

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Plea

Haigh Porter, Special Referee for Marion County

Appeal number 2015-002230
Marion County Case number 2013-CP-33-306

Anderson Brothers Bank
Respondent,

V.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., is the.....Appellants

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SC Court of Appeals

July 8, 2016

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Petitioners certifies pursuant to SCACR 242 (d) (1) that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 10, 2016.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by overlooking the fact Special Referee actions was an abuse of discretion?
2. Did the Court of Appeals err in its order by stating "Appellants no longer reside at subject property....this appeal is moot?"
3. Can an order that deprives Appellants provisions of the Constitution be withstanding?

STATEMENT OF THE CASE

On or around September 21, 2015 Special Referee signed off on a Writ of Assistance order without having a hearing and notifying all parties. Appellants received this order on October 1, 2015. On October 16, 2015 Appellants filed and satisfied necessary fees a Petition for Mandatory Injunction, Relief from Judgment 60(b)(1)(3)(4), Challenge of Jurisdiction. On October 28, 2015 Appellants filed an Objection to Writ of Assistance order, and noticed all parties by way of email that an Appeal was being filed. On October 29, 2015 Appellants noticed the circuit court that an appeal had been filed. On October 30, 2015 Appellants filed and satisfied necessary fees a Petition for Emergency Stay of Writ of Assistance. There was never a hearing held by the Special Referee that shows the amount the bond needed to be in order to stay the proceedings. Special Referee never

lifted the stay and just preceded denying Appellants due process of law. Special Referee mislead the Marion County Sheriff's office to believe that there was no appeal pending as of November 2, 2015 and that the proper paperwork wasn't filed. As a result this gross negligence has caused Appellants irreparable harm.

The Court of Appeals denied Appellants Petition for Rehearing and Petitioners seek a Writ of Certiorari to review that decision.

ARGUMENT

1. The Court of Appeals erred by overlooking the fact Special Referee's actions was an abuse of discretion.
 - i. Special Referee improperly entered an order for Writ of Assistance on September 21, 2015 in blatant disregard for procedure. Special Referee's order dated September 21, 2015 does not contain the date this purported hearing took place. (Maxims of Law "not only what is permitted, but what is proper, is to be considered because what is improper is illegal"; "No one shall take advantage of his own wrong"; *Dacaus v. Johnston* (S.C. 1936) 180 S.C. 329, 185 S.E. 491 where it states, "Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of the law permit and sanction, under such safeguards for the protection of individual rights as those maxims prescribe for the class of case to which the one in question belongs."

- ii. Special Referee was well aware of the issues raised to the Disciplinary Counsel involving the fact his spouse appeared representing the plaintiff's interest in the matter by entering bid at the sale as well as a witness, and notary of conveyance documents. (App pg. 54 & 55 Deed by Judicial Order of Special Referee) See South Carolina Rules of Judicial Disciplinary Enforcement Rule 501 Cannon 3(E)(d)(i) SCACR; Cannon 2(B); Cannon 3B (1),(5); Commentary under Cannon 2 (A). See *Bridges v. California*, 314 U.S. 252, 289-290; wherein Justice Frankfurter stated, "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions . . . Judges must be kept mindful of their limitations and their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt". *State v. Brown* (S.C. 1935) 178 S.C. 294, 182 S.E. 838. *Constitutional Law* 3880 where it states, "Due process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property."; *Bracey v. Warden*, US Supreme Court No.96-6133 (June 9, 1997) where it states, "Where the judge does not act impartially.
- iii. Being that there was no hearing in September 2015 (see unrebutted affidavit in support of reply App pg. 86) there was no bond amount set to stay execution of Writ of Assistance. Depriving Appellants their right to procedural due process. *Sandal v. State* (S.C. 1920) 115 S.C. 168, 104 S.E.

567, 13 A.L.R. 1268 where it states, "The word "deprived" connotes want of consent"; See Ogburn-Matthews v. Loblolly Partners(Ricefields Subdivision)(S.C. App.1998) 332 S.C. 551, 505 S.E.2d 598.

Constitutional Law 3888; Constitutional Law 3879 where it states, "Requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review."

2. The Court of Appeals erred in its order by stating "Appellants no longer reside at subject property.....this appeal is moot."
 - i. At the time the appeal was filed Appellants had been in peaceful possession of said property in dispute for a little over 7 years. (Maxims of Law, "Things that belong to a person ought not be separated from the person"); "What belongs to us cannot be transferred to another without consent." ; See Dacaus v. Johnston (S.C. 1936) 180 S.C. 329, 185 S.E. 491;
 - ii. Appellants only lost possession of said property by way of Special Referee misleading the Marion County Sheriffs Office to believe that the proper paperwork had not been filed. Where ultimate facts supported by evidentiary facts show not only was the proper paperwork filed the Appellants was unjustly removed from their property.(See Order of Dismissal App pg. 22) ; See Abelleira v District Court of Appeals, Third District., 17 Cal. 2d 942, 948

where it states, "Acts which exceeded defined power of court in any instance."

