La. 1963) (a person who claims to own the property in question but who was not named as a party in a condemnation proceeding may not move pursuant to Rule 60(b) to set aside the judgment in that proceeding).

However, an independent action under Rule 60(b) may be brought by one who was not a party to the original action when warranted by equitable principles, and a non-party may attack a judgment obtained by fraud of one of the parties . . . **if it affects his [non-party's] legal interests.** Morrel v. Nationwide Mutual Fire Ins. Co., 188 F.3d 218 (4th Cir. 1999). The October 15, 2007 Order in the Levie Hinson estate did not and does not affect Petitioner's legal interests. Prior to filing this independent action in January, 2015, Petitioner's action to quiet title (case 3) was concluded by the South Carolina Supreme Court's dismissal of Petitioner's petition for writ of certiorari, leaving in place the Court of Appeals' opinion (unpublished opinion no. 2014-UP-010) affirming the circuit court's grant of summary judgment. The summary judgment order construed the Levie Hinson last will to have devised only a life estate to Reba Hinson. At best, the only interest in the land that Petitioner could possibly have received from Reba Hinson was her life estate interest. Her life estate interest terminated upon her death. Consequently, when the October 15, 2007 Order was issued, and when this independent action was commenced, Petitioner had no legal interest in the land that could be affected by the October 15, 2007 Order. The content of the 2007 Order is perfectly consistent with

¹¹ Subsequent to the April 19, 2010 Order the Wright, Miller and Kane treatise was updated. It is now found at Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 2852 and 2865 (2012).

the outcome of the Petitioner's quiet title action.

(C) Affirmative Defense of *Res Judicata*. Assuming that Petitioner has standing to seek Rule 60(b) independent action relief, such relief is unavailable to him if he had the full opportunity to litigate the issue in a prior proceeding and did not do so. M.W. Zack Metal Co. v. International Navigation Corporation of Monrovia, 675 F.2d 525, 529-530 (2d Cir. 1982) (plaintiff could have raised claims of fraudulently concealed facts in earlier proceedings and there is no explanation for why such claims could not have been presented then.) As noted above, Petitioner commenced an action in 2011 to quiet title to the land at issue by having the Levie Hinson last will construed. The defendants in that action, including Breakfield as personal representative of the Reba Hinson estate, raised the existence of the October 15, 2007 Order by counterclaim. Petitioner did not challenge the validity of the Order on the grounds raised herein, or on any other grounds. *Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit **and any issues which might have been raised in the former suit.**" Judy v. Judy, 712 S.E.2d 408 (S.C. 2011). (emphasis added.). A party seeking to use the doctrine of *res judicata* to preclude litigation must show (1) identity of the parties, (2) identity of the subject matter, (3) adjudication of the issue on the merits in the former suit by a court of competent jurisdiction. Id.

(D) Petitioner has not been damaged by the October 15, 2007 Order because he is not an heir or devisee of Levie Hinson. Likewise, Petitioner has not been damaged by the fact that Reba Hinson's June 23, 1998 last will was admitted to probate because Petitioner is neither an heir of Reba Hinson nor a devisee in any last will she is known to have executed.

The Form 300 PC Petition for Formal Testacy and Appointment filed in the Reba Hinson estate on December 15, 2008 expressly disclosed on page 3 that the June 23, 1998 last will was being

offered for probate and that the unsigned, unwitnessed handwritten document bearing the date April 5, 2003 and the typed document bearing the typed date of April 5, 2003 but indicating that it was not witnessed until April 24, 2003, were considered to be invalidly executed and ineffective to revoke the June 23, 1998 last will. Not a single heir or devisee of Reba Hinson objected to the probate of the 1998 will. Devisees/heirs can agree to probate a particular last will among several that may be offered, and can agree to alter the interests contained in a particular last will. S.C. Code Ann. § 62-3-912. Not being an heir or devisee of Reba Hinson, Petitioner does not have a voice in such decisions.

Further evidencing the frivolousness of this action is the fact that the undersigned deposed Mr. Woods in one of the Reba Hinson estate cases and questioned him about the various documents/ last wills known to exist. There was the June 23, 1998 last will that was admitted to probate. There was an unsigned, unwitnessed handwritten last will bearing the date of April 5, 2003 that Petitioner testified was in the handwriting of Reba Hinson. Petitioner admitted that he is not mentioned in this document. There was a typed last will dated either April 5 or April 24, 2003, that is essentially the same as the unsigned, handwritten version, and this is the last will that Petitioner contends should have been probated. However, he admitted that he is not named in this document in any sense or manner, much less named as a devisee. **Petitioner is not named in any purported last will**, yet he pursued legal actions, including this one, as if he had a horse in the race.¹² Consequently, Petitioner has no interest in the Reba Hinson estate and has no standing to advocate for or against any particular

¹² Petitioner does not like the June 23, 1998 last will because it expressly states that Reba Hinson received a life estate in the land devised to her by her husband. But, assuming solely for sake of argument that Reba Hinson thought she owned the fee interest in the land, it really does not matter what Reba Hinson thought her interest was, or what Petitioner thought Reba Hinson's interest was, because her interest is determined by the content of the Levie Hinson last will and by the governing law. In the Court of Appeals' unpublished opinion no. 2014-UP-010 (Petitioner's quiet title case) it was established that Reba Hinson owned only a life estate because that is what was devised to her in her husband's will, and that she could not have transferred to anyone, including Petitioner, the fee interest because that is an interest greater than what she owned.

last will offered for probate, and therefore, has no interest in the Levie Hinson estate order based on his “wrong will” argument in the Reba Hinson estate. Judge Gettys has already properly dismissed Mr. Woods’ “wrong will” challenge.

