

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William E. Tindal, Special Referee

Opinion No. 2015-UP-306 (S.C. Ct. App. Filed June 24, 2015)

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SC Court of Appeals

Ned Gregory, Jr. -----Respondent,

v.

Howell Jackson Gregory and
The Gregory Company, Inc. -----Petitioners.

PETITION FOR A WRIT OF CERTIORARI

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INDEX

Cover of Petition for a Writ of Certiorari -----1

Index -----2

Certificate of Counsel -----3

Question Presented -----4

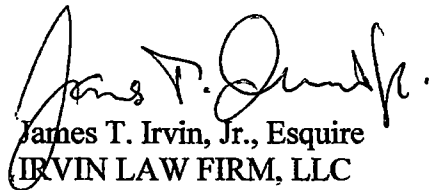
Statement of the Case -----5-6

Argument -----7-10

Conclusion -----11-12

CERTIFICATE OF COUNSEL

Counsel for petitioners certify that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 20, 2015.



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September 20, 2015
Myrtle Beach, SC

QUESTION PRESENTED FOR REVIEW

DOES THE CORRECTION IN 2012 BY THE SAME CLERK OF COURT OF A CLERICAL OR SCRIBNERS ERROR SHE MADE IN 2008 OF A TRANSCRIPT OF JUDGMENT AMOUNT, BASED UPON MASTER IN EQUITY ORDERS OF 2006, THEN COMPLY WITH SC CODE ANN. 15-35-810 TO CREATE A FINAL JUDGMENT NEEDED TO CREATE A LIEN, EVEN THOUGH A SUCCESSOR MASTER IN EQUITY TOOK JUDICIAL NOTICE OF THE 2008 ERROR AND FAILED TO ALLOW THE CORRECTION WHICH THEN CHANGED THE ORDERS OF THE PRIOR MASTER IN EQUITY, WHOSE ORDERS WERE NOT APPEALED BECOMING THE LAW OF THE PARTITION CASE, THEREBY CAUSING A VIOLATION OF RULE 63 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE BY THE LATER JUDGE IN CHANGING THE PRIOR JUDGES DECISION BY NOT ACCEPTING THE CLERK OF COURTS AMENDED TRANSCRIPT OF JUDGMENT AND THUS NO FINAL JUDGMENT EXISTS?

STATEMENT OF THE CASE

This case is a bizarre one about an award that later takes on the appearance of a Magician's "now you see it, now you don't" command that has turned into a nightmare for Howell Jackson Gregory. The award was offsetting judgments in a partition case wherein the trial judge, Horry County Master-in-Equity J. Stanton Cross, Jr. allowed the setoff of monies spent for taxes and real estate improvements to the jointly owned properties paid for by Appellant (Howell Jackson Gregory) that was not contributed towards by Respondent (Ned Gregory, Jr.) amounting to \$25,517.99 including a payment of \$7,940.00 that was conceded at trial prior to 2005. Those 2006 Cross orders were not appealed and became the law of the 2000 partition case.

Subsequently, successor Horry County Master-in-Equity Cynthia Graham Howe in a May 15, 2013 ruling on the issue of two 2006 checks totaling \$7,597.03 made payable to the Master-in-Equity for Horry County ordered them to be credited as Respondent conceded them at the April, 2013 post trial hearing to Appellant; however, she held that Appellant did not prove payment of the \$25,519.99, but that was not an issue for her and had been resolved by the prior judge Master-in-Equity Cross in 2006.

In the interim the Horry County Clerk of Court issued an erred transcript of judgment in 2008 and failed to report the credits or setoffs due Appellant. It was not until 2012 that the error of omission or Scribner's error was discovered and she amended the transcript of judgment in November, 2012 to reflect the setoffs but not the two 2006 checks (\$7,597.03) as they were made payable to the Master-in-Equity Court not her.

The Howe order of May 15, 2013 clearly violates the standard set forth in Rule 63 of the South Carolina Rules of Civil Procedure in that Master-in-Equity Howe is changing the ruling set forth by her prior judge in the same court. What makes the case most glaring is that she does this intentionally and refuses to accept the 2012 amended transcript of judgment that corrects the math, but goes with the 2008 erred transcript of judgment in ordering a judgment in the partition case that takes away the awards that Master-in-Equity Cross ordered in 2006 including a conceded sum at trial of \$7,940.00 for the removal of gas tanks paid for by Appellant only and prior to trial.

Since the amount of the judgment is not final then it cannot become a lien and to cause a public sale of the Lancaster real estate based on this non-final judgment would be an illegal sale. It will not become legal until the Cross orders of 2006 are complied with.

During the fifteen year course of the events of this partition case Respondent has on two occasions conceded monetary amounts to Appellant; however, only one has been properly credited against the purported judgment claim Respondent makes. That sum is \$7,597.03 the total of two checks written on August 9, 2006 and conceded at the April, 2013 Master-in-Equity Howe hearing in her order of May 15, 2013. However, the conceded sum of \$7,940.00 at the trial of the case with Master-in-Equity Cross for the payment by Appellant for removing the gas tanks from the Lancaster real estate has yet to be properly credited as it was part of the Cross orders of 2006 that were not appealed and are the law of the case. Until proper credits are ruled upon in this matter there is no final money judgment in this case and SC Code Ann. Section 15-35-810 requires that a final money judgment be ascertained before a lien exists.

