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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-32-01537

Appellate Case No. 2015-000329

Julius Brazell ..... Appellant,

v.

Town of Chapin, South Carolina;
And County of Lexington ..... Respondents.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This appeal stems from a dispute regarding the ownership of two pieces of real estate that were sold at a Lexington County tax sale auction in June of 2011.

Respondent Town of Chapin ("Town" or "Respondent") has held fee simple title to one of the properties at issue, identified as Tax Map No.: 001106-01-028 ("Parcel 028") containing a sewer system and water pump station, continuously since the last transfer of the parcel in 1999. (Affidavit of Andy Syrett; R. pp. 13-15). The Town also has a permanent easement to the sewer and the pump station infrastructure across the other property at issue, Tax Map No.: 001100-05-011 ("Parcel 011"), pursuant to a deed dated August 25, 1999. Id.

These two parcels were later mistakenly put up for auction at a tax sale in 2011 by Defendant County of Lexington[1] due to an inaccurate legal description on a deed from a bankruptcy trustee in 2003. (Affidavit of Andy Syrett; R. pp. 13-15; Transcript of Hearing, R. p. 89, line 23-p.100, line 19). Appellant, Julius Brazell, was the high bidder on the two parcels at the Lexington County tax sale. (Pl's Ans. to Int.; R. p. 67, lines 6-13). Appellant purchased the Tax Title to Real Estate ("Tax Title") for Parcel 011 and Parcel 028 for $900.00 and $500.00 respectively. (R. p. 47; R. p. 51).

Appellant did not physically inspect the properties in question before his attempt at purchasing them at the tax sale. (Pl.'s Ans. to Interrog; R. p. 68, lines 7-10). After the tax

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1 Defendant County of Lexington is not a party to this appeal. While counsel for the County of Lexington did appear before the Court for the hearing on Respondent's Motion for Summary Judgment, the trial court's Order only considered Respondent's involvement in this matter. Appellant's action against the County of Lexington remains pending in the trial court.

sale, he discovered that Parcel 028 mainly consisted of the Town's Sewer Lift Station ("Pump Station") and that Parcel 011 contained an access road after the tax sale. (Id.; R. p. 68, lines 11-14). After his discovery of the Town's pump station and roadway, Appellant placed a chain across the road in an attempt to prevent access to them. (Id.; R. p. 67, line 21-p. 68, line 1). It was removed. (Id.; R. p. 67, lines 1-2).

Appellant brought this lawsuit as a real estate title dispute and expressly requested in his Complaint that the Court "declare the Plaintiff to be the owner of the real estate in question." (Compl.; R. p. 42, para. 5). Appellant also sought relief for conversion, trespass, unjust enrichment and requested declaratory and injunctive relief. Appellant also requested that the Court declare that he is entitled to remove the Master Pump Station for the Town of Chapin and its easement road from the real estate or have its operation ceased (Id.; R. p. 42, para. 6); order that the Town of Chapin and Lexington County cannot enter the properties (Id.; R. p. 43, para. 9); award damages for the removal of barriers and chains he installed on the property (Id.; R. p. 43, para. 10); award damages for rental use of the road on the property (Id.; R. p. 43, para. 10); order an accounting for revenue produced by the Town of Chapin's use of the property (Id.; R. p. 43, para. 11); and award damages for the alleged trespass by the Town of Chapin (Id.; R. p. 43, paras. 14-15). Finally, Appellant's Complaint recognizes that if the County of Lexington did not have the authority to sell the property in question, that he be entitled to recover the benefit of his bargain for the property. (Id.; R. p. 44, para. 18). It is important to note that the grant of summary judgment at issue in this Appeal only ended the action against the Town of Chapin. The Appellant's action against the County of Lexington is still pending, and his recourse against the County is

unaffected by the outcome of this appeal.

Appellant filed the Summons and Complaint on April 24, 2014. Respondent Town of Chapin served its Answer and discovery requests on Appellant on May 9, 2014. Defendant Lexington County also timely answered. Appellant's Answer to Respondent's discovery were served on July 28, 2014. Appellant failed to serve any discovery in this matter.