2. Additional ground for dismissal- Rule 12(b)(7) - failure to join necessary parties. Mr. Woods must join as parties all persons whose ownership interests were affected by the challenged order. He has not done so.

Discretion and Requirements for Rule 60(b) Independent Action Relief

By its terms, Rule 60(b) can only afford equitable relief. In considering collateral attacks on final orders or judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the case. Chewning v. Ford Motor Co., 579 S.E.2d 605 (S.C. 2003). For a Rule 60(b) independent action grounded on fraud, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Id. The “indispensable elements” of a Rule 60(b) independent action in equity to escape a prior judgment are:

1. a judgment which ought not, in equity and good conscience, to be enforced;
2. a good defense to the alleged cause of action on which the judgment is founded;
3. fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense;
4. the absence of fault or negligence on the part of the defendant; and
5. the absence of any adequate remedy at law.

Mr. T v. Ms. T, 662 S.E.2d 413 (S.C.App. 2008). Petitioner’s failure to satisfy any one of the elements is fatal to his action. Based on the allegations of the Amended Petition and matters that the court can consider by judicial notice:

- a. There is no readily apparent reason why the October 15, 2007 Order ought not, in equity and good conscience, be enforced. All persons who were heirs of Levie and Reba Hinson were made parties, and none of them appealed the order.
- b. Petitioner has not made out, and cannot make out, a good defense to the cause of action decided by the October 15, 2007 Order. The cause of action in the 2007 proceeding involved the construction of Levie Hinson's last will and a determination who his heirs/remaindermen were. Had Petitioner been a party to the 2007 proceeding, his defense would have been the same as his claim in his own 2011 quiet title action (case 3), namely that Levie Hinson's last will devised fee title to Reba Hinson and not a life estate. That "defense" has heretofore been decided by all courts as not being a "good defense" for Petitioner.
- c. Petitioner has not been prevented from obtaining the benefit of his good defense. He presented his defense as an affirmative claim in case 3, and lost. Further, there was no fraud, accident or mistake in offering Reba Hinson's June 23, 1998 last will for probate when the other last will versions were disclosed to the court and there was no objection made by any of the decedent's heirs or devisees.
- d. Petitioner cannot show an absence of adequate remedy at law because he commenced an action at law in 2011 to construe Levie Hinson's last will, and argued his case to the Circuit Court, the Court of Appeals and the Supreme Court; and lost in each court. Holcombe-Burdette v. Bank of America, 640 S.E.2d 480 (S.C.App. 2006) (the construction of a will is an action at law.)

Motion to Dismiss Petitioner's Demand for Jury Trial

In conjunction with the Amended Petition for independent action equity relief, Petitioner filed

a Demand for Jury Trial in which he claims to also be suing for money damages for interference with contract and for fraudulent acts.¹³ This he cannot do. Rule 60(b) is available only to set aside a prior order or judgment, and not for a grant of different or additional relief. 12 Moore's Federal Practice § 60.25 (Matthew Bender 3d 2004); Delay v. Gordon, 475 F.3d 1039 (9th Cir. 2007) (Rule 60(b) is available only to set aside a prior judgment or order; courts may not use Rule 60(b) to grant affirmative relief in addition to the relief contained in the prior order or judgment); U.S. v. \$119,980, 680 F.2d 106 (11th Cir. 1982.) Consequently, there is no right to jury trial.

Motion for Sanctions Against Petitioner

Respondent Breakfield moves the court to impose sanctions on the Petitioner in the form of an award of litigation costs, including attorney fees, and an order prohibiting the Petitioner from filing any further probate court actions or proceedings in either the Reba Hinson estate or the Levie Hinson estate unless Petitioner's pleadings are signed by an attorney and a bond is posted in the amount of \$15,000 to cover litigation costs and reasonable attorney fees incurred in defending against the action.

1. Rule 11 sanctions. Rule 11(a), SCRCF, imposes a duty on parties and attorneys representing parties by construing a signature on pleadings as a certificate that (s)he has read the pleading and "that to the best of his knowledge, information and belief there is good ground to support it . . ." The history of the proceedings between the captioned parties belie any suggestion that this case was filed in good faith. Petitioner has pursued repeated and vexatious litigation, with the captioned case being only the latest installment.

¹³ No such causes of action are alleged in the Amended Petition.