- iii. Appellant (Arnold Parson Jr.) was arrested the morning of November 2, 2015 for trespassing and breach of the peace. (See App pg. 20) ; The Supreme Court of South Carolina, in the case of State v. Byrd, 72 S.C. 104, 51 S.E. 542, 544(1905), affirmed a prior decision of the Court holding that: At common law, as a general rule, an arrest could not be made without warrant for an offense less than felony. . . . 3 Cyc. 880; State v, Simms, 16 S.C. 486; An individual is "seized" within the meaning of the Fourth Amendment when an officer restrains his freedom, even if the detention is brief and falls short of arrest. Sikes v State (S.C. 1994) 323 S.C. 28, 448 S.E. 2d 560.
- iv. The Marion County Sheriff Office used excessive force nearly 18 officers armed with machine guns, hand guns and sniper rifles to remove Appellant from the property during a State of Emergency. (See S.C. Code 16-7-10)
- v. On the morning of November 2, 2015 it was pouring down raining while all belongings, intangible, tangible, including keepsakes were thrown out in the rain. (See App pg. 85 flashdrive) This very same day Court of Appeals sent out correspondence changing the caption and giving new case number.

vi. On February 29, 2016 all charges was dismissed, expunged, and Appellants regained possession of the property in dispute (see App pg. 21 & 22.)

3. An order that deprives Appellants provisions of the Constitution can't be withstanding for it is void.

i. Respondents filed a return to Appellants Petition for Rehearing with Exhibits A-K attached. within these exhibits, there is no Petition for Writ of Assistance with certificate of service attached, evidencing the petition was served upon Appellants. Janove v. Bacon 6 Ill 2d 245, 249, 218 N.E. 2d. 706, 708 (1953) where it states, "Where service of process was not made pursuant to statute and Supreme Court."; Brown v. Vankeuren 340 Ill. 118, 122(1930) where it states, "No petition in the record of the case."

ii. Respondents states in their Return to the Petition for Rehearing that, "In September 2015 after all appellate proceedings related to the foreclosure had been completed—ABB filed a Petition for Writ of assistance with Judge Porter in the Circuit Court(there's no record of this filing). Following a hearing, (there's no record of this hearing) the Circuit Court issued a Writ of Assistance on September 21, 2015." There is no date associated with the Petition for Writ of Assistance, nor is there any evidence that the movant gave notice to all parties. See Wilson v. Moore,

13 Ill. App. 3d 632, 301 N.E. 2d 39 (1st Dist. (1973) where it states, "When proper notice is not given to all parties by the movant"; Moore v. Moore (S.C. 2008-376 S.C. 467, 657 S.E. 2d 743, Constitutional Law 3879 where it states, "Procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross examine witnesses; Wuest v. Wuest, 53 Cal. App. 2d 339, 127 P. 2d 934, 937 where it states, "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an "excess of jurisdiction."; State v. Earle (S.C. 1903) 66 S.C. 194, 44 S.E. 781 where it states, "By "due process of law" is meant a process which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either without the observance of those general rules established in our system of jurisprudence for the security of private rights."

- iii. According to the court's index it shows that Appellants had a stay until December 11, 2015. Special Referee had the duty to hold a hearing lifting

the stay, and set bond amount instead of falsifying information to the Marion County Sheriffs Office that an appeal had not been filed in retaliation of complaint. See Duran v. City of Douglas, 904 F.2d 1372, 1378 (9th Cir. 1990) "the First Amendment right to criticize public officials is well-established and supported by ample case law. Furthermore, it is well-established that a public official's retaliation against an individual exercising his or her First Amendment rights is a violation of § 1983."

REASONS TO GRANT CERTORARI

1. Respondents failing to notice Appellant of the Petition for Writ of Assistance, deprived Appellants of their right to due process. Johnson v. Zerbst 304 U.S. 458, 58 S. Ct. 1019; Janove v. Bacon 611 2d 245, 249, 218 N.E. 2d. 706,708 (1953); Og burn-Matthews v. Loblolly Partners (Ricefields Subdivision)(S.C. App.1998) 332 S.C. 551, 505 S.E.2d 598. Constitutional Law 3870; South Carolina Constitution Article 1 Section 3
2. An ordered entered in favor of the movant who has failed to properly notice opposing party Petitioners, and without hearing is void for lack of personam Juris. (See South Carolina Rules of Civil Procedure 12(b)(2) Lack of Jurisdiction over the person); (See Overby v. Overby, 457 S.W.2d 851 (Tenn. 1970) where it states, "A judgment obtained without jurisdiction over the defendant is void."); South Carolina Rules of Civil Procedure 12(b)(5)

Insufficiency of service of process; See *Rosenstiel v. Rosenstiel*, 278 F.Supp. 794 (S.D.N.Y. 1967) where it states, "If the court exceeded its statutory authority.

3. Special Referee should have known, knew, or had the duty of knowing entering an order without an hearing is an abuse of discretion and insufficiency of process; See South Carolina Rules of Civil Procedures 12(b)(4) insufficiency of process.

4. After reaching out to the Secretary of State's Office it was discovered that a notary cannot notarize a document they receive a benefit from. Therefor the Special Referee Deed by Judicial Order is void abinitio meaning the original deed to Arnold and Dazanea Parson is still in full force and effect.

5. This action took place in total disregard of the state of Emergency entered by the President of the United States, and the Governor for the state of South Carolina. See South Carolina Code of Laws Title 16 Crimes and Offenses Chapter 7 Offenses Against the Peace Article 1 Offenses During State of Emergency Section 16-7-10 Illegal act During State of Emergency where it states in part, A. "In any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to:

(2)(a) Enter into the property of another, without lawful authority and with criminal intent.

Damage the property of another; or

Take possession or otherwise disturb the property of another in any manner.

6. Respondents and Special Referee actions was a denial of South Carolina Constitutional Provisions Article 1 Section 3(Due Process); Article 1 Section 22(Right to be heard); Article 1 Section 23 (Provisions of the Constitution is mandatory)

CONCLUSION

For the reasons stated Petitioners move this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

All Rights Reserved.

By: Arnold Jr. Dazarhea Parson

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July 8, 2016