Respondent Town of Chapin filed its Motion for Summary Judgment on July 2, 2014. In support of its Motion, the Town submitted the Affidavit of Spencer Andrew Syrett and the records of the Office of the Register of Deeds for Lexington County to establish the chain of title for the two parcels. The chain of title undisputedly showed the Town of Chapin has held fee simple title to Parcel 028, which contains the pump station, and an easement for an access road to the pump station over Parcel 011 continuously since in 1999. The transfers which created the Town of Chapin's ownership and easement interests were prior to the transfer, bankruptcy, deed description errors, and tax problems that ultimately lead to the tax sale on the subject properties. The Town of Chapin was not party to or involved in any of these issues.

This matter came before the Honorable William P. Keesley on September 5, 2014. (Transcript of Hearing; R. p. 85). Appellant was granted time to present additional arguments, caselaw and/or affidavits. On January 21, 2015, Judge Keesley issued his Order granting Respondent Town of Chapin's Motion for Summary. (Order; R. p. 1-9). Respondent is in complete agreement with the well written Order of the Trial Court and requests that it be affirmed in full.

STANDARD OF REVIEW

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. Pittman v. Grand Strand Entertainment, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); B&B Liquors, Inc. v. O'Neal, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004).

A Motion for Summary Judgment is properly granted if the pleadings, depositions, answers to Interrogatories, and admissions on file, together with the affidavits, if any, show that no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. Anthony v. Padmar, Inc., 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992). The party seeking summary judgment has the burden of clearly establishing by the record properly before the court the absence of a triable issue of fact. Owens v. Magill, 308 S.C. 556, 419 S.E.2d 786 (1992). However, with respect to an issue upon which the non-moving party bears the burden of proof, this initial responsibility may be discharged by showing the trial court there is an absence of evidence supporting the non-moving party's case. Prescott v. Farms Telephone Co-Op, Inc., 328 S.C. 379, 491 S.E.2d 698 (Ct. App. 1997).

The plain language of Rule 56, SCRP, mandates the entry of summary judgment, after adequate time for discovery and upon motion against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which the party bears the burden of proof at trial. Etheredge v. Richland School District 1, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998). In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts

immaterial. Etheredge, supra.

Additionally, "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THE CHAIN OF TITLE IS DISPOSITIVE

The Trial Court correctly held that the chain of title for Parcels 011 and 028 is dispositive of the question of Appellant's claim to ownership. Appellant argues that sole reliance on the chain of title ignores questions such as "how Appellant came to hold title to the property, how the properties came to be included in a Lexington County Tax Sale in the first place, and the effect of that tax sale of any existing lien and encumbrances." (Appellant's Initial Brief, p. 3, line 23-p. 4, line 2). Considerations beyond chain of title in this case are immaterial, and Appellant's reliance on these alleged outstanding issues as a barrier to summary judgment is misplaced.

The South Carolina Courts have found in other contests over real property that "detailed analysis of the chain of title [is] not only relevant, but also dispositive of the issue before us." Greene v. Griffith, 2004-UP-056, 2004 WL 6248971 (S.C. Ct. App. Jan. 29, 2004). The South Carolina Supreme Court has also stated that "as record title is concerned, where both parties claim under a common source, the elder or better title will prevail."

Marsh Plywood Corp. v. Graham, 240 S.C. 486, 493, 126 S.E.2d 510, 513 (1962).

Appellant draws light to the fact that counsel for Appellant argued additional factual development was necessary to determine how Lexington County placed these parcels up for auction at a tax sale. (Appellant's Initial Brief, p. 4). This does not refute the Trial Court's holding that this case can be decided on the issue of paramount title alone, as Appellant's other theories for relief are predicated on his unencumbered ownership of the real properties in question. When pleadings present both legal and equitable issues, those which should be tried first are those likely to result in a final judgment and render unnecessary the consideration of the other issues. Rush v. Thompson, 203 S.C. 106, 111, 26 S.E.2d 411 (1942).