2. S.C. Code Ann. §15-36-10, The South Carolina Frivolous Civil Proceedings Sanctions Act.

Section 15-36-10(C) provides that

(C)

(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based. (emphasis added.)

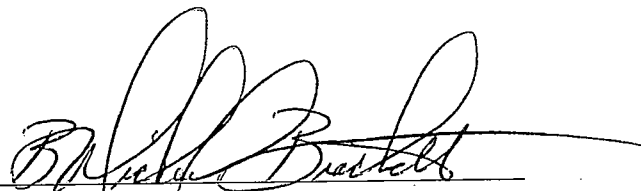
(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

Bringing and/or continuing a lawsuit based on allegations that prior court rulings have found to have no merit can be the basis for awarding sanctions, Holmes v. East Cooper Community Hospital, Inc., 758 S.E.2d 483 (S.C. 2014), including ordering the Plaintiff to pay the Defendant's attorney fees and other related litigation costs, and enjoining the Plaintiff from filing any future legal proceedings in the probate court against the Defendants without first posting bond. Id. The plaintiff may also be sanctioned and enjoined from filing any future legal proceedings in the probate court against the Defendants without representation on the pleadings by a licensed attorney. Id., fn. 18.¹⁴

¹⁴ Here, the sanction could only apply to future filings in the probate court.

These motions will be supported by all matters of record herein and by the judicially noticed evidence and authorities cited hereinabove, and subsequently discovered authorities. There is no duty of prior consultation for this motion.

March 30, 2015



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Adam T. Silvernail
Moses & Brackett, PC
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Columbia, SC 29202
803.461.2312
Attorneys for Respondent Breakfield

EXHIBIT E

STATE OF SOUTH CAROLINA
Chester County

In the Probate Court
Sixth Judicial Circuit

Number: 1986-ES-12-188

Mell Woods,
Plaintiff,

vs.

Robert H. Breakfield,
plus three unknown
parties whose true name
is unknown,
Defendants.

LOUIS H. RODDEY
JUDGE OF PROBATE
2015 JUN -9 P 4:42
PROBATE COURT
CHESTER COUNTY S.C.

[COPY] [COPY]

Voluntary Dismissal per Rule 41(a)(1) SCRPC:

There has not been an answer filed or served in the
above case; nor a motion for summary judgment filed or
served; this case is not a class action; there is not
a receiver in this case.

WHEREFORE, plaintiff comes now and dismisses the
above action under authority of Rule 41(a)(1) SCRPC.

This 06 day of June, 2015.

[Signatures and Certificate of Service follow]

-/-

~~COPY~~

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

CERTIFICATE OF SERVICE

I hereby certify that I have served the defendants with a true copy of the within and foregoing pleading which dismisses this case under Rule 41(a)(1) SCRPC, by placing the document in the U.S. Mail addressed to the counsel of Record for defendants, to wit:

Moses & Brackett
c/o B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 06 day of June, 2015.

~~COPY~~

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-2-

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
JUL 20 2015
SC Court of Appeals

Appeal from Chester County
Court of Common Pleas
Brian M. Gibbons, Circuit Court Judge

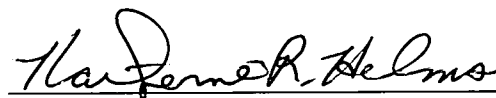
2015-CP-12-0179

Appellate Case No. 2015-001036

Certificate of Service

I, Katherine Helms, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served the pro se Appellant, Mell Woods, with a copy of Respondent's Return to Appellant's Petition for Rehearing and Respondent's Motion for Rule 269, SCACR, Sanctions postage prepaid and return address clearly indicated on said envelope, on this 20th day of July, 2015 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721



Katherine Helms

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

B. Michael Brackett, of Counsel
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

July 20, 2015

Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1220 Senate St.
Columbia, SC 29201

RECEIVED

JUL 20 2015

SC Court of Appeals

Re: Breakfield, as Attorney-in-Fact v Woods
Trial Court Case No. 2015-CP-12-0179
Appellate Case No. 2015-001036
Our File No. 12085.3

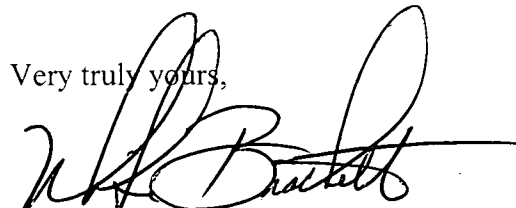
Dear Ms. Kitchings:

Enclosed for filing please find the original (unbound) and six copies of Respondent's Return to Appellant's Petition for Rehearing and Respondent's Motion for Rule 269, SCACR, Sanctions. Also enclosed for filing is the customary Certificate of Service.

By copy of this letter, I am serving a copy of the enclosed Return/Motion on Appellant who is pro se.

Please allow my courier to return with a clocked copy of page one of the Return.

Very truly yours,



B. Michael Brackett

cc. Robert H. Breakfield, Esquire
Mell Woods