

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

2015-CP-12-0179

Appellate Case No. 2016-002016

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SC Court of Appeals

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

v.

Mell Woods Appellant.

Respondent's Motion to Dismiss Appeal

Pursuant to Rule 203(b)(1), SCACR, and Rule 59, SCRCP, Respondent, as agent for the
named principals, moves the Court to dismiss Appellant's appeal herein on the grounds that:

(1) Appellant's Rule 59(e) motion to the Circuit Court was untimely served meaning that said
motion did not toll the time for an appeal to this Court, making this appeal untimely and depriving

this Court of jurisdiction to entertain the appeal; and

(2) The appeal should be dismissed as a sanction for Appellant's continued misuse of the courts.

This is but the latest of Appellant's serial, meritless appeals in his running dispute with the heirs of Reba Hinson. Appellant appears pro se, and does nothing but invite lower court orders so that he can file motions for reconsideration, appeals to the Court of Appeals and Petitions for Writ of Certiorari. Without reviewing the blow-by-blow history, the Court is asked to take judicial notice of its records in the following matters:

2013-UP-0256

2013-UP-0257

2014-UP-010

2014-UP-0158

2014-UP-076

Each of these cases was decided by an unpublished per curiam opinion, and Appellant's petitions for writ of certiorari were unsuccessful. Appeal costs were awarded against the Appellant in each case, and Appellant has not paid any of the awarded costs.¹

The matter now before the court is a summary ejectment proceeding heard in the Magistrate's Court and appealed to the Circuit Court. Two of the earlier cases identified above are particularly

¹ All of the facts relevant to this history are established in the myriad filings in prior trial court and appellate court proceedings, and are subject to judicial notice in this proceeding. Courts may take judicial notice of matters of public record, Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F. Supp. 2d 553 (W.D.N.C. 1998); prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993); decisions of other courts, Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd., 181 F.3d 410 (3d Cir. 1999); and reliable sources found on the Worldwide Web. In re Yahoo Mail Litigation, 7 F.Supp. 3d 1016,1024 (N.D.Cal. 2014), and Rule 201, SCRE.

relevant to the matter now before the Court. (1) 2014-UP-010 was a case brought by the Appellant in which he sought to establish Reba Hinson's title to the subject real property to support his own claim to title. The courts decided the question of Appellant's claim to an ownership interest in the subject real property by finding that he has no title or cognizable claim of title to the property. He will not accept that outcome and has continued to argue his claim to title in subsequent court proceedings, including herein.

(2) In 2014-UP-076 the Hinson family/heirs commenced an eviction action in magistrate's court to have Appellant evicted as a hold-over tenant at will. This case is a predecessor proceeding to the matter now before this court. Appellant appealed a pretrial order to the Circuit Court, and to the Court of Appeals and to the Supreme Court. As with his other appeals, he was unsuccessful. In the course of his numerous appeals, Appellant asserted to the various courts that his interest in the subject land is as an owner and not as a tenant. Upon the tenant-eviction case's (2014-UP-076) return to the magistrate's court, and based on Appellant's express denial that he is a tenant, the Hinson family converted the tenant-based action to one for summary ejectment of Appellant as a trespasser. The Chester County Magistrate's Court issued an Order dated and filed March 27, 2015, finding Appellant to be a trespasser and announcing the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Appellant from the subject premises. **(Exhibit 1)**. Appellant appealed the March 27, 2015 Order to Circuit Court. The subsequent chronology was:

June 1, 2016	Appeal hearing;
July 7, 2016	Circuit Court Order Affirming Magistrate's Court (Exhibit 2) ;
July 12, 2016	July 7 Order served on Appellant by email and by U.S. mail;
July 18, 2016	date Appellant claimed to have received written notice of the July 7 Order;

July 28, 2016 Appellant served a Rule 59(e) motion for reconsideration (**Exhibit 3**);

August 16, 2016 Respondent served a Return to the Rule 59(e) motion, raising the issue of the timeliness of the Rule 59(e) motion (**Exhibit 4**);

August 31, 2016 Circuit court Order denying Appellant's Rule 59(e) motion (**Exhibit 5**);

September 9, 2016 Appellant served Notice of Appeal to Court of Appeals. It is this appeal that is the subject of this motion to dismiss appeal. (As of the date of this motion, the undersigned has not received a Notice of Appeal from the Appellant. The undersigned learned of the appeal from the Chester County Clerk of Court and from this Court's letters to the Appellant dated September 28, 2016).

Ground 1 (Untimely Appeal-Lack of Jurisdiction)

Respondent's Return to Appellant's Rule 59(e) motion in Circuit Court raised the issue of the untimeliness of Appellant's Rule 59(e) motion. (**Exhibit 4**). The timeliness issue is relevant for two reasons, both related to jurisdiction.

(1) If the Rule 59(e) motion was not timely served, the Circuit Court had no jurisdiction to entertain and rule upon it. A Rule 59(e) motion for reconsideration must be served no later than ten days after receipt of written notice of entry of the order. Rule 59(e), SCRPC. "The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Rutland v. Holler, Dennis, Corbett & Garner, 637 S.E.2d 316 (S.C. App. 2006). See also Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000). In a short, generic Order, the Circuit Court judge denied the Rule 59(e) motion on substantive grounds without addressing the timeliness of the motion. (**Exhibit 5**). However, this is not fatal to the objection because subject

matter jurisdiction can be raised at any time.

Lack of subject matter jurisdiction constitutes the strongest possible defense in an action because it is a complete defense that may be raised at any stage of a proceeding, even for the first time on appeal before the Supreme court. It may not be waived, including by consent of parties, and should be taken notice of by the courts. (internal citations omitted).

Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 3 (2d ed.2002).

(2) If the Rule 59(e) motion was not timely served, the motion did not stay or toll the time for taking an appeal to this Court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 119 (2d ed.2002), citing Canal Ins. Co. v. Caldwell, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999) and Ackerman v. 3-V Chemical, Inc., 349 S.C. 212, 562 S.E.2d 613 (2002). Where a notice of appeal is untimely because of a motion for reconsideration that was itself untimely and therefore did not stay the time for appeal, the appellate court does not have subject matter jurisdiction. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 119 (2d ed.2002), citing Canal Ins. Co. v. Caldwell, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999).

The Respondent's Return to the Motion for Reconsideration (**Exhibit 4**) is attached hereto and incorporated herein by reference. It contains Respondents' arguments on the issue of the untimeliness of Appellant's Rule 59(e) motion and includes Exhibits A through E.

Ground 2 (Sanctions)

Appellant should be sanctioned for his persistent misuse of the legal process to repeatedly argue ownership when the trial court and appellate courts have decided that appellant has no title or

ownership. In the above-captioned case, the Appellant has already appealed an interlocutory order, leading to a dismissal of the appeal. Appellant petitioned the Supreme Court for a writ of certiorari. Respondent moved to dismiss the petition and moved for sanctions. See Supreme Court no. 2015-002318 and Court of Appeals no. 2015-001036.

Respondent's Motion for Sanctions filed in the Supreme Court is incorporated herein by reference. **(Exhibit 6)**. By Order filed February 10, 2016 **(Exhibit 7)** the Supreme Court denied the Appellant's petition for writ of certiorari and denied Respondent's motion for sanctions; however, the Order contained the following warning: "... **we take this opportunity to warn petitioner that if he continues to abuse the judicial process by way of frivolous filings, sanctions may be imposed by any of the courts in which such frivolous filings are mad, including this Court, and may include, in addition to monetary sanctions, restrictions on future filings.**" (Emphasis added).

Subsequent to the February 10, 2016 Order of the Supreme Court, Appellant argued to the Circuit Court sitting as an appellate court, many issues that are all grounded on his claim to title to the subject real property, notwithstanding 2014-UP-010 and notwithstanding the Supreme court's February 10, 2016 Order. The Circuit Court's July 7, 2016 Order Affirming Magistrate's Court fully sets out the issues raised and argued by the Appellant. In his untimely Rule 59(e) motion, Appellant again claims title by adverse possession; that he had a land sales contract with Reba Hinson, notwithstanding that this court has already decided that Reba Hinson only owned a life estate and could not contract to sell an ownership interest she did not own and that Appellant has no rights by adverse possession. (2014-UP-010).

Pursuant to the Supreme Court's February 10, 2016 Order, this court should sanction Appellant for his continued and repetitive abuse of the legal process. Rule 11 sanctions. Rule 11(a), SCRCF, imposes a duty on parties and attorneys representing parties by construing a signature on pleadings as a certificate that (s)he has read the pleading and "that to the best of his knowledge, information and belief there is good ground to support it . . ." The history of the proceedings between the captioned parties belie any suggestion that this appeal was filed in good faith. Appellant has pursued repeated and vexatious litigation, with the captioned appeal being only the latest installment.

Bringing and/or continuing a lawsuit based on allegations that prior court rulings have found to have no merit can be the basis for awarding sanctions, Holmes v. East Cooper Community Hospital, Inc., 408 S.C. 138, 758 S.E.2d 483 (2014), including ordering the Plaintiff to pay the Defendant's attorney fees and other related litigation costs, and enjoining the Plaintiff from filing any future legal proceedings in the probate court against the Defendants without first posting bond. Id. The plaintiff may also be sanctioned and enjoined from filing any future legal proceedings against the Defendants without representation on the pleadings by a licensed attorney. Id., fn. 18.

In Balcar v. Bell and Associates, LLC, 295 F.Supp.2d 635 (N.D.W.Va. 2003) the Court wrote:

... courts may sanction for bad faith conduct via their inherent authority. "The case law is well-established that district courts have the inherent power to sanction parties for certain bad faith conduct, even where there is no particular procedural rule that affirmatively invests the court with the power to sanction." Strag v. Bd. of Tr., 55 F.3d 943, 955 (4th Cir. 1995). The Fourth Circuit has also held that Rule 11 and § 1927 do not displace the inherent authority of the court to impose sanctions for bad faith conduct as these other methods of sanctions "are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions." United States v. Shaffer Equip. Co., 11 F.3d 450, 458 (4th Cir. 1993)(quoting Chambers v. NASCO, Inc., 501 U.S. 32, 46, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)).

Courts may impose monetary sanctions. Balcar, *supra*. However,

A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court. See generally In Re Urban, 768 F.2d 1497, 1500 (D.C.Cir.1985); Green v. Warden, U.S. Penitentiary, 699 F.2d 364 (7th Cir.1983). In fashioning such a remedy in Lysiak's case we act on our "obligation to protect and preserve the sound and orderly administration of justice," In Re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir.1984). At the same time we must take care to protect Lysiak's undeniable right of access to the court's processes, see In Re Green, 598 F.2d 1126, 1127 (8th Cir.1979) (en banc).

Lysaiak v. C.I.R., 816 F.2d 311 (7th Cir. 1987). Courts may also impose sanctions to limit access to the courts by ordering that all court clerks decline to accept any filing from the litigant unless a judge of the Court has specifically authorized the filing. Vinson v. Heckmann, 940 F.2d 114 (5th Cir. 1991).

In BKS Properties v. Shumate, 271 B.R. 794 (N.D. Tex. 2002) the Court imposed a hybrid sanction.

If monetary sanctions are imposed, the Court can also require that until the monetary sanction is paid that

the clerk of the bankruptcy court not accept for filing any pleading or paper filed by Shumate. As a matter of comity and sound judicial administration, this court requested that all courts, state and federal, recognize and honor that order. As a further sanction, this court recommends that the district court enter a similar directive to the clerk of the district court, as well as to the clerks of all courts, not to accept any pleading or paper filed by Shumate until he pays the sanctions. . . [and] the order should further direct that if Shumate files either a paper or pleading in violation of this order, that a named defendant immediately remove the litigation to federal court, and that the federal court immediately sua sponte dismiss the matter with prejudice."

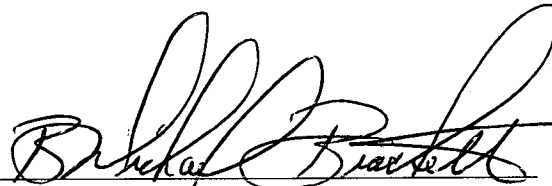
Additionally, the court may enter an injunction requiring the litigant to seek leave of court in order to file an appeal. Billman v. C.I.R., 847 F.2d 887 (D.C. Cir. 1988).

Pursuant to Ground 1 above, this Court should dismiss the appeal as being untimely. In addition, pursuant to Ground 2, the Court should sanction Appellant as follows:

1. dismiss the notice of appeal herein;

2. restrict and enjoin him from subsequently filing any document with any court involving in any way one or more of the Respondents, and/or the estates of Levie and Reba Hinson, and/or the subject of title to the real property owned by Respondents and from which Appellant has been ejected, known as 1537 Hinton Road, Great Falls, SC until Appellant pays the appellate costs awarded in his prior unsuccessful appeals in cases: 2013-UP-0256; 2013-UP-0257; 2014-UP-010; 2014-UP-0158; and 2014-UP-076;
3. enjoin the Appellant from hereafter filing any pleadings, appeals, motions or submissions to any court involving in any way one or more of the Respondents, and/or the estates of Levie and Reba Hinson, and/or the subject of title to the real property owned by Respondents and from which Appellant has been ejected, known as 1537 Hinton Road, Great Falls, SC, unless the filings are signed by a licensed South Carolina attorney, and leave of court for the filings has been granted by the court.

September 30, 2016



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Attorney for Respondent Breakfield, as agent

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

Robert H. Breakfield,
as attorney-in-fact, for)

John D. Hinson, John C.)

Hinson, Kathy Huffstickle,)

Robert H. Hinson,)

Darrell W. Hinson,)

Christina Jones as Trustee)

of the Lois Griffin Trust,)

George Stanford as Personal)

Representative of the)

Estate of Linda Stanford,)

William L. Hinson,)

and William C. Hinson, Jr.,)

Plaintiffs,)

-vs-)

Mell Woods,)

Defendant.)

IN THE MAGISTRATES COURT

2014CV1210400037 and

2014CV1210400002

formerly 2011CV1210100148

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CHESTER COUNTY
MAGISTRATE OFFICE
CHESTER, SC 29706

Certified to be a True and
Correct Copy of Original

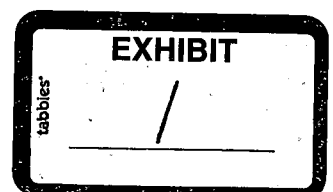
Chester Co. Magistrate

Date March 27, 2015

FINAL ORDER AND JUDGMENT

The above-captioned matters were initially filed by the Plaintiffs upon the Defendant and have been consolidated for judicial economy. The case under 2011CV1210100148 was an eviction Action filed in Chester, subsequently transferred to the Rossville District Magistrate Court, Great Falls and re-numbered 2011CV1210400002. It came before me for a pre-trial hearing on May 12, 2011 following which the Court issued an interim Order covering some preliminary matters. The Defendant appealed the interim Order which appeal was heard by the Chester County Court of Common Pleas and ultimately, the Court of Appeals. The Supreme Court denied Certiorari. A related matter serving as the foundation of the position taken by the Plaintiffs was

93-#1



resolved by the Chester County Probate Court, which issued its Order and which in turn served as the foundation for a related case filed in the Chester County Court of Common Pleas by the Defendant in the instant case. The Court of Common Pleas issued its Order in that matter and the Defendant appealed. The Court of Appeals issued its Order and the Supreme Court denied Certiorari. The proceedings in this Court were suspended pending the final resolution of these related matters as the Defendant asserted title to the real estate was in question. Following these events, the Plaintiffs filed a new Action with this Court wherein they alleged the Defendant is a trespasser and should be ejected from the property upon that basis.

With the issues before the Court now ripe and clarified for adjudication, the above-captioned matters came before me for a hearing on January 30, 2015. The Plaintiffs were represented by B. Michael Brackett, Esquire. The Defendant represented himself. Pursuant to this Court's interim Order, the Defendant was required to pay bond to the Court in the amount of \$200.00 per month commencing June, 2011, with an initial payment of \$100.00 covering May, 2011, the hearing having taken place toward the middle of that month. The Defendant complied, making regular and timely payments of Bond. As of January 30, 2015, the Defendant had paid a total of \$8,900.00. The Court prepared a detailed accounting for the Defendant, who inspected and signed it accepting the accounting as complete and accurate. Copies were furnished to him and to counsel for the Plaintiffs. The Defendant has since made the required payments for February and March,

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2015 such that at the time this Order was issued, the grand total held by the Court as bond is \$9,300.00., well in excess of the Court's Jurisdictional Limit of \$7,500.00 plus costs.

The second preliminary matter was the election of the Plaintiffs as to which Action they wanted to pursue. The Plaintiffs chose to go forward upon their second filed Action, the one wherein and whereby they allege the Defendant is a trespasser and should be ejected from the property in question. They chose not to go forward upon the prior Action for eviction.

The third preliminary matter taken was amendment of the case caption due to changes among the Plaintiffs. These amendments were made in the caption of this Order. The interest previously held by Plaintiff Lois Hinson, a/k/a Lois Griffin, was conveyed to Tina Jones, a/k/a Christina Jones as Trustee of the Lois Griffin Trust. The interest previously held by Plaintiff Elaine Hensley was conveyed to Plaintiff Robert H. Hinson.

The next preliminary matter was the Defendant's Motion for a Jury Trial in the current Notice to Quit Action. He objected to the proceedings going forward as a bench trial citing Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985) so as to avoid waiving his rights. The Defendant has not in fact waived whatever right he may have had to a jury trial as no ruling had been made by the Court as to that issue up to that point. The Court heard the parties concerning this matter, notes that the issue was timely raised by the Defendant, and considers the Defendant protected on the Record. Jury trials are in fact widely

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available in this State for all sorts of cases. However, that right is not absolute and therefore does not apply in every instance. The right to jury trial is available to both sides in eviction matters as it is provided for by Statute. Were this matter going forward as originally filed, the Defendant would have been entitled to a jury trial. However, there is no statutory right to jury trial for an Action to eject a trespasser, which is the current situation. The Magistrate Court Rules make no such provision either. Although the Court has wide discretion in situations wherein a jury trial might prove helpful, the Defendant failed to demonstrate a need for one in the interests of justice or as an aid to the Court for resolution of this case. No valid reason having been presented by the Defendant for a jury trial, the Defendant having failed to demonstrate entitlement to one, the prayer for jury trial was and remains denied.

The Plaintiff presented exhibits for evidence asking the Court to take them by Judicial Notice. All were accepted and entered as such. Plaintiff's 1 is a True Copy of an Order issued by the Chester County Probate Court Case No. 1986-ES-12-188, Kathy H. Huffstickle, In the Matter of Levie Hoyt Hinson, Petitioner, v. Lois H. Griffin, Respondent (2007) which affirmed an amended real estate conveyance of March 8, 2007 and declared that the real property consisting of 92 acres on tax map number 158-0-0-3 is owned as tenants in common by the bodily heirs of Levie Hoyt Hinson. It further declared that the bodily heirs of Levie Hoyt Hinson are John C. Hinson, Lois H. Griffin, Kathy H. Huffstickle, and the heirs of William C. Hinson. It also

93-#4

declared the heirs of William C. Hinson are Charles Jerry Hinson, Robert Harold Hinson, William Calvin Hinson, Etta Elaine Hinson, Linda Kay Hinson, and Darrell Wayne Hinson. Plaintiff's 1 was accepted as evidence as it is proper to take Judicial Notice of relevant Court Orders of a Court of competent jurisdiction.

