

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

APPEAL FROM CHESTER COUNTY

DEC - 4 2015

Court of Common Pleas

S.C. Supreme Court

Brian Gibbons, Circuit Court Judge

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.

APPENDIX

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

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The South Carolina Court of Appeals

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., Respondents,

v.

Mell Woods, Appellant.

Appellate Case No. 2015-001036

ORDER

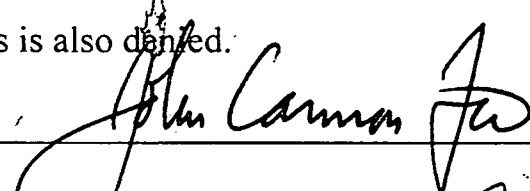
Appellant has filed a petition to rehear the dismissal of this appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating the appeal. Accordingly, the petition for rehearing is denied.

Respondents' motion for sanctions is also denied.

Appendix

page

1


_____. C.J.

_____. J.

_____. A.J.

FILED
10/15/15

Columbia, South Carolina

cc:

Mell Woods

B. Michael Brackett, Esquire

Appendix

page 2

The South Carolina Court of Appeals

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., Respondents,

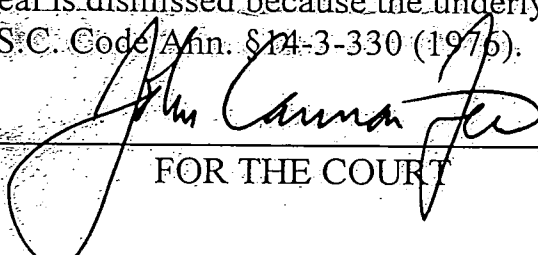
Mell Woods, Appellant.

Appellate Case No. 2015-001036

ORDER

Appellant has filed a notice of appeal from the circuit court's order dismissing Appellant's appeal without prejudice because a Rule 59(e), SCRCP, motion was pending before the magistrate's court. Respondent has filed a motion to dismiss, arguing the circuit court has not issued a final appealable order.

After careful consideration, this appeal is dismissed because the underlying order is not immediately appealable. See S.C. Code Ann. § 14-3-330 (1976).


FOR THE COURT

Columbia, South Carolina

cc:
Mell Woods
B. Michael Brackett, Esquire

FILED

6/25/15

76580

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APPEAL FROM CHESTER COUNTY

JUL 10 2015

Court of Common Pleas

SC Court of Appeals

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 221(a), SCACR PETITION FOR REHEARING

Appellant Mell Woods respectfully asks that the
the decision filed on June 25, 2015 dismissing the appellant
appeal be reexamined based on the following points:

-/-

004

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. Argument: 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), SCRCP before being ruled on by the trial court. This shows by the Record that the 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.

5. As part of this Rule 221(a), SCACR Petition for Rehearing, appellant incorporates by reference, and attaches appellant's Return to the Respondent Motion to Dismiss Appeal brought by appellant Mell Woods, (8 pages) which is more detailed.

Respectfully submitted,
this 10 day of July, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

[Certificate of Service is placed last, after Exhibits]

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

MAY 26 2015

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

SC Court of Appeals

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.
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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.

RETURN TO THE RESPONDENT MOTION TO DISMISS THE APPEAL BROUGHT
BY APPELLANT MELL WOODS:

1. The above appeal should be allowed to proceed based
on the following facts, to wit:

EXHIBIT TO
PETITION FOR REHEARING

007

2. The respondent attorney, Mr. Michael Brackett went behind appellant's back and obtained an ex parte order which is the subject of this Appeal.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

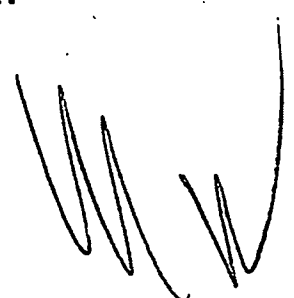
9. The South Carolina Supreme Court based its ruling in LaSalle, cited above, on procedural due process grounds [a substantial right] and cited the South Carolina case of State v. Brown, 178 S.C. 294, 182 S.E. 838 (1935) which reminded everyone that "[d]ue process of law requires that a person shall 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."

10. 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) SCRCF. 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.

11. 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.

Based on all of the above, appellant respectfully asks that the respondent motion be denied.

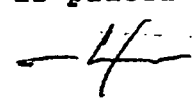
This 28 day of May, 2015.

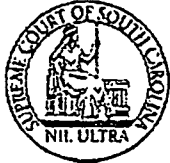


Mell Woods
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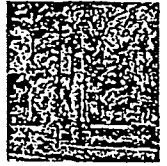
[Certificate of Service is placed last, after the exhibits]

EXHIBIT TO
PETITION FOR REHEARING





Chester County Sixth Judicial Circuit Public Index



Chester County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Robert Breakfield VS Mel Woods					
Case Number:	2015CP1200179	Court Agency:	Common Pleas	Filed Date:	04/16/2015
Case Type:	Common Pleas	Case Sub Type:	Magistrate Civil 910	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court.		
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	05/01/2015	Disposition Judge:	Gibbons, Brian M
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Woods, Mel	Service/Certificate Of Service	Filing		05/19/2015-11:36		
Woods, Mel	Amended/Amended Notice of Appeal Amendment No. 1	Filing		05/19/2015-11:29		
Woods, Mel	Notice/Notice	Filing		05/19/2015-11:28		
Brackett, B. Michael	Letter/Letter	Filing		05/12/2015-08:45		
Woods, Mel	Service/Certificate Of Service	Filing		05/04/2015-16:40		
Woods, Mel	Notice/Notice of Appeal Amendment #1	Filing		05/04/2015-16:40		
Woods, Mel	Service/Certificate Of Service	Filing		05/01/2015-16:54		
Woods, Mel	Notice/Notice of Appeal	Filing		05/01/2015-16:54		
Breakfield, Robert	Service/Certificate Of Service	Filing		05/01/2015-15:04	05/01/2015-15:04	
Breakfield, Robert	Order/Dismissing Appeal Without Prejudice	Order		05/01/2015-15:03	05/01/2015-15:03	
Brackett, B. Michael	Service/Certificate Of Service	Filing		05/01/2015-09:22	05/01/2015-09:22	
Brackett, B. Michael	Notice to Circuit Court Sitting as an Appellate Court	Filing		05/01/2015-09:21	05/01/2015-09:21	
Breakfield, Robert	Appeal/Notice of Civil Appeal	Action		04/26/2015-16:43	05/01/2015-16:43	

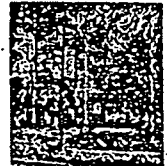
-5-

EXHIBIT TO
PETITION FOR REHEARING

011



Chester County Sixth Judicial Circuit Public Index



[Chester County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Robert Breakfield VS Mel Woods					
Case Number:	2015CP1200179	Court Agency:	Common Pleas	Filed Date:	04/16/2015
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Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	05/01/2015	Disposition Judge:	Gibbons, Brian M
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Brackett, B. Michael	PO Box 100261 Columbia SC 29202				Plaintiff Attorney		05/01/2015
☒ Breakfield, Robert					Plaintiff		05/01/2015
Woods, Mel	P O Box 2603 Lancaster SC 29721				Defendant		04/16/2015

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Woods, Mel	Service/Certificate Of Service	Filing		05/19/2015-11:36		
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Woods, Mel	Notice/Notice	Filing		05/19/2015-11:28		
Brackett, B. Michael	Letter/Letter	Filing		05/12/2015-08:45		
Woods, Mel	Service/Certificate Of Service	Filing		05/04/2015-16:40		
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Woods, Mel	Service/Certificate Of Service	Filing		05/01/2015-16:54		
Woods, Mel	Notice/Notice of Appeal	Filing		05/01/2015-16:54		

EXHIBIT TO
PETITION FOR REHEARING

012

Breakfield, Robert	Service/Certificate Of Service	Filing		05/01/2015-15:04	05/01/2015-15:04
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Breakfield, Robert	Motion/Appeal	Motion		04/16/2015-16:43	05/01/2015-16:43

Financials

Summary

Fine/Costs:	\$150.00	Total Paid for fine/costs:	\$150.00	Balance Due:	\$0.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Civil Filing Fee State 56%	CVFPST	\$56.00		\$56.00
Civil Filing Fee County 44%/100%	CVFFCN	\$44.00		\$44.00
SCJD Filing Fee Proviso \$50 / \$25	SCJDPV	\$50.00		\$50.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
04/16/2015	16865	cl2datkins	PY	\$150.00

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EXHIBIT TO
PETITION FOR REHEARING

013

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MAY 28 2015

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036

Breakfield v. Mell Woods

CERTIFICATE OF SERVICE

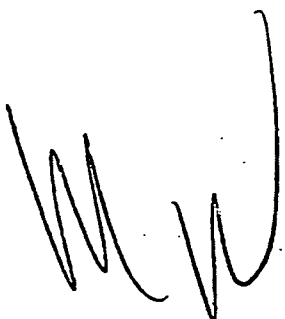
I hereby certify that I have served the respondents
with a true copy of the within and foregoing

*Return to the Respondent Motion to Dismiss the Appeal brought
by Appellant Mell Woods*

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 28 day of May, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

- 8 -

EXHIBIT TO
PETITION FOR REHEARING

014

SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036

Breakfield v. Mell Woods

RECEIVED

JUL 10 2015

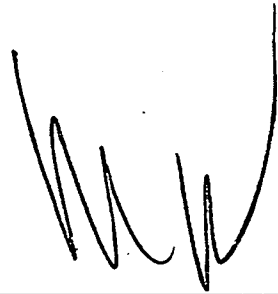
SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondents
with a true copy of the within and foregoing
RULE 221(a), SCACR Petition for Rehearing
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 10 day of July, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-12-

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

RECEIVED

JUL 20 2015

SC Court of Appeals

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.)

