

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

Brian Gibbons, Circuit Court Judge

RECEIVED

DEC - 4 2015

S.C. Supreme Court

SUPREME COURT NUMBER: 2015-002318

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,

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI TO THE SOUTH CAROLINA
COURT OF APPEALS

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

B. Michael Brackett
Moses & Brackett PC
P.O. Box 100261
Columbia, SC 29202
Counsel for Respondents

INDEX

Certificate under Rule 242(d)(1), SCACR 1
Questions Presented 1
Statement of the Case 1

Arguments:

1. Did the Court of Appeals err in not Ruling that the trial court committed a *structural error*, after LaSalle Bank v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009) was cited in support of Petitioner's position that the failure of a court to adhere to procedural due process is reversible error? 03

2. Did the Court of Appeals err in failing to remit the entire case to the jurisdiction of the Special Master assigned to adjudicate exactly what persons are the owners of the land in question after being informed of the *pending partition action*? 03

Conclusion 07

Certificate under Rule 242(d)(1), SCACR

Mell Woods, Petitioner herein, hereby certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 15, 2015.

Questions Presented

1. Did the Court of Appeals err in not Ruling that the trial court committed a *structural error*, after Lasalle Bank v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009) was cited in support of Petitioner's position that the failure of a court to adhere to procedural due process is reversible error?

2. Did the Court of Appeals err in failing to remit the entire case to the jurisdiction of the Special Master assigned to adjudicate exactly what persons are the owners of the land in question after being informed of the pending partition action?

Statement of the Case:

Petitioner has filed this Petition for a Writ of Certiorari to the Court of Appeals on the basis as argued below that the Court of Appeals has disregarded controlling precedent set by the South Carolina Supreme Court.

-/-

The trial court below, upon prompting by B. Michael Brackett, counsel below, disregarded the public policy of South Carolina as articulated by the South Carolina Rules of Civil Procedure when the trial court dismissed the case without any notice whatsoever, contrary to Rule 6(d), SCRPC. In fact, the same day as a motion to dismiss was filed, and only six hours after the filing of the motion the trial court issued its Ruling on the Motion filed by Brackett, instead of the ten days as required Rule 6(d), SCRPC.

On a more salient point, this case is actually *still pending* in the Chester Court of Common pleas. Petitioner [Appellant] discovered during the summer of 2015 that the Respondents, in these appeals are actually involved in, and are having an on-going *partition case* about the land in question among themselves without including Petitioner as a necessary party. Petitioner first notified the Court of Appeals about this state of facts on July 29, 2015, and again on September 22, 2015, when responding to motions filed by Brackett, where the motions, nor any other filings by the Respondents mentioned the *pending partition action*. (R.pp. 148-154, and R.pp. 156-164) The Court of Appeals had this information on file when it denied the Petition for Rehearing filed by Petitioner. Petitioner has applied to be a party in the pending partition action, which has been pending since year 2008, but without the knowledge of Petitioner. (R.pp. 160-164) All of the parties to the present action and appeal claim parts of the same land presently still in litigation since the partition action was filed in 2008.

ARGUMENT

1. The Court of Appeals failed to address the issue of a structural defect, and whether the trial judge in not going the policy of the State of South Carolina as articulated by the South Carolina Rules of Civil Procedure is merely harmless error, or actually a structural defect.

2. The Court of Appeals also failed to rule on the standing of the respondent to even to have communicated with the trial court about the status of appellant's appeal below.

3. In addition to LaSalle Bank v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009), where the South Carolina Supreme Court Ruled that bogus court orders are structural defects instead of harmless error, and that the failure of a court to adhere to procedural due process is reversible error, there is also a Court of Appeals case which says nearly the same thing, Adams v. H.R. Allen, Inc., Op. No. 4967 (S.C. Ct. App. Filed May 02, 2012); the Court of Appeals in Adams ruled that procedural due process requires an opportunity to be heard even in a civil case.

