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S.C. Supreme Court

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August 27, 2012

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

S.C. Supreme Court

AUG 28 2012

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United States Priority Mail

Re: Mountain View Baptist Church vs. Bobby Lee Burdine
On Certiorari to the Supreme Court of South Carolina

Dear Mr. Shearouse:

Enclosed for filing is the Petitioner's Brief in the above case. Also enclosed are the following:

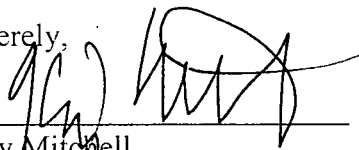
- (1) Proof of service of the Petitioner's Brief to the opposing counsel.
- (2) Appendix.

S.C. Supreme Court

AUG 28 2012

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Sincerely,


s/ _____
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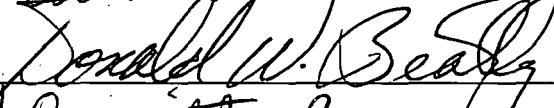
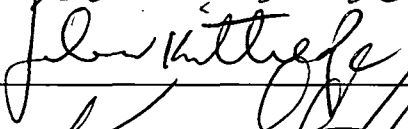
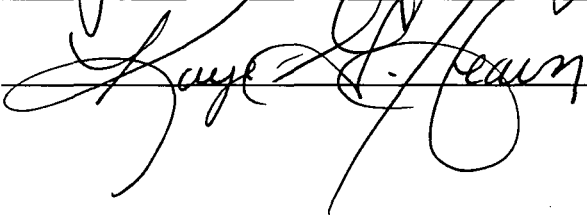
The Supreme Court of South Carolina

Mountain View Baptist Church, Respondent,
v.
Bobby Lee Burdine, Petitioner.

Appellate Case No. 2011-192466

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *Mountain View Baptist Church v. Burdine*, Op. No. 2011-UP-061 (S.C. Ct. App. filed Feb. 16, 2011). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

July 27, 2012

cc:

Daniel R. Unumb

Kirby Rakes Mitchell

Michael Stephen Gambrell

Candy M. Kern-Fuller

The Honorable Jenny Kitchings

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MAY 26 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Opinion No. (S.C. Ct. App. Filed April 25, 2011)

Mountain View Baptist Church Respondent

v.

Bobby Lee Burdine Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on April 25, 2011.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that the magistrate had subject matter jurisdiction in a summary ejectment proceeding where Respondent failed to show that the relationship between the parties invoked the application of the statute as required by this Court’s precedents?
2. Did the Court of Appeals err in holding that the magistrate had subject matter jurisdiction where Respondent’s witnesses demonstrated that there was a legitimate dispute regarding the title of the property?

STATEMENT OF THE CASE

1. Case facts.

In 1958 Bobby Lee Burdine’s parents purchased a parcel of real property located in Greenville, South Carolina and recorded the deed thereto. Shortly thereafter the Burdines built a home on a parcel located at 108 Temple Street, Greenville, South Carolina, which is several lots over from the parcel indicated in their recorded deed. When the home was completed the Burdines moved in the lived there for the remainder of their lives until 2000. Bobby Lee Burdine, born August 5, 1956, grew up in the home located at 108 Temple Street and possessed

and occupied the home subsequent to his parents deaths. Bobby Lee Burdine still possesses and occupies this home as of the date of filing this petition.

In 1998 Mountain View Baptist Church purchased the lot located at 108 Temple Street, from Richard W. Locke, who had purchased the property from David Stone in 1996, and recorded the deed thereto. When Richard W. Locke sold the property to Mountain View Baptist Church he had never been on the property and did not know that the Burdine home existed on the lot. Shortly after the church purchased the property from Mr. Locke, Bobby Lee Burdine informed Pastor Mills that his family in fact owned the property. Over the next ten years Pastor Mills continued to see and speak with Bobby Lee Burdine on occasion.

In the summer of 2008 the church purchased the property next to 108 Temple Street and began to prepare to construct a parking lot thereupon. Bobby Lee Burdine presented himself to the church and asserted that he claimed title to the property located at 108 Temple Street. The church subsequently filed an application for ejectment against Bobby Lee Burdine in the magistrate's court.

2. Procedural history.

On October 2, 2008, Mountain View Baptist Church [hereinafter "Respondent"] applied to the Greenville County Magistrate's Court for a Rule to Vacate or Show Cause against Bobby Lee Burdine [hereinafter "Petitioner"]. In the 'Application for Ejectment' Respondent claimed ownership of the premises located at 108 Temple Street, Greenville, South Carolina 29601 [hereinafter the "subject premises," or "subject property"], admitted that no landlord/tenant relationship existed between the parties, and alleged that petitioner "has unlawfully resided in the house located on the parcel of land ... and has failed to vacate the premises upon request of

[Respondent]” (ROA. p. 6). Attached to the application was a copy of a deed, filed July 9, 1998, indicating that Respondent purchased the subject property from Richard W. Locke on July 8, 1998. (ROA. p 10). The magistrate issued and served Petitioner a Rule to Vacate or Show Cause to which Petitioner did not respond.

On October 21, 2008, Judge Leila Foster issued a writ of ejectment “in accordance with S.C. CODE ANN. § 27-40-710, 27-40-735, and 27-37-160¹” against Petitioner requiring him to voluntarily vacate the premises by November 20, 2008. (ROA. p. 1). On October 27, 2008, counsel for Petitioner delivered a correspondence to Judge Foster requesting that she suspend the execution of the writ and schedule a hearing on the matter (ROA. pp. 22-23). Judge Foster set the matter for a summary ejectment proceeding before her on November 13, 2008.

On November 13, 2008, Petitioner filed an Answer denying Respondent’s title to the premises, admitting that he and his parents resided in the home thereon in excess of forty (40) years and that he continued to reside in the home, and asserting his own title to the premises. (ROA. pp. 11-12). Additionally, Petitioner submitted an undertaking affirming that if Respondent, within 20 days, returned to the magistrate a summons and complaint of a civil action concerning the title to the subject premises filed in the Circuit Court, the Petitioner would, by and through his counsel, within 20 days accept service thereof. (ROA. pp. 11-12).

At the call of the case, Petitioner moved, pursuant to S.C. CODE ANN. § 22-3-20², to dismiss the summary proceeding for lack of subject matter jurisdiction based on the fact that Petitioner and his parents had possessed and occupied the property since 1958. Petitioner argued that because such possession was adverse to all other ownership claims he therefore asserted a

¹ S.C. Residential Landlord Tenant Act, S.C. CODE ANN. § 27-40-10, et. seq. (2007) (SCRLTA); and Eviction of Tenants, 27-37-10 et seq. (2007). It is unclear why the magistrate issued a writ of ejectment pursuant to the SCRLTA when it is undisputed that the parties did not have a landlord/tenant relationship.

² “No magistrate shall have cognizance of a civil action: (2) When the title to real property shall come in question, except as provided in Article 11 of this chapter.” S.C. CODE ANN. § 22-3-20(2) (2007).

legitimate claim regarding the title to the property pursuant to S.C statutory and common law. (ROA. pp. 26-41). The Court, without making any findings on the record, denied Petitioner's motion and continued the summary ejectment proceeding. At the conclusion of the proceeding the magistrate found in favor of Respondent and issued a writ of ejectment.

On November 17, 2008, Petitioner applied to the Circuit Court of Greenville County for an order staying the execution and enforcement of the writ of ejectment (ROA. pp. 13-15). On November 20, 2008, Circuit Court Judge John C. Few heard Petitioner's motion and issued an order setting aside the writ of ejectment. (ROA. pp. 2-3). Judge Few found that because sufficient evidence existed that raised a legitimate question regarding the title to the subject property, the magistrate lack of subject matter jurisdiction to issue the writ of ejectment pursuant to summary ejectment proceedings (ROA. pp. 66-73). His order was subsequently filed on November 26, 2008, and received by Respondent on December 2, 2008. On December 12, 2008, Respondent filed a motion for reconsideration which was denied by Judge Few by order dated December 18, 2008.

On January 8, 2009, Respondent filed a notice of appeal to the South Carolina Court of Appeals. On February 16, 2011, the Court of Appeals filed an unpublished, per curium opinion, Op. No. 2011-UP-061, reversing Judge Few's order setting aside the writ of ejectment. The Court of Appeals found the magistrate had subject matter jurisdiction because Petitioner's undertaking was not executed by a surety and, therefore, did not comply with the statutory provisions relating to the magistrate's jurisdiction. *Mountain View Baptist Church v. Burdine*, Unpublished Opinion No. 2011-UP-061 (Filed February 16, 2011).