ARGUMENT

Following the sale of real estate at public auction in 2005 owned by the parties in a partition action begun in 2000 the Horry County Master-in-Equity, J. Stanton Cross, Jr. who ordered the sales in Horry and Lancaster Counties ordered in 2006 (R.2-5) offsetting judgments of the parties to allow for costs paid and not contributed to by a party. As a result the math ordered for Respondent (Ned Gregory, Jr.) judgments of \$20,900.00 and \$21,959.47 and ordered for Appellant (Howell Jackson Gregory) judgments of \$7,940.00 (an amount conceded by Respondent at trial prior to the sales); \$4,077.99 in taxes and \$13,500.00 for a new roof. The math reveals the following per the Cross orders of 2006:

Respondent judgment totals:	\$42,859.47
LESS Appellant judgment totals:	25,517.99
Net judgment total for Respondent:	<hr/> \$17,341.48

The Cross orders of 2006 were not appealed and are the law of the case. (R. 2-5)

In 2008 the Horry County Clerk of Court created an erred transcript of judgment that reported that Respondent held a \$45,087.47 judgment against Appellant and without reporting the offsets. (R.33) This omission, clerical or Scribner's error by the clerk was not presented until 2012 by Respondent at the first hearing before a Special Referee in his 2008 suit in Lancaster County to set aside the Cross deed of the Lancaster real estate to The Gregory Company, Inc. alleging a forty five thousand dollar claim not the seventeen thousand dollar ordered amount as his basis for a violation of the Statute of Elizabeth.

Subsequently, the Horry County Clerk of Court in 2012 amended the erred 2008 transcript of judgment reflecting the amended judgment amount to be \$24,666.51 (R.36); but, she could not report the two 2006 checks since they were made to the Horry County Master-in-Equity and it took a post trial motion to accomplish a May 15, 2013 order (R.21) by the successor Horry County Master-in-Equity Cynthia Graham Howe reporting that the Respondent conceded the two August 9, 2006 checks totaling \$7,597.03 (R.37) at the hearing on April 25, 2013 in favor of Appellant.

In that May, 2013 order Master-in-Equity Howe failed and refused to accept the amended transcript of judgment prepared by the Horry County Clerk of Court on November 2, 2012 and as a result the erred transcript of judgment amount was used by Howe to arrive at a judgment amount; however, it is not a final judgment as the math is off by over twenty thousand dollars in Respondent's favor; however, it is not a final judgment. With the amended transcript of judgment and the credit of the two 2006 checks (R.37) the correct math is as follows: This would create a final judgment and become a lien in compliance with SC Code Ann. Section 15-35-810.

Amended transcript of judgment of 2012:	\$24,666.51
LESS the two 2006 checks conceded in 2013:	7,597.03
Correct net judgment total for Respondent:	<u>\$17,069.48</u>

Furthermore, by the successor Master-in-Equity Howe not adhering to the 2006 Cross orders in accepting the erred transcript of judgment over the amended one that correctly reports the orders of the trial judge, Master-in-Equity Cross, the law of the case, then, Howe violates Rule 63 SCRPC by not following the law in the Cross 2006 orders.

That the judgment amount reported in the Howe order of May 15, 2013 is not a final judgment and therefore is not available for the Special Referee in Lancaster to order a sale of the Lancaster real estate based on that amount and until the correct final judgment amount is ruled upon then any sale or attempt to sell the real estate at public auction to satisfy a non-final judgment is an illegal sale and is tantamount to judicial extortion to do so.

Master-in-Equity Howe acts in her May 15, 2013 order that Appellant is trying to prove to her that he paid for three years taxes amounting to \$4,077.99 and a new roof amounting to \$13,500.00 when Appellant was not as he had already proved these sums to the prior Master-in-Equity Cross in 2006 and the Cross orders of 2006 uphold that proof and the cancelled checks presented to Howe were to show how Appellant proved to Cross that he paid for the taxes and improvements to real estate jointly owned by the parties that was not contributed towards by Respondent. Also, the Cross orders of 2006 are the law in the partition case and Rule 63 SCRCF prevents those prior orders from being changed or tampered with by a successor judge in the same court (here the Horry County Master-in-Equity Court).

Therefore, the Horry County Clerk of Court has cleaned up her error of 2008 in 2012 which now complies with the Cross orders of 2006; but, successor Master-in-Equity Howe in 2013 does not give credit to the 2012 amended transcript of judgment or the prior Master-in-Equity Cross who ordered the judgments in 2006. Howe taints the trail of justice in this matter by violating Rule 63, SCRCF in ordering that Appellant did

not prove payments when that was not an issue for her as Cross had already ruled on it. (R. 147) Howe excuses herself by saying that she is abiding by the 2006 Cross orders.