Plaintiff's 2 is a True Copy of a Complaint filed by the current Defendant in the Chester County Court of Common Pleas under Case No, 2011-CP-12-00323, captioned Mell Woods, Plaintiff v. John D. Hinson, Christine Jones, John C. Hinson, Kathy Huffstickle, Charles J. Hinson, William L. Hinson, Lois Hinson, Robert Breakfield, as Personal Representative of the Estate of Reba P. Hinson, Elaine H. Hensley, Robert H. Hinson, George Stanford, as Personal Representative of the Estate of Linda H. Stanford, William C. Hinson, Jr., Darrell W. Hinson, MARY ROE, and JOHN doe, fictitious names used to designate all other parties whose names are unknown, AND ANY and ALL OTHER PERSONS claiming any right, title, estate, interest, or lien upon the real estate described in this Complaint. Attached to the foregoing and part of the exhibit is an Action for Trespass to Try Title, bearing the same case number and caption which contains 3 photocopies of a plat. Inasmuch as this exhibit is on file with the Clerk of Court of Chester County directed to the Chester County Court of Common Pleas and is relevant to the within Action, it is proper to accept it by Judicial Notice and was received in evidence.

Plaintiff's No. 14 is a True Copy of the same plat attached by the within Defendant in Plaintiff's 2, and is a complete plat

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containing some material cut off by the copier the within Defendant had attached in his Complaint. As this is a document on file with the Clerk of Court and is relevant to this matter, it is proper to accept it by Judicial Notice, the Plaintiff herein having labeled it Exhibit 14. It was received as such.

Plaintiff's 3 is a True Copy of the Answer and Counterclaim filed by the Defendants in the same case, No. 2011-CP-12-0323 and bearing the same case caption, offered as evidence by Judicial Notice. Attached thereto is a copy of the Last Will and Testament of Levie Hoyt Hinson and a copy of what has already been accepted herein as Plaintiff's 1. As this document is on file with the Clerk of Court and is relevant to the within Action, it is proper to accept it by Judicial Notice and was received as such.

Plaintiff's 4 is a True Copy of the Circuit Court Order in Case No. 2011-CP-12-0323 bearing the same caption, dated December 29, 2011, wherein and whereby the Defendants' Motion for Summary Judgment was granted and the Plaintiff's Complaint was dismissed. This is an authenticated copy of an Order issued by a Court of competent jurisdiction and is relevant to the within Action. It is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 5 is a copy of the Order issued by the South Carolina Court of Appeals bearing the same caption and recorded as Appellate Case No. 2012-212330, Unpublished Opinion N. 2014-UP-010 (2014). As this is an official Order of the South Carolina Court of Appeals, it

93-6
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is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 6 is a copy of the Order issued by the South Carolina Supreme Court bearing the same case caption, bearing Appellate Case No. 2014-000660 (2014) denying Certiorari. As this is an official Order of the Supreme Court it is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 7 is a copy of the original Rule to Vacate issued by Chester County Magistrate Court with the Plaintiff's attached Complaint for Possession of Real Property/Application for Ejectment in Case No. 2011CV1210100148, above-captioned, with attachments thereto. As this is already on file with this Court and it is relevant to the within Action, it is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 8 is a copy of the Defendant's Answer with attachments in Case No. 2011CV1210100148, which is already on file with this Court, is relevant to the within Action. It is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 9 is the interim Order of the Court in the original Action renumbered 2011CV1210400002, which Order was issued by this Court. It is proper to take by Judicial Notice the Court's own prior Orders. This one is relevant to the issues in the within Action and the exhibit was accordingly received into evidence.

93-7
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Plaintiff's 10 is a True Copy of an Order of the Court of Common Pleas, for Case No. 2011-CP-12-0291, bearing the caption: Robert H. Breakfield, as attorney-in-fact v. Mell Woods and called Order Affirming Magistrate Order, dated January 12, 2012. It is proper to accept it by Judicial Notice as it is relevant to the issues herein and the exhibit was received into evidence.

Plaintiff's 11 is an Opinion from the South Carolina Court of Appeals upholding Plaintiff's 10, Robert H. Breakfield, as attorney-in-fact, Respondent v. Mell Woods, Appellant, Unpublished Opinion No. 2014-UP-076 (2014).

Plaintiff's 12 is an Order of the Supreme Court of South Carolina denying certiorari in Plaintiff's 11.

Plaintiff's 13 is a listing of the owners with percentages owned regarding the property in question.

During the course of the hearing, the Defendant presented several exhibits to the Court which were received as evidence.

Defendant's 1, accepted by the Court as evidence, is a UCC Filing Statement listing the Defendant as debtor and Reba Hinson as secured party of: "Manufactured home existing at #10 North Adams Road; this same lot is also known as 1537 Hinton Road, Great Falls, South Carolina 29055, along with Real Estate described a in #14 of this UCC filing." The exhibit consists of 5 pages and includes a hand drawn map and a land sales agreement between Reba P Hinson and Mell Woods.

Defendant's 2, accepted by the Court as evidence, is a true copy of a Notice of Lis Pendens and Action for Trespass to Try Title and

93
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an Amendment of Lis Pendens Notice filed by the Defendant against the Plaintiffs in this matter together with attachments.

Defendant's 3, accepted by the Court as evidence, is a true copy of a letter dated June 27, 2007 to Cheste County Probate Court Judge Lois Roddey seeking copies of records in connection with regard to the Estate of Reba Hinson.

The Defendant raises the defense of questionable title in Defense Exhibit 1, which includes a land sales agreement dated May 7, 2005 between himself and Reba Hinson, deceased, and by his testimony. This defense, if it could be established, would deprive this Court of subject matter jurisdiction given that the rights to real estate must be determined by the Court of Common Pleas and may not be determined in Magistrate Court. Such a situation would require dismissal of the original Action for Eviction and would require dismissal of this Action for ejectment of a trespasser (Notice to Quit). However, the mere claim that there is a cloud upon the title to the realty subject to this Action is insufficient grounds upon which to find that this Court has no subject matter jurisdiction. The Defendant had already instituted suit concerning this very issue in the Court of Common Pleas under Civil Action No. 2011-CP-12-0323, and the Court, The Honorable Brooks P. Goldsmith, presiding, granted Summary Judgment to the Defendants in that case, who are Plaintiffs in this one. Judge Goldsmith found, "Plaintiff claims ownership by virtue of a 20-year presumption of a grant through Reba Hinson. This claim must fail, as a life tenant (Reba Hinson) cannot claim adverse possession against

93-19

remaindermen." Mell Woods v. John D. Hinson, et al, December 29, 2011 (Plaintiff's 4). Mr. Woods appealed this Order, which was upheld by the South Carolina Court of Appeals, Mell Woods v. John D. Hinson, et al, Ct. Appeals Unpublished Opinion 2014-UP-010 (2014), Plaintiff's 5, a copy of which is attached hereto and incorporated herein by reference. The Supreme Court denied Certiorari in Appellate Case No. 2014-000660 on July 24, 2014 (Plaintiff's 6). Accordingly, the Defendant in the current matter before this Court lost this issue and is estopped from asserting it here pursuant to the doctrine of res judicata and this is also the law of the case. The Court further notes that the Defendant had a right to jury trial in the matter he took to the Court of Common Pleas but did not have one because he lost on Summary Judgment, such that there is no good faith reason to believe his rights were or are being violated by denying a jury trial and conducting a bench proceeding. It should be noted that the facts are not really disputed. This case turns upon the Law.

I find this Court devoid of power to over-rule the Court of Common Pleas, the Court of Appeals, and the Supreme Court, and rather that this Court must accept the rulings from the higher Courts as final. The Defendant may not raise the defense of questionable title to defeat this Court's subject matter jurisdiction in the current Notice to Quit Action or as a valid defense against it

The Defendant shows every sign of being both intelligent and articulate such that there is no reason to question his mental competence. Quite to the contrary, he has demonstrated considerable

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skill in reading, research, and comprehension. In Court he was attentive and focused. He demonstrated good command of his information and the position he took. His writing and reasoning skills are impressive given that he is not a lawyer. During the proceedings as he presented his case he attempted to collaterally attack the orders and rulings of the higher courts in this case concerning ownership of the real estate and he attempted to impugn the integrity of Plaintiff's counsel personally. This clearly impermissible effort was cut off by the Court. Given the overwhelming evidence in this matter I find that the Defendant's position has no merit and that he has failed to raise a single scintilla of competent evidence or any type of admissible colorable reason supporting it. The Plaintiff has proven the Defendant a trespasser who should be ejected from the property in question and I so find.

Notwithstanding the foregoing, however, the Defendant has been on the property for a very extended period of time such that it is appropriate, in the interests of justice, to provide the Defendant a reasonable amount of time to terminate his occupation of the premises and leave, the Court having some reasonable discretion. Accordingly, I find it reasonable to order the Defendant to vacate the premises no later than the close of business April 15, 2015, after which time, if the Defendant remains, a Writ of Ejectment will issue from the Court. I further find given the limit that can be awarded in potential damages by this Court is \$7,500.00 plus filing fees, which in this case is \$65.00, \$7,565.00 should be retained by the Court at present

93.
#11

but all other monies should be refunded to the Defendant. \$9,300.00 having been collected from the Defendant, he should receive a refund in the amount of \$1,735.00, The obligation to make any further payments should be terminated pending further Order of the Court. It is uncontroverted that the Defendant owns a mobile home together with improvements to it currently located on the property and that the Defendant lives there and has lived there for an extended time. The Plaintiffs not only desire that he leave their property but also desire that he remove the mobile home with improvements from their land. I find that the Plaintiffs have the right to so require. Because this task may reasonably require more time than the Court allotted for the Defendant to vacate the property, it is appropriate to allow some additional time to remove the mobile home plus improvements. Therefore, I find it reasonable to require that the mobile home plus improvements be removed from the property of the Plaintiffs by the close of business Monday, June 1, 2015 following which, if it remains on their property they shall be permitted to take action have it removed themselves. Now, therefore, it is

ORDERED:

1. That the Defendant shall vacate the premises in question no later than the close of business, April 15, 2015 and further, that should he remain on site after that date, a Writ of Ejectment shall issue from this Court.

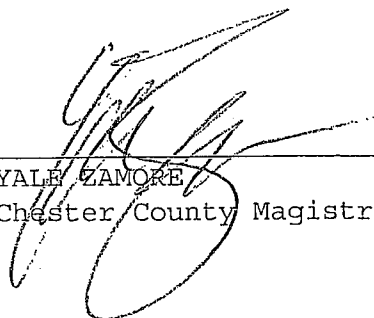
9.3.
#2

2. That the Defendant shall not be obligated to make any further payments to this Court for Bond and that all sums collected from him in excess of \$7,565.00 shall be refunded to him.

3. That the sum of \$7,565.00 already collected as bond from the Defendant as Bond shall be retained by the Court pending further Order of the Court.

4. That the Defendant shall remove his mobile home and improvements thereto no later than the close of business, Monday, June 1, 2015 and, should he fail to comply, the Plaintiffs shall be permitted to have it removed pursuant to the provisions of South Carolina Law for such a purpose and the Defendant shall have no recourse against them for doing so provided that they shall have acted in accordance with South Carolina Law.

AND IT IS SO ORDERED.



YALE ZAMORE
Chester County Magistrate

Great Falls, South Carolina

March 27, 2015

9-3-#13

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Mell Woods, Appellant,

v.

John D. Hinson; Christine Jones; John C. Hinson;
William L. Hinson; Lois Hinson; Robert Breakfield, as
Personal representative of the Estate of Reba P. Hinson;
Elaine H. Hensley; Robert H. Hinson; George Stanford,
as Personal Representative of the Estate; Linda H.
Stanford; William C. Hinson, Jr.; Darrell W. Hinson; and
Mary Roe and John Doe, fictitious names used to
designate all other parties, whose names are unknown,
and any and all other persons claiming any right, title,
estate interest or lien upon the real estate described in the
complaint, Respondents.

Appellate Case No. 2012-212330

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2014-UP-010
Submitted November 1, 2013 – Filed January 8, 2014

AFFIRMED

Mell Woods, of Lancaster, pro se.



B. Michael Brackett, of Moses & Brackett, PC, of
Columbia, for Respondents.

PER CURIAM: Mell Woods appeals the circuit court's order granting summary judgment in favor of Respondents. Woods argues the circuit court erred in: (1) granting summary judgment when issues of material fact remained; (2) denying his right to a jury trial in violation of section 15-67-100 of the South Carolina Code (2005); (3) finding Reba Hinson acquired a life estate under Levie Hinson's will; and (4) finding Reba Hinson, as a life tenant, could not claim adverse possession against the remaindermen to the life estate. We affirm.¹

1. As to issue one and issue three, the circuit court did not err in granting summary judgment because Woods failed to create a genuine issue as to any material fact. *See S. Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012) ("When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."). First, no evidence supports Woods's argument that the circuit court applied an improper standard in granting summary judgment. The circuit court's order does not specifically state the standard it applied in granting summary judgment. The circuit court apparently treated the issues presented as questions of law, which was proper because the interpretation of a will is a question of law to be decided by the court. *See* 96 C.J.S. *Wills* § 901 (2011) ("Generally, the interpretation or construction of a will, or so much thereof as is applicable to the case under consideration, is a question of law for the court and not one of fact for the jury" (footnotes omitted)). Moreover, although Levie Hinson's will was ambiguous, any ambiguity in the will was a patent ambiguity; therefore, the circuit court properly resolved the issue as a matter of law. *Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 526, 709 S.E.2d 85, 95 (Ct. App. 2011) (stating "[a] patent ambiguity is one that arises upon the words of a will, deed, or contract"); 96 C.J.S. *Wills* § 901 ("When a patent ambiguity exists in a will, a court must resolve such ambiguity as a matter of law."); *see also United Nat. Ins. Co.*, 392 S.C. at 526, 709 S.E.2d at 95-96 (recognizing, in the context of an insurance policy, the

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

interpretation of a policy with a patent ambiguity is for the court). Furthermore, Woods's conclusory allegations of title to the property in question are insufficient to withstand summary judgment. *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 389, 701 S.E.2d 776, 779 (Ct. App. 2010) ("As Rule 56(e), SCRPC, states, a party 'may not rest upon the mere allegations or denials of his pleading[s].'" (citation omitted)); *see also Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994) ("A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.").

Additionally, the circuit court properly determined Reba Hinson acquired a life estate under Levie Hinson's will. "The cardinal rule in the construction of any will is to determine the intent of the testator as gleaned from the written instrument itself; technical rules or interpretation are subservient to that principle." *Wise v. Poston*, 281 S.C. 574, 577, 316 S.E.2d 412, 414 (Ct. App. 1984). Here, Levie Hinson's will states: "I will, devise and bequeath unto my beloved wife, [Reba Hinson,] all my real estate, *in fee simple, as long as she lives then to our bodily heirs forever.*" (emphasis added).

[W]hen a gift is made in one clause of a will in clear and unequivocal terms, the quality or quantity of the estate given should not be cut down or qualified by *words of doubtful import* found in a subsequent clause. To have that effect, the subsequent words should be at least as clear in expressing that intention as the words in which the interest is given.

Wates v. Fairfield Forest Prods. Co., 210 S.C. 319, 322, 42 S.E.2d 529, 530 (1947) (emphasis added).

Although Levie Hinson's will uses the term "fee simple," the will also includes words of limitation indicating Reba Hinson is entitled to the property "as long as she lives." The words of limitation are not of doubtful import; rather, they are as clear as the term "fee simple" and demonstrate Levie Hinson's intent to create a life estate. *See Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005) (stating no special language is required to create a life estate, rather courts will look to the intention of the creator of the estate); *Epting v. Mayer*, 283 S.C. 517, 519, 323 S.E.2d 797, 798 (Ct. App. 1984) ("If the intention of the testator is to be given effect, as it must be, courts must be permitted . . . to disregard words of absolute gift and to declare the estate created to be a limited estate where a clear

intention to that effect appears."). Moreover, if we interpreted this will as vesting Reba Hinson with a fee simple interest in the property, it would require us to ignore the provision of the will, which provided for a remainder in the parties' heirs. *See Blackmon*, 366 S.C. at 250, 621 S.E.2d at 44 (stating "a construction which gives meaning to all should be preferred over one which renders some provisions meaningless"). Therefore, because Reba Hinson inherited a life estate under Levie Hinson's will, any interest Woods acquired in the property from Reba Hinson extinguished when Reba Hinson died because "a life tenant can convey no more than his life estate." *Poston*, 281 S.C. at 579, 316 S.E.2d at 415. Accordingly, the circuit court did not err in granting summary judgment because Woods failed to show any genuine issue of material fact.

2. As to whether the circuit court violated section 15-67-100 in denying Woods a jury trial, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised and ruled upon by the [circuit court]."); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e)[,SCRCP,] to present to the court an issue the party could have raised prior to judgment but did not.").

3. As to whether the circuit court erred in finding Reba Hinson, as a life tenant, could not claim adverse possession against the remaindermen to the life estate, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009) ("The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time."); *id.* at 15, 681 S.E.2d at 14 ("A person claiming adverse possession must have personally held the property for ten years, and tacking is *allowed only* between ancestor and heir." (emphasis added)); *Phipps v. Hardwick*, 273 S.C. 17, 25, 253 S.E.2d 506, 510 (1979) ("[A]dverse possession . . . cannot run against remaindermen until the death of the life tenant.").

AFFIRMED.

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

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

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

Order Affirming Magistrate's Court
Final Order and Judgment

Applicant, Respondent on Appeal,

v.

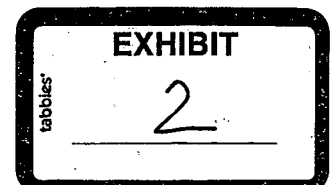
Mell Woods,

Appellant-Trespasser.

CLERK OF COURT
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FILED

This is an appeal from Magistrate's Court in a summary trespasser ejectment proceeding. The appeal was heard on June 1, 2016. Present were the Appellant, appearing pro se, and Respondent Robert Breakfield in his capacity as attorney-in-fact, and his attorney Mike Brackett. It was determined in case no. 2015-CP-12-0368, a related case, that the Magistrate's Court's Return for this appeal satisfied the requirements of the common law and applicable statutes.

The first matter considered was the Appellant's letter to the undersigned, dated May 28, 2016 and received May 31, 2016, calling attention to the fact that Appellant had been a client of the law firm where I worked before I became a circuit court judge, generally the period 2000 to 2005. However, Appellant admitted that he never saw me at the firm and that I had not personally represented him or provided legal advice to him. Appellant expressed on the record that his letter



was not a formal motion for recusal. The court is unsure how the situation described by Appellant would be a problem with respect to Appellant. If anyone might be concerned about the presiding judge having been in a law firm that in the past represented the Appellant, it would be the Respondent. The Respondent had no objection to going forward with the appeal hearing.

Davis v. Parkview Apartments, 762 S.E.2d 535 (S.C. 2014) addresses this issue.

Pursuant to Canon 3(E)(1) of the Judicial Code of Conduct, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..." Canon 3(E)(1), Rule 501, SCACR. The judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge "knows" that he or a member of his family (spouse, parent, or child) has more than a de minimus economic interest in the litigation and the litigation will "substantially affect[]" that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a de minimus interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. Canon 3(E)(1)(a)-(d). (emphasis added.)

Appellate courts "accord great weight to the trial judge's assurance of his own impartiality." Id. It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality. Lyvers v. Lyvers, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct.App.1984) (citation omitted).

I have not met and do not know the Appellant. I have never worked on this case, and based on Appellant's showing, my former law firm did not work on this case at the time I worked there ten years ago. Appellant offered no evidence at the appeal hearing of the existence of judicial prejudice or bias or that I have personal knowledge of evidentiary facts in dispute. Further, Appellant's letter indicated that his communication with my former law firm included asking

A handwritten signature in black ink, appearing to be "J. Z." or similar, located at the bottom right of the page.

questions about the Hinson family and what was going to happen if Mrs. Reba Hinson died. Those questions and/or issues were answered with finality by the South Carolina Court of Appeals, primarily in unpublished opinion no. 2014-UP-010 filed January 8, 2014, approximately 10 months before the trespass case herein was commenced. The appeal herein cannot affect the outcome of Appellant's prior cases and appeals. Accordingly, if Appellant's letter is merely a suggestion for recusal, for the reasons stated I decline the suggestion. Further, if Appellant's letter is deemed to be a formal motion for recusal, which Appellant expressly said is not the case, the motion is nevertheless denied.