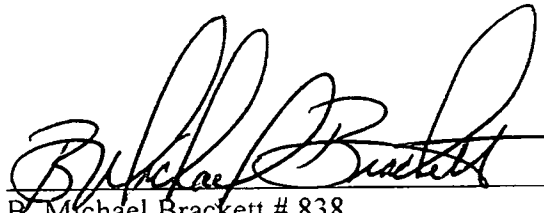
7. Most recently, Appellant commenced an action in the Chester County Probate Court, in the estate of Levie Hinson, against Respondent Breakfield in which Appellant sought to raise the many issues already decided adversely to him. Breakfield moved to dismiss Appellant's petition and moved for sanctions. 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.



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

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,

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, 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, 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

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.

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

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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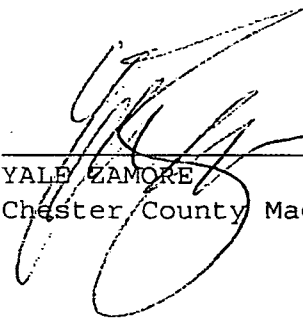
#2

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.

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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), SCRCPP; 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.

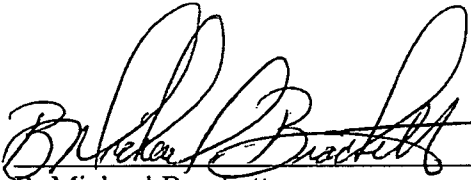
4. The Last Will and Testament of Levie Hoyt Hinson dated April 21, 1977 and probated in the Chester County Probate Court, devised to his spouse Reba Hinson a life estate in all real property owned by Levie Hoyt Hinson with the remainder interest to pass to their bodily heirs upon the termination of 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

Chester County

In the Magistrate Court
Rossville District

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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053

2014CV12104000 37
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

COUNTY OF Chester

Robert Breakfield
PLAINTIFF(S)

IN THE MAGISTRATE'S COURT

BOND UNDERTAKING
AND ORDER

VS.

Mehl Woods

DEFENDANT(S)

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. # 22147897050

(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: 22147897050
Year/Month/Day: 06/24/07
Post Office: 2603
U.S. Dollars and Cents: 100.00
Amount: ONE HUNDRED DOLLARS & 00/100

Pay to: **Will Wood's**
Address: **PO Box 2603**
Concepcion, SC 29927

Memo: _____

© 2003 United States Postal Service. All Rights Reserved.
SEE REVERSE WARNING: NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

1:00000080021: 22147897050

VERIFICATION BY DEFENDING PARTY MELL WOODS:

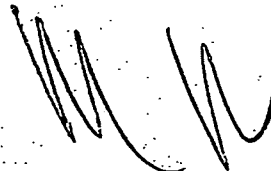
State of South Carolina

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.



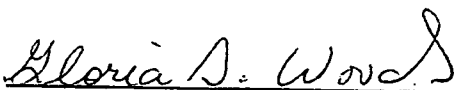
Mell Woods

Sworn to, and subscribed before me,

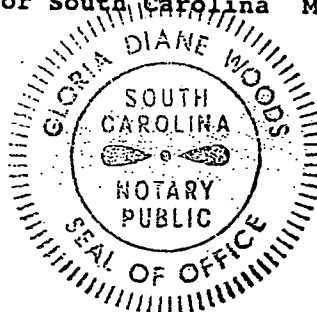
This 10 day of December, 2014.

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

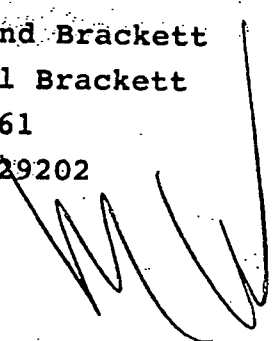
In the Magistrate Court

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
COUNTY OF CHESTER

IN THE PROBATE COURT
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) SCRCF 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.

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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

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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

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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.)

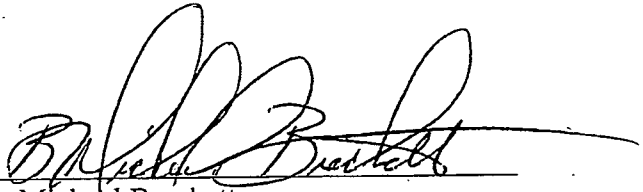
(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

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



B. Michael Brackett
Adam T. Silvernail
Moses & Brackett, PC
P.O. Box 100261
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. ROBBEY
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) SCRCF, 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 26 day of June, 2015.

COPY

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-2-

081

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

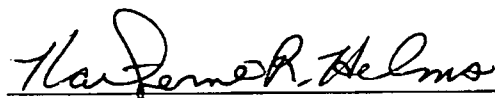
2015-CP-12-0179

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

RECEIVED
JUL 20 2015
SC Court of Appeals

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

RECEIVED

JUL 20 2015

SC Court of Appeals

Hand Delivery

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

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

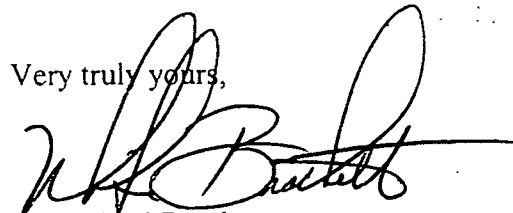
Dear Ms. Kitchings:

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

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STATE OF SOUTH CAROLINA

IN THE 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 Reply to Appellant's Return

Respondent's Motion to Dismiss Appeal is incorporated herein by reference. In his Return, Appellant represents that Respondent obtained an ex parte order by "going behind appellant's back."

Attached hereto and incorporated herein are documents supplementing those attached to the Motion to Dismiss Appeal. They are:

RECEIVED
JUN 01 2015
SC Court of Appeals

- transmittal letter to the Chester County Clerk of Court dated April 28, 2015 transmitting the Notice to Circuit Court and showing Appellant as being copied with the letter;
- Notice to Circuit Court bearing the Clerk of Court's file stamp dated May 1, 2015;
- Certificate of Service confirming service of the Notice to Circuit Court on the Appellant on April 28, 2015, also bearing the Clerk of Court's file stamp dated May 1, 2015;
- the Order signed by Judge Gibbons dated and filed May 1, 2015.

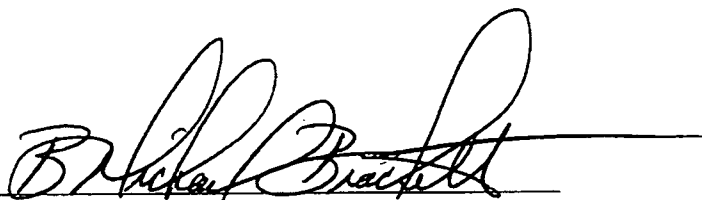
Judge Gibbons decided to execute the Order without requiring a hearing, apparently based on the content of the Notice to Circuit Court.

Appellant has not argued that the Notice to Circuit Court is inaccurate with respect to its content.

Appellant did not file a Rule 59(e) motion with respect to the May 1, 2015 Order.

Conclusion

The appeal should be dismissed.



B. Michael Brackett, Bar No. 838
 Adam T. Silvernail, Bar No. 80219
 Moses & Brackett, PC
 P.O. Box 100261
 Columbia, SC 29202
 803.461.2312
 Attorney for Respondent

June 1, 2015

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

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

April 28, 2015

The Honorable Sue Carpenter
Chester County Clerk of Court
P.O. Drawer 580
Chester, SC 29706

RE: Breakfield, as Attorney-in-Fact v. Woods
2015-CP-12-0179 (Appeal from Magistrate's Court)
Our File No.: 12085.3

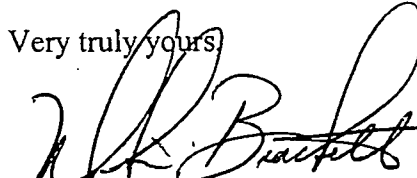
Dear Ms. Carpenter:

Enclosed for filing please find the original Notice to Circuit Court sitting as an Appellate Court, together with a copy of a proposed order dismissing this appeal without prejudice.