On March 2, 2011, Petitioner filed a petition for rehearing with the South Carolina Court of Appeals who denied the petition on April 25, 2011. Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. THE MAGISTRATE DID NOT HAVE SUBJECT MATTER JURISDICTION BECAUSE RESPONDENT FAILED TO MAKE A *PRIMA FACIE* SHOWING NECESSRY TO INVOKE SUMMARY EJECTMENT PROCEEDINGS

South Carolina property law attempts to reconcile the policy of prohibiting state magistrates from hearing cases involving issues regarding the title to real property, with affording property owners an expedited process for expelling trespasser and tenants. As a result, in order for a magistrate to assume jurisdiction of a summary ejectment proceeding, this Court requires property owners to make a preliminary showing that the action brought comes within the particular statute plead upon. Because the evidence presented to the magistrate at the commencement of the proceeding in this case indicated, on its face, that a legitimate issue existed between the parties regarding the title to the subject property, the magistrate erred in continuing with the summary ejectment of trespassers proceeding. The S.C. Court of Appeals should have, therefore, affirmed the Circuit Court's holding that the magistrate lacked subject matter jurisdiction to decide the matter. Because the Court of Appeals's decision is in conflict with this Court's precedents, this Court should grant Petitioner's petition for writ of certiorari.

Historically the South Carolina Constitution precluded state magistrate's from having jurisdiction to decide actions involving the title to real property. S.C. CONSTITUTION OF 1895.³ Upon amendment the constitution authorized the General Assembly to provide for the civil jurisdiction of the magistrate's courts. S.C. CONST. ART. V, § 26. Thereafter, the S.C. legislature

³ The S.C. Constitution did not intend to allow the magistrate in any case to oust a man from the possession of his real estate and throw upon him the burden of proving his title. *Bamberg Banking Co. v. Matthews*, 132 S.C. 130, 128 S.E. 718 (S.C. 1925) (Watts, J., dissenting).

codified the well- established exclusion of actions involving the title to real property from magistrate's courts subject matter jurisdiction. S.C. CODE ANN. § 22-3-20(2) (2007). Article 11 under this chapter provides a statutory safeguard to ensure that magistrates do not decide actions involving legitimate questions as to the title of real property. S.C. CODE ANN. § 22-3-1110, et seq. (2007). Pursuant to Article 11 such cases either get automatically transferred to the Circuit Court, or the parties are prohibited from raising the issue of title to real property. *Id.*

Equally historic is the S.C. legislature's statutory policy of providing real property owners an expedited procedure in magistrate's court to expel trespassers and tenants from their property. *See, e.g., Baldwin vs. Cooley*, 1 S.C. 256, 1870 Lexis 30 (S.C. 1870) ("The magistrate, in this case, has proceeded ... under the Act of 1866 entitled 'An Act to provide an expeditious mode of ejecting trespassers'"). Under the statutory scheme,⁴ the property owner does not file a summons and complaint, but, rather, makes an application for a notice to quit, in the case of a trespasser, or a rule to vacate or show cause, in the case of a tenant. S.C. CODE ANN. § 15-67-610 (2007); S.C. CODE ANN. § 27-37-20 (2007). Neither the alleged trespasser, nor the alleged tenant are required to file a written answer to the notice or the rule; rather, if they contest the ejection they must simply make an appearance within the statutory period and show either: (1) a bona fide claim to *possession* in the case of an alleged trespasser; or (2) cause as to why they should not have to vacate the premises as a tenant. S.C. CODE ANN. § 15-67-620 (2007); S.C. CODE ANN. § 27-37-20, 60 (2007).

In order to reconcile affording property owners the convenience of summary proceedings while ensuring that magistrate's do not decide actions involving the title to real property, this Court has consistently required plaintiffs attempting to utilize summary ejection proceedings to

⁴ The language of which has essentially remained unchanged even into the modern S.C. Code of Laws, *see infra* fn 4.

make a preliminary *prima facie* showing that the action they bring falls within the particular ejectment statute. *Richland Drug Co. v. Moorman*, 71 S.C. 236, 50 S.E. 792 (S.C. 1905) (“The plaintiff claiming right of summary ejectment must bring himself within the statute by at least making before the magistrate a *prima facie* showing that he is the owner of the premises and that defendant is a trespasser.”); *Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 121 S.E. 374 (S.C. 1924) ([n]ecessarily, therefore, it is competent for the magistrate to determine as a fact whether the relation of landlord and tenant exists ... [because] it is apparent that by merely asserting the claim that another is in possession of real estate as his tenant a party may not be permitted to use the summary statutory proceeding to eject the true owner of the premises”).

In *Moorman*, the plaintiff initiated summary ejectment proceedings, pursuant to Code 1902, section 2972⁵, against the defendant by serving a notice to quit on the defendant concerning the premises described in the notice. *Moorman*, 71 S.C. 236, 237 (S.C. 1905). The day after he was served, the defendant appeared before the magistrate and presented a deed to the premises as evidence of his title and requested a hearing to determine the matter. *Id.* The magistrate did not inspect the deed, but agreed to set a day for the hearing and contacted the attorney’s for plaintiff accordingly. *Id.* at 238. Instead of agreeing to a hearing date, the plaintiff asserted that the proceeding was summary, and, because more than five days passed with the defendant failing to give a bond, the duty of the magistrate was limited to ejecting the defendant

⁵ “If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, it shall be lawful for the owner of the land so trespassed upon to apply to any magistrate to serve notice on such trespasser to quit the premises; and if after the expiration of five days from personal service of such notice such trespasser refuses or neglects to quit, it shall then be the duty of such magistrate to issue his warrant to any sheriff or constable, requiring him forthwith to eject such trespasser, using such force as may be necessary; *Provided however*, That if the person in possession shall, before the expiration of the said five days, appear before the magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises, and enter into bond to the person claiming the land, with good and sufficient surety, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the lands may incur in the successful establishment of his claim by any of the modes of proceeding now provided by law, the said magistrate shall not issue his warrant as aforesaid.” The language of this provision is essentially the same language of the current code section authorizing summary ejectment of trespassers. See S.C. CODE ANN. § 15-67-610 and 620 (2007).

from the property. *Id.* The magistrate declined to summarily eject the defendant without a hearing and the plaintiff applied to the Circuit Court for a writ of mandamus compelling the magistrate to issue the warrant of ejectment. *Id.*

The Circuit Court held that the summary ejectment of trespassers statute contemplates that *only if* the alleged trespasser satisfies the magistrate that a bona fide color or claim to possession exists *and* enters into a bond, then the person bringing the action is relegated to his action of law, during which the question of trespass is determined. *Id.* at 239. The Court determined that more than five days elapsed since the plaintiff initiated the proceedings and the defendant failed to enter into the bond and concluded, therefore, that the magistrate should have issued the warrant of ejectment as a matter of law. *Id.* The Circuit Court issued the writ of mandamus and the defendant appealed to the S.C. Supreme Court to set aside the writ.

This Court reversed the writ of mandamus and found that the summary ejectment statute did not apply to someone with an ownership interest in the premises, but, rather to an alleged trespasser who, nevertheless, has a bona fide color of claim to *possession*.⁶ *Id.* at 240. According to the Court, the statute gives such alleged trespasser the privilege of demonstrating such a claim to possession to the magistrate within five days and executing a bond, which in turn operates to prevent the court from issuing the warrant of ejectment.⁷ *Id.* It did not follow, however, that the magistrate, as a matter of law, is compelled to issue a warrant in all cases where a person served with a notice to quit failed to comply with the provisions of the statute. *Id.*

In some cases, the Court reasoned, a defendant in possession, even though he does not avail himself of the privilege of executing the bond within five days after notice to quit, and

⁶ See, e.g., *Sires v. Moseley*, 60 S.C. 504, 39 S.E. 7 (S.C. 1901) (Court upheld ejectment of trespasser where defendant did not claim title to the property and failed to prove a bona fide color of claim to possession).

⁷ In the case where the defendant avails himself of the privilege, the magistrate would determine the issue of defendant's claim to possession and each party has the right to appeal the decision to the Circuit Court. S.C. CODE ANN. § 15-67-640 (2007).

thereby preventing the warrant from being issued, will appear and demand a hearing as to whether the case is one falling within summary ejectment proceedings. *Id.* When this occurs the magistrate must conduct a hearing on the matter to determine if the plaintiff can make a least a *prima facie* showing that he is the owner of the premises and that defendant is a trespasser. *Id.* If it initially appears, however, that the defendant has an ownership interest in the property and for that reason refuses to quit the premises, the statute does not apply and the magistrate must dismiss the summary ejectment proceeding. *Id.* at 239. The plaintiff would then be left to the ordinary remedy for recovery of possession of land.⁸ *Id.*

Accordingly, in this case, in order for the magistrate to have maintained the summary ejectment proceeding against Petitioner held on November 13, 2008, the magistrate would have had to make a preliminary finding that that the action was governed by the summary ejectment of trespassers statute.⁹ Necessarily, then, the magistrate was required to determine that Respondent initially demonstrated a valid claim of ownership over the subject premises and required to have found facts that facially showed that Petitioner was an unlawful, tortuous trespasser thereupon. S.C CODE ANN. § 15-67-610 (2007); *Baldwin vs. Cooley*, 1 S.C. 256, 870 LEXIS 30, (S.C. 1870) (finding that defendants who were heirs possessing the property at the acquiescence of the executor of the grantor's will prior to executor selling the land to satisfy a debt of the grantor were not, then, trespassers in an action brought by purchaser. "They did not enter against the consent of the party have the fee, and ... hence the [summary ejectment] Act is not applicable to

⁸ See, e.g., *Little vs. Little*, 223 S.C. 332, 75 S.E.2d 871 (S.C. 1953) ('Trespass to try title.' Action filed in the Circuit Court where "plaintiff alleged that he was owner of and in lawful possession of described premises and that defendant had trespassed thereon, and defendant denied both plaintiff's possession and title, and set up an affirmative defense that the land was owned by the mother of the parties, cause became one of trespass to try title"). See, *Dargan v. Tankersley*, 380 S.C. 480, 671 S.E.2d 73 (S.C. 2008) (Quiet title action brought in Circuit Court, and subsequently transferred to the Master-in-Equity, seeking to establish ownership of a parcel of real property).