Although Appellant filed a motion for continuance of the appeal hearing, the motion was waived when Appellant represented to the court that he was ready to proceed with the hearing and actually participated in the hearing without objection and without the court having acted on the motion. 17 C.J.S. Continuances § 14 (1999). Well into the appeal arguments, Appellant first raised his motion for continuance and asked if the continuance would be granted. It was then too late; the hearing was underway, the motion had been waived, and the Court formally denied the motion. The appeal arguments continued.

From the record, the following history is noted: following a hearing on January 30, 2015, the Chester County Magistrate's Court issued an Order dated and filed March 27, 2015, finding Appellant to be a trespasser and announcing the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Appellant from the subject premises. On April 15, 2015, Appellant herein, pro se, filed and served a Notice of Appeal to the circuit court (assigned the above-captioned case number). On April 24, 2015, Appellant, pro se, served a Rule 59(e), SCRPC, motion for

A handwritten signature or set of initials, possibly "JP 3", written in dark ink.

reconsideration¹ with respect to the March 27, 2015 Final Order and Judgment. Pursuant to Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014) the appeal was dismissed without prejudice by Order dated May 1, 2015. Appellant then appealed the May 1, 2015 Order to the Court of Appeals. By Order dated June 25, 2015, the Court of Appeals dismissed Appellant's appeal because the order being appealed was not a final order. Appellant then filed a Petition for Rehearing. It was also denied. Appellant petitioned the South Carolina Supreme Court for a Writ of Certiorari. It was denied. While the appeal was pending, the Magistrate Court issued an Order denying Appellant's motion(s) for reconsideration.

What is Now Before the Court

1. The Magistrate's Court's March 27, 2015 Final Order and Judgment was appealed by Appellant's Notice of Appeal / Grounds of Appeal dated and served April 15, 2015.
2. On May 14, 2015 Appellant served an Amended Notice of Appeal setting out another nine grounds for appeal.
3. Additionally, while Appellant's appeal from the May 1, 2015 Order was being decided by the Court of Appeals and Supreme Court, the Magistrate's Court issued an Order dated July 15, 2015 denying Appellant's motion(s) for reconsideration. This was permitted because the pending appeal to the Circuit Court and to the Court of Appeals did not deprive the Magistrate's Court of jurisdiction to consider and rule upon the motion for reconsideration. See Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 119 (2d ed.2002), citing Hudson v. Hudson, 349 S.E.2d 341 (S.C. 1986). Appellant filed and served his "Restated Notice

¹ Appellant actually filed and served four separate motions for reconsideration containing a total of 13 grounds or matters Appellant wanted reconsidered.

of Appeal” dated August 11, 2015, thereby consolidating his first appeal from the Magistrate’s Court’s March 27, 2015 Order and his appeal from the July 15, 2015 Order.

4. On or about August 4, 2015, Appellant filed and served, in the magistrate’s court trespass case that is the subject of this appeal, an “Application for Change of Venue, and Two Days Notice to Adverse Party” and a Rule 12(b)(8) Motion to Dismiss. The application for change of venue was made pursuant to S.C. Code Ann. § 22-3-920 on the ground that Magistrate Judge Zamore was biased against him. By Order dated August 24, 2015, Appellant’s motions were denied by the Magistrate’s Court.

5. Appellant filed and served a Notice of Appeal on September 2, 2015, appealing from the Magistrate’s Court’s August 24, 2015 Order that denied Appellant’s Rule 12(b)(8) motion and the motion for change of venue. The September 2, 2015 Notice of Appeal incorporates the original five grounds of appeal set out in Appellant’s April 15, 2015 Notice of Appeal and purports to add two additional grounds related to the August 24, 2015 Order, specifically that it was error to deny Appellant’s Rule 12(b)(8) motion and to deny Appellant’s motion for change of venue. Appellant thereafter, on September 23, 2015, filed an Amended Notice of Appeal, amending the September 2, 2015 Notice of Appeal, to also appeal the August 24, 2015 Order on the grounds that it was error to strike the Appellant’s Rule 12(b)(8) motion and to strike Appellant’s motion for change of venue.

6. By Order dated February 10, 2016, the South Carolina Supreme Court denied Appellant’s Petition for Writ of Certiorari. The Remittitur was issued February 22, 2016.

7. On or about February 29, 2016, Appellant filed and served his “Refiling of Appeal” in which he “restates, republishes, and incorporates by reference all of the grounds for appeal stated each [sic] of the notices of appeal from the magistrate court.”



Accordingly, there are six Notices of Appeal filed subsequent to the March 27, 2015 Final Order and Judgment:

- April 15, 2015 Notice of Appeal/Grounds for Appeal to Circuit Court - this Notice includes five grounds for the appeal;
- May 14, 2015 Amended Notice of Appeal purporting to add nine new grounds for appeal to the April 15, 2015 Notice of Appeal;
- August 11, 2015 Restated Notice of Appeal - this Restated Notice of Appeal relates to the Order denying Appellant's Rule 59(e) Motion for Reconsideration, but it does not include any new grounds for the appeal in addition to those stated in the April 15, 2015 Notice of Appeal;
- September 2, 2015 Notice of Appeal and Grounds for Appeal - this appeal is from the Magistrate's Court's August 24, 2015 Order that denied Appellant's Rule 12(b)(8) motion and motion for change of venue. The one ground for the appeal is that "the one-time change of venue allowed by SC § 22-3-920 is not discretionary with a magistrate court, especially in view of the discovery of another action pending between the same parties concerning the same subject matter, Rule 12 (b)(8), SCRCP."
- September 23, 2015 Amended Notice of Appeal assigning error the magistrate's court's striking of the two motions.
- February 29, 2016 "Refiling of Appeal" - this "restates, republishes, and incorporates by reference all of the grounds for appeal stated each [sic] of the notices of appeal from the magistrate court."

Consequently, there are 18 grounds of appeal alleged by Appellant stemming from the Magistrate's Court's orders in the above-captioned trespass case: five (5) are set out in the April 15, 2015 Notice of Appeal and Grounds for Appeal, nine (9) are set out in the May 14, 2015 Amended Notice of Appeal, two are set out in the September 2, 2015 Notice of Appeal and Grounds for Appeal, and two are set out in the September 23, 2015 Amended Notice of Appeal. The issues on appeal are:

1. The case involves title to land and pursuant to S. C. Code Ann. § 22-3-20(2) the Magistrate's Court did not have subject matter jurisdiction to entertain the action.
2. The trespass case involved a defense of questionable title and that upon posting bond, the trespass case should have been discontinued until the matter of title was resolved, citing § 22-3-1110, 1120, and 1130.
3. Appellant assigns error because he was not allowed to cross examine Robert Breakfield at the trespass hearing.
4. Another issue on appeal raising "reasons that these proceedings involve land." It is merely another statement of the Appellant's assertion that the trespass case involved title to land, in particular because Appellant was arguing that Reba Hinson owned the fee simple estate in the land, and not only a life estate, or alternatively, that even if Reba Hinson owned only a life estate, the remaindermen to the life estate could nevertheless be compelled to deliver a deed to Appellant if he paid the purchase price. "Defendant [Appellant] assigns error on the fact that the magistrate failed to rule that these proceedings involve title to land."
5. The Magistrates' Court erred in failing to dismiss this action pursuant to S.C. Code Ann. § 15-67-20, on the ground that Respondents are limited to only one action to recover the subject property.

6. The summary trespass hearing was held without a jury.
7. Another claim of error on the Magistrate's Court's not having dismissed the trespass ejectment case pursuant to § 15-67-20.
8. The Magistrate's Court erred in its conclusion that Appellant is a trespasser within the terms of § 15-67-610.
9. Appellant complains about having been asked by the Court to execute an accounting for the monies Appellant paid into court pursuant to the Court's June 2011 Order.
10. Appellant charges error based on the fact that the Magistrate Court is retaining money paid into the Court by Appellant since June 2011.
11. Appellant again assigns error on the Magistrate's Court's failure to comply with § 22-3-20, 22-3-1110, 22-3-1120 and 22-3-1130, by discontinuing the trespass case until his "questionable title" claim is resolved.
12. Appellant charges error on the Magistrate's Court's proceeding to the January 30, 2015 hearing after the Appellant had served a Notice of Appeal.
13. Appellant assigns error on the Magistrate's Court's inclusion in the Final Order and Judgment language that if the Appellant does not remove the structure on the land by the deadline set by the court, the Respondents, as the owners of the land, may remove the structure and Appellant shall have no recourse against Respondents so long as Respondents act in accordance with the law.
14. Appellant complains that the Magistrate's Court failed to consider the case of Eller v. Motley, 82 S.E.992 (S.C. 1914) and that the cited case requires that the court order the remaindermen to Reba Hinson's life estate to give a deed to Appellant.



15, 16, 17 and 18. Appellant assigns error on the failure of the Magistrate's Court to grant Appellant's Motion for Change of Venue, and related Rule 12(b)(8) motion to dismiss, and for ordering that the two motions be stricken.

Scope of Review

Appellate review by the circuit court of an appeal from magistrate's court encompasses all the papers in the case including testimony in the lower court. The circuit court may affirm or reverse the judgment of the magistrate's court in whole or in part for errors of law or fact. See generally Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 26-27 (2d ed.2002). In this case, Respondent filed and served a full Respondent's Brief. Appellant did not file and serve a brief, although he filed at the hearing a memorandum of law on his issue on appeal no. 5, having to do with the operation of S.C. Code Ann. § 15-67-20. Appellant's presentation was almost exclusively oral.

Rulings on Issues on Appeal

Appellant continues to claim, assert and allege that he holds some form of title or interest in the real property at issue, the property being occupied by Appellant as a trespasser as found by the Magistrate's Court, by virtue of an agreement between Appellant and Reba Hinson. That subject has already been decided adversely to Appellant by the Court of Appeals in its unpublished opinion no. 2014-UP-010. Whatever interest, if any, Appellant may have received from Reba Hinson terminated upon her death in 2007 because Reba Hinson owned only a life estate. The Magistrate's Court was correct in so finding. Consequently, issues on appeal nos. 1, 2, 4 and 11, in which Appellant claims that the trespass case involved a defense of questionable or paramount title are

without merit. This is not a case that attacks Appellant's title because it was judicially determined prior to the trespass proceeding that Appellant has no title.

With respect to issue on appeal no. 3, Appellant complains the he was not allowed to cross examine Mr. Breakfield at the trespass proceeding. The record reveals that Respondent (Breakfield) was required to make a prima facie showing of ownership of the property and that Appellant (Woods) was in possession without consent or permission. Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905). Respondent put into evidence the paper record of the past legal proceedings between the parties, including the case brought by Appellant in which he alleged and argued that he had a claim to title acquired from Reba Hinson who had acquired her title from her late husband's last will, a case that resulted in summary judgment in favor of Respondent's principals (2014-UP-010). Breakfield testified about the undivided interests held by his principals and that the Appellant did not have permission of any of the tenants in common to be on the subject property. Appellant asked "do I get to examine witnesses?" The court responded "this is a summary proceeding, you can not go through formal examinations." Appellant: "All right, well I mean he just had Mr. Breakfield testifying." The Court: "Well you're going to testify and you're not going to be questioned by anyone but me."

Respondent proceeded to testify/explain his case. During his case, Appellant again asked about being allowed to examine Breakfield.. The Court again would not allow that and would not allow Respondent's attorney to examine Appellant. Appellant represented to the court that Breakfield "has information that will be helpful to the court to decide." The Court asked what information Breakfield had that would be helpful to the court [in the pending case], thereby inviting a proffer of the evidence. Appellant answered "about that court order that they're basically - - -." The court immediately stated that the back story of the probate court order that determined which

last will would be admitted to probate in the Reba Hinson estate was not relevant. Those matters related to the administration of the Reba Hinson probate estate had already been decided adversely to the Appellant by the South Carolina Court of Appeals in unpublished opinion no. 2013-UP-0256.

This issue is not preserved for appellate review because a sufficient proffer was not made by Appellant. Rule 103(b), SCRE, provides that

- (a) **Effect of Erroneous Ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
- (1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
- (2) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

To preserve the issue for appeal when a trial court excludes evidence, the party seeking its admission must show both error and prejudice. An appellate court need not address an issue regarding the exclusion of evidence where the proponent failed to make a proffer of the evidence that the witness would have given had he been allowed to testify. Greenville Memorial Auditorium v. Martin, 391 S.E.2d 546 (S.C. 1990); Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc., 450 S.E.2d 41 (S.C. 1994). The proffer must establish the relevance of the excluded evidence. State v. Hall, 439 S.E.2d 278 (S.C. 1994). The purpose of a proffer is to adequately develop the record in order to allow the appellate court a chance to determine whether the appellant was prejudiced by the trial court's refusal to admit the evidence. Love v. Gamble, 448 S.E.2d 876 (S.C.App. 1994). A proffer that is confusing or incomplete will not provide grounds for the appellate court to find prejudice. When considering whether a proffer is sufficient to demonstrate error and prejudice "whatever doesn't make any difference, doesn't matter." Miles v. Miles, 397 S.E.2d 790 (S.C.App. 1990). Here, the Appellant made no effective proffer and cannot show error/relevance or prejudice, thereby

not preserving the issue for appeal.

With respect to issue on appeal no. 6, Appellant claims error in being denied a jury trial. The Magistrate's Court addressed this issue in its March 27, 2015 Final Order and Judgment. The purpose of S. C. Code Ann. § 15-67-610 is to give the real owner of land an "expeditious method of ejecting trespassers." Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905). A jury trial is not provided for in proceedings under § 15-67-610 precisely because it is a proceeding for an expeditious "summary ejectment." See the heading for Title 15, Chapter 67, Article 7; Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905); Lynch v. Ball, 79 S.C. 243, 60 S.E. 691 (1908); Cotton v. Johnson, 71 S.C. 413, 51 S.E. 245 (1905). Neither § 15-67-610 nor § 15-67-620 mentions a right to a jury trial.² Additionally, § 15-67-620 provides that the Respondent (the person who is sought to be ejected from the premises) must appear before the magistrate and satisfy "him" [the magistrate], not a jury, of the bona fides of Respondent's possession.

The procedures to be utilized at a summary trespasser ejectment hearing are:

- The Plaintiff/Applicant "must bring himself within the statute by at least making before the magistrate prima facie showing that he is the owner of the premises and that defendant is a trespasser." Richland Drug Co. v. Moorman, *supra*. Plaintiff must make such proof as should satisfy **the magistrate** that the case is one falling within the statute. *Id*.
- Once the plaintiff has made his showing of ownership and that the defendant is in possession without consent, the defendant, to avoid summary ejectment, must do two things: (a) satisfy **the magistrate** that Defendant "has a bona fide color of claim to the possession of such

² In Appellant's separate action for trespass to try title/quiet title (see South Carolina Court of Appeals unpublished opinion no. 2014-UP-010), he would have been entitled to a jury trial on the issue of his claim to paramount title had the action not been decided adversely to him on summary judgment. Therefore, he has not been denied the right to a jury trial on the issue of title.

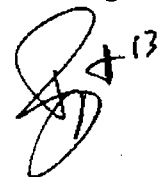
premises" and (b) "enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate." S.C. Code Ann. § 15-67-620.

- If the Respondent satisfies **the magistrate** that Respondent has a colorable claim of rightful possession, the summary proceeding should be dismissed, and the Plaintiff is left to the ordinary remedy for recovery of possession of the land. Richland Drug Co. v. Moorman, supra. (emphasis added.)

The Magistrate's Court was right that the law does not provide for jury trials in summary proceedings for ejectment of trespassers.

In his issue on appeal no 8, appellant claims that he does not fit the definition of a trespasser as that term is used in § 15-67-610. Appellant argues that the statute applies only to "squatters" and not to someone, like him, who purports to have a document giving him the right to possess the property. Appellant's "document" was rendered ineffective to give him any claim to possession or ownership by the Court of Appeals as explained above. An adult trespasser is a person whose presence is neither invited nor suffered. Estate of Adair v. L-J, Inc., 641 S.E.2d 63 (S.C. App. 2007). Trespass is defined as "any intentional invasion of the plaintiff's interest in the exclusive possession of his property." Hedgepath v. Am. Tel. & Tel. Co., 559 S.E.2d 327, 337 (S.C. App. 2001). The magistrate rightly found Appellant to be a trespasser.

Issues on appeal 9 and 10 relate to the Magistrate's Court's requirement that Appellant sign an accounting to confirm his payment and the court's retention of monies being paid for rent /bond. This issue is not preserved for review because the Appellant does not claim that the accounting was inaccurate in any way. His only complaint is that the Magistrate Court was pushy in insisting that it be signed. In June, 2011, in an order on preliminary matters in the tenant eviction proceeding, Appellant was ordered to pay a fair rent into the court pending the outcome of the proceeding, to also



be held as bond. If Appellant did not prevail in his defense, the money would be paid over to the Respondents, as owners of the property, for Appellant's occupancy of property he does not own. Appellant has continued to make the ordered payments, and the magistrate court continues to receive and hold the funds. Based on the March 27, 2015 Final Order and Judgment, the funds being paid into and retained by the magistrate court will be paid over to Respondents when Appellant's appeal is concluded. At the appeal hearing, Magistrate Zamore delivered to the circuit court the funds that had theretofore been paid into the magistrate's court. Respondent moved that the funds be held by the circuit court clerk of court pending future order of the court. Appellant did not object. Accordingly, there is no error with regard to the accounting or the holding of the money by the court that requires a reversal of the Final Order and Judgment.

Issue on appeal no. 12 asserts error on proceeding with the summary trespass hearing notwithstanding that a notice of appeal had been filed previously. Appellant's argument is that once he learned that the Magistrate's Court would hold a non-jury summary ejectment proceeding, he filed a Notice of Appeal on January 21, 2015 that should have stopped the summary ejectment proceeding.

At that time, there had been no hearing in the trespass matter, and no order or judgment had been issued from which to appeal. Appellant's stated ground of appeal was that in his Answer he demanded a jury trial in this proceeding, and in the Magistrate Summons the Court indicated that the proceeding will be a "bench trial." Appellant argued that the Magistrate Summons was an Order denying him a mode to trial to which he has a right, thereby making the "order" immediately appealable. Appellant misreads the law.

First, the Summons is not a final judgment or order. Additionally, if the Summons operates as an order in this instance, it is not the type of order that is immediately appealable. "An order denying a jury trial is not immediately appealable unless it deprives the party of a mode of trial to

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which he is entitled as a matter of right.” Jean Hoefer Toal, Shahin Vafai & Robert A Muckenfuss, Appellate Practice in South Carolina 95 (2d ed.2002), (emphasis added.)

Appellant was not entitled to jury trial herein as a matter of right for two reasons: (1) as addressed hereinabove, the governing statute, § 15-67-610, does not provide for a jury trial in this proceeding. This is a proceeding for an expeditious “summary ejectment.” See the heading for Title 15, Chapter 67, Article 7; Richland Drug Co. v. Moorman, *supra.*; Lynch v. Ball, *supra.*; Cotton v. Johnson, 71 S.C. 413, 51 S.E. 245 (1905). Neither § 15-67-610 nor § 15-67-620 mentions a right to a jury trial.³ Additionally, § 15-67-620 provides that the Appellant, as the person who is sought to be ejected from the premises, must appear before the magistrate and satisfy “him” [the magistrate], not a jury, of the bona fides of Appellant’s possession.

(2) Appellant argued in his notice of appeal that the subject before the magistrate court in this proceeding is the “issue of paramount title” to the land in question, and that the nature of the “issue” entitles him to a jury trial. As addressed hereinabove, Appellant had already litigated his claim to title to the land at issue and had lost that battle. What was before the Magistrate’s Court in January, 2015 was the issue of Appellant’s right, if any, to possession of the land separate and apart from his already failed claim to title.