By copy of this letter, a copy of the enclosed Notice, and the original proposed Order are being provided to Judge Gibbons for his consideration. Copies are also being provided to the Magistrate's Court.

Please return a clocked copy of the Notice using the envelope provided.

Very truly yours,


B. Michael Brackett

BMB/Ita
Enclosures

cc. The Honorable Brian M. Gibbons
The Honorable Yale Zamore
Robert H. Breakfield, Esquire
Mell Woods

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
On Appeal from Magistrate's Court
2015-CP-12-0179
2014CV1210400037

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.,

Notice to Circuit Court Sitting as
an Appellate Court

FILED
2015 MAY -1 A 9 16
CLERK OF COURT
CIRCUIT COURT S.C.

Respondents,

v.

Mell Woods,

Appellant.

Respondents (Applicants in the Magistrate's Court proceeding) by their attorney-in-fact, commenced an action in Magistrate's Court, pursuant to S.C. Code Ann. § 15-67-610, to have the Appellant (Respondent below), declared to be a trespasser and to be ejected from the Applicants' property. The § 15-67-620 hearing was held on January 30, 2015. Respondent appeared pro se, as he has in all other legal proceedings involving these parties, and offered his evidence and arguments. By Final Order and Judgment dated March 27, 2015 the Magistrate's Court found Respondent to be a trespasser and announced the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Respondent from the subject premises.

On April 15, 2015, Appellant, pro se, filed and served a Notice of Appeal. (attached as Exhibit A). The circuit court case number for the appeal is shown in the above caption. The Notice

of Appeal does not indicate the date when Appellant claims to have received written notice of the March 27, 2015 Order.

On April 24, 2015,¹ Appellant, pro se, served a Rule 59(e), SCRPC, motion for reconsideration with respect to the March 27, 2015 Final Order and Judgment. (Attached as Exhibit B).²

When a timely Rule 59(e) post-trial motion is filed after a notice of appeal has been filed and served, the procedure, as explained by the South Carolina Supreme Court, is:

... this Court has held that the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion. See, e.g., Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986). For example, in Hudson, the order appealed was filed on March 18, 1986, and a notice of appeal was filed on March 24, 1986. *Id.* On March 27, 1986, timely post-trial motions were made pursuant to Rule 59(e), SCRPC. *Id.* at 215-16, 349 S.E.2d at 341. Holding "that the service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions," *id.* at 216, 349 S.E.2d at 341, the Court ordered the notice of appeal to be dismissed without prejudice as prematurely filed, *id.* at 216, 349 S.E.2d at 341-42 ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, **the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions.** A second filing fee will not be collected from a party who previously appealed." (footnote omitted)). This way, all ancillary matters can be timely heard, and appealed, if necessary, in an efficient and wholesale manner, and not, as Appellant suggests, in a piecemeal fashion.

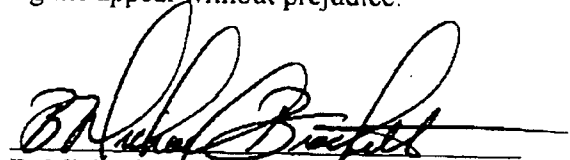
Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014). (emphasis added).

¹ Appellant represents in the motion(s) that the Appellant received written notice of the Final Order and Judgment on April 14, 2015 and blamed the delay on an incorrect address used by the Magistrate's Court. He conveniently makes no mention of the fact that the Final Order and Judgment was served by the undersigned on March 30, 2015 by U.S. mail at Appellant's post office box and by Fed-Ex to his street address. (Exhibit C).

² Appellant's filing is actually four separately stated Rule 59(e) motions.

Here, the Respondents are giving the circuit court, as an appellate court, the notice required by Holmes, together with a proposed Order dismissing the appeal without prejudice.

April 28, 2015



B. Michael Brackett
Adam T. Silvernail
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondents

FILED
2015 MAY -1 A 9:16
CLERK OF COURT
CO. S.C.

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF CHESTER

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,
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.,

CERTIFICATE OF SERVICE

FILED
2015 MAY -1 2 21b
CLERK OF COURT
CHESTER CO S.C.

Respondents,

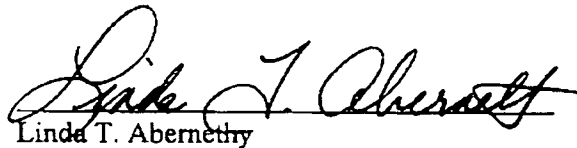
v.

Mell Woods,

Appellant.

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackott, Esquire, attorney for the Applicant in the above-captioned matter, do hereby certify that I have served Respondent-Trespasser, pro se with a copy of Notice to Circuit Court sitting as an Appellate Court by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 28th day of April, 2015 at the following address:

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


Linda T. Abernethy

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
On Appeal from Magistrate's Court
2015-CP-12-0179
2014CV1210400037

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.,

Respondents,

v.

Mell Woods,

Appellant.

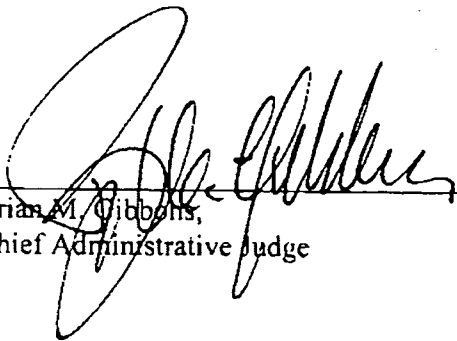
Order Dismissing Appeal
Without Prejudice

2015 MAY -1 9 2:16
CLERK OF COURT
CHESTER CO S.C.

Pursuant to Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014) this court
has been given notice that Appellant timely served a Rule 59(e) motion for reconsideration in the
Magistrate's Court after having filed and served a Notice of Appeal. Accordingly, the appeal is
hereby dismissed without prejudice.

IT IS SO ORDERED.

5/11, 2015


Brian M. Gibbons,
Chief Administrative Judge

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

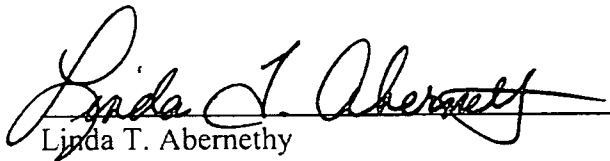
2015-CP-12-0179

Appellate Case No. 2015-001036

Certificate of Service

I, Linda T. Abernethy, 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 Reply to Appellant's Return postage prepaid and return address clearly indicated on said envelope, on this 1st day of June, 2015 at the following address:

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


Linda T. Abernethy

RECEIVED
JUN 01 2015
SC Court of Appeals

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

June 1, 2015

Hand Delivery

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

RECEIVED

JUN 01 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

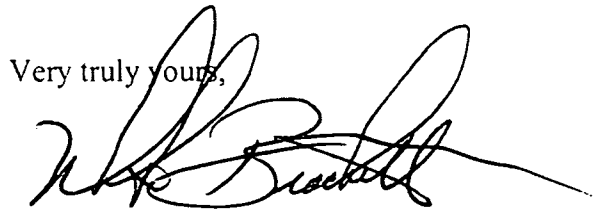
Dear Ms. Kitchings:

Enclosed for filing please find the original (unbound) and six copies of Respondent's Reply to Appellant's Return. Also enclosed is the customary Certificate of Service.

By copy of this letter, I am serving the Appellant who is pro se.

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

Very truly yours,



B. Michael Brackett

cc. Robert H. Breakfield, Esquire
Mell Woods

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

MAY 26 2015

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

SC Court of Appeals

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.

RETURN TO THE RESPONDENT MOTION TO DISMISS THE APPEAL BROUGHT

BY APPELLANT MELL WOODS:

1. The above appeal should be allowed to proceed based
on the following facts, to wit:

-/-

2. The respondent attorney, Mr. Michael Brackett went behind appellant's back and obtained an *ex parte* order which is the subject of this Appeal.

3. 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) SCRCF.

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

5. In this case, instead of a motion as required by Rule 7(b)(1) SCRCF, 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.

6. 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.

7. 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.

8. 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.

9. 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."

10. 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) SCRCF. 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.

11. 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.

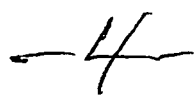
Based on all of the above, appellant respectfully asks that the respondent motion be denied.

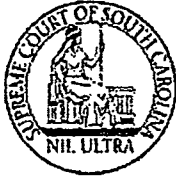
This 28 day of May, 2015.