⁹ Respondent admits no landlord/tenant relationship existed between the parties and its Brief to the S.C. Court of Appeals appears to accept the premise that Respondent initiated the action under S.C. CODE ANN. § 15-67-610, et seq. (2007), however the application for ejectment filed with the magistrate does not specifically state the code section upon which they rely. (ROA. p. 6).

such a case ... nor was it intended to reach such cases. It was to reach open, flagrant trespassers”). Furthermore, if the initial facts presented to the magistrate showed that Petitioner did not quit the premises because of a valid claim to ownership of the property, the magistrate was required to dismiss the proceeding. *Moorman*, 71 S.C. 236, 237 (S.C. 1905). Here, the information initially presented to the magistrate clearly showed that not only was Petitioner not a flagrant trespasser, but that he had a legitimate claim regarding the title to the subject property through adverse possession.

Because the information the magistrate had at the commencement of the action clearly demonstrated a legitimate issue regarding the title to the subject property, the magistrate erred in finding that the relationship between the parties brought the action within the jurisdiction of the summary ejectment proceeding. First, in the application for ejectment, Respondent presented that it purchased the subject property in July 1998. (ROA. p. 6). Respondent admits that Petitioner was residing in the house located on the subject property when they brought the action in October 2008, but that a landlord-tenant relationship did not exist, and never existed, between the parties. (ROA. p. 6). Petitioner did not respond to the Rule to Vacate issued by the magistrate, but was granted a hearing concerning the writ of ejectment issued thereafter. (ROA. pp. 22-23).

On the day of the hearing, Petitioner submitted an answer stating that he resided and continued to reside on the subject premises and that his occupancy was lawful and had continuously existed by him and his parents for a period in excess of forty (40) years. (ROA. p. 11). Additionally, Petitioner informed that court, pre-trial, that in 1958 his parents mistakenly built a home on the subject property that Respondent claimed to have purchased in 1998. (ROA. p. 36). He also informed the magistrate that he grew up in this home and that his parents lived in

the home until 1999 or 2000 at which time he began occupying and exclusively possessing the home and that such possession continued through the day of trial—a fact corroborated by Respondent’s application. (ROA. pp. 36-37). Petitioner asserted, therefore, a claim to the title of the subject property pursuant to adverse possession. *Miller v. Leaird*, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (S.C. 1992).

Acquiring title by adverse possession requires proof of actual, open, notorious, hostile, continuous, and exclusive possession by the claimant, or by one or more persons through whom he claimed, for the full statutory period. *Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (S.C. Ct. App. 2009) quoting *Miller*, 307 S.C. at 61. In South Carolina, adverse possession may be established if the elements of the claim are shown to exist for at least ten years. S.C. CODE ANN. § 15-67-210 (2007). Here, the Burdine’s used, occupied, and claimed ownership of the subject property actually, openly and notoriously, exclusively, continuously and hostilely from 1958 until at least 1998 or 1999. They did everything required by S.C. law to effectuate ouster of any other entity’s claim to the subject property and to claim title to the property in themselves through adverse possession. Even the fact that the Burdine’s possession of the subject property was based on an apparent erroneous belief in their ownership of the property does not defeat their claim to title through adverse possession. *Perry v. Heirs at law and Distributees of Gadsden*, 316 S.C. 224, 449 S.E.2d 250 (S.C. 1994); *Wigfall v. Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (S.C. 1988). Accordingly, because Petitioner’s parents acquired title to the property by adverse possession between 1958 and 1998, Petitioner had a claim to an interest in the subject property as their heir. *Clark v. Hargrove*, 323 S.C. 84, 473 S.E.2d 474 (S.C. Ct. App. 1996).

Petitioner argued that based on the long possession and occupation of the property by him and previously his parents, he had an apparent interest in the title to the property through adverse

possession pursuant to “ten year statute, ... the 20 years for presumption of credit, of common law, as well as the forty (40) year statute.” (ROA. pp. 39-40). Because the facts initially presented to the magistrate indicated a clear issue regarding the title to the subject property, Petitioner moved to dismiss because the magistrate did not have jurisdiction to proceed with a summary ejectment. (ROA. p. 39). Even when presented with these preliminary facts the magistrate assumed jurisdiction and proceeded to hear the case.

The magistrate was required, however, to refuse summary ejectment jurisdiction over the matter and dismiss the action accordingly. The pleadings and evidence presented to the magistrate at the commencement of the summary proceedings demonstrate that Petitioner and his predecessors occupied and possessed the subject property up to forty (40) years before Respondent’s claim to the title in 1998 and that Petitioner was occupying the premises at the time Respondent brought the action in 2008. Because Petitioner raised a legitimate claim to title to the subject premises, the preliminary facts, even in the light most favorable to Respondent, failed to establish the necessary *prima facie* showing that the relationship of the parties came within the summary ejectment of trespassers statute. The magistrate was required, therefore, to dismiss the application pursuant to § 22-3-20(2) so that Respondent or Petitioner, could bring an action to determine title in Circuit Court.¹⁰ Accordingly, the S.C. Court of Appeals should have affirmed Judge Few’s holding that because the case presented a legitimate question of title of the subject property it therefore followed that the magistrate did not have jurisdiction “to kick these people out of their home. [That] only the circuit court can.”

This Court has held that property owners invoking summary proceedings must bring themselves within the statute by initially demonstrating the relationship between the parties is one contemplated by the respective statute. Because the facts presented at the commencement of

¹⁰ See *supra* fn 7.

this action demonstrated that Petitioner had a legitimate ownership interest in the subject property, the magistrate could not have decided the summary ejectment of trespasser proceeding without determining the issue of title to the subject property.¹¹ Magistrates are precluded from determining title to real property in summary ejectment proceedings and it was, therefore, error for the magistrate to assume jurisdiction in this action. The Circuit Court was correct, then, in setting aside the writ of ejectment because the magistrate did not have subject matter jurisdiction.

The Court of Appeals decision held that the magistrate had subject matter jurisdiction because Petitioner failed to comply with Article 11. Because plaintiff failed to present a prima facie case showing that a summary ejectment proceeding was appropriate; however, the provisions of Article 11 were not implicated and could not have therefore determined the magistrate's exercise of jurisdiction in this case. The Court of Appeals therefore erred in reversing Judge Few's stay of the writ of ejectment due to the lack of the magistrate's subject matter jurisdiction. Because the Court of Appeals' decision conflicts with the precedent set by this Court, this Court should grant Petitioner's petition for a writ of certiorari.

2. THE MAGISTRATE DID NOT HAVE SUBJECT MATTER JURISDICTION BECAUSE RESPONDENT'S OWN SHOWING BROUGHT THE TITLE TO THE SUBJECT PROPERTY INTO QUESTION.

To ensure that plaintiffs do not bring actions involving title to real property into magistrate's courts, Article 11 of Title 22 requires magistrates to dismiss actions where a plaintiff's own showing brings the title of real property into question. S.C. CODE ANN. 22-3-1150 (2007). Because Respondent's presentation of its case-in-chief clearly demonstrated that a legitimate question existed regarding the title to the subject property, the Court of Appeals erred

¹¹ See, e.g. *Ex Parte Wingate*, 166 S.C. 440, 165 S.E. 176 (S.C. 1932) (Finding that the determination of the matter necessary relied upon the issue of title to the property and that because the court did not have jurisdiction to decide the question of title to real property, the court's adjudication was without authority of law).

in finding that the magistrate had subject matter jurisdiction of the summary ejectment proceeding pursuant to Article 11.

The Code of Laws of South Carolina enumerates the numerous cases over which a magistrate has jurisdiction. S.C. CODE ANN. § 22-3-10 (2007). The Code specifically excludes, however, magistrate's jurisdiction over civil actions "when the title to real property shall come in question, except as provided in Article 11 of this chapter." S.C. CODE ANN. § 22-3-20(2) (2007). Article 11's eight sections, when read together, ensure that magistrates do not decide legitimate issues of title to real property in actions brought in their court. In fact, in the cases heard by the magistrate under the exception provided by Article 11, the defendant is precluded from bringing the issue of title as a defense. S.C. CODE ANN. § 22-3-1140 (2007). In those cases, the magistrate can proceed with the action, but is still prohibited from considering the issue of title to real property to decide the matter. Furthermore, as a failsafe, in cases where the magistrate proceeds under Article 11, if the plaintiff's case-in-chief raises a question as to the title of real property, then the magistrate is required to dismiss the action. S.C. CODE ANN. § 22-3-1150 (2007).