When an order is not immediately appealable, the service and filing of a notice of appeal does not transfer jurisdiction to the appellate court, nor does it stay further proceedings in the lower court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 149. (2d ed.2002). The Magistrate Court continued to have jurisdiction over this matter notwithstanding

³ As addressed above, in Appellant’s separate action for trespass to try title, he would have been entitled to a jury trial on the issue of his claim to paramount title had the action not been decided adversely to him on summary judgment. Therefore, he has not been denied the right to a jury trial.

Appellant's erroneous notice of appeal. The Magistrate's Court did not err in proceeding with the hearing.

In his issue on appeal 13, Appellant complains that the Magistrate's Court's Judgment Order provides that he may have no recourse against the Respondent's principals for the removal of the Appellant's structure. This is brought about by the unusual situation of the Respondents' owning the land, with the Appellant owning the mobile home, and additions built onto the mobile home. Respondents have consistently acknowledged that Appellant is entitled to take his mobile home and improvements, but he must do so within a reasonable time. The content of the Order on this subject is not objectionable because it merely states the obvious. Respondent may not claim damages for Respondents' ultimate removal of the structure, if such becomes necessary, and if Respondents do what the law requires.

In his issue on appeal no. 14, Appellant complains that the Magistrate's Court failed to consider the case of Eller v. Motley, 82 S.E.992 (S.C. 1914) and that the cited case requires that the court order the remaindermen to Reba Hinson's life estate to give a deed to Appellant. Appellant interprets the Eller opinion to say that if a vendee (Appellant) enters into an installment land sale agreement with a vendor who holds only a life estate (Reba Hinson), and if payments are made to the vendor prior to her death, and if the vendor dies before the contract is fully performed then the vendee has the right to finish out the sales contract by paying to the remaindermen whatever is owed on the sales contract and the remaindermen can be ordered in specific performance to give the vendee a deed. That is not the law, and that is not what Eller says. The portion of the case quoted in Appellant's issue on appeal 14 addresses the question of a vendor who has fee simple title who dies before the full purchase price under the sales contract is paid. It confirms that the "heirs at law of the vendor" (not remaindermen to a life estate) can be compelled to carry out the contract that the

16

vendee had with the deceased vendor. It has been established, as addressed above, that Appellant has had no title or interest in the real property since Reba Hinson's death.

Issues on appeal 15, 16, 17 and 18. Appellant assigns error on the failure of the Magistrate's Court to grant Appellant's Motion for Change of Venue, and related Rule 12(b)(8) motion to dismiss, and for ordering that the two motions be stricken. On their face, the motions are without merit. A Rule 12(b)(8), SCRCF motion to dismiss (another action is pending between the same parties for the same claim) is waived if not included in a pre-answer motion or in a responsive pleading. Appellant did not include the objection in a responsive pleading or in a pre-responsive pleading motion. The motion was made not only after trial, and after entry of a final order and judgment but also after an appeal had been taken. It was untimely and waived.

The motion to change venue was made pursuant to S.C. Code Ann. § 22-3-920. Just as with the motion to dismiss, this motion is wholly without merit. The statute reads:

Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days' notice that he intends to apply for a change of venue or (b) the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate's district in the same county. One such transfer only shall be allowed each party in any case.

The motion was made too late and was supported by an affidavit that was based on Appellant's complaint that Judge Zamore was not giving credence to Appellant's claim of ownership to the subject property. The statute obviously envisions that the motion be made before trial because it must be based on the good faith belief that he cannot get a fair trial. The trial had taken place, and the case had been appealed before the motion to change venue was made. See the S. C. Courts

website, Trial Courts, Magistrate's Courts, Summary Court Judges Benchbook , Section D.1

(Change of Venue), which reads:

S.C. Code Ann. § 22-3-920 provides that either party in a civil case, or the prosecutor or the accused in a criminal case, may apply for a change of venue. In civil cases, the party seeking the change of venue must give the adverse party at least two (2) days notice of his/her intent to seek a change of venue prior to applying for such, unless the affidavit shows that the necessary facts were not discovered until it was too late to give such notice. In criminal cases the request for a change of venue should be made prior to trial, unless in view of all the circumstances the person requesting the change did not have a reasonable opportunity to make such a request previously. Op. Att'y Gen. No. 1733, dated 1963-64.

In either a civil or criminal case, the person requesting the change of venue must file with the magistrate an affidavit stating that the individual does not believe he/she can receive a fair trial. The affidavit must also state the grounds supporting the belief of the requesting party. If the affidavit sets forth grounds for a belief that the party cannot obtain a fair trial, then the grant of a change of venue is mandatory. (emphasis added).

Based on the forward-looking language of the statute, a tardy motion for change of venue cannot be made after trial as a substitute for an appeal.

Issues on appeal nos. 5 and 7 each assert error to the Magistrate's Court in not dismissing the trespass case pursuant to § 15-67-20. Section 15-67-20 reads: "The plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to one action for recovery."

The record shows that in 2010 a property management company on behalf of the Reba Hinson remaindermen and who were then the owners of the real property at issue brought an action in Magistrate's Court to have Mr. Woods, then alleged to be a tenant, removed from the property.

The Magistrate entered an Order dated June 14, 2010 that read:

Dismissed Without Prejudice on June 14, 2010. There was no clear ownership of the property or clear right to collect or receive rent. Reba Hinson had a life estate in the property, which, on her death, was inherited by her children or their heirs. As to the Counterclaim filed by the defendant, there is no Counterclaim in an

Eviction and the \$160,000 is over the jurisdiction of this Court. Therefore: the Order and Rule to Show Cause, the Application for Ejectment and the Counterclaim are **Dismissed without Prejudice.** (Emphasis added.)

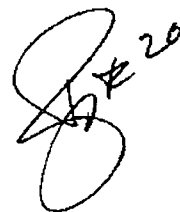
In March, 2011, Breakfield, as attorney-in-fact for the Reba Hinson remaindermen, commenced an action in the magistrate's court to have Mr. Woods, alleged to be a hold-over tenant, removed from the property. As initially filed, it was also a tenant eviction proceeding. The Magistrate's Court's Order on Motions, deciding various pre-trial matters, was issued on June 2, 2011. Appellant appealed that Order to the Circuit Court, and to the Court of Appeals, eventually resulting in unpublished opinion no. 2014-UP-076 filed February 26, 2014. Appellant's petition for certiorari to the Supreme Court was dismissed by Order dated June 27, 2014. Appellant's Motion to Reinstate Appeal was denied by Order dated September 24, 2014.

On June 22, 2011, Appellant herein filed an action in the Circuit Court against the Reba Hinson remaindermen alleging that Appellant had acquired fee simple title to the real property at issue from Reba Hinson who, in turn, had received fee simple title from her late husband by and through his last will. Appellant labeled his action as trespass to try title. Respondent labeled it an action to quiet title or to construe the last will of Levie Hinson. The Circuit Court granted summary judgment in favor of the Reba Hinson remaindermen. Appellant appealed the summary judgment Order, which was eventually affirmed by the Court of Appeals in its unpublished opinion no. 2014-UP-010. More time passed while Appellant unsuccessfully petitioned the Supreme Court for a writ of certiorari. Consequently, by his own legal action, Appellant established that he held no title or interest in the property and that he was therefore a trespasser.

In November, 2014, on the basis of unpublished opinion no. 2014-UP-010, Breakfield, as attorney-in-fact for the Reba Hinson remaindermen, commenced a summary ejectment of trespasser

proceeding based on Appellant's claim of being an owner and not a tenant. At the first merits hearing held in Magistrate's Court, the Respondent elected to proceed with the summary trespass remedy in lieu of the tenant eviction remedy because of Appellant's claims of ownership and the fact that the issue of his alleged ownership had by then been judicially decided adversely to him in unpublished opinion no. 2014-UP-010. This was effectively an amendment of the pleadings to allege alternate causes of action, one for trespass if Appellant claimed title and one for eviction of tenant if Appellant claimed to be a tenant. Although the Magistrate Court assigned another case no. to the trespass action, it was in effect the addition of a new and alternate cause of action allowing the decision to pursue one and not the other at the hearing. This was consistent with the rules governing magistrate court proceedings: the rules are to be construed to secure the just, speedy and inexpensive determination of every civil case, Rule 1, South Carolina Rules of Magistrates Court; the court shall be lenient in the allowance of changes or amendments to pleadings, Rule 14, South Carolina Rules of Magistrates Court; trials are to be conducted in an informal manner, Rule 13, South Carolina Rules of Magistrates Court. In magistrate's court, substantial justice cannot be sacrificed on the alter of technical procedure. As of November, 2014, Respondent's principals (the Hinson remaindermen) had not received an adjudication from a court with respect to requiring Appellant to vacate the property.

On January 30, 2015 the Magistrate's Court held the trespass hearing that is the subject of this appeal; Respondent Breakfield elected to proceed on the trespass case and not on the eviction of tenant case. The resulting Final Order and Judgment dated March 27, 2015 (the order being appealed herein) was the first dispositive order or judgment in any proceeding for the recovery of the subject real property.

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Appellant argues that this history runs afoul of S.C. Code Ann. § 15-67-20 in that Respondent (and his principals) have commenced more than one action to recover the property and that the Magistrate's Court erred in not dismissing the trespass case. Relying on Carr v. Mouzon, 76 S.E. 201 (S.C. 1912), Appellant argues that the Hinson remaindermen's actions to evict Appellant as a tenant, and/or to eject Appellant as a trespasser, were all actions for recovery of the land at issue and that the § 15-67-20 limitation of one action to recover the property or its possession applies without regard to the disposition of the prior actions. According to Appellant, when the first tenant eviction case resulted in an order of dismissal without prejudice, Respondent's principals were then foreclosed from any other action to establish their ownership and to recover the property. And, when Respondent elected to pursue the summary trespass remedy and to forgo the tenant eviction remedy, that was an additional action in violation of § 15-67-20. The Court disagrees.

The statute in Carr,⁴ a predecessor version to § 15-67-20, expressly provided that a second action was permitted within two years of the verdict, judgment, non-suit or discontinuance in the first action. Appellant argues that according to Carr a nonsuit or discontinuance for any reason counts as an action to recover real property for the purpose of applying the limitation in § 15-67-20. However, the statute construed in Carr is not the statute now in effect. Section 15-67-20 no longer permits more than one action and no longer contains the non-suit and discontinuance provision found in earlier versions of the statute. Obviously, the non-suit and discontinuance provision operated only in the two-action exception to res judicata found in earlier versions of § 15-67-20.

Appellant cites Stewart-Jones Co. v. Hankins, 152 S.E. 430 (S.C. 1930) in which three eviction actions against the Defendant, and the failure to pay costs of the first action, required a dismissal of the third action. However, Stewart-Jones is factually distinguishable from the case now

⁴ Subdivision 2 of section 98 of the Code of Procedure.

before the court in significant respects. It was decided on the content of Section 317, Code of Civil Procedure (1922), now amended and codified as S.C. Code Ann. § 15-67-20. Section 317 then provided:

"The plaintiff in all actions for recovery of real property, or the recovery of the possession thereof, is hereby limited to two actions for the same, and no more: Provided, that the costs of the first action be first paid, and the second action be brought within two years from the rendition of the verdict or judgment in the first action, or from the granting of a non-suit or discontinuance therein."

The opinion in Stewart-Jones rested on the defense that the action on appeal "was commenced by the plaintiff without the payment of the costs in the said former action, which was a condition precedent to its right to bring this action." Id. at 437. The expressly stated basis for the opinion (the payment of costs in the former action) was removed from the statute in 1988, now § 15-67-20, when the provision for a second action subject to the payment of costs in the former action was removed from the statute.

Further distinguishing the opinion is the fact that the Defendant in Stewart-Jones had a deed to the property, as did the Plaintiff, and that each persistently claimed title. Herein, by the time the tenant eviction case had become a trespass case, it had been definitively established by the Court of Appeals, confirmed by denial of certiorari by the Supreme Court, that Appellant never had a deed and has no valid, enforceable claim to title whether by adverse possession or by acquisition from Reba Hinson. Nevertheless, Appellant argues that he is entitled to a deed or a declaration of title notwithstanding that the courts have determined that he has not held title in any possible form since Reba Hinson's death in 2006. That would be a truly unconscionable result.

The underlying policies of the 1922 statute and the post-1988 revised statute guide the court in determining the operation of § 15-67-20 in this case. There are no reported cases addressing the application of the post-1988 §15-67-20. The pre-1988 two-action limitation was considered in Ladd

v. DuPre, 147 S.E.2d 253 (S.C. 1966). In that case P1 brought an action against D1 for possession of land. It resulted in a final judgment awarding possession and damages to P1. D1 then instituted an action against P1 to regain possession of the land, arguing that S.C. Code Ann. § 10-2402 (1962) permitted a second action to determine possession. P1, who was the plaintiff in the first action and the defendant in the second action, pled res judicata and argued that the final judgment in the first action was a bar to the second action. The circuit court dismissed the complaint in the second action claiming that res judicata operated as a bar to the second action. The Supreme Court construed the statute thus: "The statute must be construed in the light of the common law rule, recognized in this State, which permitted a plaintiff to bring any number of actions for the recovery of the same real property." Citing Carr v. Mouzon, 76 S.E. 201 (S.C. 1912) the court in Ladd continued: "the courts refused to apply the general principles of res judicata to such actions . . . because title and right to possession of real property was regarded with special favor, and it was thought that such important rights should not be finally determined by one action." It follows that the two-action limitation was enacted to preserve the exception to res judicata but to limit the right of a person to two actions for the recovery of real estate and also to protect "a person in possession of, and claiming title to, real estate." (Emphasis added.) Such person has a right to be "relieved of continued attacks on his title." (Emphasis added.) The pre-1988 statute was construed to mean that "a party out of possession, who loses his first action, shall have a second action, but was never intended to modify the doctrine of res judicata otherwise." (Emphasis added). The policy of the former statute gleaned from the language of the Ladd v. DuPre opinion negates Appellant's arguments herein. In the eviction/ejectment proceeding Appellant was not legitimately claiming title to the land, and Respondent was not attacking Appellant's title, because the Court of Appeals had already decided the question of title. And, the Hinson remaindermen did not "lose" the first action because it did

not proceed to a ruling or judgment. Dismissal of a case "without prejudice" means a plaintiff may reassert the complaint by curing defects that led to the dismissal, in contrast to a dismissal of a complaint "with prejudice" which is intended to bar relitigation of the same claim. Spence v. Spence, 628 S.E.2d 869 (S.C. 2006).

The change in policy effectuated by the 1988 amendment of the statute appears to be that by amending the statute to allow only one action, the common law res judicata doctrine is now codified with respect to actions to recover real property. Under modern law and procedure real property disputes are no longer viewed as needing a special exception to res judicata. For the common law res judicata doctrine, and/or its equivalent statutory limitation in § 15-67-20 to apply, Appellant must show that (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication (final judgment) of the issue by a court of competent jurisdiction. Catawba Indian Nation v. State, 756 S.E.2d 900 (S.C. 2014). A "final judgment" for purposes of res judicata must finally dispose of some matter which under substantive law to be applied and procedural law of forum can be, and has been, finally disposed of. McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich, 482 S.E.2d 564 (S.C.App. 1997).

Nothing was decided or disposed of by court action in the first tenant eviction proceeding. It was dismissed without prejudice. The second tenant eviction proceeding was discontinued without proceeding to trial when the Respondent elected to proceed on the trespasser theory of the case. The summary ejection of trespasser proceeding did go to a hearing and produced the trial court's only order, adjudication or judgment that finally disposed of the dispute between these parties. Accordingly, § 15-67-20 is not a bar to the trespass case.

Injunction

2015-CP-12-0368, a companion case to this appeal, has been dismissed by separate order, but only after transferring Appellant's cause of action for injunction to this case. On or about August 10, 2015, Appellant commenced case no. 2015-CP-12-0368 by filing a complaint alleging two causes of action. First, he sought a writ of mandamus to compel the Magistrate to file a Return of the magistrate's court proceedings in 2015-CP-12-0179 (the trespass case); and second, he sought an injunction to enjoin the Magistrate from issuing a warrant or writ of ejectment in the trespass case. In effect, Appellant seeks a preliminary injunction to enjoin a future action pending the outcome of his appeal. Respondent Breakfield, as attorney-in-fact for the Hinson remaindermen, moved to intervene and the motion was granted. Respondent Breakfield in his representative capacity opposes the cause of action for preliminary injunction.

A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief he will suffer irreparable harm, that he has a likelihood of success on the merits, and that there is no adequate remedy at law. Poynter Invs. Inc. v. Century Builders of Piedmont, Inc., 694 S.E.2d 15 (S.C. 2010).

This court denies the Appellant's request for a preliminary injunction. First, the action for injunction is untimely pursuant to the terms of S.C. Code Ann. § 15-67-640. Additionally, on the merits, Appellant has not satisfied the requirements for preliminary injunctive relief. Paragraph 10 of his complaint in case no. 2015-CP-12-0368, the cause of action for an injunction, alleges that "the aim of the magistrate action is to evict plaintiff [Appellant] from land that plaintiff Mell Woods acquired through ten years adverse possession." He does not allege another source for his purported title apart from adverse possession. Appellant further alleges that he therefore holds an ownership interest in the land and is entitled to participate in a separate partition action in which the Hinson

remaindermen are partitioning the land.

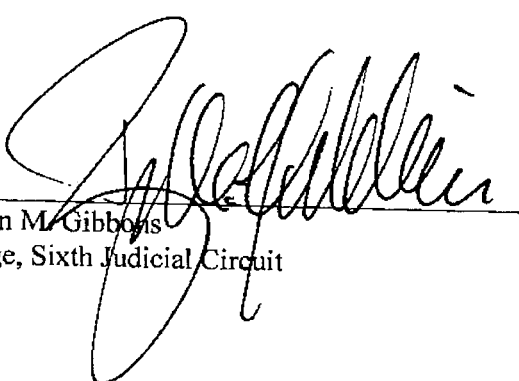
Appellant had an adequate remedy at law, and he sought it in his action to construe the Levie Hinson last will. That action resulted in Court of Appeals unpublished opinion no. 2014-UP-010 which expressly ruled that Appellant acquired no ownership by adverse possession. Appellant cannot show a likelihood of success on the merits of his appeal. His claim to right of possession of the real property at issue is based on either adverse possession, as alleged in case no. 2015-CP-12-0368, or having acquired title from Reba Hinson. The Court of Appeals' unpublished opinion no. 2014-UP-010 decided both of those claims adversely to the Appellant. Accordingly, Appellant is not entitled to injunctive relief, and his action/motion for such is denied. The magistrate is free to issue a warrant or writ of ejectment.

On the basis of the rulings herinabove, it is the Order of this Court, sitting as an appellate court, that:

1. The Magistrate's Court's Final Order and Judgment dated March 27, 2015 is affirmed.
2. The Magistrate's Court's July 15, 2015 Order denying Appellant's Motions Reconsideration is affirmed.
3. The Magistrate's Court's August 24, 2015 Order denying Appellant's motion to change venue and motion to dismiss is affirmed.
4. Appellant's cause of action or motion for injunction to enjoin the magistrate from issuing a warrant or writ of ejectment is denied.

IT IS SO ORDERED.

July 7
2016


Brian M. Gibbons
Judge, Sixth Judicial Circuit

CLERK OF COURT
CHESTER CO. S.C.
2016 JUL 11 AM 11:54

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

2015-CP-12- 0179

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

Certificate of Service

Applicant, Respondent on Appeal,

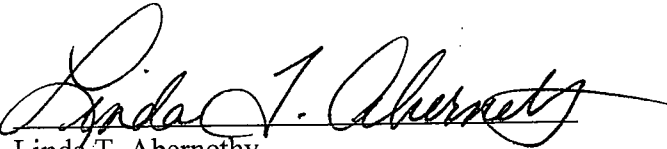
v.

Mell Woods,

Appellant-Trespasser.