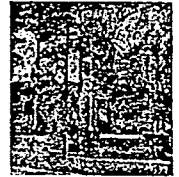
Mell Woods
P.O. Box 2603
Lancaster, SC 29721

[Certificate of Service is placed last, after the exhibits]





Chester County Sixth Judicial Circuit Public Index



[Chester County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Robert Breakfield VS Mel Woods

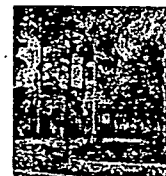
Case Number:	2015CP1200179	Court Agency:	Common Pleas	Filed Date:	04/16/2015
Case Type:	Common Pleas	Case Sub Type:	Magistrate Civil 910	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	05/01/2015	Disposition Judge:	Gibbons, Brian M
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Woods, Mel	Service/Certificate Of Service	Filing		05/19/2015-11:36		
Woods, Mel	Amended/Amended Notice of Appeal Amendment No. 1	Filing		05/19/2015-11:29		
Woods, Mel	Notice/Notice	Filing		05/19/2015-11:28		
Brackett, B. Michael	Letter/Letter	Filing		05/12/2015-08:45		
Woods, Mel	Service/Certificate Of Service	Filing		05/04/2015-16:40		
Woods, Mel	Notice/Notice of Appeal Amendment #1	Filing		05/04/2015-16:40		
Woods, Mel	Service/Certificate Of Service	Filing		05/01/2015-16:54		
Woods, Mel	Notice/Notice of Appeal	Filing		05/01/2015-16:54		
Breakfield, Robert	Service/Certificate Of Service	Filing		05/01/2015-15:04	05/01/2015-15:04	
Breakfield, Robert	Order/Dismissing Appeal Without Prejudice	Order		05/01/2015-15:03	05/01/2015-15:03	
Brackett, B. Michael	Service/Certificate Of Service	Filing		05/01/2015-09:22	05/01/2015-09:22	
Brackett, B. Michael	Notice to Circuit Court Sitting as an Appellate Court	Filing		05/01/2015-09:21	05/01/2015-09:21	
Breakfield, Robert	Appeal/Notice of Civil Appeal	Action		04/26/2015-16:43	05/01/2015-16:43	



Chester County Sixth Judicial Circuit Public Index



[Chester County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Robert Breakfield VS Mel Woods

Case Number:	2015CP1200179	Court Agency:	Common Pleas	Filed Date:	04/16/2015
Case Type:	Common Pleas	Case Sub Type:	Magistrate Civil 910	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	05/01/2015	Disposition Judge:	Gibbons, Brian M
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Brackett, B. Michael	PO Box 100261 Columbia SC 29202				Plaintiff Attorney		05/01/2015
☒ Breakfield, Robert					Plaintiff		05/01/2015
Woods, Mel	P O Box 2603 Lancaster SC 29721				Defendant		04/16/2015

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Woods, Mel	Service/Certificate Of Service	Filing		05/19/2015-11:36		
Woods, Mel	Amended/Amended Notice of Appeal Amendment No. 1	Filing		05/19/2015-11:29		
Woods, Mel	Notice/Notice	Filing		05/19/2015-11:28		
Brackett, B. Michael	Letter/Letter	Filing		05/12/2015-08:45		
Woods, Mel	Service/Certificate Of Service	Filing		05/04/2015-16:40		
Woods, Mel	Notice/Notice of Appeal Amendment #1	Filing		05/04/2015-16:40		
Woods, Mel	Service/Certificate Of Service	Filing		05/01/2015-16:54		
Woods, Mel	Notice/Notice of Appeal	Filing		05/01/2015-16:54		

-6-

099

Breakfield, Robert	Service/Certificate Of Service	Filing		05/01/2015-15:04	05/01/2015-15:04
Breakfield, Robert	Order/Dismissing Appeal Without Prejudice	Order		05/01/2015-15:03	05/01/2015-15:03
Brackett, B. Michael	Service/Certificate Of Service	Filing		05/01/2015-09:22	05/01/2015-09:22
Brackett, B. Michael	Notice to Circuit Court Sitting as an Appellate Court	Filing		05/01/2015-09:21	05/01/2015-09:21
Breakfield, Robert	Appeal/Notice of Civil Appeal	Action		04/26/2015-16:43	05/01/2015-16:43
Breakfield, Robert	Motion/Appeal	Motion		04/16/2015-16:43	05/01/2015-16:43

Financials

Summary

Fine/Costs:	\$150.00	Total Paid for fine/costs:	\$150.00	Balance Due:	\$0.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Civil Filing Fee State 56%	CVFFST	\$56.00		\$56.00
Civil Filing Fee County 44%/100%	CVFFCN	\$44.00		\$44.00
SCJD Filing Fee Proviso \$50 / \$25	SCJDPV	\$50.00		\$50.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
04/16/2015	16865	cl2datkins	PY	\$150.00

-7-

RECEIVED

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

MAY 28 2015

Breakfield v. Mell Woods

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**

***Return to the Respondent Motion to Dismiss the Appeal brought
by Appellant Mell Woods***

**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 28 day of May, 2015.



Mell Woods

**P.O. Box 2603
Lancaster, SC 29721**

- 8 -

76035

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAY 18 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

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.

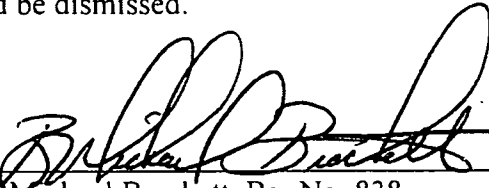
Respondent's Motion to Dismiss Appeal

Respondent moves the Court to dismiss Appellant's appeal, commenced by the filing and service of a Notice of Appeal, dated and served May 1, 2015, and a Notice of Appeal Amendment No. 1, also dated May 1, 2015. The ground for the motion is that the Circuit Court Order being appealed is not a final order, and unless a recognized exception exists permitting the immediate

appeal of an interlocutory order, only a final order is appealable. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 85 (2d ed.2002), citing S.C. Code Ann. § 14-3-330.

By letter to this Court dated May 7, 2015, the absence of a final order was called to the Court's attention. Without acting on the matter, the Court issued its customary letter, dated May 14, 2015, announcing the filing of the appeal and the assignment of an appellate case number. The undersigned's letter to the Court dated May 7, 2015, and its attached exhibits, are incorporated herein by reference, and copies of same are attached hereto.

For the reasons stated, the appeal should be dismissed.

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

B. Michael Brackett, Bar No. 838
Adam T. Silvermail, Bar No. 80219
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

May 18, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

2015-CP-12-0179

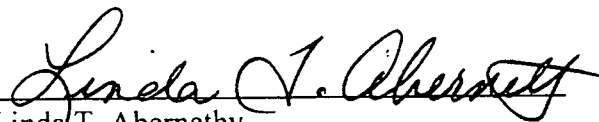
Appellate Case No. 2015-001036

RECEIVED
MAY 18 2015
SC Court of Appeals

Certificate of Service

I, Linda T. Abernethy, 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 Motion to Dismiss Appeal, postage prepaid and return address clearly indicated on said envelope, on this 18th day of May, 2015 at the following address:

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


Linda T. Abernethy

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

May 7, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Breakfield, as Attorney-in-Fact v. Woods
2015-CP-12-0179 (Appeal from Magistrate's Court)
Our File No.: 12085.3

Dear Ms. Kitchings:

I represent the captioned Respondents. On May 1, 2015 Mr. Woods filed and served a Notice of Appeal from the circuit court's dismissal, without prejudice, of Mr. Wood's appeal from a magistrate's court judgment holding that Mr. Woods is a trespasser who must vacate the premises owned by the respondents.

The chronology is set out in the Notice to Circuit Court Sitting as an Appellate Court that I served on Mr. Woods on April 28, 2015 (copy enclosed as Exhibit 1). Judge Brian Gibbons thereafter issued an Order Dismissing Appeal Without Prejudice dated May 1, 2015. (copy enclosed as Exhibit 2). On that same day, Mr. Woods filed and served a Notice of Appeal and a Notice of Appeal Amendment No. 1, purporting to appeal Judge Gibbons' Order to the Court of Appeals. (copies enclosed as Exhibit 3). Although there are two Notices of Appeal, they are essentially the same. The enclosures are incorporated herein by reference.

I respectfully submit that Judge Gibbons' Order is not immediately appealable because, on its face, it is not a final order. It does not finally decide anything. And, I take this opportunity to note that when an order is not immediately appealable, the filing and service of a notice of appeal does not transfer jurisdiction to the appellate court and does not stay further proceedings in the lower court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 149 (2d ed.2002).

I request that Mr. Woods appeal be dismissed.

Very truly yours,



B. Michael Brackett

Page 2
May 7, 2015

Enclosures

cc. The Honorable Brian M. Gibbons
 The Honorable Yale Zamore
 The Honorable Sue Carpenter
 Robert H. Breakfield, Esquire
 Mell Woods

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

May 18, 2015

Hand Delivery

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

RECEIVED
MAY 18 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 and six copies of Respondent's Motion to Dismiss Appeal. Also enclosed is my check for the filing fee and the Proof of Service.

By copy of this letter, I am serving the Appellant who is pro se.

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

Very truly yours,



B. Michael Brackett

cc. Robert H. Breakfield, Esquire
Mell Woods

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
On Appeal from Magistrate's Court
2015-CP-12-0179
2014CV1210400037

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.,

Notice to Circuit Court Sitting as
an Appellate Court

Respondents,

v.