Article 11, then, contemplates that a plaintiff's initial filing in magistrate's court is pursuant to one of the statutorily enumerated actions and does not bring title to real property into question. Once sued, the statute requires the defendant to present the issue of title of real property as a defense to plaintiff's action in writing. S.C. CODE ANN. § 22-3-1110 (2007). Additionally at the time of answering the defendant must deliver to the magistrate a written undertaking that has been executed by a sufficient surety and approved by the magistrate. S.C. CODE ANN. § 22-3-1120 (2007).¹² The undertaking must state that if the plaintiff delivers to the

¹² The statute continues: "In case of failure to comply with the undertaking the surety shall be liable for not exceeding one hundred dollars." S.C. CODE ANN. § 22-3-1120 (2007)

magistrate within twenty days a copy of a summons and complaint for the same cause of action filed in circuit court, then the defendant will within twenty days after such deposit accept service thereof. S.C. CODE ANN. § 22-3-1120 (2007). When the defendant files the answer and undertaking with the magistrate the magistrate is required to dismiss the pending action. S.C. CODE ANN. § 22-3-1130 (2007). Plaintiff is then allowed to bring an action in Circuit Court, but the action filed, and subsequently accepted by defendant pursuant to the undertaking, must be the exact action plaintiff filed in magistrate's court. *High v. Wingo*, 84 S.C. 246, 66 S.E. 185 (S.C. 1909).¹³

In situations where the defendant does not deliver the required undertaking to the magistrate, the magistrate retains jurisdiction of the action and proceeds with hearing the matter accordingly. S.C. CODE ANN. § 22-3-1140 (2007). Furthermore, during such proceedings the defendant is precluded from bringing the title of real property into question as a defense against plaintiff's claims. S.C. CODE ANN. § 22-3-1140 (2007). When the case is heard, however, and the plaintiff's own showing brings title to real property into question, and the defendant disputes such title, the magistrate is then required to dismiss the action. S.C. CODE ANN. § 22-3-1150 (2007); *Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 121 S.E. 374 (S.C. 1924) (“[I]t appeared on the trial from the plaintiff's own showing that the title to real property was in question, and that such title was disputed by the defendant, and hence that the magistrate was without jurisdiction”).¹⁴

¹³ S.C. CODE ANN. § 15-67-610 (2007) gives magistrate courts exclusive jurisdiction over summary ejectment of trespasser actions with the Circuit Courts serving in an appellate capacity. Because a plaintiff could not file an application pursuant to § 15-67-610 with the Circuit Court, as would be required under *High*, arguably Article 11 was not intended to apply to applications made to the magistrate under the summary ejectment of trespassers statute.

¹⁴ The court in *Stewart-Jones Co.* found that even though the Circuit Court found that the plaintiff introduced the question of title to the real property, the magistrate, as a preliminary matter could not have found that a landlord/tenant relationship existed to invoke summary ejectment proceedings. *Id.*

In this case, Respondent brought a summary ejectment of trespasser action against Petitioner. Petitioner did not respond to the Rule to Vacate or Show Cause that was issued by the magistrate. Instead, subsequent to the magistrate's issuance of the writ of ejectment, Petitioner, alleging title to the subject property, requested a hearing on the matter. Petitioner filed an answer and undertaking which denied Respondent's title and in fact claimed title to the property based on the lengthy occupation and possession of the premises by Petitioner and his parents. Additionally, prior to trial, Petitioner moved to dismiss based on the lack of subject matter jurisdiction because there was a legitimate question as to the title of the subject property. The magistrate denied Petitioner's motion and proceeded to hear Respondent's case. Therefore, presumably because Petitioner failed to comply with the statute, pursuant to § 22-3-1140, Petitioner was precluded from introducing evidence relating to the title of the subject property in his defense. Because Respondent brought the title of the subject property into question, however, the magistrate should have dismissed the action pursuant to § 22-3-1150.

The application for ejectment indicated that Respondent purchased the property in 1998. At trial Respondent's primary witness, pastor Stacy Mills, testified that immediately upon purchasing the subject property, Petitioner "apparently got some notion of our owning the property and her came over ... and he was making a ruckus about us owning the property." (ROA. pp. 43-44). Even after Petitioner asserted an issued regarding the title to the property, Respondent waited ten years to file this summary action. Additionally, during this time Respondent did not exercise any form of possession over the subject property as Respondent offered no evidence of possession and Pastor Mills testified that he had never even been inside the home located thereon. Pastor Mills further testified that:

"After that point [purchasing surrounding property in 2008] we began to have surveys and get bids from other companies to come in and give us a quote on actually making it a

formal parking area. That's when [Petitioner] began to present again as the owner of the property." (ROA. p. 48).

He went on to testify that:

"[A]round July/August of this year [2008] we purchased another piece of property which is right next door to the property in question ... and we have been preparing to formalize a parking area ... And when we began to move in that direction is when *Mr. Burdine, presented himself again to us that he had rights and claim to that property*, and that is when we decided to seek legal action to *find out what our interests are* and to protect the interests of the church." (Emphasis added.) (ROA. pp. 45-46).

Furthermore, when asked upon cross-examination whether Respondent had taken any action whatsoever regarding the subject property prior to the summer of 2008, Pastor Mills testified that:

"Other than, you know, seeking to have an amicable agreement about it, no sir, with the Burdines prior to their passing." (ROA. p. 50)

"We --- we sought to have an amicable agreement with them about the --- the property to find out more about their having lived there, or what was transpiring, because there was no deed. We tried to research all of that to find out titles and exactly when did they build their house. We were trying to find out more information." (ROA. P. 50).

It is obvious from Pastor Mills' testimony that Respondent was uncertain of its property interest in the subject property from the time it purchased the property in 1998 until the time it brought a summary ejectment action against Petitioner in 2008. Not only was Respondent aware of the possession by Petitioner's parents prior to allegedly purchasing the subject property in 1998, but at the time of purchase they became aware that Petitioner claimed an ownership in the subject property as well. Furthermore, Respondent never assumed any actual or constructive ownership of the subject property at any time subsequent to the alleged purchase and prior to bringing this action in 2008. In fact, prior to this action, Respondent sought to enter into an amicable agreement with Petitioner's parents concerning the subject property because there was no deed concerning the Burdine's ownership. It was not until the Burdines had long been dead

and Petitioner again asserted his ownership of the subject property in the summer of 2008 that Respondent decided to seek legal advice to determine what their interests in the subject property were.

This evidence presented by Respondent clearly indicates that there was and is a legitimate question as to the title of the subject property. The Court of Appeals, nonetheless found that the magistrate had summary ejectment jurisdiction to hear the matter because Petitioner's undertaking was not secured by a surety not exceeding one-hundred dollars (\$100.00), and did not, therefore, comply with § 22-3-1140. Furthermore, according to this provision the magistrate retained jurisdiction to hear the matter and Petitioner was precluded from raising the issue of title as a defense. The very next section, § 22-3-1150, however, requires the magistrate to dismiss the action if the evidence introduced by the Respondent's own showing brings the title of real property into question. Because Respondent's witness testified that title to the subject property was in question, § 22-3-1150 required the magistrate to dismiss the summary ejectment action. Accordingly, because the Court of Appeals' decision conflicts with prior precedent of this court, this Court should grant Petitioner's petition for a writ of certiorari.

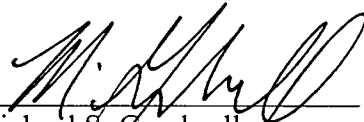
CONCLUSION

For the reasons stated, Petitioner asked the Court to grant the petition for a writ of certiorari.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Opinion No. (S.C. Ct. App. Filed April 25, 2011)

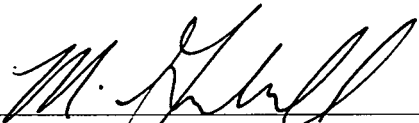
Mountain View Baptist Church Respondent

v.

Bobby Lee Burdine Petitioner.

PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari on Mountain View Baptist Church by depositing a copy of it in the United States mail, on May 25, 2011, addressed to their attorney of record, Candy Kern-Fuller of Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640.


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S.C. SUPREME COURT

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S.C. Supreme Court
pm 6-24-11

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Circuit Court of Common Pleas

John C. Few, Circuit Court Judge

C.A. NO.: 2011-192466

Mountain View Baptist Church

Respondent,

v.

Bobby Lee Burdine

PETITIONER.

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QUESTIONS PRESENTED

- A. SHOULD PETITIONER SHOULD BE PRECLUDED FROM SEEKING CERTIORARI ON THE GROUND THAT MOUNTAIN VIEW BAPTIST CHURCH “FAILED TO SHOW THAT THE RELATIONSHIP BETWEEN THE PARTIES INVOLVED THE APPLICATION OF [S.C. CODE 15-67-610] AS REQUIRED BY THIS COURT’S PRECEDENTS” WHEN RESPONDENT ARGUED A CLEARLY CONTRARY POSITION IN ITS BRIEF AND ARGUED INSTEAD THAT “S.C. CODE ANN. §15-67-610 IS NOT THE APPLICABLE LAW IN THIS CASE”?
- B. DID THE COURT OF APPEALS CORRECTLY HOLD THAT “BURDINE DID NOT COMPLY WITH THE STATUTORY PROVISIONS [OF TITLE 22] RELATING TO THE MAGISTRATE’S SUBJECT MATTER JURISDICTION BECAUSE BURDINE’S UNDERTAKING WAS NOT EXECUTED BY A SURETY.”