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the movant Robert H. Breakfield in the above-captioned matter, do hereby certify that I and/or Mr. Brackett have served the pro se Plaintiff, Mell Woods with a copy of **Order Affirming Magistrate's Court Final Order and Judgment, dated July 7, 2016, filed July 11, 2016** postage prepaid and return address clearly indicated on said envelope, on this 12th day of July, 2016 at the following address:

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


Linda T. Abernethy

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260(29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

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

July 12, 2016

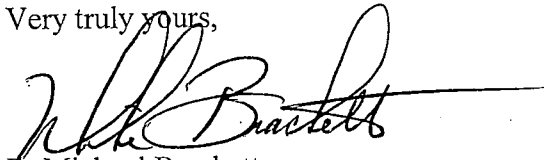
Mell Woods
P.O. Box 2603
Lancaster, SC 29721

RE: Breakfield, et. al. v. Woods
2015-CP-12-0179

Dear Mr. Woods:

Enclosed please find a copy of the Order Affirming Magistrate's Court Final Order and Judgment, dated July 7, 2016, filed July 11, 2016.

Very truly yours,



B. Michael Brackett

BMB/lta
Enclosure

cc. Robert H. Breakfield, Esquire
Honorable Yale Zamore, Chester County Magistrate
Honorable Sue Carpenter, Chester County Clerk of Court

STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

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

Respondents,

vs.

Mell Woods,

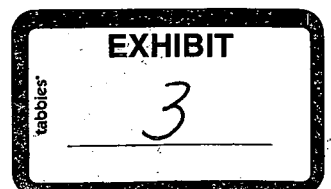
Appellant.

APPELLANT'S RULE 59(e) MOTION:

1. Certification under Rule 11(a) SCRCP

Appellant certifies that the required consultation would
serve no useful purpose, but the opposing party has been
notified of this motion in writing.

-/-



2. Pursuant to Rule 59(e), SCRCP, appellant Mell Woods moves that this Court reconsider its July 07, 2016 Order because the same was drafted by B. Michael Brackett, the respondent counsel, and contains factually inaccurate statements inserted in the Order by B. Michael Brackett. In addition, Mr. Brackett failed to mention the allegations of perjury and the evidence of perjury presented to the Court, over objection, concerning *Elaine H. Hensley*, a party to this case who was already dead at the time this case was filed. Appellant Mell Woods first received written notice of the entry of the Order on July 18, 2016.

3. This is a land case concerning land in Chester County, South Carolina. The respondents, or at least the alive ones, call themselves "remaindermen" of the estate of Levie Hinson. The litigation for this case and the others has lasted several years, and during year 2016, appellant Mell Woods completed the full ten years of *adverse possession* against everyone concerning the land in question, and without the need to tack to the possession of anyone else. The adverse possession details are in the Record, with the specific dates of the beginning and the continuance of the adverse possession for 10 years; appellant would appreciate a Ruling from the Court about the adverse possession issue.

4. In addition, and over the objection of the respondent counsel, B. Michael Brackett, appellant filed his Notice of Bar under SC Statute § 15-67-20, and cited several cases which stand for the proposition that once two suits, (and now only one) have been filed attacking someone's title and possession, there can be no more suits. South Carolina Statute § 15-67-20 has been the law for 272 years, being enacted during colonial times, and the statute and the cases construing the statute mean exactly what they do say, that: "the law is so written" and so what if the statute number has been changed, the law is still the same.

5. A copy of the NOTICE OF BAR UNDER SC STATUTE § 15-67-20, which was presented to the Court during the Appeal from Magistrate phase, is attached for ready reference;

also attached is a copy of Mrs. Hinson's plat, recorded in Plat CAB D slide 174, page 3B, a certified copy of which was presented in Court, is made a part of this motion;

AND, a copy of the land sales contract between Mrs. Hinson and Mell Woods, which is the same as the one presented in Court is attached also.

6. Lastly is a copy of the affidavit, the original of which was presented to the court, which shows that Robert H. Breakfield lied to the Court.

Robert H. Breakfield is a licensed South Carolina Attorney and knows better than to present dead people to the Court. An attorney's authority to act for his client ends at the client's death. Carver v. Morrow, 213 S.C. 199, 48 S.E.2d 814 (1948). In this instance, the affidavit shows that Mr. Breakfield *already knew* of the death Mrs. Elaine Hensley well before the present suit was filed. Since Breakfield swore to a paper in connection with the filing of the present suit, the same constitutes perjury, and is in fact a fraud upon the Court. Appellant Mell Woods requests that the Court Rule on Breakfield's false statement used to obtain the jurisdiction of the Magistrate Court, while at the same time obtaining the desired results using false pretenses.

Respectfully submitted,

This 28 day of July, 2016.



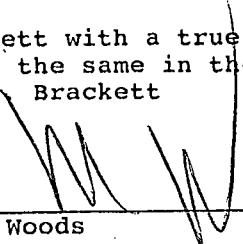
Mell Woods

P.O. Box 2603
Lancaster, SC 29721

CERTIFICATE OF SERVICE

I hereby certify that I have served B. Michael Brackett with a true copy of the within and foregoing MOTION by placing a copy of the same in the U.S. Mail with sufficient postage and properly addressed to Mr. Brackett

on the 28 day of July, 2016.



Mell Woods

-4-


STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

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

Respondents,

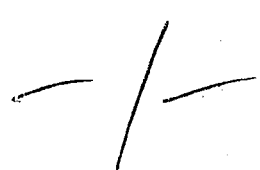
vs.

Mell Woods,

Appellant.

AFFIDAVIT

In order to protect the Record, Mell Woods, appellant
above, comes now and presents the following affidavit allowed
under S.C. Statute § 18-7-180:



State of South Carolina
County of Chester

After being first deposed, Mell Woods, affiant herein, makes the following statements based upon the personal knowledge of affiant,

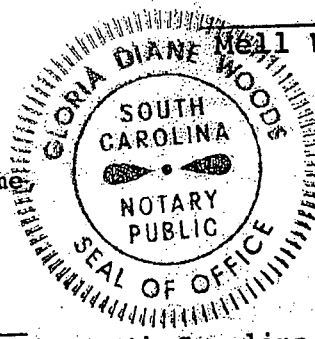
1. Elaine H. Hensley, a listed party above has died, and was already dead when the above case was first filed;
2. Robert H. Breakfield, one of the parties above, already knew of Mrs. Hensley's death when the case was filed, and represented to the court that Mrs. Hensley was alive instead of dead;
3. Attached to this affidavit, is certified copy of the Deed of Distribution filed in the Chester County Real Estate Records, which shows that Robert H. Breakfield was a witness to the Deed of Distribution concerning Mrs. Hensley's property, and for this reason did know that he filed suit for a dead person after her estate had been closed out, and a personal representative no longer existed;

FURTHER, affiant saith not.

Sworn to, and subscribed before me,

This 21 day of April, 2016.

Gloria Diane Woods
Gloria Diane Woods Notary public for South Carolina, Comm. Expires 01/08/2018



STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MATTER OF:
ETTA ELAINE HENSLEY
(Decedent)

County where property is located If not above County:

The undersigned states as follows:

Decedent died on NOVEMBER 30, 2013; and probate of the Estate is being administered in the Probate Court for CHESTER County, South Carolina, in File #2013ES1200318.

I/We was/were appointed Personal Representative (s) on DECEMBER 9, 2013.

Decedent owned real property described as follows:

Tax Map Number: 202-10-15-27

Street/Property Address: 6 CHURCH STREET, GREAT FALLS, SC 29055

Legal Description: AN UNDIVIDED 1/2 INTEREST IN THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND WITH ANY AND ALL IMPROVEMENTS THEREON SITUATE, LYING AND BEING IN THE TOWN OF GREAT FALLS, CHESTER COUNTY, SOUTH CAROLINA AT 6 CHURCH STREET, AND SHOWN AND DESIGNATED AS LOT NO. 10, SECTION 5, ON THE CERTAIN PLAT OF VILLAGE NO. 1 OF REBULIC COTTON MILLS DATED DECEMBER 31, 1948 AND RECORDED IN PLAT BOOK B, AT PAGE 49 AND HAS SUCH COURSES AND DISTANCES, METES AND BOUNDS AS SHOWN ON SAID PLAT WHICH SAID PLAT IS INCORPORATED HEREIN BY REFERENCE. THIS IS THE IDENTICAL REAL ESTATE CONVEYED TO W. HENSLEY & BRENDA J. HENSLEY BY DEED RECORDED IN DB 518, PAGE 188; BRENDA J. HENSLEY CONVEYED HER 1/2 INTEREST TO MORRIS W. HENSLEY BY DEED RECORDED JANUARY 31, 1990 IN DB 579, PAGE 171; MORRIS W. HENSLEY THEN CONVEYED AN UNDIVIDED 1/2 INTEREST TO BONNIE L. HENSLEY BY DEED RECORDED IN DB 592, PAGE 319. BONNIE L. HENSLEY CONVEYED HER 1/2 INTEREST TO MORRIS W. HENSLEY BY DEED RECORDED MAY 23, 1994 IN DB 658, PAGE 285. ALL REFERENCES BEING MADE TO THE OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY, SC.

DERIVATION: REFERENCE IS ALSO MADE TO THAT CERTAIN DEED FROM MORRIS W. HENSLEY TO ELAINE H. HENSLEY CONVEYING A 1/2 INTEREST BY DEED DATED FEBRUARY 19, 1999 AND RECORDED FEBRUARY 25, 1999 IN DB 752, PAGE 292 IN THE OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY, SC.

CHESTER COUNTY TAX ASSESSOR
DATE 2-9-14
TAX MAP NO. 202-10-15-27

I hereby certify that the within Deed
has been this 9 day of
February, A.D. 2014
recorded in Book J of Deeds.
Donald Wade
AUDITOR, CHESTER COUNTY

True and correct copy of original paper
On file in this office.

Sue K. Carpenter
Clerk of Court
Chester County, SC
Date 4-15-16

IN THE PROBATE COURT

DEED OF DISTRIBUTION
(Real Property Only)
NOT A WARRANTY DEED

CASE NUMBER: 2013ES1200318

201400080616
Filed for Record in
CHESTER COUNTY SC
SUE K. CARPENTER, CLERK OF COURT
02-06-2014 At 02:31:24 pm.
DEED DIST 10.00
Volume 1095 Page 23 - 25

aaa:04/15/2016

Instrument
201400080616

Volume Page
1095 24

This transfer is made pursuant to:

- ☐ Decedent's Will
- ☒ Intestacy Statute: SCPC 62-2-103
- ☐ Private Family Agreement: SCPC 62-3-912
- ☐ Disclaimer by: _____
- ☐ Probate Court Order issued on _____
- ☐ Other: _____

04/15/2016

instrument
201400080616

Volume Page
1095 25

in accordance with the laws of the State of South Carolina, the Personal Representative(s) does/does hereby release all of
Personal Representative(s) right, title and interest, including statutory and/or testamentary powers, over the real
property described to the beneficiaries named below:

Name: MORRIS WILLIAM HENSLEY
Address: 6 CHURCH STREET
GREAT FALLS, SC 29055

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

☐ An additional sheet is attached for names of additional beneficiaries (check, if applicable)

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of
Distribution, on this 4 day of FEBRUARY, 2014.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Patricia S. Davis

Print Name: PATRICIA S. DAVIS

Witness: Kelly S. Sumwalt

Print Name: KELLY S. SUMWALT

Estate of: ETTA ELAINE HENSLEY

Signature of Personal

Representative: Morris William Hensley

Print Name: MORRIS WILLIAM HENSLEY

If applicable,
Signature of Co-Personal
Representative: _____

Print Name: _____

STATE OF SOUTH CAROLINA)
)
)

ACKNOWLEDGMENT

COUNTY OF CHESTER

I, ROBERT H. BREAKFIELD, Notary Public, a notary for the State of South Carolina do hereby certify that MORRIS
WILLIAM HENSLEY, as Personal Representative(s) of the Estate of ETTA ELAINE HENSLEY, personally appeared
before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 4 day of FEBRUARY, 2014

Robert H. Breakfield (SEAL)
(Signature of Notary Public)
ROBERT H. BREAKFIELD
(Print name of Notary Public)
Notary Public for State of SOUTH CAROLINA
My Commission Expires: 9/25/2017

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

OF SOUTH CAROLINA

IN THE PROBATE COURT
APPLICATION FOR SETTLEMENT

JNTY OF CHESTER

LOIS H. RODDEY
JUDGE OF PROBATE

CASE NUMBER: 2013ES1200318

2014 AUG 15 P 1:45

The undersigned as the Personal Representative(s) has/have collected and managed the assets of the estate; has/have paid all lawful claims against the estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to estate of decedent.

The Personal Representative(s) has/have filed:

- ☒ Proof of Publication.
☒ an Inventory.
☒ a Proposal for Distribution.
☒ a Final Accounting.
☐ all required returns (including final income tax return, fiduciary income tax return, estate tax return); If not, please explain.

The time period for submission of claims has expired.

I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Court may deem applicable and proper.

I request that the Court: (check all that apply)

- ☒ A. Consider and approve the Personal Representative's Final Accounting and the Proposal for Distribution.
☐ B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for Distribution (Form #401PC).
☐ C. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
☐ D. (Other:)

Notice of Right to Demand Hearing and copies of the Final Accounting, the Proposal for Distribution, and this Application have been/are being sent to all interested persons as required by law.

Executed this 15 day of August, 2014

FORN to before me this 15 day of
August, 2014

Terri B. Jean
Notary Public for South Carolina
Commission Expires: May 9, 2016

Signature:

Name:

Address:

Telephone (0):

(H):

Morris William Hensley
MORRIS WILLIAM HENSLEY

6 CHURCH STREET
GREAT FALLS, SC 29055

803 374-1036

Signature:

Name:

Address:

Telephone (0):

(H):

A TRUE COPY
Lois H. Roddey
JUDGE OF PROBATE
CHESTER COUNTY, SC

OF SOUTH CAROLINA
JNTY OF CHESTER
THE MATTER OF ETTA ELAINE HENSLEY

)
)
)
)
)
)

IN THE PROBATE COURT

ORDER CLOSING ESTATE

CASE NUMBER: 2013ES1200318

on the consideration of the Petition for Settlement, it appears to the Court that the allegations and statements in the Petition are true and correct; that all required notices have been given; that this estate has been administered according to the laws of South Carolina and the Orders of this Court; that the Estate should be closed in accordance with the Court's Order and

(Testate-Complete Settlement) That the decedent's will dated _____, _____ and _____ which was/were previously admitted to probate constitute the valid unrevoked Last Will and Testament of the decedent.

] (Intestate-Complete Settlement) That the decedent died leaving no valid unrevoked Last Will and Testament.

] (Other:)

IT IS HEREBY ORDERED

- ☒ 1. That the final account and proposal for distribution is approved.
- ☐ 2. That the Personal Representative(s) is/are authorized and directed to deliver and distribute title and possession of the assets of this estate to the distributees in the amount and manner set forth in the Proposal for Distribution
- ☐ 3. That, upon compliance with this Court's Order as set forth in #2 above and upon presentation of proper proof of such compliance, the appointment of the Personal Representative(s) shall be terminated and the estate closed.
- ☒ 4. That the Personal Representative(s) is/are released and discharged as the Personal Representative(s).
- ☒ 5. That the appointment of the Personal Representative(s) is/are hereby terminated and this estate is closed.
- ☐ 6. (Other:)

Executed this 15th day of August, 2014

Lois H. Roddey
LOIS H. RODDEY, JUDGE OF PROBATE

CHESTER COUNTY, SOUTH CAROLINA

Date: May 07, 2005# 2005

LAND SALES AGREEMENT between REBA P. HINSON and MELL WOODS

Total amount of Contract	\$28,530.00
Credit for prior payment (minus)	3,804.00
due May 06#, 2011 extra payment for land . .	19,020.00
\$5.00 consideration for this new contract	5.00

\$24,731.00
Remains

To date Mell Woods has paid in \$3,804.00 ground rent on the property described in this contract. He, (Mell Woods) bought the building sitting on my land from Bobby Gardner. Mell Woods can move the building if he wants to. The rent contract was \$951.90 per year. The rental contract for the ten years is now modified; credit against the contract price, in the amount of \$3,804.00 is allowed, and it is now agreed that Mell Woods is buying the land where building is, instead of renting the land. (1537 Hinton Road)

PROMISES BY MELL WOODS

Mell Woods owes Reba P. Hinson the following money:
\$951.00 times ten = \$9,510.00, plus double the amount paid-in \$19,020.00, as a final payment, total of \$28,535.00 for the land. Mell Woods can move the building off if he wants to. Mell Woods has 90 days after May 06, 2011 to finish paying the \$28,535.00 to either Reba P. Hinson her heirs, or assigns. If the total amount is not paid within 90 days all unpaid amounts will start earning 8% per year interest, after August 06, 2011.

DESCRIPTION OF LAND:

The land sold today is shown on the plat of Phillip G. Smith, a registered surveyor, and dated May 13, 2002 -- reference is made to the Smith plat which shows lands of Reba P. Hinson;

Starting at the dividing line between Tract #2, and Tract #3 at the junction of the line S 59° 45' 57" E and the EAST side of Hinton Road, then turning South for appx 130 feet alongside the East side of Hinton Road to an existing wood fence, then turn east toward Fishing Creek Lake, and go down the existing wood fence appx 115 feet, then turn North along the other existing wood fence and go appx ~~106~~ 106 feet until intersecting with the dividing LINE S 59° 45' 57" E on the plat of Phillip Smith, and Jack Smith Surveying Company, and last go WEST back toward Hinton Road by going along the S 59° 45' 57" E line for appx 100 feet to arrive at the starting place.

All of the described land is coming out of

Tract #2 as shown on the May 13, 2002 plat of Phillip Smith.

In addition Mell Woods, and assigns, is granted a 20ft. easement to Fishing Creek Lake along the South Side of the extension of line S 59° 45' 57" E. SEE THE ATTACHED DRAWING ON PAGE TWO of this contract for illustration purposes; if there is any variation between the drawing and the above word description, then the words control over the drawing.