Mell Woods,

Appellant.

FILED
2015 MAY -1 2 2:17
CLERK OF COURT
CHESTER CO S.C.

Respondents (Applicants in the Magistrate's Court proceeding) by their attorney-in-fact, commenced an action in Magistrate's Court, pursuant to S.C. Code Ann. § 15-67-610, to have the Appellant (Respondent below), declared to be a trespasser and to be ejected from the Applicants-owners' property. The § 15-67-620 hearing was held on January 30, 2015. Respondent appeared pro se, as he has in all other legal proceedings involving these parties, and offered his evidence and arguments. By Final Order and Judgment dated March 27, 2015 the Magistrate's Court found Respondent to be a trespasser and announced the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Respondent from the subject premises.

On April 15, 2015, Appellant, pro se, filed and served a Notice of Appeal. (attached as Exhibit A). The circuit court case number for the appeal is shown in the above caption. The Notice

of Appeal does not indicate the date when Appellant claims to have received written notice of the March 27, 2015 Order.

On April 24, 2015,¹ Appellant, pro se, served a Rule 59(e), SCRCP, motion for reconsideration with respect to the March 27, 2015 Final Order and Judgment. (Attached as Exhibit B).²

When a timely Rule 59(e) post-trial motion is filed after a notice of appeal has been filed and served, the procedure, as explained by the South Carolina Supreme Court, is:

... this Court has held that the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion. See, e.g., Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986). For example, in Hudson, the order appealed was filed on March 18, 1986, and a notice of appeal was filed on March 24, 1986. *Id.* On March 27, 1986, timely post-trial motions were made pursuant to Rule 59(e), SCRCP. *Id.* at 215–16, 349 S.E.2d at 341. Holding “that the service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions,” *id.* at 216, 349 S.E.2d at 341, the Court ordered the notice of appeal to be dismissed without prejudice as prematurely filed, *id.* at 216, 349 S.E.2d at 341–42 (“[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, **the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions.** A second filing fee will not be collected from a party who previously appealed.” (footnote omitted)). This way, all ancillary matters can be timely heard, and appealed, if necessary, in an efficient and wholesale manner, and not, as Appellant suggests, in a piecemeal fashion.

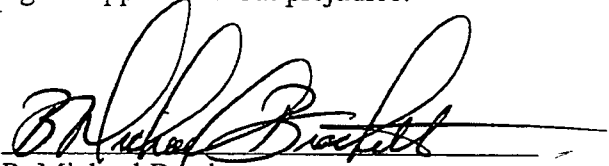
Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014). (emphasis added).

¹ Appellant represents in the motion(s) that the Appellant received written notice of the Final Order and Judgment on April 14, 2015 and blamed the delay on an incorrect address used by the Magistrate’s Court. He conveniently makes no mention of the fact that the Final Order and Judgment was served by the undersigned on March 30, 2015 by U.S. mail at Appellant’s post office box and by Fed-Ex to his street address. (Exhibit C).

² Appellant’s filing is actually four separately stated Rule 59(e) motions.

Here, the Respondents are giving the circuit court, as an appellate court, the notice required by Holmes, together with a proposed Order dismissing the appeal without prejudice.

April 28, 2015



B. Michael Brackett
Adam T. Silvernail
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondents

FILED

2015 MAY - 1 2 2:17

CLERK OF COURT
CHESTER CO. S.C.

EXHIBIT A

State of South Carolina

Chester County

In the Magistrate Court
Rossville District

Number: 2014CV1210400037

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

v.

Mell Woods,

Respondent.

Notice of Appeal

Mell Woods hereby appeals the final order entered in the above case, and dated March 27, 2015. This appeal is to the Circuit Court, Chester County South Carolina, Sixth Judicial Circuit.

Grounds for Appeal:

1. This case involves title to land, and therefore a magistrate court is without jurisdiction to have heard the case, SC Statute § 22-3-20 (2), error is assigned on this point.

[pg. 1 of 5]

2. Defendant Mell Woods raised the defense of questionable title in the answer, SC Statute § 22-3-1110, and filed the written undertaking and the maximum cost bond, (\$100.00) required by SC Statute § 22-3-1120; SC Statute § 22-3-1130 requires that the action be discontinued upon the filing of the cost bond and undertaking, instead the magistrate carried on with the action, error is assigned on these points.

3. The magistrate refused to allow defendant to cross-examine Robert Breakfield, the person who brought these proceedings against defendant. Mr. Breakfield was present at the hearing and defendant has a right to cross-examine Mr. Breakfield, upon not being allowed to cross-examine witness Breakfield, defendant objected on the Record, error is assigned on this point.

4. *Reasons that these proceedings involve land:*
Defendant Mell Woods is trying to pay a mortgage on the land in question. The mortgage is between Mell Woods, and Mrs. Reba Hinson. Robert Breakfield is the personal representative for Mrs. Hinson. Mr. Breakfield has gone to court and obtained a Ruling that Mrs. Hinson held only a "life" estate, where in fact Mrs. Hinson does have a fee simple estate. This probate matter is still being litigated in the probate court.

(4. continues) However, even if in the end, Mrs. Hinson has only a "life" estate, defendant does have the right to have the mortgage contract specifically performed and is entitled to a deed from the circuit court, or from Mr. Breakfield himself, this came up in the hearing in the magistrate court, but after stating that "the Hinsons' will not take the money" defendant was cut-off from further explanation by the magistrate judge -- here is the explanation:

South Carolina Supreme Court, Eller v. Motley, 99 S.C. 20, 82 S.E. 992

(1914) "If William Motley went into possession of the land as a purchaser with a contract to pay a specified sum for a specified amount he would be entitled to a decree for specific performance upon his fully carrying out the terms and conditions of the contract entered into, and would not have been required to have paid the price agreed upon in the lifetime of David Motley. He did not have to pay the purchase price and retain possession ten years after such payment to acquire title. If he purchased the land, went into possession of the same, put valuable improvements thereon, and carried out his contract as to payments, as soon as he fully performed all of his promises and agreements as contracted for between the parties as to the purchase, he would be entitled to a deed. And upon full performance on his part of the terms and conditions of the contract, whether the vendor was alive or dead, he would be entitled to a deed from the heirs at law of the vendor, or the Courts, upon proper showing, would declare him the owner of the land and require a deed to be made. There can be no question that the purchaser of the land upon the payment to the vendor, or his heirs, of the purchase price agreed upon between the parties at the time of contract of sale or any balance due of the purchase price would be entitled to receive a deed; and it can not be maintained that a failure to pay the whole to vendor in his lifetime will defeat the right of purchaser to retain possession. The payment of balance to vendor's heirs will be sufficient, even though they be minors. His Honor was in error in the particulars complained of in exception seven, and this exception is sustained."

Judgment reversed and new trial granted.

defendant assigns error on the fact that the magistrate failed to rule that these proceedings involve title to land.

5. In addition, defendant continues to plead:

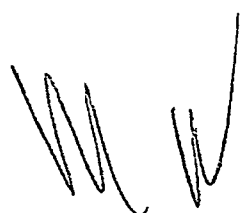
South Carolina Statute § 15-67-20:

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.

Defendant assigns error on the failure of the magistrate to dismiss these proceedings pursuant SC § 15-67-20.

This 15 day of April, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-4-

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 **NOTICE OF APPEAL** by placing copies of the same in the U.S. Mail postage prepaid 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

4-15-15



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-5-

EXHIBIT B

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.

MOTION, pursuant to Rule 59(e) SCRPC to alter or amend judgment:

Respondent Mell Woods comes now, and within 10 days after the receipt of written notice of the court's order, dated March 27, 2015, serves the following motion, and moves as follows;

1. That the magistrate court Order, page 2, where the Order recites that "The Court prepared a detailed accounting for the Defendant, who inspected and signed it accepting the accounting as complete and accurate." be amended to speak the truth which is: that defendant signed the piece of paper under protest and under duress by the court itself; that the paper was handed back and forth to the court several times with the defendant stating if signed, defendant would be doing so under protest. Finally out of fear of the court, the paper was signed, but the signing was not the voluntary act of the defendant. The

—/—



Record of the hearing will back up defendant's statement, but more importantly, this exchange with the Court shows the tone and tenor of the entire "hearing."

2. Defendant further moves that the court specify what the court intends to do with the \$7,565.00 in "bond money" that is being "retained" by the court, pg. 13 of the Court Order; in addition, for the record defendant Mell Woods states that out of fear of magistrate Judge Zamore, defendant has been sending \$200.00 a month to the magistrate court for several years, with the grand total now nearing \$10,000.00, ten thousand dollars, which the magistrate court is still keeping.