STATEMENT OF THE CASE

This matter was before the Circuit Court on appeal from the Magistrate’s Court Order of Magistrate Leila Foster evicting Burdine from real property located at located at 108 Temple St., Greenville, SC 29601 (Tax Map #0054000201000).

On October 2, 2008, Mountain View Baptist Church brought a Magistrate’s Court ejectment action (R. pp. 6-10). No landlord-tenant relationship existed between the parties.

On October 8, 2008 an affidavit of service was filed regarding service on Burdine of the Mountain View Baptist Church’s Application for Ejectment.¹ As of October 15, 2008 (five business days after the latest date the action would have been served on Burdine) no Answer and Undertaking had been filed with the Court by the Burdine. On Thursday, October 16, 2008, counsel for Burdine mailed a letter to Mountain View

¹ The Action was served directly by the Magistrate Court. The Court’s docket indicates an Affidavit of Service was entered on October 8, 2008, though the action may have been served before that date. For the purposes of this argument (and the argument made at the Circuit Court), October 8, 2008, is the latest date the action could have been served.

Baptist Church's counsel, which was received on Monday, October 20, 2008, outlining his view of the case and requesting Mountain View Baptist Church's counsel review Burdine's version of the facts of the case. Burdine still filed no Answer and Undertaking with the Court. On Tuesday, October 21, 2008, the Magistrate issued the Writ of Ejectment. Thereafter, on October 27, 2008, Counsel for Burdine wrote the Court and requested the Court hear the matter. The Magistrate thereafter scheduled a hearing for November 13, 2008. As of November 7, 2008 (thirty days after the latest date the action would have been served) an Answer and Undertaking had still not yet been filed with the Court. After nearly another week passed, on November 13, 2008, the day of the hearing, an Answer and Undertaking was finally filed twelve minutes before the scheduled hearing. Mountain View Baptist Church's counsel was thereafter served with the same. No bond or surety was ever posted by Burdine. At the conclusion of the hearing, the Magistrate ordered Burdine's ejectment, ruling that Burdine must vacate the premises by 5:00 p.m. on November 20, 2008.

On November 17, 2008, Burdine appealed to the Circuit Court, requesting a Stay of Ejectment. (R. pp. 12-25). The Circuit Court heard the matter on November 20, 2008. At the conclusion of the hearing, the Circuit Court held that the Magistrate was without jurisdiction to eject Burdine because Burdine asserted a claim to title. As a result, the Court granted the Burdine's motion to stay the ejectment. (R. p. 73, Ins. 1-2). The Circuit Court also denied Mountain View Baptist Church's request that Burdine be required to post a bond pursuant to S.C. Code Ann. §22-3-1120. (R. p. 73, ln. 21 – R. p. 74, ln. 25).

Due to the Thanksgiving holiday, Mountain View Baptist Church received the Circuit Court's formal order on December 2, 2008. (R. pp. 2-3). On December 12, 2008,

Mountain View Baptist Church filed its Motion for Reconsideration. (R. pp. 26-34). The Order denying the Motion for Reconsideration was thereafter entered by The Honorable John C. Few on December 18, 2008. (R. pp. 4-5). This appeal followed. After fully briefing the issues, and without oral argument, the Court of Appeals reversed the Circuit Court and found that “the magistrate had subject matter jurisdiction to hear the action.” The Court of Appeals further found that Burdine did not comply with the statutory provisions relating to the magistrate’s subject matter jurisdiction because Burdine’s undertaking was not executed by a surety. Therefore, the circuit court erred in holding the magistrate’s writ of ejectment was void.” *2011-UP-061 - Mountain View Baptist Church v. Burdine*, 2/16/2011. Burdine thereafter filed a Petition for Rehearing, which was also rejected. Then, Burdine filed this Petition for Writ of Certiorari.

ARGUMENT

A. PETITIONER SHOULD BE PRECLUDED FROM SEEKING CERTIORARI ON THE GROUND THAT MOUNTAIN VIEW BAPTIST CHURCH “FAILED TO SHOW THAT THE RELATIONSHIP BETWEEN THE PARTIES INVOLVED THE APPLICATION OF [S.C. CODE 15-67-610] AS REQUIRED BY THIS COURT’S PRECEDENTS” WHEN RESPONDENT ARGUED A CLEARLY CONTRARY POSITION IN ITS BRIEF AND ARGUED INSTEAD THAT “S.C. CODE ANN. §15-67-610 IS NOT THE APPLICABLE LAW IN THIS CASE.”

Burdine goes to great lengths in his Petition for Writ to bolster the argument he raised for the first time in his Petition for Rehearing.

In his Reply Brief, Burdine specifically argued that S.C. Code Ann. §15-67-610 “is plainly inapplicable to the facts and circumstances of this case.” (Resp. Brief, p. 13). Burdine went on to conclude his brief by stating, “[f]or this reason, S.C. Code Ann. §15-67-610 is not the applicable law in this case”

Contrary to the position he took during the pendency of the Appeal, in his Petition for Rehearing Burdine first quoted §§15-67-610 and 620 and asserted a new argument that the Magistrate was required to, as a preliminary matter, determine the relationship between the parties as a pre-requisite to the exercise of the magistrate's jurisdiction. (Petition for Rehearing, pp. 5-6). Burdine now repeats this same argument in his Petition for Writ, despite the fact that it was not raised below until after the Court of Appeals ruled. (*Id.*; Petition for Writ of Certiorari, p. 10 *c.f.* Resp. Brief, p. 13).

“[I]t appears from the record this argument is being made for the first time on appeal. Our law is clear that an issue may not be raised for the first time on appeal.” *See I'on LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Accordingly, the Petition for Writ of Certiorari should be denied.

B. THE COURT OF APPEALS CORRECTLY HELD THAT “BURDINE DID NOT COMPLY WITH THE STATUTORY PROVISIONS [OF TITLE 22] RELATING TO THE MAGISTRATE’S SUBJECT MATTER JURISDICTION BECAUSE BURDINE’S UNDERTAKING WAS NOT EXECUTED BY A SURETY.”

S.C. Const. Ann. Art. V, §1 provides that “[t]he judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.” More specifically, “[t]he General Assembly shall provide for [Magistrates’] terms of office and their civil and criminal jurisdiction.” S.C. Const. Ann. Art. V, §26.

Subject matter jurisdiction is defined as “the power of a court to hear and determine cases of the general class to which the proceedings in question belong.” McCullar v. Estate of Campbell, 381 S.C. 205, 206 (2009).

The South Carolina legislature has provided for the jurisdiction of Magistrates through a series of statutes. S.C. Code Ann. § 22-3-20 dictates provides that:

No magistrate shall have cognizance of a civil action:

(1) In which the State is a party, except an action for a penalty and not exceeding one hundred dollars; or

*(2) When the title to real property shall come in question, **except as provided in Article 11 of this chapter.***

(Emphasis added)

Article 11 of the chapter then provides for the following procedures and jurisdiction when title to real property shall come into question and what jurisdiction a Magistrate retains and what procedures a litigant must follow:

§ 22-3-1110. Defense of questionable title in defendant's answer.

*When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, **set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.***

(Emphasis added)

§ 22-3-1120. Written undertaking by defendant in cases where title to real property will come in question.

At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

(Emphasis added)

§ 22-3-1140. Procedure if undertaking not delivered.

If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.

(Emphasis added).

The Court of Appeals correctly held that:

Article 11 [of Title 22] provides, “When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may . . . set forth in his answer any matter showing that such title will come in question.” S.C. Code Ann. § 22-3-1110 (2007). “At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect” the defendant would accept service of a summons and complaint for an ejectment action in circuit court if the plaintiff deposited those documents with the magistrate within twenty days of the defendant’s answer. S.C. Code Ann. § 22-3-1120 (2007). “If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause . . . and the defendant shall be precluded, in his defense, from drawing the title in question.” S.C. Code Ann. § 22-3-1140 (2007).

Here, the magistrate had subject matter jurisdiction to hear the action. Burdine did not comply with the statutory provisions relating to the magistrate’s subject matter jurisdiction because Burdine’s undertaking was not executed by a surety. Therefore, the circuit court erred in holding the magistrate’s writ of ejectment was void.

The Magistrate did have the power to hear and determine a case of this nature and S.C. Code Ann. §22-3-1140 clearly states that “if such an undertaking [as envisioned by S.C. Code Ann, §§22-3-1110 and 22-3-1120] be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.” (Emphasis added).

The interdependent structure created by these statutes provides that a challenged party in possession, pursuant to S.C. Code Ann. §15-67-620, can raise a “colorable claim of title” only within five (5) days of being served and then must post a surety bond after doing so. Given that the time period is less than seven (7) days, intervening weekends and holidays are not counted. S.C.R.Civ.P 6.