Nothing could be more further from the truth, because if she was really abiding by the 2006 Cross orders then the amended transcript of judgment (R. 36) would be the amount from which she should have deducted the two 2006 checks conceded at the 2013 hearing (R. 37) resulting in the May 15, 2013 Howe order. (R. 21) But, instead Howe deducts the two 2006 checks conceded from the erred transcript of judgment which by 2013 was out of date as it had been amended by the Horry County Clerk of Court who had created the error in 2008 and as it was a clerical or Scribner's error she had the right to correct her error and did so in November, 2012 prior to 2013.

It should be noted that Master-in-Equity Howe did take judicial notice of the fact that the clerk of court's office created an error on the 2008 transcript of judgment, however, she after affirming the fact states "that doesn't matter." (R.124) This statement to us shows the callous indifference this successor Master-in-Equity shows as she by avoiding doing the proper thing clearly violates Rule 63, SCRCP and attempts to modify the 2006 orders of Master-in-Equity Cross, the prior judge in her court who tried the case.

"Rule 63 gives a successor judge no discretion to reweigh the evidence where the trial judge has made findings of fact supported by evidence in the record." *Charleston County DSS v. Father, et. al.*, 317 S.C. 283, 454 S.E.2d 307, 312 (1995).

CONCLUSION

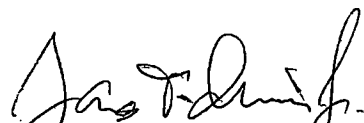
As this is an equity matter application of the equitable maxims applies and that is what the trial judge, J. Stanton Cross, Jr., Master-in-Equity did in 2005 and 2006 when he ordered the sale of the real estate and later ordered the offsetting judgments. As the judge of the facts and law in the case he ordered any payments made that was not contributed towards by the other party would be accounted for and he did so with the offsetting judgments. As his orders of 2006 became the law of the case as they were not appealed then for a later judge in the Horry County Master-in-Equity Court to come in and attempt to change the Cross 2006 orders is a flagrant violation of the Rule 63, SCRPC and her order of May 15, 2013 should be reversed in part for that reason.

Respondent during the course of this case has conceded two amounts to Appellant. The first conceded amount of \$7,940.00 was at trial before Master-in-Equity Cross and is plainly set forth in his 2006 orders (T. 2-5). To date Appellant has been denied this conceded sum. The second conceded amount of \$7,597.03 (T. 37) is the sum of the two 2006 checks for the benefit of Appellant and that sum was credited by Master-in-Equity Howe in her May 15, 2013 order (T. 21) and that sum should not be a part of the reversal.

With the application of equity, the allowance for the clerk to correct her own error as it was a clerical or Scribner's error and the requirements of Rule 63, SCRCP it should be clear that this case should not continue to be a magic show and that the relief ordered by the trial judge in 2006 was not appealed and is the law of the partition case and the May 15, 2013 order of Master-in-Equity does not truly reflect the right outcome of this Case which was totally overlooked by the Court of Appeals.

For the reasons stated, petitioners ask the Court to grant the petition for a writ of certiorari.

Respectfully submitted,



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September 20, 2015

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In the Supreme Court

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SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
William C. Tindal, Special Referee

Appellate Case No. 2015-001959
Court of Appeal

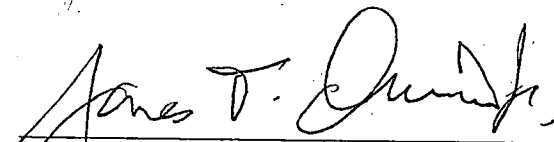
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and the Gregory Company,Petitioners.
Inc.

APPEAL FROM LANCASTER COUNTY
COURT OF COMMON PLEAS
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PROOF OF SERVICE

I certify that I have served one copy of the Petition for Writ of Certiorari and one copy of the cover of the Appendix on Palmer Freeman by depositing a copy of it in the United States Mail, postage prepaid, on September 21, 2015 addressed to Palmer Freeman, P.O. Box 8024, Columbia, SC 29202 attorney for Respondent. One copy of the same is being served by U.S. Mail to The Honorable Jenny Abbott Kitchings Clerk, SC Court of Appeals, at 1015 Sumter Street, Columbia, SC, 29201 on September 21, 2015.


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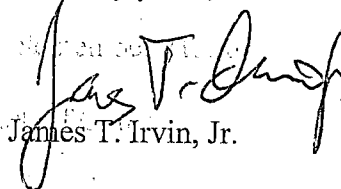
The Honorable Daniel E. Shearouse, Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RE: Gregory vs. Gregory
Appellate Case No. 2015-001959

Dear Mr. Shearouse:

Pursuant to the conversation I had with the Court last week, enclosed herewith please find the original unbound and six copies of the Petition for Writ of Certiorari as well as two covers of the Appendix with regard to the above referenced matter. By copy of this letter we serving the opposing counsel with the same. If you have any questions or need further information, please let me know. With kind regards, I am

Sincerely yours,



James T. Irvin, Jr.

JTI/jnb
The Honorable Jenny Abbott Kitchings
Palmer Freeman, Esq.
Enclosures

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