

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SEP 22 2015

SC Court of Appeals

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

Brian Gibbons, Circuit Court Judge

Court of Appeals Number 2015-001036

Circuit Case Number 2015-CP-12-0179

Robert H. Breakfield, Esquire as
attorney-in-fact for John D.
Hinson, John C. Hinson,
Jerry Hinson, Kathy Huffstickle,
Robert H. 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.,

Respondents,

v.

Mell Woods,

Appellant.

RULE 240(e), SCACR REPLY TO Motion

-1-

1. Mr. Brackett, the respondent attorney filed a motion complaining about appellant representing himself; the respondent motion should be denied because all persons in South Carolina have the statutory right to represent themselves, Washington v. Washington, 308 S.C. 549, 419 S.E.2d 779 (1992), and South Carolina Statute § 40-5-80; also appellant has a first amendment right to petition the government, including the judicial branch.

2. In the present appeal, Res Judicata does not exist because of two reasons:

(a) the parties are not the same, and

(b) *extrinsic fraud*, repeat extrinsic fraud has employed by Brackett and Breakfield, both licensed attorneys, to obtain the results they wanted; this issue has been raised in the magistrate court, and the presiding magistrate judge refused rule on the issue, claiming that doing so would only serve to "impugn" the character of Brackett.

3. The parties are not the same, simply because one of the original parties, *Elaine H. Hensley*, has died and her estate has been closed out, and Mrs. Hensley is not a party to the present proceeding; in addition, *Darrell W. Hinson*, has apparently quit the case and is not a party to the present proceeding.

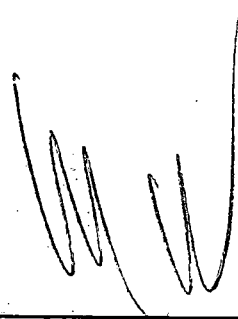
4. In addition, and contrary to what Mr. Brackett is now telling the Court of Appeals, the Court of Appeals did not Rule that appellant could not claim adverse possession, but only that appellant could not "tack" to make the required 10 years; since the Ruling by the Court of Appeals, twenty-one months ago, appellant has completed the required ten years, on his own and without the need to tack to the title of anyone else, the date of the completion of appellant's ten years adverse possession was May 08, 2015.

5. As appellant has previously pointed out, there now pends in the Chester County Court of Common Pleas, a partition action, concerning the same land in question which was filed during year 2008, which was well before any of the subsequent litigations which Mr. Brackett is now complaining about; appellant should have been made a party to the partition action, since everyone was well aware that appellant claimed part of the land which is the subject of the partition action, Number 2008-CP-12-00475; appellant has now applied to be a party within forty-five days of finding out about the pending partition action, with a copy of the motion attached to this reply.

Conclusion

It is clear that the jurisdiction of this case is fully within the pending partition action, and none of the parties have the right to go to another court, the magistrate court in this instance, and try to have anyone evicted when the partition case is still pending. Appellant respectfully asks that this case be remanded and adjudicated in the partition action.

Respectfully submitted,
this 18 day of September, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

Robert H. Hinson, William
Calvin Hinson, Jr.,
Charles Jerry Hinson,
Elaine H. Hensley, and
Linda K. Stanford and
William Levy Hinson,

Plaintiffs,

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CLERK OF COURT
CHESTER CO S.C.

Civil Action, Number:
2008-CP-12-00475

vs.

Lois H. Griffin, Christine
G. Jones as Trustee of the
Lois H. Griffin Living
Trust, J.C. Hinson, Kathy
Huffstickle, John Daniel
Hinson and Darrell Wayne
Hinson,

[Mell Woods, applicant
for intervention]

Defendants.

Motion pursuant to Rule 24(a)(2) SCRCP:

Mell Woods, as an applicant to intervene in the above
styled action, comes now and shows to the Honorable Special
Referee the following grounds for intervention.