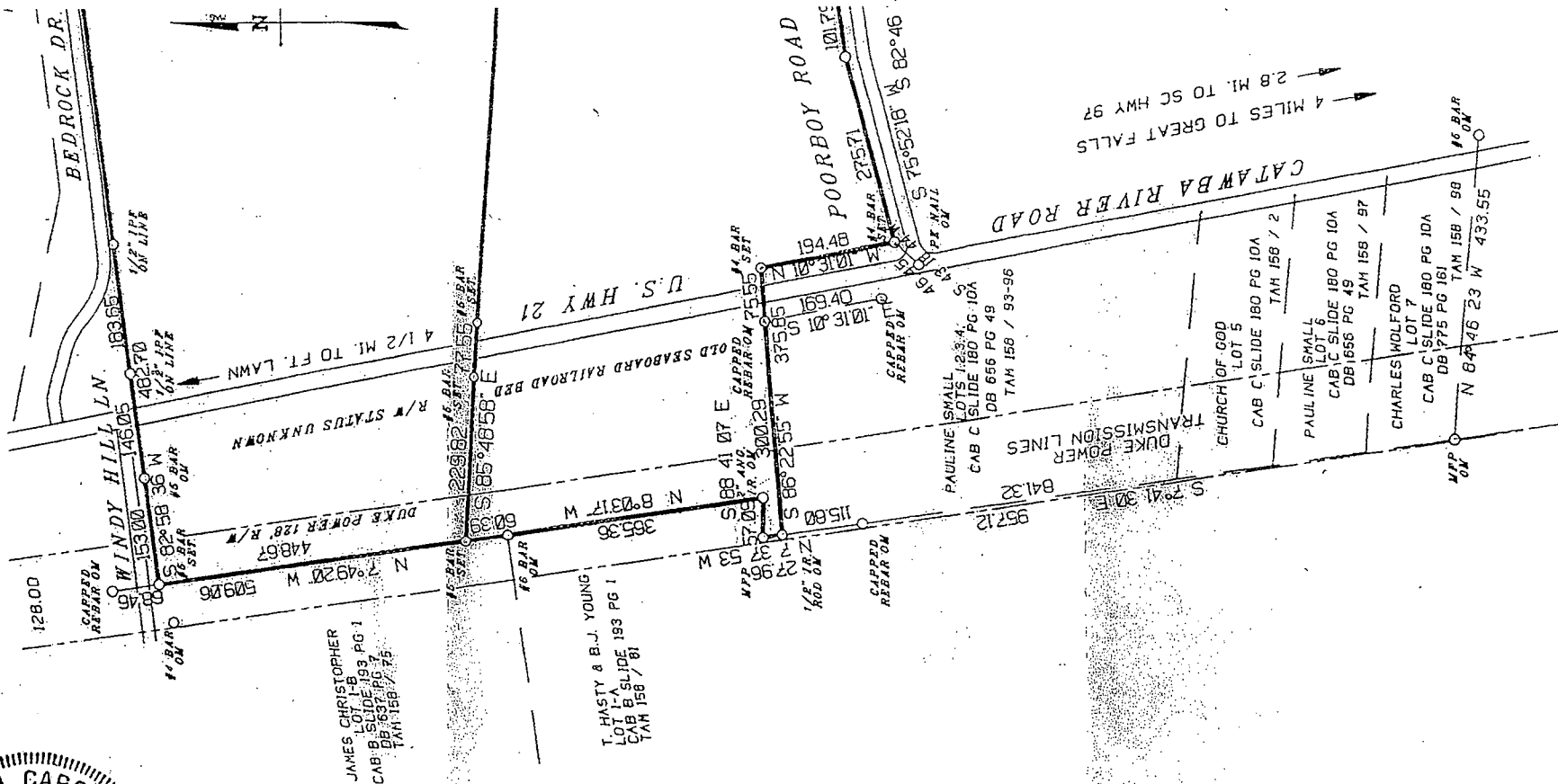
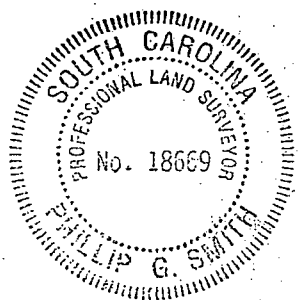
Mell Woods is to get the above lot surveyed at his own expense.

Mell Woods is hereby put in possession of the described lands as a buyer, and debtor. Mell Woods is no longer a tenant of Reba P. Hinson. The description from the plat, and attached drawing is everything needed for this agreement to sell the land. Mell woods can move the building if he wants to. It is the further condition of this agreement that once the sum promised is paid-in, Mell Woods, or assigns, is the fee-simple owner of the described property without restriction. Any of the eight % interest which may accrue after Aug. 06, 2011 will be due in a lump sum the following Jan 15, 15, any interest not paid on time will incur a one time late fee of fifty dollars. Accrued interest may be collected by court action, with the limitation of four hundred dollars attorney fee per collection. This contract is a sealed instrument. This contract can be assigned to others by either party, or assigns. Mell Woods will have a deed and plat prepared. Reba P. Hinson will sign, and then keep the deed until the money promised has been paid-in.

Reba P. Hinson
SELLER

Mell Woods
BUYER

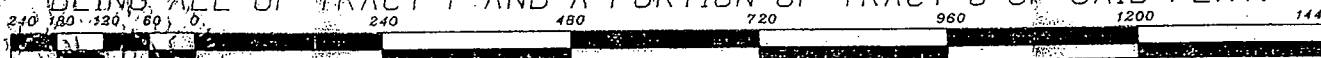
to the best of my knowledge, the survey shown herein was made in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets the requirements for a Class A survey as specified herein.



STATE OF SOUTH CAROLINA
COUNTY OF CHESTER
PLAT OF SURVEY FOR

REBA P. HINSON

LOCATED ABOUT 4 1/2 MILES SOUTH OF SC HWY 9 AT FT. LAWN ON BOTH SIDES OF U.S. HWY 21
BEING A PORTION OF THE REBA HINSON LANDS SHOWN AS TRACTS No. 7 & 8 OF PB "B" PAGE 106.
BEING ALL OF TRACT 7 AND A PORTION OF TRACT 8 OF SAID PLAT.



©2002js

Phillip G. Smith
18069

**JACK SMITH
SURVEYING**

800 FOREST DR. (803) 283-2646

LANCASTER SOUTH CAROLINA

DRAWN BY
PS

SCALE
1" = 240'

TAX MAP
P/O 158 /

FILE:
HNSNREBA

DATE
13 MAY 2002

HARRY DAVID TIBBS

1496.72

OLIVIA WILKIE
CAB C SLIDE 37 PG 1

DB 768 PG 168
TAM 158 / 20

N 82°54'13" E

174.40

N 81°22'58" E

BENT REBAR
REPLACED
W / 45 BAR

CAPPED
REBAR
ON

OLIVIA WILKIE
CAB C SLIDE 52
DB 642 PG 106
TAM 158 / 65

N 13°47'33" W

112.76

S 9°07'18" E

69.36

S 4°35'43" W

82.62

S 6°25'07" W

322.18

S 3°15'09" E

297.30

S 59°45'57" E

191.55

S 10°09'10" E

192.30

S 3°33'35" E

240.48

S 34°55'30" W

141.57

S 1°10'10" S

41.01

S 5°33'27" W

11.01

S 3°06'35" W

158.95

N 15°02'43" E

114.01

S 5°08'47" E

11.01

S 3°06'35" W

158.95

N 15°02'43" E

114.01

S 5°08'47" E

11.01

S 3°06'35" W

158.95

N 15°02'43" E

114.01

S 5°08'47" E

11.01

S 3°06'35" W

158.95

N 15°02'43" E

114.01

S 5°08'47" E

11.01

S 3°06'35" W

158.95

N 15°02'43" E

114.01

S 5°08'47" E

11.01

S 3°06'35" W

158.95

N 15°02'43" E

114.01

TRACT 3
32.857 AC.

1752.88
S 85°48'58" E

TRACT 2
32.857 AC.

FISHING CREEK
RESERVOIR

161.14
N 86°33'59" W
253.47
N 77°31'33" W
72.82
N 70°40'52" W
137.89
N 62°23'30" W
445.65
N 53°42'24" W

REBA HINSON
REMAINDER TRACT 8 PB "B" PG 106

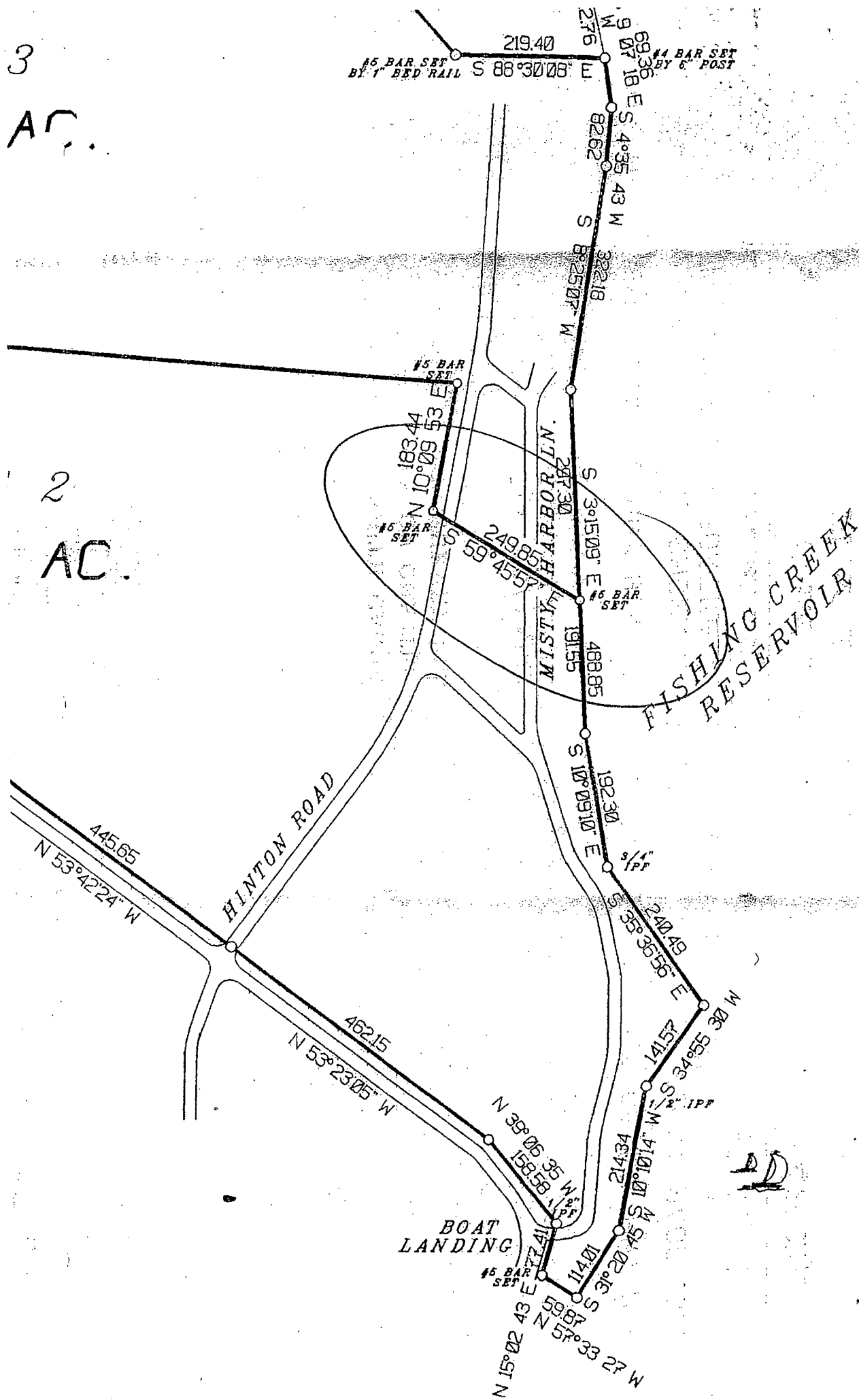
HANTON ROAD

BOAT
LANDING



3
AC.

2
AC.



STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

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

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

Applicant-Respondent's Return to
Appellant's Rule 59 (e) Motion
for Reconsideration

Applicant, Respondent on Appeal,

v.

Mell Woods,

Appellant-Trespasser.

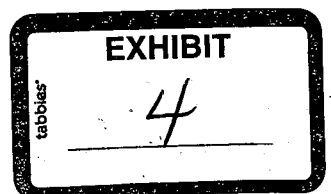
FILED

2016 AUG 18 P 3:14

CLERK OF COURT
CHESTER CO S.C.

Appellant's appeal from magistrate's court was heard on June 1, 2016. By Order dated July 7, 2016 the magistrate's court's Final Order and Judgment was affirmed. Appellant served a Rule 59 (e), SCRCF, motion for reconsideration, and Respondent submits this Return to Appellant's motion..

Ordinarily, a Rule 59(e) motion is used when a court overlooks an issue raised and presented by the parties and fails to rule on it. Alex Sanders and John Nichols, Trial Handbook for South Carolina Lawyers, §36:5 (4th ed. 2007). Further, a Rule 59(e) motion for reconsideration may be made and granted for one of three other reasons: (1) an intervening change in the controlling law has occurred since issuance of the original Order; (2) evidence not previously available has become available; or (3) it is necessary to correct a clear error of law or prevent manifest injustice.



Weyerhaeuser Corp. v. Coppers Co., 771 F.Supp. 1406 (D. Md. 1991). However under South Carolina jurisprudence, a Rule 59(e) motion can be used to ask the Court to reconsider issues and arguments even if that involves a rehashing of arguments already presented. Elam v. South Carolina Dept. of Transp., 602 S.E.2d 772 (S.C. 2004).

Appellant sets out four grounds for reconsideration (paragraphs numbered 4 and 5 relate to the same issue):

1. that the undersigned drafted the Order, and it does not mention the issue of Elaine Hensley's status;
2. that the Order does not include a ruling on "the adverse possession issue;"
3. that the Order incorrectly decided the issue of the application of S.C. Code Ann. § 15-67-20;
4. that the Order does not address the question of Robert Breakfield, the attorney-in-fact for the respondent remaindermen, misrepresenting the status of Elaine Hensley.

First Response

Appellant's motion is untimely. A Rule 59(e) motion for reconsideration must be served no later than ten days after receipt of written notice of entry of the order. Rule 59(e), SCRCp. "The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Rutland v. Holler, Dennis, Corbett & Garner, 637 S.E.2d 316 (S.C. App. 2006). There are two separate and independent arguments regarding untimeliness.

1. Appellant acknowledges in his motion that he received written notice of entry of the July 7, 2016 Order on July 18, 2016. (Motion, p. 2, l. 9-11.) However, he actually received written notice of the entry of the Order on July 12, 2016 when the Order was emailed to Appellant. Exhibit A is a copy of the email sent to Appellant on July 12, 2016 with a copy of the signed and clocked Order

as an attachment.¹ The email was simultaneously sent to the clerk of court. The Appellant's email address on Exhibit A is the email address he furnished to this court in a related case after the court ordered that an email address be provided.² Consequently, the tenth and last day for serving the Rule 59(e) motion for reconsideration was July 22, 2016. Appellant's certificate of service indicates that his motion was served on the undersigned by mail on July 28, 2016 (as analyzed below, the certificate of service is inaccurate). In Wells Fargo Bank, N.A. v. Fallon Props. S.C., 776 S.E.2d 575 (S.C.App. 2015) it was decided that email constitutes written notice of the entry of an Order when the email includes a copy of the signed and clocked Order. Accordingly, Appellant's motion was served at least six days too late.

2. Alternatively, disregarding the email notice argued above, Appellant's motion is still untimely. If a motion is served by mail, mailing ordinarily occurs when the document is deposited with the United States Postal Service, properly addressed with sufficient postage attached. Green v. Green, 465 S.E.2d 130 (S.C. App. 1995).

Although Appellant's motion is dated July 28, 2016, and the Click-N-Ship mailing label on his envelope to Respondent's attorney bears the date July 28, 2016, the Postal Service tracking report shows that the envelope was not deposited with the Postal Service until August 1, 2016 at 9:20 pm in Jacksonville, Florida.³ Attached as Exhibit B is the mailing label on the envelope containing the

¹ Exhibit A also includes an authenticating affidavit (Exhibit E).

² See "Compliance with Court Order" filed by Appellant on February 29, 2016 in case no. 2008-CP-12-00475.

³ After the issuance of the July 7, 2016 Order, Magistrate Judge Zamore issued a writ of ejectment, and the sheriff put Appellant off of the Great Falls property. Appellant testified in a deposition that he lived in Richmond Hill, Georgia before moving to Great Falls. Richmond Hill lies south of Savannah.

motion as mailed to the undersigned.⁴ Attached as Exhibit C is the United States Postal Service's tracking report for Appellant's envelope.⁵ It shows that the Click-N-Ship mailing label was purchased (and printed) on July 29, 2016, but that the envelope itself was not deposited with the Postal Service until August 1, 2016 at 9:20 pm.

Appellant has previously suffered the consequences of having legal proceedings discontinued or dismissed because of his playing fast and loose with the Postal Services's click-n-ship program resulting in untimely service of pleadings by mail. His appeal in the initial tenant eviction action herein was decided adversely to him by the Court of Appeals. When his petition for certiorari was untimely filed and served, it was dismissed by the South Carolina Supreme Court. Appellant moved to have the appeal reinstated which prompted consideration of Appellant's use of the Postal Service's click-n-ship program. The undersigned's Return to Appellant's Motion to Reinstate appeal included an affidavit from Paris Cherry, a postal service manager. The evidence showed that Appellant would print the mailing label, but would not actually deliver the item to the post office until later, and he routinely used a post office in Charlotte, NC rather than the Great Falls or Lancaster post office. The Supreme Court denied Appellant's motion to reinstate appeal. Attached as Exhibit D is the Return and supporting affidavit which have been printed from the South Carolina Judicial Department website. These court filings are official government judicial records of which this Court can take

⁴ Exhibit B also includes an authenticating affidavit (Exhibit E). Appellant's mailing label bears the date "07/28/2016." However, the ability to manipulate the information on the label is demonstrated by the fact that the label is printed on Appellant's computer (See Paris affidavit in Exhibit E) and the label shows that the envelope was "mailed from 29721" (according to the return address, 29721 is the zip code for Lancaster, SC.) However, the Postal Service tracking report shows that the envelope was actually deposited with the Postal Service in Jacksonville, FL.

⁵ Exhibit C also includes an authenticating affidavit (Exhibit E).

judicial notice. The Supreme Court appellate case no. for the prior eviction matter was 2014-001039.⁶

The arguments, legal authorities and supporting affidavit set out in the Return in 2014-001039 (Exhibit D) are incorporated herein by reference.

In summary, by his own admission, and assuming for the sake of argument that Appellant received written notice of the entry of the July 7 Order on July 18, 2016, Appellant's Rule 59(e) motion must have been served (deposited with the Postal Service) no later than Thursday, July 28, 2016. The Postal Service tracking record, in conjunction with the supporting affidavit of Paris Cherry, shows that Appellant bought postage on July 29, 2016 (that action itself being a day late) but that Appellant's envelope was not deposited with the Postal Service until Monday, August 1, 2016 at 9:20 pm. Appellant will no doubt argue that the Postal Service is at fault. He will claim that he deposited the envelope on Thursday and that the Postal Service lost it and/or mishandled it for three days (almost four days because it was not logged in to the USPS tracking system until 9:20 pm on the fourth day). The South Carolina Supreme Court was not persuaded with this argument in 2014-001039 and did not grant Appellant's motion to reinstate appeal. This Court should likewise not be persuaded.

Appellant's Rule 59(e) motion was not timely served and should be dismissed.

⁶ All of the facts relevant to this history are established in the filings in prior trial court and appellate court proceedings, and are subject to judicial notice in this proceeding. Courts may take judicial notice of matters of public record, Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F. Supp. 2d 553 (W.D.N.C. 1998); prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993); decisions of other courts, Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd., 181 F.3d 410 (3d Cir. 1999); and reliable sources found on the Worldwide Web. In re Yahoo Mail Litigation, 7 F.Supp. 3d 1016,1024 (N.D.Cal. 2014), and Rule 201, SCRE.

Alternatively for a Second Response

Appellant has presented no legally sufficient reason for the Court to alter or amend its July 7, 2016 Order.

1. As found in prior decisions, Appellant is a stranger to the estate of Reba Hinson and has no ownership interest in the real property at issue. Hence, Appellant has no standing to object to how Elaine Hensley's interests are handled in the Reba Hinson estate and/or in the real property that passed to the remaindermen to Reba Hinson's life estate.

2. The July 7, 2016 Order addressed the adverse possession issue. (Order, p. 9, l. 13 to p. 10, l. 2).

3. The Order fully addressed the operation of § 15-67-20 and correctly decided the issue.

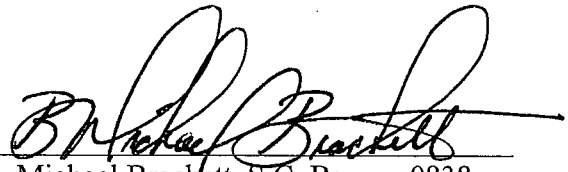
4. Ground 4 is the same as Ground 1. As found in prior decisions, Appellant is a stranger to the estate of Reba Hinson and has no ownership interest in the real property at issue. Hence, Appellant has no standing to object to how Elaine Hensley's interests are handled in the Reba Hinson estate and/or in the real property that passed to the remaindermen to Reba Hinson's life estate.

5. Appellant has not shown (1) that an intervening change in the controlling law has occurred since issuance of the original Order; (2) that evidence not previously available has become available; or (3) that the Order was based on a clear error of law or resulted in a manifest injustice.

Conclusion

The Court is not required to hold a hearing on a Rule 59(e) motion. To avoid further delay, the Court is urged to consider the motion and to deny same without a hearing.