The timeline of the Ejectment action was as follows:

10/2/2008 Action filed

10/8/2008 Affidavit of service on Burdine filed with the Court

10/15/08 5 business days – no Answer and Undertaking filed

10/16/08 Counsel for Burdine mailed a letter to Mountain View Baptist Church's Counsel outlining Burdine's position on the action, but no Answer and Undertaking delivered to Mountain View Baptist Church or the Magistrate

10/21/08 Writ of Ejectment issued by Magistrate

10/27/08 Counsel for Defendant writes Court (evincing knowledge by Defendant that Court was proceeding on Plaintiff's action) and Court decides to hold a hearing

11/7/08 Answer DUE (30 days after service). Still no Answer and Undertaking filed

11/13/08 Answer and Undertaking filed day of hearing, 12 minutes before hearing and Counsel for Plaintiff served 10 minutes before hearing.

11/13/08 Magistrate's hearing on ejectment held and ejectment ordered

An affidavit of service was entered by the Magistrate on October 8, 2008.² No written answer showing that title would be called into question was filed by Burdine or delivered to the Magistrate on or before October 15, 2008, as required by S.C. Code Ann. §22-3-1110. No copy of such answer under S.C. Code Ann. §22-3-1110 was served on the Mountain View Baptist Church or his attorney on or before October 15, 2008. So, Burdine failed to defend based on a colorable title, as permitted under S.C. Ann. §15-67-620.

Defendant might argue that he could have raised a colorable title defense in an Answer filed at least thirty days after service pursuant to S.C. Code Ann. § 22-3-1110. If

² The Action was served directly by the Magistrate Court. The Court's docket indicates an Affidavit of Service was entered on October 8, 2008, though the action may have been served before that date. For the purposes of this argument, October 8, 2008, is the latest date the action could have been served.

Defendant had wished to do so, he would then have been required to “set forth in his answer any matter showing that such title will come in question.” S.C. Code Ann. § 22-3-1110. Any such Answer was required “to be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall [also] be served on the plaintiff or his attorney.” *Id.* The Answer Defendant filed was not filed within thirty (30) days after receipt of the Application for Ejectment, but, rather, was filed nearly a week later, only twelve minutes before the scheduled hearing. Plaintiff’s counsel received a copy of the Answer approximately ten minutes before the scheduled hearing. Had Defendant timely filed such an Answer, he would then have been required to “deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate.” S.C. Code Ann §22-3-1120. To this day, Defendant has never posted any surety and Mountain View Baptist Church has been denied access to its property for nearly three years during the pendency of this action.

The Magistrate’s specific statutory grant of jurisdiction in S.C. Code Ann. § 22-3-1140, provides that “[i]f such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.” (Emphasis added).

“[A]ll statutes are [to be] presumed constitutional and will, if possible, be construed so as to render them valid.” Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 451 (2006) (quoting Horry County Sch. Dist. v. Horry County, 346 S.C. 621, 631 (2001)). “[T]he primary rule of statutory construction is to ascertain and effectuate the intent of the Legislature. [A] statute should not be construed by focusing on an isolated phrase.” Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 43 (2008) (internal citations

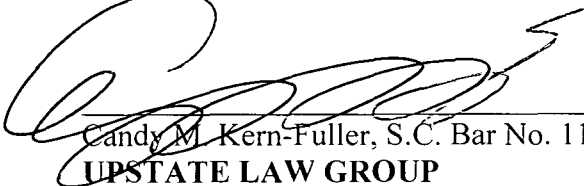
omitted). Specifically, “[t]he goal of statutory construction is ... to prevent an interpretation that would lead to a result that is plainly absurd. Hodges v. Rainey, 341 S.C. 79, 91 (2000).

If a Magistrate’s Court had no subject matter jurisdiction at all once a Defendant raised in any fashion, at any time, that the title is at issue in an ejectment action, the clear provisions in S.C. Code Ann. §22-3-20(2), §22-3-1110, §22-3-1120, and §22-3-1140 would be effectively invalidated.

Burdine did not properly raise a colorable claim of title within 5 days, as required by S.C. Code Ann. §15-67-620, did not timely answer pursuant to S.C. Code Ann. §22-3-1110, did not post the surety required by S.C. Code Ann. §15-67-620 for an undertaking as required by S.C. Code Ann. §22-3-1120, and, therefore, the Magistrate correctly precluded Burdine’s success on a title defense in the cause and properly issued the ejectment. Accordingly, the Court of Appeal’s finding that the Magistrate had jurisdiction and that “the circuit court erred in holding the magistrate’s writ of ejectment was void” was correct. Accordingly, Burdine’s Petition for Writ of Certiorari should be denied.

CONCLUSION

For the reasons stated, Burdine’s Petition for Writ of Certiorari should be denied.


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June 27, 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Circuit Court of Common Pleas

John C. Few, Circuit Court Judge

C.A. NO.: 2011-192466

Mountain View Baptist Church ~~Appellant~~

Petitioner,
~~Appellant~~

v.

Bobby Lee Burdine Respondent.

PROOF OF SERVICE

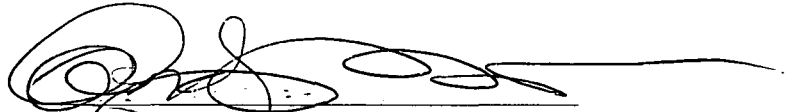
I certify that I have served Mountain View Baptist Church's Return to Burdine's Writ of Certiorari on Bobby Lee Burdine by depositing a copy of said Return in the United States Mail, on June 27, 2011, addressed to Burdine's attorneys of record:

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and by filing an original and six (6) copies with the Court United States Mail, on June 27,
2011, addressed to:

The Honorable Daniel E. Shearhouse, Clerk
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June 27, 2011

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

JUL 26 2011

John C. Few, Circuit Court Judge

S.C. Supreme Court

Opinion No. (S.C. Ct. App. Filed April 25, 2011)

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v.

Bobby Lee Burdine Petitioner.

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Attorney for Petitioner

Other Counsel Of Record

Candy M. Kern-Fuller
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
Attorney for Respondent

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 CERTIORARI ON THE QUESTION OF WHETHER THE MAGISTRATE
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 CLEARLY RAISED THIS ISSUE IN HIS BRIEF TO THE COURT OF
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QUESTIONS PRESENTED

1. Is Petitioner precluded from seeking a writ of certiorari on the question of whether the magistrate court had subject matter jurisdiction?

ARGUMENTS

1. PETITIONER SHOULD NOT BE PRECLUDED FROM SEEKING CERTIORARI ON THE QUESTION OF WHETHER THE MAGISTRATE COURT HAD SUBJECT MATTER JURISDICTION BECAUSE PETITIONER CLEARLY RAISED THIS ISSUE IN HIS BRIEF TO THE COURT OF APPEALS AND IN HIS PETITION FOR REHEARING

Petitioner responded to Mountain View Baptist Church’s [hereinafter “Respondent”] appeal to the Court of Appeals from a holding by the Circuit Court that the magistrate trial court was without subject matter jurisdiction to hear the matter. The Court of Appeals, however, ruled that the magistrate had subject matter jurisdiction to hear the action because Petitioner did not comply with the provisions of Title 22, Chapter 3, Article 11. Petitioner then timely filed a petition for rehearing to the Court of Appeals. The Court of Appeals denied Petitioner’s petition for rehearing. Petitioner timely filed a petition for a writ of certiorari with this Court seeking review of the Court of Appeals’ decision below.

Generally, a question presented to the Supreme Court for consideration in a petition for a writ of certiorari must have been raised in the Court of Appeals and in the petition for rehearing. SCACP Rule 242(d)(2) (2011); *Kleckley v. Northwestern Nat. Cas. Co.*, 338 S.C. 131, 526

S.E.2d 218 (S.C. 2000). In other words, in order for a party to properly preserve an issue for review by the Supreme Court, the party must present the issue in its brief to the Court of Appeals and in the party's subsequent petition for rehearing. Furthermore, a question presented in an appellate brief will be deemed to include every subsidiary question fairly comprised therein. SCACP Rule 242(d)(2) (2011). Here, because Petitioner raised the question of whether the magistrate court below in fact had subject matter jurisdiction in his brief to the Court of Appeals and in his subsequent petition for rehearing, Petitioner properly preserved this issue and every subsidiary question fairly comprised therein for review by the Supreme Court.

In his appellate brief to the Court of Appeals Petitioner could ask the Court to affirm the Circuit Court's holding on any ground appearing in the record. SCACP Rule 208(b)(2) (2011). Petitioner included in his statement of issues on appeal the following:

“THE CIRCUIT COURT PROPERLY HELD THAT THE MAGISTRATE COURT LACKS SUBJECT MATTER JURISDICTION UNDER S.C. CODE ANN. § 22-3-20.”

“THE CIRCUIT COURT PROPERLY FOUND S.C. CODE ANN. § 15-67-610 IS NOT THE APPLICABLE LAW UNDER THE CIRCUMSTANCES PRESENT IN THIS CASE.”

Petitioner's brief clearly asked the Court of Appeals to affirm the Circuit Court's holding that the magistrate was without subject matter jurisdiction to hear the action under S.C. CODE ANN. § 22-3-20 and because S.C. CODE ANN. § 15-67-610 was not applicable to the circumstances and facts present in this case.

Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Majors v. S.C. Sec. Comm'n*, 373 S.C. 153, 159, 644 S.E.2d 710, 713 (S.C. 2007). The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental.

Peterson v. Peterson, 348 S.C. 436, 559 S.E.2d 370 (Ct. App. 2002). In his brief Petitioner argued that the magistrate was without subject matter jurisdiction pursuant to the statutory laws of this State. (Respondent's Brief, pp. 6-9). Specifically, S.C. Code Ann. § 22-3-20 states: "No magistrate shall have cognizance of a civil action: (2) when title to real property shall come in question, except as provided in Article 11 of this chapter." Clearly, Petitioner presented the issue that the magistrate court lacked subject matter jurisdiction pursuant to this statutory provision to the Court of Appeals. Moreover, because this statutory provision incorporates Article 11 of chapter 3, an analysis of that Article's provision to the facts of this case as it relates to subject matter jurisdiction is presented as well.

Additionally, Petitioner argued that the magistrate lacked subject matter jurisdiction because the statute upon which Respondent relied on, S.C. Code Ann. § 15-67-610, entitled "Summary Ejectment of Trespassers," was not applicable to the facts and circumstances of the case. (Respondent's Brief, pp. 12-14). Petitioner argued that the magistrate was without jurisdiction to determine the matter because Respondent had not set forth a prima facie case showing that the circumstances of the parties fell within the ejectment of trespassers statute. (Respondent's Brief, pp. 12-14). Clearly then Petitioner presented the issue of whether or not the magistrate had jurisdiction to proceed with a summary ejectment action against Petitioner to the Court of Appeals.

In his petition for rehearing to the Court of Appeals, Petitioner included the following grounds for his request:

"THE COURT OF APPEALS ERRED BY OVERLOOKING THE MANDATORY STATUTORY PROVISIONS RELATING TO MAGISTRATE'S COURT SUBJECT MATTER JURISDICTION UNDER TITLE 22, CHAPTER 3, ARTICLE 11, SPECIFICALLY: S.C. CODE ANN. § 22-3-1150."

“THE COURT OF APPEALS ERRED IN COMPLETELY MISAPPREHENDING THE APPLICATION OF TITLE 22, CHAPTER 3, ARTICLE 11 TO THE QUESTION OF MAGISTRATE’S COURT SUBJECT MATTER JURISDICTION INVOLVING SUMMARY EJECTMENT PROCEEDINGS.”

Petitioner argued again that the magistrate was without subject matter jurisdiction when the facts were analyzed pursuant to the provisions of Title 22, Chapter 3, Article 11. Specifically, Petitioner argued that the undisputed facts from the record show that Respondent’s own presentation of its case brought the title to the subject property into question and that pursuant to S.C. Code Ann. § 22-3-1150, and therefore § 22-3-20(2), the magistrate was required to dismiss the action. (Petition for Rehearing, pp. 3-4).

Petitioner additionally argued in his petition for rehearing that the magistrate was without subject matter jurisdiction to proceed with a summary ejectment against Petitioner because the ejectment of trespassers statute, § 15-67-610, was inapplicable to the facts of the case. (Petition for Rehearing, pp. 5-8). Petitioner further argued that the magistrate failed, as a preliminary matter to determine if the relationship of the parties was one such that it would invoke the jurisdiction of this statute. (Petition for Rehearing, pp. 5-8). Because the magistrate did not make this initial determination and because the relationship of the parties did not fall within the jurisdiction of the statute, Petitioner argued that the magistrate did not have subject matter jurisdiction to proceed. Each of these issues presented in the petition for rehearing pertain to the subject matter jurisdiction of the magistrate court and were presented to the Court of Appeals in Petitioner’s appellate brief, or are, alternatively, subsidiary questions fairly comprised in the issue of subject matter jurisdiction.

Petitioner seeks a writ of certiorari on the following grounds:

“THE MAGISTRATE DID NOT HAVE SUBJECT MATTER JURISDICTION BECAUSE REpondent FAILED TO MAKE A *PRIMA FACIE* SHOWING NECESSARY TO INVOKE SUMMARY EJECTMENT PROCEEDINGS.”

“THE MAGISTRATE DID NOT HAVE SUBJECT MATTER JURISDICTION BECAUSE RESPONDENT’S OWN SHOWING BROUGHT THE TITLE TO REAL PROPERTY INTO QUESTION.”

Petitioner further expands on the arguments made in his appellate brief and his petition for rehearing. Specifically Petitioner argues that when the facts of the case, as contained in the record on appeal, are analyzed under § 22-3-20(2) and, therefore, § 22-3-1110, eq set., it is clear that the Court of Appeals erred in failing to uphold the finding of the Circuit Court that the magistrate was without subject matter jurisdiction because Respondent’s own witnesses brought the title to the subject property into question.

Additionally, Petitioner further develops the position that the magistrate was without subject matter jurisdiction because the information the magistrate had at the commencement of this action clearly demonstrated a legitimate issue regarding the title to the subject property. The magistrate, therefore, erred in finding that the relationship between the parties brought the action within the jurisdiction of the summary ejectment proceeding, § 15-67-610. The Circuit Court correctly held that the magistrate was without jurisdiction and the Court of Appeals erred in reversing that holding.

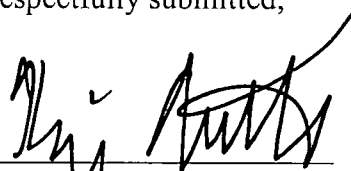
Petitioner presented the issue that the magistrate court lacked subject matter jurisdiction, as held by the Circuit Court, in his initial appellate brief. He argued that the court lacked subject matter jurisdiction pursuant to § 22-3-20(2), and therefore Article 11 under Chapter 3. He also argued that the court lacked subject matter jurisdiction because the summary ejectment proceeding, § 15-67-610, did not apply to the facts and circumstances of this case and the magistrate erred in continuing the case when presented with such preliminary facts. Subject

matter jurisdiction is a question of law and includes findings of fact which relate to jurisdiction. *Olmstead v. Shakespeare*, 348 S.C. 436, 559 S.E.2d 370 (Ct. App. 2002), rehearing denied, certiorari granted, affirmed as modified 354 S.C. 421, 581 S.E.2d 483 (S.C. 2003). Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. *Simmons v. Bellamy*, 349 S.C. 473, 562 S.E.2d 687 (Ct. App. 2002). Because Petitioner presented the issue of the magistrate court's subject matter jurisdiction in his initial appellate brief, in his petition for rehearing and in his petition for a writ of certiorari, Petitioner has preserved the issue of subject matter jurisdiction, and any subsidiary questions fairly comprised therein, for this Court's review.

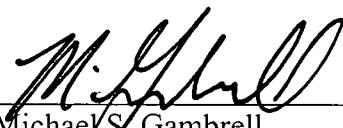
CONCLUSION

For the reasons stated herein, and in Petitioner's petition for a writ of certiorari, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,



Kirby R. Mitchell
S.C. Bar # 11640 Fed. Id. # 6927
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
(864) 679-3247
Attorney for Petitioner



Michael S. Gambrell
S.C. Bar # 70044, Fed. Id. 9756
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
(864) 679-3525
Attorney for Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Opinion No. (S.C. Ct. App. Filed April 25, 2011)

Mountain View Baptist Church Respondent

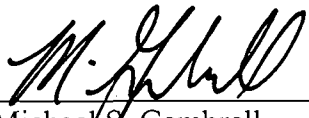
v.

Bobby Lee Burdine Petitioner.

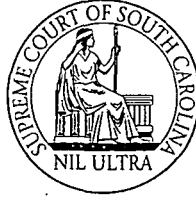
PROOF OF SERVICE

I certify that I have served Petitioner's Reply on Mountain View Baptist Church by depositing a copy of it in the United States Mail, postage prepaid, on July 25, 2011, addressed to its attorney of record, Candy M. Kern-Fuller, 200 East Main Street, Easley, South Carolina 29640.

July 25, 2011



Michael S. Gambrell
S.C. Bar # 70044, Fed. Id. 9756
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
(864) 679-3525
Attorney for Petitioner



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 9, 2012

Michael S. Gambrell, Esquire
Kirby R. Mitchell, Esquire
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601

Re: Mountain View Baptist v. Burdine, Bobby

Dear Counsel:

This is in response to your letter dated February 7, 2012.

This is to advise you that the above case is still pending in this Court. All parties will be notified as soon as action has been taken in this matter.

Very truly yours,

Daniel E. Shearouse
35

CLERK

DES/lda

cc: Daniel R. Unumb, Esquire
Candy M. Kern-Fuller, Esquire



**South Carolina
Legal Services**

Balancing the Scales of Justice

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FEB 08 2012

pm 2-7-12

S.C. SUPREME COURT

701 South Main Street, Greenville South Carolina 29601
Phone: (864) 679-3232 Fax: (864) 679-3260
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February 7, 2012

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

RE: *Mountain View Baptist Church v. Bobby Burdine*
Case No. 2011-UP-061

Dear Mr. Shearouse,

South Carolina Legal Services ("SCLS") represents Mr. Bobby Burdine in the above-captioned action where his Petition for a Writ of Certiorari is currently pending before the S.C. Supreme Court. Mr. Burdine filed with the Court the Petitioner's Reply along with a certificate of mailing on July 25, 2011. At that time SCLS was informed that the Petition was perfected and would remain in pending status until ruled on by the Court.