1. The above action is for the partition of real estate.
 2. Mell Woods is the legal owner of part of the real
estate in suit.
- /-

3. Mell Woods has not been included in the pending partition case, and applicant claims an interest relating to the property in question and is so situated [meaning not being a party] that the disposition of the action without Mell Woods being included will impede both the applicant's interests, as well as the interests of the present parties.

4. This application is timely; applicant discovered the pending partition action only about a month ago; this case has been concealed from public view because of the way it is shown in the public data base provided by the South Carolina Supreme Court; the case is listed in a non-standard way which does not match the filed pleadings, one example, the Case Number in the data base is not hyphenated as one would expect. Any deviation will cause the computer to return "no results." In any event, the last entry in the case file is a note to Mr. Bruce Poore, an attorney for one of the parties, from the clerk of court wanting to know the status of the partition case, dated June 11, 2013, over two years ago, with the note to date not having been responded to. So, applicant is surely as timely as anyone else in the case.

5. There is an on-point South Carolina case about Rule 24, SCRCF. South Carolina requires a four point test to determine if an application for intervention should be granted, Berkeley Electric v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712, (1990);

4 Parts:

(1) establish timely application;

(2) assert an interest relating to the property which is the subject of the action;

(3) demonstrate that applicant is in a position such that without intervention, disposition of the action may impair applicant's ability to protect that interest;

(4) demonstrate applicant's interest is inadequately represented by other parties.

6. Berkeley Electric also cited Spring Construction Co., Inc. v. Harris, 614 F.2d 374 (4th Cir. 1980), being timely was discussed in Spring Construction Co.; "Mere passage of time is but one factor to be considered in light of all the circumstances." and that, "the proper approach is to disregard non-prejudicial technical defects."

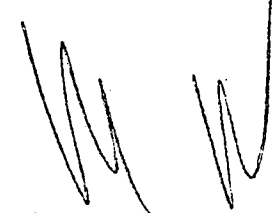
7. Will the present parties protect the interests of Mell Woods, the applicant for intervention? The answer is, no, simply because the existing parties have interests adverse to applicant's interests.

8. The disposition of the pending partition action without the addition of applicant will impede the final settlement of the land dispute between all of the parties for the simple reason that Mell Woods has a good and valid and legal claim to part of the land in question, and if any less than *all of the parties* are before the court at the disposition of the case, then the case will probably have to be filed again.

9. Applicant moves to be added as a party in the pending partition action.

Respectfully submitted,

this 10 day of August, 2015.


Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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CHESTER COUNTY SOUTH CAROLINA
COURT OF COMMON PLEAS

SC Court of Appeals

Civil Case Number: 2008-CP-12-00475

CERTIFICATE OF SERVICE:

Mell Woods has examined the case file for the above case.

Appearances have been filed by the following persons:

Bruce M. Poore, attorney at law

J. Steedley Bogan, attorney at law

Ned Gregory, II, attorney at law

Daniel D. D'Agostino, attorney at law

I hereby certify that I have served the foregoing
four persons by mailing to each a copy of the within
and foregoing Motion to Intervene by placing copies
of the motion in the U.S. Mail, addressed to each
person at the address of record listed on the
pleadings, with sufficient first class mail postage.

This 10 day of August, 2015.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036

Breakfield v. Mell Woods

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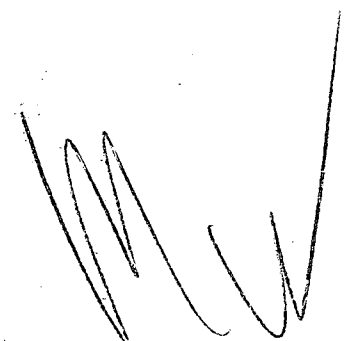
SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondents
with a true copy of the within and foregoing
RULE 240(e), SCACR REPLY TO Motion
by placing a copy of the same in the U.S. Mail with postage
prepaid addressed to:

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

This 18 day of September, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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SC Court of Appeals

**SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036**

Breakfield v. Mell Woods

**Attached is an original, and six copies of a reply
to a pending motion in the above case. Please file
with the other papers in the case.**

Thanks.

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