August 16, 2016

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

B. Michael Brackett, S.C. Bar no. 0838
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent Breakfield, as
Attorney-in-Fact

Mike Brackett

From: Mike Brackett
Sent: Tuesday, July 12, 2016 10:06 AM
To: 2008CP00475@gmail.com
Cc: datkinson@chestercounty.org; Robert Breakfield (breakfieldb@comporium.net)
Subject: Orders 2015-CP-12-0179 and 0368
Attachments: Order.Affirming.Magistrates.Court.pdf; Order Granting Motion to Intervene.pdf

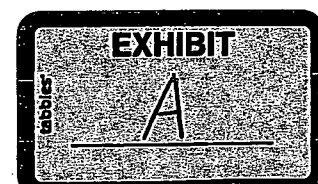
Mr. Woods,

Attached are copies of the Orders, each dated July 7, 2016, in case nos. 2015-CP-12-0179 and 0368. Hard copies are being served by mail today.

B. Michael "Mike" Brackett
Moses & Brackett, PC
Post Office Box 100261
1333 Main Street, Suite 650
Columbia, SC 29202-3261
803-461-2312 (direct dial)
803-461-2309 (fax)

Confidentiality Notice: This message (including any attachments) is intended exclusively for the individual or entity to which it is addressed. This message may contain information that is legally privileged, confidential or otherwise exempt from disclosure. If you are not the intended recipient, please note that any use, dissemination, distribution, or copying of this message is strictly prohibited and may be unlawful. Please notify the sender immediately by return email and delete all copies of this message.

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STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

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

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

Order Affirming Magistrate's Court
Final Order and Judgment

Applicant, Respondent on Appeal,

v.

Mell Woods,

Appellant-Trespasser.

CLERK OF COURT
CHESTER CO S.C.
2016 JUL 11 A 11:54

This is an appeal from Magistrate's Court in a summary trespasser ejectment proceeding. The appeal was heard on June 1, 2016. Present were the Appellant, appearing pro se, and Respondent Robert Breakfield in his capacity as attorney-in-fact, and his attorney Mike Brackett. It was determined in case no. 2015-CP-12-0368, a related case, that the Magistrate's Court's Return for this appeal satisfied the requirements of the common law and applicable statutes.

The first matter considered was the Appellant's letter to the undersigned, dated May 28, 2016 and received May 31, 2016, calling attention to the fact that Appellant had been a client of the law firm where I worked before I became a circuit court judge, generally the period 2000 to 2005. However, Appellant admitted that he never saw me at the firm and that I had not personally represented him or provided legal advice to him. Appellant expressed on the record that his letter



was not a formal motion for recusal. The court is unsure how the situation described by Appellant would be a problem with respect to Appellant. If anyone might be concerned about the presiding judge having been in a law firm that in the past represented the Appellant, it would be the Respondent. The Respondent had no objection to going forward with the appeal hearing.

Davis v. Parkview Apartments, 762 S.E.2d 535 (S.C. 2014) addresses this issue.

Pursuant to Canon 3(E)(1) of the Judicial Code of Conduct, “[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned....” Canon 3(E)(1), Rule 501, SCACR. The judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge “knows” that he or a member of his family (spouse, parent, or child) has more than a de minimus economic interest in the litigation and the litigation will “substantially affect[]” that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a de minimus interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. Canon 3(E)(1)(a)-(d). (emphasis added.)

Appellate courts “accord great weight to the trial judge's assurance of his own impartiality.” *Id.* It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality. Lyvers v. Lyvers, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct.App.1984) (citation omitted).

I have not met and do not know the Appellant. I have never worked on this case, and based on Appellant's showing, my former law firm did not work on this case at the time I worked there ten years ago. Appellant offered no evidence at the appeal hearing of the existence of judicial prejudice or bias or that I have personal knowledge of evidentiary facts in dispute. Further, Appellant's letter indicated that his communication with my former law firm included asking

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questions about the Hinson family and what was going to happen if Mrs. Reba Hinson died. Those questions and/or issues were answered with finality by the South Carolina Court of Appeals, primarily in unpublished opinion no. 2014-UP-010 filed January 8, 2014, approximately 10 months before the trespass case herein was commenced. The appeal herein cannot affect the outcome of Appellant's prior cases and appeals. Accordingly, if Appellant's letter is merely a suggestion for recusal, for the reasons stated I decline the suggestion. Further, if Appellant's letter is deemed to be a formal motion for recusal, which Appellant expressly said is not the case, the motion is nevertheless denied.

Although Appellant filed a motion for continuance of the appeal hearing, the motion was waived when Appellant represented to the court that he was ready to proceed with the hearing and actually participated in the hearing without objection and without the court having acted on the motion. 17 C.J.S. Continuances §14 (1999). Well into the appeal arguments, Appellant first raised his motion for continuance and asked if the continuance would be granted. It was then too late; the hearing was underway, the motion had been waived, and the Court formally denied the motion. The appeal arguments continued.

From the record, the following history is noted: following a hearing on January 30, 2015, the Chester County Magistrate's Court issued an Order dated and filed March 27, 2015, finding Appellant to be a trespasser and announcing the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Appellant from the subject premises. On April 15, 2015, Appellant herein, pro se, filed and served a Notice of Appeal to the circuit court (assigned the above-captioned case number). On April 24, 2015, Appellant, pro se, served a Rule 59(e), SCRCF, motion for

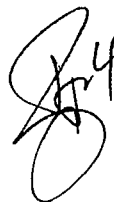


reconsideration¹ with respect to the March 27, 2015 Final Order and Judgment. Pursuant to Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014) the appeal was dismissed without prejudice by Order dated May 1, 2015. Appellant then appealed the May 1, 2015 Order to the Court of Appeals. By Order dated June 25, 2015, the Court of Appeals dismissed Appellant's appeal because the order being appealed was not a final order. Appellant then filed a Petition for Rehearing. It was also denied. Appellant petitioned the South Carolina Supreme Court for a Writ of Certiorari. It was denied. While the appeal was pending, the Magistrate Court issued an Order denying Appellant's motion(s) for reconsideration.

What is Now Before the Court

1. The Magistrate's Court's March 27, 2015 Final Order and Judgment was appealed by Appellant's Notice of Appeal / Grounds of Appeal dated and served April 15, 2015.
2. On May 14, 2015 Appellant served an Amended Notice of Appeal setting out another nine grounds for appeal.
3. Additionally, while Appellant's appeal from the May 1, 2015 Order was being decided by the Court of Appeals and Supreme Court, the Magistrate's Court issued an Order dated July 15, 2015 denying Appellant's motion(s) for reconsideration. This was permitted because the pending appeal to the Circuit Court and to the Court of Appeals did not deprive the Magistrate's Court of jurisdiction to consider and rule upon the motion for reconsideration. See Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 119 (2d ed.2002), citing Hudson v. Hudson, 349 S.E.2d 341 (S.C. 1986). Appellant filed and served his "Restated Notice

¹ Appellant actually filed and served four separate motions for reconsideration containing a total of 13 grounds or matters Appellant wanted reconsidered.



of Appeal” dated August 11, 2015, thereby consolidating his first appeal from the Magistrate’s Court’s March 27, 2015 Order and his appeal from the July 15, 2015 Order.

4. On or about August 4, 2015, Appellant filed and served, in the magistrate’s court trespass case that is the subject of this appeal, an “Application for Change of Venue, and Two Days Notice to Adverse Party” and a Rule 12(b)(8) Motion to Dismiss. The application for change of venue was made pursuant to S.C. Code Ann. § 22-3-920 on the ground that Magistrate Judge Zamore was biased against him. By Order dated August 24, 2015, Appellant’s motions were denied by the Magistrate’s Court.

5. Appellant filed and served a Notice of Appeal on September 2, 2015, appealing from the Magistrate’s Court’s August 24, 2015 Order that denied Appellant’s Rule 12(b)(8) motion and the motion for change of venue. The September 2, 2015 Notice of Appeal incorporates the original five grounds of appeal set out in Appellant’s April 15, 2015 Notice of Appeal and purports to add two additional grounds related to the August 24, 2015 Order, specifically that it was error to deny Appellant’s Rule 12(b)(8) motion and to deny Appellant’s motion for change of venue. Appellant thereafter, on September 23, 2015, filed an Amended Notice of Appeal, amending the September 2, 2015 Notice of Appeal, to also appeal the August 24, 2015 Order on the grounds that it was error to strike the Appellant’s Rule 12(b)(8) motion and to strike Appellant’s motion for change of venue.

6. By Order dated February 10, 2016, the South Carolina Supreme Court denied Appellant’s Petition for Writ of Certiorari. The Remittitur was issued February 22, 2016.

7. On or about February 29, 2016, Appellant filed and served his “Refiling of Appeal” in which he “restates, republishes, and incorporates by reference all of the grounds for appeal stated each [sic] of the notices of appeal from the magistrate court.”



Accordingly, there are six Notices of Appeal filed subsequent to the March 27, 2015 Final Order and Judgment:

- April 15, 2015 Notice of Appeal/Grounds for Appeal to Circuit Court - this Notice includes five grounds for the appeal;
- May 14, 2015 Amended Notice of Appeal purporting to add nine new grounds for appeal to the April 15, 2015 Notice of Appeal;
- August 11, 2015 Restated Notice of Appeal - this Restated Notice of Appeal relates to the Order denying Appellant's Rule 59(e) Motion for Reconsideration, but it does not include any new grounds for the appeal in addition to those stated in the April 15, 2015 Notice of Appeal;
- September 2, 2015 Notice of Appeal and Grounds for Appeal - this appeal is from the Magistrate's Court's August 24, 2015 Order that denied Appellant's Rule 12(b)(8) motion and motion for change of venue. The one ground for the appeal is that "the one-time change of venue allowed by SC § 22-3-920 is not discretionary with a magistrate court, especially in view of the discovery of another action pending between the same parties concerning the same subject matter, Rule 12 (b)(8), SCRCF."
- September 23, 2015 Amended Notice of Appeal assigning error the magistrate's court's striking of the two motions.
- February 29, 2016 "Refiling of Appeal" - this "restates, republishes, and incorporates by reference all of the grounds for appeal stated each [sic] of the notices of appeal from the magistrate court."

Consequently, there are 18 grounds of appeal alleged by Appellant stemming from the Magistrate's Court's orders in the above-captioned trespass case: five (5) are set out in the April 15, 2015 Notice of Appeal and Grounds for Appeal, nine (9) are set out in the May 14, 2015 Amended Notice of Appeal, two are set out in the September 2, 2015 Notice of Appeal and Grounds for Appeal, and two are set out in the September 23, 2015 Amended Notice of Appeal. The issues on appeal are:

1. The case involves title to land and pursuant to S. C. Code Ann. § 22-3-20(2) the Magistrate's Court did not have subject matter jurisdiction to entertain the action.
2. The trespass case involved a defense of questionable title and that upon posting bond, the trespass case should have been discontinued until the matter of title was resolved, citing § 22-3-1110, 1120, and 1130.
3. Appellant assigns error because he was not allowed to cross examine Robert Breakfield at the trespass hearing.
4. Another issue on appeal raising "reasons that these proceedings involve land." It is merely another statement of the Appellant's assertion that the trespass case involved title to land, in particular because Appellant was arguing that Reba Hinson owned the fee simple estate in the land, and not only a life estate, or alternatively, that even if Reba Hinson owned only a life estate, the remaindermen to the life estate could nevertheless be compelled to deliver a deed to Appellant if he paid the purchase price. "Defendant [Appellant] assigns error on the fact that the magistrate failed to rule that these proceedings involve title to land."
5. The Magistrates' Court erred in failing to dismiss this action pursuant to S.C. Code Ann. § 15-67-20, on the ground that Respondents are limited to only one action to recover the subject property.

6. The summary trespass hearing was held without a jury.
7. Another claim of error on the Magistrate's Court's not having dismissed the trespass ejectment case pursuant to § 15-67-20.
8. The Magistrate's Court erred in its conclusion that Appellant is a trespasser within the terms of § 15-67-610.
9. Appellant complains about having been asked by the Court to execute an accounting for the monies Appellant paid into court pursuant to the Court's June 2011 Order.
10. Appellant charges error based on the fact that the Magistrate Court is retaining money paid into the Court by Appellant since June 2011.
11. Appellant again assigns error on the Magistrate's Court's failure to comply with § 22-3-20, 22-3-1110, 22-3-1120 and 22-3-1130, by discontinuing the trespass case until his "questionable title" claim is resolved.
12. Appellant charges error on the Magistrate's Court's proceeding to the January 30, 2015 hearing after the Appellant had served a Notice of Appeal.
13. Appellant assigns error on the Magistrate's Court's inclusion in the Final Order and Judgment language that if the Appellant does not remove the structure on the land by the deadline set by the court, the Respondents, as the owners of the land, may remove the structure and Appellant shall have no recourse against Respondents so long as Respondents act in accordance with the law.
14. Appellant complains that the Magistrate's Court failed to consider the case of Eller v. Motley, 82 S.E.992 (S.C. 1914) and that the cited case requires that the court order the remaindermen to Reba Hinson's life estate to give a deed to Appellant.

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15, 16, 17 and 18. Appellant assigns error on the failure of the Magistrate's Court to grant Appellant's Motion for Change of Venue, and related Rule 12(b)(8) motion to dismiss, and for ordering that the two motions be stricken.

Scope of Review

Appellate review by the circuit court of an appeal from magistrate's court encompasses all the papers in the case including testimony in the lower court. The circuit court may affirm or reverse the judgment of the magistrate's court in whole or in part for errors of law or fact. See generally Jean Hofer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 26-27 (2d ed.2002). In this case, Respondent filed and served a full Respondent's Brief. Appellant did not file and serve a brief, although he filed at the hearing a memorandum of law on his issue on appeal no. 5, having to do with the operation of S.C. Code Ann. § 15-67-20. Appellant's presentation was almost exclusively oral.

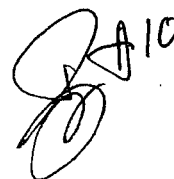
Rulings on Issues on Appeal

Appellant continues to claim, assert and allege that he holds some form of title or interest in the real property at issue, the property being occupied by Appellant as a trespasser as found by the Magistrate's Court, by virtue of an agreement between Appellant and Reba Hinson. That subject has already been decided adversely to Appellant by the Court of Appeals in its unpublished opinion no. 2014-UP-010. Whatever interest, if any, Appellant may have received from Reba Hinson terminated upon her death in 2007 because Reba Hinson owned only a life estate. The Magistrate's Court was correct in so finding. Consequently, issues on appeal nos. 1, 2, 4 and 11, in which Appellant claims that the trespass case involved a defense of questionable or paramount title are

without merit. This is not a case that attacks Appellant's title because it was judicially determined prior to the trespass proceeding that Appellant has no title.

With respect to issue on appeal no. 3, Appellant complains the he was not allowed to cross examine Mr. Breakfield at the trespass proceeding. The record reveals that Respondent (Breakfield) was required to make a prima facie showing of ownership of the property and that Appellant (Woods) was in possession without consent or permission. Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905). Respondent put into evidence the paper record of the past legal proceedings between the parties, including the case brought by Appellant in which he alleged and argued that he had a claim to title acquired from Reba Hinson who had acquired her title from her late husband's last will, a case that resulted in summary judgment in favor of Respondent's principals (2014-UP-010). Breakfield testified about the undivided interests held by his principals and that the Appellant did not have permission of any of the tenants in common to be on the subject property. Appellant asked "do I get to examine witnesses?" The court responded "this is a summary proceeding, you can not go through formal examinations." Appellant: "All right, well I mean he just had Mr. Breakfield testifying." The Court: "Well you're going to testify and you're not going to be questioned by anyone but me."

Respondent proceeded to testify/explain his case. During his case, Appellant again asked about being allowed to examine Breakfield.. The Court again would not allow that and would not allow Respondent's attorney to examine Appellant. Appellant represented to the court that Breakfield "has information that will be helpful to the court to decide." The Court asked what information Breakfield had that would be helpful to the court [in the pending case], thereby inviting a proffer of the evidence. Appellant answered "about that court order that they're basically - - -." The court immediately stated that the back story of the probate court order that determined which



last will would be admitted to probate in the Reba Hinson estate was not relevant. Those matters related to the administration of the Reba Hinson probate estate had already been decided adversely to the Appellant by the South Carolina Court of Appeals in unpublished opinion no. 2013-UP-0256.

This issue is not preserved for appellate review because a sufficient proffer was not made by Appellant. Rule 103(b), SCRE, provides that

- (a) **Effect of Erroneous Ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
- (1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
- (2) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

To preserve the issue for appeal when a trial court excludes evidence, the party seeking its admission must show both error and prejudice. An appellate court need not address an issue regarding the exclusion of evidence where the proponent failed to make a proffer of the evidence that the witness would have given had he been allowed to testify. Greenville Memorial Auditorium v. Martin, 391 S.E.2d 546 (S.C. 1990); Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc., 450 S.E.2d 41 (S.C. 1994). The proffer must establish the relevance of the excluded evidence. State v. Hall, 439 S.E.2d 278 (S.C. 1994). The purpose of a proffer is to adequately develop the record in order to allow the appellate court a chance to determine whether the appellant was prejudiced by the trial court's refusal to admit the evidence. Love v. Gamble, 448 S.E.2d 876 (S.C.App. 1994). A proffer that is confusing or incomplete will not provide grounds for the appellate court to find prejudice. When considering whether a proffer is sufficient to demonstrate error and prejudice "whatever doesn't make any difference, doesn't matter." Miles v. Miles, 397 S.E.2d 790 (S.C.App. 1990). Here, the Appellant made no effective proffer and cannot show error/relevance or prejudice, thereby

not preserving the issue for appeal.

With respect to issue on appeal no. 6, Appellant claims error in being denied a jury trial. The Magistrate's Court addressed this issue in its March 27, 2015 Final Order and Judgment. The purpose of S. C. Code Ann. § 15-67-610 is to give the real owner of land an "expeditious method of ejecting trespassers." Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905). A jury trial is not provided for in proceedings under § 15-67-610 precisely because it is a proceeding for an expeditious "summary ejectment." See the heading for Title 15, Chapter 67, Article 7; Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905); Lynch v. Ball, 79 S.C. 243, 60 S.E. 691 (1908); Cotton v. Johnson, 71 S.C. 413, 51 S.E. 245 (1905). Neither § 15-67-610 nor § 15-67-620 mentions a right to a jury trial.² Additionally, § 15-67-620 provides that the Respondent (the person who is sought to be ejected from the premises) must appear before the magistrate and satisfy "him" [the magistrate], not a jury, of the bona fides of Respondent's possession.

The procedures to be utilized at a summary trespasser ejectment hearing are:

- The Plaintiff/Applicant "must bring himself within the statute by at least making before the magistrate prima facie showing that he is the owner of the premises and that defendant is a trespasser." Richland Drug Co. v. Moorman, *supra*. Plaintiff must make such proof as should satisfy **the magistrate** that the case is one falling within the statute. *Id*.
- Once the plaintiff has made his showing of ownership and that the defendant is in possession without consent, the defendant, to avoid summary ejectment, must do two things: (a) satisfy **the magistrate** that Defendant "has a bona fide color of claim to the possession of such

² In Appellant's separate action for trespass to try title/quiet title (see South Carolina Court of Appeals unpublished opinion no. 2014-UP-010), he would have been entitled to a jury trial on the issue of his claim to paramount title had the action not been decided adversely to him on summary judgment. Therefore, he has not been denied the right to a jury trial on the issue of title.

premises” and (b) “enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate.” S.C. Code Ann. § 15-67-620.

- If the Respondent satisfies **the magistrate** that Respondent has a colorable claim of rightful possession, the summary proceeding should be dismissed, and the Plaintiff is left to the ordinary remedy for recovery of possession of the land. Richland Drug Co. v. Moorman, supra. (emphasis added.)