4. The Record shows that the case below was only on file for six hours instead of the required ten days as mandated by Rule 6(d), SCRCF before being ruled on by the trial court. This shows by the Record that the court below never intended to afford due process to appellant, but that the court below was only interested in going by the instructions provided by B. Michael Brackett,

the respondent counsel. (R.pp. 11-13)

5. As part of this Petition for Certiorari, Petitioner incorporates by reference each document shown in the attached Appendix. (R.pp. 1-165)

6. The respondent attorney, Mr. Michael Brackett went behind appellant's back and obtained an *ex parte* order which is the subject of this Appeal, and Petition. (R.p. 147)

7. There was no need for any *ex parte* order and appellant was and is entitled to ten days notice before any motion is ruled on, Rule 6(d) SCRCP.

8. Rule 7(b)(1) SCRCP instructs that "An application to the court for an order shall be by motion" (and in writing) unless made during open court.

9. In this case, instead of a motion as required by Rule 7(b)(1) SCRCP, Brackett issued a "notice" to the circuit court judge, telling the judge what Brackett wanted done, and without any input whatsoever from Mell Woods, the person who brought the appeal from the magistrate court to the circuit court. (R.p. 89)

10. Along with Brackett's "notice" to the circuit court, a blank court order was furnished for the court to sign, as if there had already been a hearing, or agreement among the parties, where in fact, neither had happened. (R.p. 147)

11. Mr. Brackett, the attorney for the respondents is not in a position to "notify" an appeals court that motions are pending, and to therefore dismiss an appeal. The procedure he is talking about is usually in the Court of Appeals, and the procedure dates from Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986) where it was ruled that it is the APPELLANT'S responsibility to notify the clerk, and Hudson never gave the duty or standing to the respondent to do anything about getting an appeal dismissed.

12. The proceedings in this case are similar to LaSalle Bank v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009), a foreclosure case in which the master in equity judge failed to attend the scheduled foreclosure hearing. However, missing a judge in LaSalle did not stop the hearing, which was conducted by the plaintiff attorney without the judge being present and this defect was fixed when the plaintiff attorney had the judge "rubber stamp" a court order which referred to the hearing without a judge and awarded attorney fees also. And on top of all of that the bogus court order was filed with the clerk of court. LaSalle was appealed and the South Carolina Supreme Court took up the case and ruled that the absence of a judge at a court hearing and the subsequent filing of a make-believe court order is a structural defect, and not at all harmless error.

13. The South Carolina Supreme Court based its ruling in LaSalle, cited above, on procedural due process grounds [a substantial right] and cited the South Carolina case of State v. Brown, 178 S.C. 294, 182 S.E. 838 (1935) which reminded everyone that "[d]ue process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property."

14. So, it is the same in this case, the Record shows that the motion or "notice" was on file for a total of 6 hours before the court issued a judgment in the case. Not any six days, or sixty days, and certainly not the ten days required by Rule 6(d) SCRC. All that the court heard was the information supplied by the adverse party before "rubber-stamping" the ex parte order supplied by Michael Brackett, the respondent attorney. (R.pp. 87-89)

15. The Record is attached, and it consists of the Chester County Sixth Judicial Circuit Public Index, published by the Supreme Court of South Carolina. The blue X-marks show when the "notice" was filed [on May 01] with the case then being dismissed six hours later, [also on May 01]. At no time during these six hours, or at any other time, was appellant Mell Woods heard by the Chester County Court of Common Pleas in reference to the "notice" or motion filed by Brackett. (R.pp. 11-13)

CONCLUSION

Petitioner asks that LaSalle Bank be upheld, and that this entire case be remitted to the care of the Special Master assigned to adjudicate all of the land issues of the case.

Respectfully submitted,

This 21 day of December, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-7-

RECEIVED

DEC - 4 2015

S.C. Supreme Court

SOUTH CAROLINA SUPREME COURT
Case Number 2015-002318

Breakfield v. Mell Woods

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondents
with a true copy of the within and foregoing
Petition for Certiorari AND ALSO A COPY OF THE APPENDIX
by placing each 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 01 day of December, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