As of today's date, I am concerned that the action is not, and has not been, listed in the S.C. Advanced Sheets. Can your office please confirm that Mr. Burdine's petition is in fact still pending a determination by the Court? Any assistance or information regarding this matter is greatly appreciated.

With kindest regards, I remain

Very truly yours,

Michael S. Gambrell
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
(864) 679-3525
Attorney for Petitioner

cc: Candy Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, SC 29640





**South Carolina
Legal Services**

Balancing the Scales of Justice

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July 25, 2011

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

RECEIVED

JUL 26 2011

United States Priority Mail

Re: Mountain View Baptist Church vs. Bobby Lee Burdine
Case No. 2008-CP-23-8598

S.C. Supreme Court

Dear Mr. Shearouse:

Enclosed for filing is the Petitioner's Reply and Certificate of Mailing in the above case.

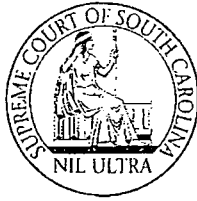
Sincerely,

Michael O. Gambrell

Michael Gambrell
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
(864) 679-3525
Attorney for the Respondent

cc: Candy Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, SC 29640





The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 15, 2011

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 E Main St
Easley, SC 29640-2073

Re: Mountain View Baptist v. Burdine, Bobby

Dear Ms. Kern-Fuller:

The following Order has been endorsed on your Motion to Accept Return to Writ Out of Time in the above entitled case on appeal.

“Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

July 15, 2011.”

By copy of this letter we are advising opposing counsel any Reply to the Return to the Petition for Writ of Certiorari is due 10 days from the date of this letter.

Very truly yours,

Daniel E. Shearouse
CLERK 35

DES/lda

cc: Daniel R. Unumb, Esquire
Michael S. Gambrell, Esquire
Kirby R. Mitchell, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Circuit Court of Common Pleas

RECEIVED

John C. Few, Circuit Court Judge

JUL 11 2011

S.C. SUPREME COURT

C.A. NO.: 2011-192466

p.m. 7-5-11

Mountain View Baptist Church

Respondent

v.

Bobby Lee Burdine

PETITIONER

MOTION TO ACCEPT RETURN TO WRIT OUT OF TIME

The undersigned, Mountain View Baptist Church (hereinafter referred to as "Mountain View"), hereby moves for the Court to accept its Return to Bobby Lee Burdine's Writ of Certiorari served June 27, 2011. In support of its Motion, Mountain View asserts that the filing of its Return to the Writ was a simple calculation error.

Bobby Lee Burdine (hereinafter referred to as "Burdine") served his Writ on May 25, 2011. In counsel for Mountain View's reading of SCRAP Rules 242(f), 262(a)(2), 263(a), counsel calculated the time for Mountain View's Return to the Writ as due on Monday, June 27, 2011. Mountain View's counsel's calculation was based upon the following:

The Return to Writ was due within thirty days after service of Burdine's Writ

*check # 1383
\$25.00*

SCRAP 242(f)

The date of service of Burdine's Writ was the day it was placed in the U.S. Mail – June 25, 2011.

SCRAP 262(a)(2)

The date of service, (May 25, 2011) was not to be counted

SCRAP 263(a)

So, the thirty days would not begin until the next day (May 26, 2011). Starting on May 26, 2011, thirty days later would be Saturday, June 25, 2011, thus making the Return due the following Monday, June 27, 2011.

SCRAP 263(a)

The Clerk to the Court has calculated the Return as having been due on Friday, June 24, 2011. Accordingly, Mountain View asserts that any error by its counsel in the calculation of the date the Return to Writ was an inadvertent error and, therefore, Mountain View requests the Court accept its Return to Burdine's Writ of Certiorari.

The undersigned conferred with Burdine's counsel regarding this Motion, both Mr. Unumb and Mr. Mitchell responded that they consent to this motion.

Respectfully submitted,

GRANTED.

Jean H. Tool C.J.
For the Court
By _____
Clerk

Candy M. Kern-Fuller, S.C. Bar No. 11392
UPSTATE LAW GROUP
200 East Main Street
Easley, South Carolina 29640
864-855-3114
864-855-3446 (Facsimile)
Candy@upstatelawgroup.com

July 15, 2011
July 5, 2011

**ATTORNEY FOR MOUNTAIN VIEW
BAPTIST CHURCH**

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Circuit Court of Common Pleas

John C. Few, Circuit Court Judge

C.A. NO.: 2011-192466

Mountain View Baptist Church *Petitioner*
~~Appellant~~

v.

Bobby Lee Burdine Respondent.

PROOF OF SERVICE

I certify that I have served Mountain View Baptist Church's Motion to Accept its Return to Burdine's Writ of Certiorari by depositing a copy of said Return in the United States Mail, on July 5, 2011, addressed to Burdine's attorneys of record:

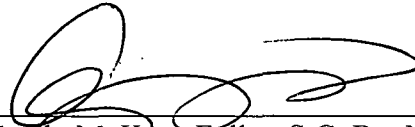
Mr. Michael S. Gambrell, Esq.
Mr. Kirby Mitchell, Esq.
South Carolina Legal Services
701 S. Main Street
Greenville, S.C. 29601

Mr. Daniel Unumb, Esq.
South Carolina Legal Services
P.O. Box 1445
Columbia, S.C. 29202

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JUL 11 2011
S.C. SUPREME COURT

and by filing an original and six (6) copies with the Court United States Mail, on July 5,
2011, addressed to:

The Honorable Daniel E. Shearhouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211



Candy M. Kern-Fuller, S.C. Bar No. 11392

UPSTATE LAW GROUP

200 East Main Street

Easley, South Carolina 29640

864-855-3114

864-855-3446 (Facsimile)

Candy@upstatelawgroup.com

July 5, 2011

**ATTORNEY FOR MOUNTAIN VIEW
BAPTIST CHURCH**



**South Carolina
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July 12, 2011

Linda Allen
South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: *Mountain View Baptist Church v. Bobby Lee Burdine*
C. A. No.: 2008-CP-23-8598

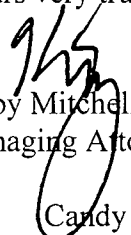
Dear Ms. Allen:

As per your request – I am writing to confirm that this office represents Bobby Lee Burdine in the above-referenced case and as counsel for Mr. Burdine, Dan Unumb and I did by phone and e-mail communication directly consent to Ms. Kern-Fuller to allowing Candy Kern-Fuller's Motion to Accept Return To Writ Out of Time. We have no objection to her motion being granted.

Please call me with any questions and/or if you need further information (my direct line: 679-3247).

With kind regards, I am

Yours very truly,


Kirby Mitchell
Managing Attorney

cc: Candy Kern-Fuller

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JUL 14 2011

S.C. SUPREME COURT





South Carolina Legal Services

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June 8, 2011

Ms. Linda Allen
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

United States Priority Mail

Re: Mountain View Baptist Church vs. Bobby Lee Burdine
Case No. 2008-CP-23-8598


Dear Ms. Allen:

Enclosed for filing regarding the above case are the following:

- (1) Amended proof of service of the Respondent's Petition to the opposing counsel.
- (2) Order of S.C. Court of Appeals denying Petitioner's petition for rehearing to the S.C. Court of Appeals.

RECEIVED
JUN 10 2011
S.C. SUPREME COURT

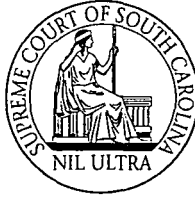
Sincerely,

s/ 

Michael Gambrell
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
(864) 679-3525
Attorney for the Respondent

cc: Candy Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, SC 29640





The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 26, 2011

Michael S. Gambrell, Esquire
Kirby R. Mitchell, Esquire
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601

Re: Mountain View Bapt v. Burdine, Bobby
Case Tracking No. 2011-192466

Dear Counsel:

This office has received your Petition for Writ of Certiorari in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/lda

Enclosure

cc: Daniel R. Unumb, Esquire
Candy M. Kern-Fuller, Esquire
The Honorable Tanya Gee



South Carolina Legal Services

Balancing the Scales of Justice

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May 25, 2011

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

United States Priority Mail

Re: Mountain View Baptist Church vs. Bobby Lee Burdine
Case No. 2008-CP-23-8598

Dear Mr. Shearouse:

Enclosed for filing is the Respondent's Petition for Writ of Certiorari in the above case.
Also enclosed are the following:

- (1) Proof of service of the Respondent's Petition to the opposing counsel.
- (2) Appendix.

RECEIVED

MAY 26 2011

S.C. SUPREME COURT

pm 5-25-11

Sincerely,

[Signature]

Michael Gambrell
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
(864) 679-3525
Attorney for the Respondent

cc: Candy Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, SC 29640

Check # 2074
\$100.00