The Circuit Court correctly determined additional factual development would not change the answer to what South Carolina law holds is a legal question. The cases of Mountain Lake Colony v. McJunkin and Watson v. Suggs clearly establish the instant case as an action at law given that one party is asserting paramount title to the disputed land to defeat the other party's claims. See Mountain Lake Colony v. McJunkin, 308 S.C. 202, 204, 417 S.E.2d 578, 579 (1992); see also Watson v. Suggs, 313 S.C. 291, 293, 437 S.E.2d 172, 173 (Ct.App.1993) (holding that [a]n action brought for the primary purpose of determining title to a disputed land is in the nature of a trespass action to try title, which is an action at law).

Appellant's pleadings present the legal issue of whether Appellant or Respondent possessed paramount title to the two properties. This issue was dispositive of all other issues. Appellant has not addressed the citations relied on by the Circuit Court's Order to

establish this matter as an action at law or explain why these holdings should not apply in the current case.

II. THE TRIAL COURT CORRECTLY HELD THAT THE APPELLANT FAILED TO PROVE PARAMOUNT TITLE

The Appellant's claims also fail on the merits. In an action of trespass to try title, the defendant in actual possession of the disputed property is regarded as the rightful owner of the property. See Watson v. Suggs, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993), reh'g denied, (Nov. 10, 1993); Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829 (1992), reh'g denied, (Feb. 20, 1992). A mere *prima facie* showing of paper title by the plaintiff is not enough. Id. The plaintiff has the burden of proving paramount title to the land by any methods: (1) perfect legal paper title shown by a grant from the state to a predecessor in title with successive deeds to the plaintiff; (2) tracing title to a common grantor with the defendant if the plaintiff can show an earlier deed deriving from the common source. Id. There also two methods to prove paramount title by adverse possession which are inapplicable here.

In this case the Appellant has only his imperfect Tax Titles to rely on and the Town has submitted perfect legal paper title shown by grant from the state with successive deeds evidencing ownership by the Town. The Appellant purchased imperfect title from the County of Lexington and is seeking the recover the benefit of his bargain from the rightful owner who was not involved in the improper deed conveyances or the erroneous tax sale. While Appellant claims the chain of title is not dispositive of the issues before the Circuit Court, nowhere does he dispute the legitimacy or accuracy of the chain of title. Analysis

of the chain of title irrefutably demonstrates that the Town held senior and proper title to the real property at issue.

The chain of title shows that the parcels Appellant bid on at the tax auction was a portion of the property mortgaged by New Horizon LLC to Twins, Inc. in September 1999 and later acquired by BB&T at foreclosure in 2003. In regards to Parcel 028, New Horizon conveyed the Lift Station to the Town in August 1999. Therefore Twins Inc. acquired no interest in Parcel 028 or the Lift Station by its Mortgage dated September 16, 1999, nor did BB&T acquire title in 2003, since it was not part of the collateral being foreclosed, nor could it transfer said title to John Haas (as Chapter 11 Trustee for Twins, Inc.) A grantor of real property can transfer no greater interest than he himself has in the property. Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct.App.1985). Likewise, Parcel 011 was already encumbered by the easements to the Town, which survived the foreclosure and the tax sale, since New Horizon had already permanently conveyed the easement through the property to the Town.

Appellant, in an effort to cloud the issue of paramount title, argues the Trial Court mistakenly concluded that Respondent was in possession of the properties at issue. Appellant states in his Initial Brief that he has consistently claimed to have been in possession of the two parcels. However, the Record establishes exactly the opposite. Appellant's Complaint openly admits his purchase of the property was "sight unseen." (Compl.; R. p. 44, para. 17; Pl.'s Ans. to Interrog; R. p. 68, lines 7-10). Most importantly, Appellant acknowledges he discovered the Town was already in possession of the parcel and maintained a water pumping station on the site. (Pl.'s Ans. to Interrog; R. p. 68, lines

11-14).