3. The Chester County Magistrate Court has never had jurisdiction of any of the cases brought by the plaintiffs because all of the cases involve title to land, and a South Carolina magistrate court simply does not have jurisdiction to hear a land case, SC Statute § 22-3-20 (2); each time a case is brought against defendant Mell Woods, defendant complies with the law and files the written undertaking required by SC Statute 22-3-1110, and posts \$100.00 cash bonds, guaranteed by the U.S. Postal Service, (\$100.00 money orders), expecting the cases to be discontinued as required by SC Statute § 22-3-1130, the cases are never discontinued, the bond money is converted to other uses, and defendant is coerced into signing a "detailed accounting" to imply that he agrees to all that is being done to him - when defendant does not agree.

4. Defendant moves that the magistrate judge file a more detailed order in which SC Sections 22-3-20 (2), 22-3-1110, 22-3-1120, and 22-3-1130 are ruled on in regard to the present case, and where the deposited monies in regard to the stated statutes have been applied.

This 24 day of April, 2015.

COPY

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

Certificate of Service:

State of South Carolina
County of Chester
In the Magistrate Court
Rossville District
Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the plaintiffs with a copy of the within and foregoing Rule 59(e) SCRCF Motion and supporting documents by placing copies of the same in the U.S. Mail with proper postage prepaid and 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

AND ALSO TO THE MAGISTRATE JUDGE:

Yale Zamore
P.O. Box 88
Great Falls, SC 29055

This 24 day of April, 2015.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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.

MOTION, pursuant to Rule 59(e) SCRPC to alter or amend judgment:

Respondent Mell Woods comes now, and within 10 days after the receipt of written notice of the court's order, dated March 27, 2015, serves the following motion, and moves as follows;

1. That the Court's Order of March 27, 2015 be amended to show that a magistrate court is without jurisdiction to hear cases involving title to land. On page 09 of the court order it is opined that:

"However, the mere claim that there is a cloud upon to the realty subject to this Action is insufficient grounds upon which to find that this Court has no subject matter jurisdiction."

Also on page 10 of the court order it is ruled that:

"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."

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— / —

2. That the Courts's Order of March 27, 2015 be altered to rule on Eller v. Motley, 99 S.C. 20, 82 S.E. 992 (1914), a case which defendant Mell Woods already had printed and ready to show to the court during the hearing before being cut-off by the court after stating that "the Hinsons' will not take the money." Since the court recited admitting into evidence the Uniform Commercial Code sealed contract and agreement to pay Reba P. Hinson, or her heirs, the full amount of the monies agreed upon in the contract, and the right of possession granted in the contract by Mrs. Hinson, page 08 of the Court's Order, it is incredulous that the court would rule that defendant Mell Woods is a TRESPASSER? — and is even more incredulous considering the fact that the agreement described on page 08 has been on file for years in the South Carolina Secretary of State Office for everyone to see.

South Carolina Supreme Court, Eller v. Motley, 99 S.C. 20, 82 S.E. 992 (1914) "If William Motley went into possession of the land as a purchaser with a contract to pay a specified sum for a specified amount he would be entitled to a decree for specific performance upon his fully carrying out the terms and conditions of the contract entered into, and would not have been required to have paid the price agreed upon in the lifetime of David Motley. He did not have to pay the purchase price and retain possession ten years after such payment to acquire title. If he purchased the land, went into possession of the same, put valuable improvements thereon, and carried out his contract as to payments, as soon as he fully performed all of his promises and agreements as contracted for between the parties as to the purchase, he would be entitled to a deed. And upon full performance on his part of the terms and conditions of the contract, whether the vendor was alive or dead, he would be entitled to a deed from the heirs at law of the vendor, or the Courts, upon proper showing, would declare him the owner of the land and require a deed to be made. There can be no question that the purchaser of the land upon the payment to the vendor, or his heirs, of the purchase price agreed upon between the parties at the time of contract of sale or any balance due of the purchase price would be entitled to receive a deed; and it can not be maintained that a failure to pay the whole to vendor in his lifetime will defeat the right of purchaser to retain possession. The payment of balance to vendor's heirs will be sufficient, even though they be minors. His Honor was in error in the particulars complained of in exception seven, and this exception is sustained."

Judgment reversed and new trial granted.

-2-

3. Under Eller v. Motley, 99 S.C. 20, 82 S.E. 992 (1914), defendant Mell Woods has a complete and full right to finish paying the heirs of Mrs. Hinson for the small piece of land in question, and then receive a deed to the land in question. Eller is a case in which the right of a purchaser to complete payment of partially executed sales contract to the heirs of a seller even where the seller is a life tenant is recognized in South Carolina with specific performance of land contracts being required even after the death of a life tenant. This state of facts is a far cry from being a trespasser. The Hinsons are actually the ones who are wrongfully interfering with the peaceful possession of defendant Mell Woods' land. Defendant Mell Woods moves that the Court's Order be modified, altered, and amended to state the true facts of this case.

This 24 day of April, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

Certificate of Service:

State of South Carolina

County of Chester

In the Magistrate Court

Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the plaintiffs with a copy of the within and foregoing Rule 59(e) SCRCP Motion and supporting documents by placing copies of the same in the U.S. Mail with proper postage prepaid and 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

AND ALSO TO THE MAGISTRATE JUDGE:

Yale Zamore

P.O. Box 88

Great Falls, SC 29055

This 24 day of April, 2015.



Mell Woods

P.O. Box 2603

Lancaster, SC 29721

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.

MOTION, pursuant to Rule 59(e) SCRCF to alter or amend judgment:

Respondent Mell Woods comes now, and within 10 days after the receipt of written notice of the court's order, dated March 27, 2015, serves the following motion, and moves as follows;

1. The magistrate court never did specifically rule on SC Statute § 15-67-100 Right to jury trial unchanged where the statute applies to any action to recover possession of real estate; defendant Mell Woods moves that a specific ruling construing § 15-67-100 as it applies to this case be published in an amended order.

2. The magistrate court never ruled on SC Statute § 15-67-20; A defendant under South Carolina Law is not required to have to continually defend attacks on a land title. The present proceeding is a THIRD attempt by these same plaintiffs and is outlawed by § 15-67-20, defendant continues to move for

dismissal of this THIRD attempt to interfere with defendant's land.

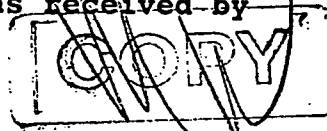
3. SC Statute § 15-67-610 does not apply in this case;
§ 15-67-610 is designed to deal with *squatters* and does not apply where a possessor is on land with recorded documents which show the possessor to be in fact a mortgagee in possession with equitable rights to stay in possession. There has not been a court order, save the one from this magistrate court, which denies the right of defendant to retain possession of his land, based on all of the Rule 59(e) SCRCF motions filed in the present proceeding, and the Record, South Carolina Case and Statutory law defendant moves that all proceedings in this magistrate case be dismissed for lack of jurisdiction.

4. As a housekeeping matter:
Defendant attaches a copy of the envelope which the magistrate court used to mail the court order complained of to defendant.

Defendant's proper mailing address is:

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

The proper address has been used on ALL documents filed by defendant in ALL the courts. The magistrate court used some other address, which has caused delay with the result being that the magistrate court order was received by defendant on April 14, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

4-24-2015

Certificate of Service:

State of South Carolina
County of Chester
In the Magistrate Court
Rossville District
Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the plaintiffs with a copy of the within and foregoing Rule 59(e) SCRPC Motion and supporting documents by placing copies of the same in the U.S. Mail with proper postage prepaid and 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

AND ALSO TO THE MAGISTRATE JUDGE:

Yale Zamore
P.O. Box 88
Great Falls, SC 29055

This 24 day of April, 2015.

COPY

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-3-

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State of South Carolina

In the Magistrate Court
Rossville District

Chester County

Number: 2014CV1210400037

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

v.

Mell Woods,

Respondent.

MOTION, pursuant to Rule 59(e) SCRPC to alter or amend judgment:

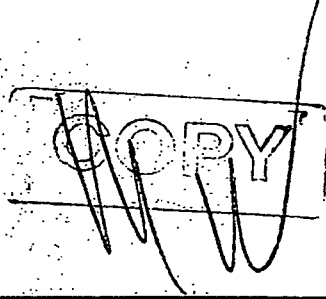
Respondent Mell Woods comes now, and within 10 days after the receipt of written notice of the court's order, dated March 27, 2015, serves the following motion, and moves as follows;

1. Defendant Mell Woods had already appealed the entire matter herein prior to any hearing by serving a Notice of Appeal as soon as defendant found out that the magistrate court had scheduled a non jury hearing on the within matter. Grounds for the appeal are that Defendant Mell Woods is entitled to a jury hearing in a land case and that failure to immediately appeal is a waiver of a jury under Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985), for this reason defendant moves that the magistrate court declare the proceedings in this case after the serving of the Notice of Appeal, a complete nullity.

—/—

2. On page 13 of the magistrate court order is the purported instruction by the magistrate court that the plaintiffs are "permitted" to remove improvements from the land in question after June 01, 2015, and that such removal shall be pursuant to "South Carolina Law" although no law is cited, and that defendant "shall have no recourse" as long as whatever they do is in "accordance with South Carolina Law" although no specific laws or law is cited; these instructions are repugnant to common sense and the magistrate might as well instruct plaintiffs to shoot and kill the defendant so that the case will be over; it is so far past the jurisdiction of a magistrate court to attempt to rule that a party "shall have no recourse" that these instructions should be stricken from the Order by the magistrate court itself, and defendant moves that the magistrate court do so.

This 24 day of April, 2015.


Mell Woods

P.O. Box 2603
Lancaster, SC 29721

Certificate of Service:

**State of South Carolina
County of Chester**

**In the Magistrate Court
Rossville District**

Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the plaintiffs with a copy of the within and foregoing Rule 59(e) SCRCP Motion and supporting documents by placing copies of the same in the U.S. Mail with proper postage prepaid and 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

AND ALSO TO THE MAGISTRATE JUDGE:

Yale Zamore
P.O. Box 88
Great Falls, SC 29055

This 24 day of April, 2015.

COPY

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-3-

EXHIBIT C

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF CHESTER

2014 CV 1210400037

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.,

CERTIFICATE OF SERVICE

Applicant,

v.

Mell Woods,

Respondent-Trespasser.

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Applicant in the above-captioned matter, do hereby certify that I have served Respondent-Trespasser, pro se with a copy of Magistrate Court's Final Order and Judgment by Federal Express hand delivery and by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 30th day of March, 2015 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Respondent-Trespasser, pro se

Mell Woods
1537 Hinton Rd.
Great Falls, SC 29055
Respondent-Trespasser, pro se

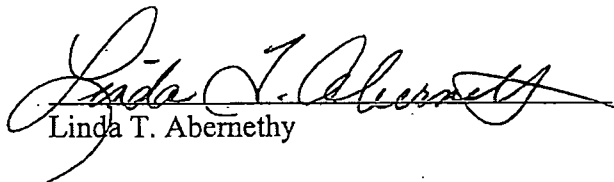

Linda T. Abernethy

EXHIBIT 2

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
On Appeal from Magistrate's Court
2015-CP-12-0179
2014CV1210400037

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.,

Order Dismissing Appeal
Without Prejudice

FILED
2015 MAY - 1 2 2:16
CLERK OF COURT
CHESTER CO. S.C.

Respondents,

v.

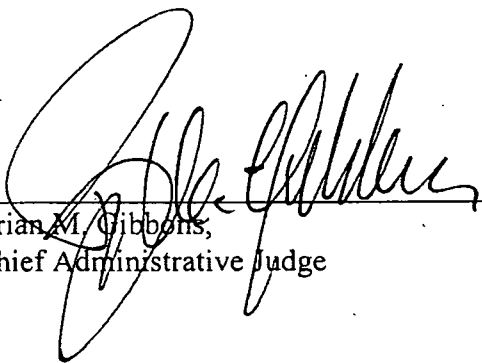
Mell Woods,

Appellant.

Pursuant to Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014) this court has been given notice that Appellant timely served a Rule 59(e) motion for reconsideration in the Magistrate's Court after having filed and served a Notice of Appeal. Accordingly, the appeal is hereby dismissed without prejudice.

IT IS SO ORDERED.

5/1, 2015



Brian M. Gibbons,
Chief Administrative Judge

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

COURT OF COMMON PLEAS
Civil Magistrate Appeal

Numbers:

2015-CP-12-0179

2014-CV-12-10400037

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

Respondents,

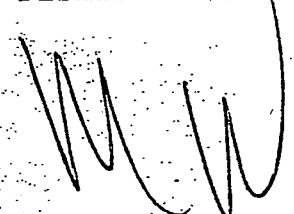
vs.

Mell Woods,

Appellant.

NOTICE OF APPEAL

Mell Woods, appellant above hereby appeals to the
Court of Appeals from the Order of Dismissal entered in
the above case on May 01, 2015.



Mell Woods

This 01 day of May, 2015.

P.O. Box 2603
Lancaster, SC 29721

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondents with a true copy of the within and foregoing pleading, APPEAL NOTICE, by placing the document in the U.S. Mail, with sufficient postage addressed to the counsel of Record for respondents to wit:

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

This 01 day of May, 2015.

P.O. Box 2603
Lancaster, SC 29721

Mell Woods

FILED

2015 MAY - 1 10 47

CLERK OF COURT
CHESTER CO S.C.

-2-

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

Brian Gibbons, Circuit Court Judge

Case Number 2015-CP-12-0179

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

Respondents,

vs.

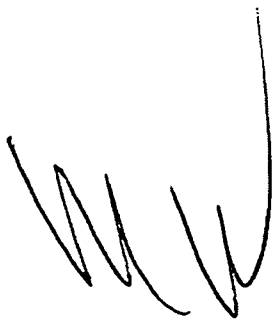
Mell Woods,

Appellant.

NOTICE OF APPEAL
Amendment, No. 1

Mell Woods appeals to the Court of Appeals from the
Order of Dismissal by Circuit Court Judge Brian Gibbons,
dated May 01, 2015.

This 01 day of May, 2015.



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

Respondent Counsel:
Moses and Brackett, PC
c/o B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202
(803) 461-2300

IN THE SOUTH CAROLINA COURT OF APPEALS

Circuit Court Number: 2015-CP-12-0179

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondents with a true copy of the within and foregoing pleading, APPEAL NOTICE, by placing the document in the U.S. Mail, with sufficient postage addressed to the counsel of Record for respondents to wit:

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

This 01 day of May, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

MAY 07 2015

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

SC Court of Appeals

75921

Brian Gibbons, Circuit Court Judge

Case Number 2015-CP-12-0179

FILED

2015 MAY -4 P 4:35

CLERK OF COURT
CHESTER CO S.C.

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

Respondents,

vs.

Mell Woods,

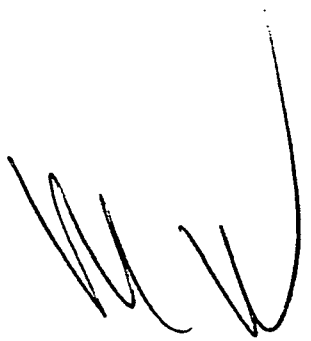
Appellant.

NOTICE OF APPEAL
Amendment, No. 1

Mell Woods appeals to the Court of Appeals from the
Order of Dismissal by Circuit Court Judge Brian Gibbons,
dated May 01, 2015.

This 01 day of May, 2015.

-/-



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

Respondent Counsel:
Moses and Brackett, PC
c/o B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202
(803) 461-2300

FILED
2015 MAY -4 P 4:35
CLERK OF COURT
CHESTER CO S.C.

RECEIVED

MAY 07 2015

SC Court of Appeals

IN THE SOUTH CAROLINA COURT OF APPEALS

Circuit Court Number: 2015-CP-12-0179

FILED

2015 MAY -4 P 4:35

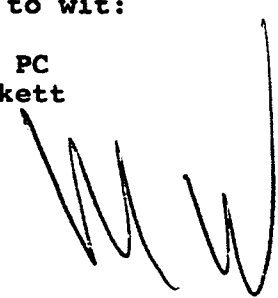
CLERK OF COURT
CHESTER CO S.C.

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondents with a true copy of the within and foregoing pleading, APPEAL NOTICE, by placing the document in the U.S. Mail, with sufficient postage addressed to the counsel of Record for respondents to wit:

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

This 01 day of May, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-3-

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

On Appeal from Magistrate's Court

2015-CP-12-0179

2014CV1210400037

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.,

Order Dismissing Appeal
Without Prejudice

FILED
2015 MAY -1 9 2 16
CLERK OF COURT
CHESTER CO S.C.

Respondents,

v.

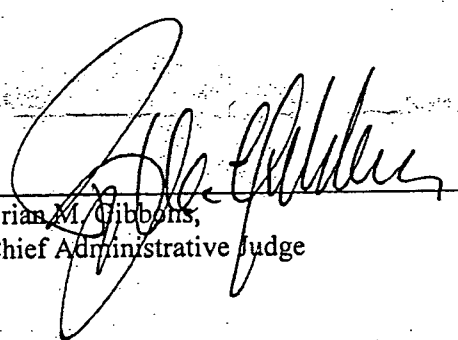
Mell Woods,

Appellant.

Pursuant to Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014) this court has been given notice that Appellant timely served a Rule 59(e) motion for reconsideration in the Magistrate's Court after having filed and served a Notice of Appeal. Accordingly, the appeal is hereby dismissed without prejudice.

IT IS SO ORDERED.

5/1, 2015


Brian M. Gibbons,
Chief Administrative Judge

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

JUL 29 2015

APPEAL FROM CHESTER COUNTY

SC Court of Appeals

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(f), SCACR REPLY TO RETURN

1. Mr. Brackett, the respondent attorney filed a Return
to the Petition for Rehearing which is pending in this case.

2. In order to further cloud the issues, Mr. Brackett appended to his Return a "Motion for Rule 269 Sanctions" appellant has 10 days to respond to the motion, and will do so by Thursday, July 30, 2015.