Appellant also argues the letter from David V. Knight[2] to Appellant shows Respondent concedes that Appellant owns some interest in the property at issue and that the Circuit Court's Order ignores that acknowledgement. David V. Knight's letter states, in relevant parts, "[a]s to [Parcel 011,] it does appear you have a tax title...[b]ut as you may know, tax titles are not marketable, and should have a competent title search" and "the parcel (011) purchased by you at Tax Sale was already encumbered by the easements to Chapin." (Letter of David V. Knight, R. p. 114-115). In regards to Parcel 028, the letter states that the lift station was conveyed to Respondent in August 1999. The letter theorizes that a later poor legal description could have created the issue but only acknowledges "[w]hile you may in fact own some interest in property near the BRP Boat Storage area, it is not in my purview to determine what interest that may be." (Id.). This statement should not be construed as conceding an ownership interest in favor of the Appellant. It is simply David V. Knight informing the Appellant that he is not the individual who will determine if such an interest exists.

Furthermore, the evidence presented by the Appellant, including the information in the letter, in no way contradicts the Trial Court's Order. The Trial Court's Order held that the "title issuing agent's affidavit and its supporting documents delineate the chain of and title and attests to the fact that the Town of Chapin has unencumbered fee simple to Parcel

2 Appellant's Initial Brief inaccurately characterizes the letter from David V. Knight as a "letter from Respondent's Attorney." David V. Knight is not and has never been counsel of record for Respondent in this action, but rather was employed by the Town of Chapin's Utility Department. (R. p. 114-115).

028 and its pump station and an indefeasible right to access the station by the easements granted on Parcel 011." (Order of the Honorable William P. Keesley; R. p. 6, lines 11-14). The Record clearly establishes the Trial Court's Order did not ignore any material fact, and the Appellant has failed to present any legally relevant basis to challenge the dispositive nature of the chain of title.

III. THE TRIAL COURT WAS CORRECT IN NOT REFERRING THE CASE TO DETERMINE THE EXTENT OF THE EASEMENT

The Appellant argues that the Trial Court erred in its findings as to the extent or scope of the easement at issue and should be reversed. The basis for this argument is the Appellant's request at the Hearing on the Motion for Summary for Judgment for the Trial Court to refer the matter to the Master in Equity for a complete resolution of issues raised in the Complaint.

Rule 53(b), SCRCP, provides circuit court judges with the discretion to refer cases to a Master in Equity upon the motion of a party. There is no requirement that a matter be referred. It is axiomatic that a circuit court judge has authority to determine matters before it without reference to a master. See Rule 53(c), SCRCP, (limiting power and authority of Master upon referral to those of "a circuit judge sitting without a jury"). A decision refusing an order of reference is generally not appealable unless the trial court, in refusing the reference, does so upon an erroneous belief that the cause of action was a legal one. Mountain Lake Colony v. McJunkin, 308 S.C. 202, 204, 417 S.E.2d 578, 579 (1992). Accordingly, as this matter was determined on the issue of paramount title, no error can be assigned to the Trial Court's refusal to refer the matter to a master.

The Trial Court's Order references and recognizes the existence of the easement across Parcel 011 for access to the pump station. A full review of the Trial Court's Order reveals no determinations regarding the extent of the easement. Accordingly, any alleged error regarding a determination of the scope or extent of the easement is misplaced. Appellant did not ask the Trial Court to determine the measure of Appellant's property claims in light of the Town's existing easements or other interests, but rather to declare Appellant the sole owner of the property. Accordingly, the Court's order fully addressed the issues the Appellant presented for consideration.