3. The Reply to the Return is as follows:
Mr. Brackett failed to address the main issue in the Petition for Rehearing which is that the Circuit Judge failed to follow the South Carolina Rules of Civil Procedure when the court dismissed appellant's appeal from magistrate court, and in doing so committed a *structural error* instead of a mere harmless one.

4. But more important than all of the above is the *jurisdictional issue* which came to light just this month. It seems that the HINSONS listed above, even the dead ones, are currently involved in a *partition action* which is pending in the Chester County Court of Common Pleas. Yes, this is true and the partition action has been pending since year 2008 (eight) which is well before any of the present litigations ever started.

5. The reason that appellant Mell Woods never knew of the pending partition action is that the partition action has been concealed, never published in the newspaper, and even as much left out of public data base of court cases published by the South Carolina Supreme Court.

6. Appellant Mell Woods found out about the partition action accidentally by speaking to the Honorable Milton E. Hamiliton who is the Special Referee appointed by the circuit court to adjudicate the land dispute.

7. It is very unlikely that B. Michael Brackett never knew about the partition action; but it is even more beyond belief that Robert H. Breakfield, an admitted attorney, who is also the personal representative for the Hinson Estate did not know that there was and still is a pending partition action concerning the very same land which has been in several litigations, and is the same land the Hinsons are trying to evict appellant from.

8. It axiomatic that where a partition action is pending, that a magistrate court does not have any right to evict anyone, simply because there is no clear "owner" unless and until the partition action is concluded.

9. And to think that B. Michael Brackett is complaining about appellant litigating these cases where appellant has complete and full right to possession of the land in question is simply preposterous. Had Breakfield and Brackett informed the various courts in which the land litigation has been pending, there would have been no need for litigation, all of the issues would have simply been resolved through the partition action, which is still pending, and where the jurisdiction of this case properly is.

10. The State of South Carolina has a strong policy in place to deal with lawyers who fail to disclose material facts to a tribunal, the policy is articulated as the Rules of Professional Conduct, Rule, 3.3 CANDOR TOWARD THE TRIBUNAL.

11. Appellant Mell Woods appends to this Reply a letter and Court Order signed by the Honorable Milton E. Hamiliton, a Special Referee for Chester County to prove that the present case is already pending in the Chester County Court of Common Pleas.

Respectfully submitted,

this 27 day of July, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-4-

HAMILTON DELLENY GRIER & COTTEN, LLC

ATTORNEYS AT LAW
HISTORIC COUNTY JAIL BUILDING (CIRCA 1842)
128 CENTER STREET
POST OFFICE DRAWER 808
Chester, South Carolina 29706-0808
803-581-2211
FAX
803-581-2218

DAVID HAMILTON (1883-1941)
THOMAS B. HAMILTON (1916-1972)
DAVID LEE HAMILTON (1911-1995)

MILTON E. HAMILTON
F.G. DELLENY JR.
BRIAN T. GRIER
F.M. "NICK" COTTEN JR

CHESTER OFFICE
128 CENTER STREET
CHESTER, S.C. 29706-0808
803-581-2211

GREAT FALLS OFFICE
215 1/4 DEARBORN STREET
GREAT FALLS, S.C. 29055
803-482-6600

June 25, 2015

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

RE: Reba Hinson Estate

Dear Mr. Woods:

Please find enclosed a copy of the last Order I believe of this case in which I signed the same as Special Referee.

I was definitely appointed sometime prior to June 2, 2011 as Special Referee in this case. I am still presiding as Special Referee of this case.

In regards to you being listed as a necessary party in this case, I cannot advise you on this part.

You may wish to consult an attorney in regards to this matter.

With kind regards, I am

Very truly yours,

HAMILTON DELLENY GRIER & COTTEN, LLC

BY:

Milton E. Hamilton

MEH:krw

Enclosure

P.S. I was on vacation the 1st part of June
Mur

- 5 -

152

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER,

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

Plaintiffs,

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,

Defendants

IN THE COURT OF COMMON PLEAS

C.A. No.: 2008-CP-12-00475

ORDER

FILED
2011 JUN 10 P 2:49
CLERK OF COURT
CHESTER CO S.C.

The within action is an action for partition and division of real estate in Chester County, South Carolina. The Special Referee held a Status Conference on May 19, 2011, and attorneys for all parties participated in the Status Conference. The property consists of approximately 92 acres of land.

In order for the Court to effect a partition and division, it is necessary to have an accurate description of the property including the boundaries. The property appears to exist of basically two tracts, one identified by the attorneys as income producing and the other property being vacant land. Within the income producing tract, several lots are owned by individuals who are parties to this litigation.

In order to proceed with an expeditious resolution of this matter and to enable the trial judge to enter a Final Order, the Court finds it necessary to commission a surveyor to survey the tract. Enfinger and Associates shall prepare a survey of the property showing it as two tracts, one tract being the vacant land and the other tract being the income producing property. Within the

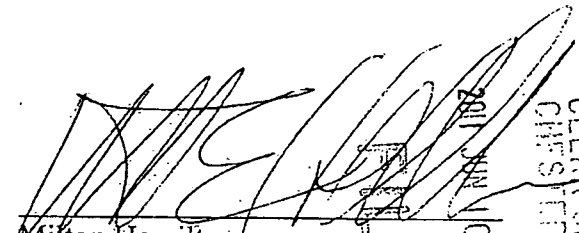
income producing property, the surveyor shall also establish boundary lines for any lots which are occupied and/or used by individuals who are parties of this litigation. The surveyor shall also include the road/easements which exist on the property. The surveyor shall be paid from the moneys which are being collected from the rents associated with the property.

The survey shall be provided to each one of the attorneys for the parties. The parties shall schedule a mediation with Charles B. Ridley, within sixty (60) days of receiving the survey from the surveyor. In addition, the parties shall employ, if he is willing to do so, Robert Breakfield, to be present at the mediation to assist with issues associated with a possible resolution of this case to include tax issues, incorporation of a business and other such matters. Mr. Breakfield's fees shall be paid from the moneys which are being collected from the rents on the property as should the mediator's fees.

ALL OF WHICH IS DULY ORDERED.

Chester, SC

June 2, 2011


Milton Hamilton
CLERK OF COURT
CHESTER CO S.C.
JUN 10 P 2:49
FILED

SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036

Breakfield v. Mell Woods

RECEIVED

JUL 29 2015

SC Court of Appeals

CERTIFICATE OF SERVICE

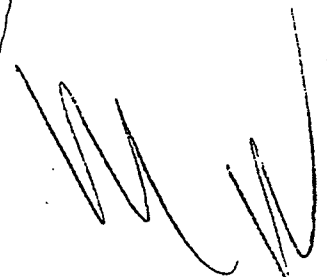
I hereby certify that I have served the respondents
with a true copy of the within and foregoing

RULE 240(f), SCACR REPLY TO RETURN

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 27 day of July, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-8-

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

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. 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.

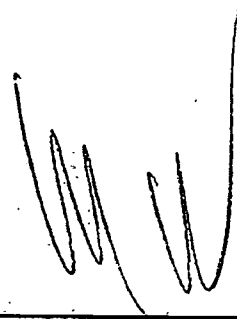
4. In addition, and contrary to what Mr. Brackett is now telling the Court of Appeals, the Court of Appeals did not Rule that appellant could not claim adverse possession, but only that appellant could not "tack" to make the required 10 years; since the Ruling by the Court of Appeals, twenty-one months 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.



Mel Woods

P.O. Box 2603
Lancaster, SC 29721

-4-

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,

FILED

2015 AUG 14 P 4:49

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) SCRCF:

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, SCRCP. 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."

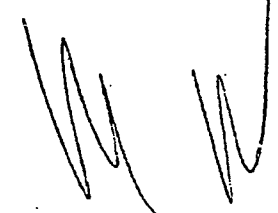
7. Will the present parties protect the interests of Mell Woods, the applicant for intervention? The answer is, no, simply because the existing parties have interests adverse to applicant's interests.

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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-4-

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2015 AUG 14 P 4:49
CLERK OF COURT
CHESTER CO. S.C.

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SEP 22 2015

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

-5-

164

SOUTH CAROLINA COURT OF APPEALS
Case Number 2015-001036

Breakfield v. Mell Woods

RECEIVED

SEP 22 2015

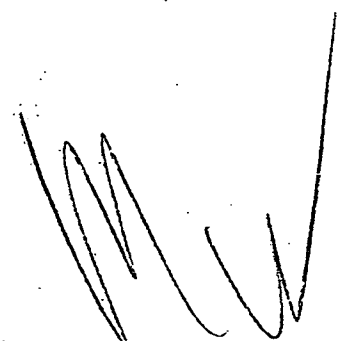
SC Court of Appeals

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

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Lancaster, SC 29721