IV. THIS MATTER WAS RIPE FOR SUMMARY JUDGMENT

Appellant argues that summary judgment is premature. Appellant's argument in this regard is best summarized as the Trial Court's Order "is completely silent as to how Parcel 028 containing the pump station ended up involved in a foreclosure proceeding that resulted in Appellant obtaining clear title to it." (Appellant's Initial Brief, p. 6). This line of argument ignores the Record and the Trial Court's Order both of which clearly show that an inaccurate legal description caused the property to end up at a tax sale. (Order of the Honorable William P. Keesley; R. p. 6, line 15-p. 7, line 5; Transcript of Hearing; R. pp. 90, 93, 99). More importantly, the precise sequence of events which lead to the properties being offered at a tax sale are inconsequential to the current considerations. Property owned by the Town could not be sold at a tax auction as the Town cannot be in arrears for taxes owed because it cannot be taxed for this property. This is a legal certainty and is not subject to factual considerations. The South Carolina Constitution provides that "[t]here shall be exempt from ad valorem taxation: all property of the State, counties,

municipalities, school districts and other political subdivisions, if the property is used exclusively for public purposes. S.C. CONST Art. X, § 3(a). S.C. Code Ann. §12-37-220 also provide a statutory tax exemption for "all property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes."

In an attempt to create a non-existent issue of fact, Appellant argues that Circuit Court ruled the Town of Chapin's water pumping station is used for a public purpose without an evidentiary basis. (Appellant's Initial Brief, p. 7). Appellant's argument rings hollow.

The provision of water utility services by a political subdivision of the State of South Carolina to its residents or others is an exclusively public purpose. Exemptions of the property of municipal corporations are liberally construed in favor of exemptions of such property and taxation the exception. Charleston County Aviation Authority v. Wasson, 277 S.C. 480, 486 (1982) (citing Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943), citing State v. City of Columbia, 115 S.C. 108, 112, 104 S.E. 337, 338 (1920)). South Carolina case law has recognized that it "would seem to be self-evident" that "the prosperity of a city, which it is the general purpose of a water supply to promote, is even more directly promoted by making such water supply available for, and by using it upon fair terms to supply, the needs of industries upon which the prosperity of so many modern urban communities vitally depends." Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 357 (1929). The Supreme Court of South Carolina has recognized that even "[w]aterworks and other utilities...located beyond the corporate limits of

municipalities [has] done much to promote expanded industrial activity. Elliott v. McNair, 250 S.C. 75, 87, 156 S.E.2d 421, 427-28 (1967).

The provision of water utility services by a political subdivision of the State of South Carolina to its residents is an exclusively public purpose. Therefore property of the Town of Chapin used for public purposes is exempt from taxation and cannot be in arrears for taxes owed or subject to tax sale by the County of Lexington. Accordingly, as a matter of law, any tax sale of the properties was improper and the Town of Chapin still owns the property claimed by Appellant.

Moreover, the Appellant's claims of the premature nature of the case at the time of the ruling on Summary Judgment are factually unfounded. Appellant filed the Summons and Complaint on April 24, 2014. This matter came before the Honorable William P. Keesley on September 5, 2014. (Transcript of Hearing; R. p. 85). Appellant was granted time to present additional arguments, caselaw and/or affidavits. (Transcript of Hearing; R. p. 102). On January 21, 2015, Judge Keesley issued his Order granting Respondent Town of Chapin's Motion for Summary Judgment. (Order of the Honorable William P. Keesley; R. p. 9).

The Appellant had the opportunity to conduct discovery. The Appellant also had the opportunity to present a material issue of fact which was his burden to survive the Motion for Summary Judgment. As a result, the Court dismissed the case as it was legally required to do. The plain language of Rule 56, SCRP, mandates the entry of summary judgment, after adequate time for discovery and upon motion against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's

case, and on which the party bears the burden of proof at trial. Etheredge v. Richland School District 1, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998).

CONCLUSION

For the reasons stated above, the Respondents request that this Court fully affirm the Order below.

Respectfully submitted,

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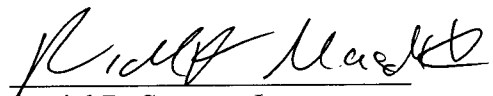
CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the Final Brief of Respondent Town of Chapin complies with Rule 211(b), SCACR.

Respectfully Submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that on December 1, 2015, a copy of the foregoing ***Final Brief of Respondent Town of Chapin*** *is* served on counsel for Appellant by hand delivering the same at the address as follows:

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