The Magistrate’s Court was right that the law does not provide for jury trials in summary proceedings for ejectment of trespassers.

In his issue on appeal no 8, appellant claims that he does not fit the definition of a trespasser as that term is used in § 15-67-610. Appellant argues that the statute applies only to “squatters” and not to someone, like him, who purports to have a document giving him the right to possess the property. Appellant’s “document” was rendered ineffective to give him any claim to possession or ownership by the Court of Appeals as explained above. An adult trespasser is a person whose presence is neither invited nor suffered. Estate of Adair v. L-J, Inc., 641 S.E.2d 63 (S.C. App. 2007). Trespass is defined as “any intentional invasion of the plaintiff’s interest in the exclusive possession of his property.” Hedgepath v. Am. Tel. & Tel. Co., 559 S.E.2d 327, 337 (S.C. App. 2001). The magistrate rightly found Appellant to be a trespasser.

Issues on appeal 9 and 10 relate to the Magistrate’s Court’s requirement that Appellant sign an accounting to confirm his payment and the court’s retention of monies being paid for rent /bond. This issue is not preserved for review because the Appellant does not claim that the accounting was inaccurate in any way. His only complaint is that the Magistrate Court was pushy in insisting that it be signed. In June, 2011, in an order on preliminary matters in the tenant eviction proceeding, Appellant was ordered to pay a fair rent into the court pending the outcome of the proceeding, to also

be held as bond. If Appellant did not prevail in his defense, the money would be paid over to the Respondents, as owners of the property, for Appellant's occupancy of property he does not own. Appellant has continued to make the ordered payments, and the magistrate court continues to receive and hold the funds. Based on the March 27, 2015 Final Order and Judgment, the funds being paid into and retained by the magistrate court will be paid over to Respondents when Appellant's appeal is concluded. At the appeal hearing, Magistrate Zamore delivered to the circuit court the funds that had theretofore been paid into the magistrate's court. Respondent moved that the funds be held by the circuit court clerk of court pending future order of the court. Appellant did not object. Accordingly, there is no error with regard to the accounting or the holding of the money by the court that requires a reversal of the Final Order and Judgment.

Issue on appeal no. 12 asserts error on proceeding with the summary trespass hearing notwithstanding that a notice of appeal had been filed previously. Appellant's argument is that once he learned that the Magistrate's Court would hold a non-jury summary ejectment proceeding, he filed a Notice of Appeal on January 21, 2015 that should have stopped the summary ejectment proceeding. At that time, there had been no hearing in the trespass matter, and no order or judgment had been issued from which to appeal. Appellant's stated ground of appeal was that in his Answer he demanded a jury trial in this proceeding, and in the Magistrate Summons the Court indicated that the proceeding will be a "bench trial." Appellant argued that the Magistrate Summons was an Order denying him a mode to trial to which he has a right, thereby making the "order" immediately appealable. Appellant misreads the law.

First, the Summons is not a final judgment or order. Additionally, if the Summons operates as an order in this instance, it is not the type of order that is immediately appealable. "An order denying a jury trial is not immediately appealable unless it deprives the party of a mode of trial to

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which he is entitled as a matter of right.” Jean Hoefer Toal, Shahin Vafai & Robert A Muckenfuss, Appellate Practice in South Carolina 95 (2d ed.2002), (emphasis added.)

Appellant was not entitled to jury trial herein as a matter or right for two reasons: (1) as addressed hereinabove, the governing statute, § 15-67-610, does not provide for a jury trial in this proceeding. This is a proceeding for an expeditious “summary ejectment.” See the heading for Title 15, Chapter 67, Article 7; Richland Drug Co. v. Moorman, *supra.*; Lynch v. Ball, *supra.*; Cotton v. Johnson, 71 S.C. 413, 51 S.E. 245 (1905). Neither § 15-67-610 nor § 15-67-620 mentions a right to a jury trial.³ Additionally, § 15-67-620 provides that the Appellant, as the person who is sought to be ejected from the premises, must appear before the magistrate and satisfy “him” [the magistrate], not a jury, of the bona fides of Appellant’s possession.

(2) Appellant argued in his notice of appeal that the subject before the magistrate court in this proceeding is the “issue of paramount title” to the land in question, and that the nature of the “issue” entitles him to a jury trial. As addressed hereinabove, Appellant had already litigated his claim to title to the land at issue and had lost that battle. What was before the Magistrate’s Court in January, 2015 was the issue of Appellant’s right, if any, to possession of the land separate and apart from his already failed claim to title.

When an order is not immediately appealable, the service and filing of a notice of appeal does not transfer jurisdiction to the appellate court, nor does it stay further proceedings in the lower court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 149. (2d ed.2002). The Magistrate Court continued to have jurisdiction over this matter notwithstanding

³ As addressed above, in Appellant’s separate action for trespass to try title, he would have been entitled to a jury trial on the issue of his claim to paramount title had the action not been decided adversely to him on summary judgment. Therefore, he has not been denied the right to a jury trial.

Appellant's erroneous notice of appeal. The Magistrate's Court did not err in proceeding with the hearing.

In his issue on appeal 13, Appellant complains that the Magistrate's Court's Judgment Order provides that he may have no recourse against the Respondent's principals for the removal of the Appellant's structure. This is brought about by the unusual situation of the Respondents' owning the land, with the Appellant owning the mobile home, and additions built onto the mobile home. Respondents have consistently acknowledged that Appellant is entitled to take his mobile home and improvements, but he must do so within a reasonable time. The content of the Order on this subject is not objectionable because it merely states the obvious. Respondent may not claim damages for Respondents' ultimate removal of the structure, if such becomes necessary, and if Respondents do what the law requires.

In his issue on appeal no. 14, Appellant complains that the Magistrate's Court failed to consider the case of Eller v. Motley, 82 S.E.992 (S.C. 1914) and that the cited case requires that the court order the remaindermen to Reba Hinson's life estate to give a deed to Appellant. Appellant interprets the Eller opinion to say that if a vendee (Appellant) enters into an installment land sale agreement with a vendor who holds only a life estate (Reba Hinson), and if payments are made to the vendor prior to her death, and if the vendor dies before the contract is fully performed then the vendee has the right to finish out the sales contract by paying to the remaindermen whatever is owed on the sales contract and the remaindermen can be ordered in specific performance to give the vendee a deed. That is not the law, and that is not what Eller says. The portion of the case quoted in Appellant's issue on appeal 14 addresses the question of a vendor who has fee simple title who dies before the full purchase price under the sales contract is paid. It confirms that the "heirs at law of the vendor" (not remaindermen to a life estate) can be compelled to carry out the contract that the



vendee had with the deceased vendor. It has been established, as addressed above, that Appellant has had no title or interest in the real property since Reba Hinson's death.

Issues on appeal 15, 16, 17 and 18. Appellant assigns error on the failure of the Magistrate's Court to grant Appellant's Motion for Change of Venue, and related Rule 12(b)(8) motion to dismiss, and for ordering that the two motions be stricken. On their face, the motions are without merit. A Rule 12(b)(8), SCRPC motion to dismiss (another action is pending between the same parties for the same claim) is waived if not included in a pre-answer motion or in a responsive pleading. Appellant did not include the objection in a responsive pleading or in a pre-responsive pleading motion. The motion was made not only after trial, and after entry of a final order and judgment but also after an appeal had been taken. It was untimely and waived.

The motion to change venue was made pursuant to S.C. Code Ann. § 22-3-920. Just as with the motion to dismiss, this motion is wholly without merit. The statute reads:

Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days' notice that he intends to apply for a change of venue or (b) the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate's district in the same county. One such transfer only shall be allowed each party in any case.

The motion was made too late and was supported by an affidavit that was based on Appellant's complaint that Judge Zamore was not giving credence to Appellant's claim of ownership to the subject property. The statute obviously envisions that the motion be made before trial because it must be based on the good faith belief that he cannot get a fair trial. The trial had taken place, and the case had been appealed before the motion to change venue was made. See the S. C. Courts

website, Trial Courts, Magistrate's Courts, Summary Court Judges Benchbook , Section D.1

(Change of Venue), which reads:

S.C. Code Ann. § 22-3-920 provides that either party in a civil case, or the prosecutor or the accused in a criminal case, may apply for a change of venue. In civil cases, the party seeking the change of venue must give the adverse party at least two (2) days notice of his/her intent to seek a change of venue prior to applying for such, unless the affidavit shows that the necessary facts were not discovered until it was too late to give such notice. In criminal cases the request for a change of venue should be made prior to trial, unless in view of all the circumstances the person requesting the change did not have a reasonable opportunity to make such a request previously. Op. Att'y Gen. No. 1733, dated 1963-64.

In either a civil or criminal case, the person requesting the change of venue must file with the magistrate an affidavit stating that the individual does not believe he/she can receive a fair trial. The affidavit must also state the grounds supporting the belief of the requesting party. If the affidavit sets forth grounds for a belief that the party cannot obtain a fair trial, then the grant of a change of venue is mandatory. (emphasis added).

Based on the forward-looking language of the statute, a tardy motion for change of venue cannot be made after trial as a substitute for an appeal.

Issues on appeal nos. 5 and 7 each assert error to the Magistrate's Court in not dismissing the trespass case pursuant to § 15-67-20. Section 15-67-20 reads: "The plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to one action for recovery."

The record shows that in 2010 a property management company on behalf of the Reba Hinson remaindermen and who were then the owners of the real property at issue brought an action in Magistrate's Court to have Mr. Woods, then alleged to be a tenant, removed from the property.

The Magistrate entered an Order dated June 14, 2010 that read:

Dismissed Without Prejudice on June 14, 2010. There was no clear ownership of the property or clear right to collect or receive rent. Reba Hinson had a life estate in the property, which, on her death, was inherited by her children or their heirs. As to the Counterclaim filed by the defendant, there is no Counterclaim in an

Eviction and the \$160,000 is over the jurisdiction of this Court. Therefore: the Order and Rule to Show Cause, the Application for Ejectment and the Counterclaim are **Dismissed without Prejudice.** (Emphasis added.)

In March, 2011, Breakfield, as attorney-in-fact for the Reba Hinson remaindermen, commenced an action in the magistrate's court to have Mr. Woods, alleged to be a hold-over tenant, removed from the property. As initially filed, it was also a tenant eviction proceeding. The Magistrate's Court's Order on Motions, deciding various pre-trial matters, was issued on June 2, 2011. Appellant appealed that Order to the Circuit Court, and to the Court of Appeals, eventually resulting in unpublished opinion no. 2014-UP-076 filed February 26, 2014. Appellant's petition for certiorari to the Supreme Court was dismissed by Order dated June 27, 2014. Appellant's Motion to Reinstate Appeal was denied by Order dated September 24, 2014.

On June 22, 2011, Appellant herein filed an action in the Circuit Court against the Reba Hinson remaindermen alleging that Appellant had acquired fee simple title to the real property at issue from Reba Hinson who, in turn, had received fee simple title from her late husband by and through his last will. Appellant labeled his action as trespass to try title. Respondent labeled it an action to quiet title or to construe the last will of Levie Hinson. The Circuit Court granted summary judgment in favor of the Reba Hinson remaindermen. Appellant appealed the summary judgment Order, which was eventually affirmed by the Court of Appeals in its unpublished opinion no. 2014-UP-010. More time passed while Appellant unsuccessfully petitioned the Supreme Court for a writ of certiorari. Consequently, by his own legal action, Appellant established that he held no title or interest in the property and that he was therefore a trespasser.

In November, 2014, on the basis of unpublished opinion no. 2014-UP-010, Breakfield, as attorney-in-fact for the Reba Hinson remaindermen, commenced a summary ejectment of trespasser

proceeding based on Appellant's claim of being an owner and not a tenant. At the first merits hearing held in Magistrate's Court, the Respondent elected to proceed with the summary trespass remedy in lieu of the tenant eviction remedy because of Appellant's claims of ownership and the fact that the issue of his alleged ownership had by then been judicially decided adversely to him in unpublished opinion no. 2014-UP-010. This was effectively an amendment of the pleadings to allege alternate causes of action, one for trespass if Appellant claimed title and one for eviction of tenant if Appellant claimed to be a tenant. Although the Magistrate Court assigned another case no. to the trespass action, it was in effect the addition of a new and alternate cause of action allowing the decision to pursue one and not the other at the hearing. This was consistent with the rules governing magistrate court proceedings: the rules are to be construed to secure the just, speedy and inexpensive determination of every civil case, Rule 1, South Carolina Rules of Magistrates Court; the court shall be lenient in the allowance of changes or amendments to pleadings, Rule 14, South Carolina Rules of Magistrates Court; trials are to be conducted in an informal manner, Rule 13, South Carolina Rules of Magistrates Court. In magistrate's court, substantial justice cannot be sacrificed on the alter of technical procedure. As of November, 2014, Respondent's principals (the Hinson remaindermen) had not received an adjudication from a court with respect to requiring Appellant to vacate the property.

On January 30, 2015 the Magistrate's Court held the trespass hearing that is the subject of this appeal; Respondent Breakfield elected to proceed on the trespass case and not on the eviction of tenant case. The resulting Final Order and Judgment dated March 27, 2015 (the order being appealed herein) was the first dispositive order or judgment in any proceeding for the recovery of the subject real property.



Appellant argues that this history runs afoul of S.C. Code Ann. § 15-67-20 in that Respondent (and his principals) have commenced more than one action to recover the property and that the Magistrate's Court erred in not dismissing the trespass case. Relying on Carr v. Mouzon, 76 S.E. 201 (S.C. 1912), Appellant argues that the Hinson remaindermen's actions to evict Appellant as a tenant, and/or to eject Appellant as a trespasser, were all actions for recovery of the land at issue and that the § 15-67-20 limitation of one action to recover the property or its possession applies without regard to the disposition of the prior actions. According to Appellant, when the first tenant eviction case resulted in an order of dismissal without prejudice, Respondent's principals were then foreclosed from any other action to establish their ownership and to recover the property. And, when Respondent elected to pursue the summary trespass remedy and to forgo the tenant eviction remedy, that was an additional action in violation of § 15-67-20. The Court disagrees.

The statute in Carr,⁴ a predecessor version to § 15-67-20, expressly provided that a second action was permitted within two years of the verdict, judgment, non-suit or discontinuance in the first action. Appellant argues that according to Carr a nonsuit or discontinuance for any reason counts as an action to recover real property for the purpose of applying the limitation in § 15-67-20. However, the statute construed in Carr is not the statute now in effect. Section 15-67-20 no longer permits more than one action and no longer contains the non-suit and discontinuance provision found in earlier versions of the statute. Obviously, the non-suit and discontinuance provision operated only in the two-action exception to res judicata found in earlier versions of § 15-67-20.

Appellant cites Stewart-Jones Co. v. Hankins, 152 S.E. 430 (S.C. 1930) in which three eviction actions against the Defendant, and the failure to pay costs of the first action, required a dismissal of the third action. However, Stewart-Jones is factually distinguishable from the case now

⁴ Subdivision 2 of section 98 of the Code of Procedure.

before the court in significant respects. It was decided on the content of Section 317, Code of Civil Procedure (1922), now amended and codified as S.C. Code Ann. § 15-67-20. Section 317 then provided:

"The plaintiff in all actions for recovery of real property, or the recovery of the possession thereof, is hereby limited to two actions for the same, and no more: Provided, that the costs of the first action be first paid, and the second action be brought within two years from the rendition of the verdict or judgment in the first action, or from the granting of a non-suit or discontinuance therein."

The opinion in Stewart-Jones rested on the defense that the action on appeal "was commenced by the plaintiff without the payment of the costs in the said former action, which was a condition precedent to its right to bring this action." Id. at 437. The expressly stated basis for the opinion (the payment of costs in the former action) was removed from the statute in 1988, now § 15-67-20, when the provision for a second action subject to the payment of costs in the former action was removed from the statute.

Further distinguishing the opinion is the fact that the Defendant in Stewart-Jones had a deed to the property, as did the Plaintiff, and that each persistently claimed title. Herein, by the time the tenant eviction case had become a trespass case, it had been definitively established by the Court of Appeals, confirmed by denial of certiorari by the Supreme Court, that Appellant never had a deed and has no valid, enforceable claim to title whether by adverse possession or by acquisition from Reba Hinson. Nevertheless, Appellant argues that he is entitled to a deed or a declaration of title notwithstanding that the courts have determined that he has not held title in any possible form since Reba Hinson's death in 2006. That would be a truly unconscionable result.

The underlying policies of the 1922 statute and the post-1988 revised statute guide the court in determining the operation of § 15-67-20 in this case. There are no reported cases addressing the application of the post-1988 § 15-67-20. The pre-1988 two-action limitation was considered in Ladd

v. DuPre, 147 S.E.2d 253 (S.C. 1966). In that case P1 brought an action against D1 for possession of land. It resulted in a final judgment awarding possession and damages to P1. D1 then instituted an action against P1 to regain possession of the land, arguing that S.C. Code Ann. § 10-2402 (1962) permitted a second action to determine possession. P1, who was the plaintiff in the first action and the defendant in the second action, pled res judicata and argued that the final judgment in the first action was a bar to the second action. The circuit court dismissed the complaint in the second action claiming that res judicata operated as a bar to the second action. The Supreme Court construed the statute thus: "The statute must be construed in the light of the common law rule, recognized in this State, which permitted a plaintiff to bring any number of actions for the recovery of the same real property." Citing Carr v. Mouzon, 76 S.E. 201 (S.C. 1912) the court in Ladd continued: "the courts refused to apply the general principles of res judicata to such actions . . . because title and right to possession of real property was regarded with special favor, and it was thought that such important rights should not be finally determined by one action." It follows that the two-action limitation was enacted to preserve the exception to res judicata but to limit the right of a person to two actions for the recovery of real estate and also to protect "a person in possession of, and claiming title to, real estate." (Emphasis added.) Such person has a right to be "relieved of continued attacks on his title." (Emphasis added.) The pre-1988 statute was construed to mean that "a party out of possession, who loses his first action, shall have a second action, but was never intended to modify the doctrine of res judicata otherwise." (Emphasis added). The policy of the former statute gleaned from the language of the Ladd v. DuPre opinion negates Appellant's arguments herein. In the eviction/ejectment proceeding Appellant was not legitimately claiming title to the land, and Respondent was not attacking Appellant's title, because the Court of Appeals had already decided the question of title. And, the Hinson remaindermen did not "lose" the first action because it did

not proceed to a ruling or judgment. Dismissal of a case "without prejudice" means a plaintiff may reassert the complaint by curing defects that led to the dismissal, in contrast to a dismissal of a complaint "with prejudice" which is intended to bar relitigation of the same claim. Spence v. Spence, 628 S.E.2d 869 (S.C. 2006).

The change in policy effectuated by the 1988 amendment of the statute appears to be that by amending the statute to allow only one action, the common law res judicata doctrine is now codified with respect to actions to recover real property. Under modern law and procedure real property disputes are no longer viewed as needing a special exception to res judicata. For the common law res judicata doctrine, and/or its equivalent statutory limitation in § 15-67-20 to apply, Appellant must show that (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication (final judgment) of the issue by a court of competent jurisdiction. Catawba Indian Nation v. State, 756 S.E.2d 900 (S.C. 2014). A "final judgment" for purposes of res judicata must finally dispose of some matter which under substantive law to be applied and procedural law of forum can be, and has been, finally disposed of. McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich, 482 S.E.2d 564 (S.C.App. 1997).

Nothing was decided or disposed of by court action in the first tenant eviction proceeding. It was dismissed without prejudice. The second tenant eviction proceeding was discontinued without proceeding to trial when the Respondent elected to proceed on the trespasser theory of the case. The summary ejectment of trespasser proceeding did go to a hearing and produced the trial court's only order, adjudication or judgment that finally disposed of the dispute between these parties. Accordingly, § 15-67-20 is not a bar to the trespass case.

Injunction

2015-CP-12-0368, a companion case to this appeal, has been dismissed by separate order, but only after transferring Appellant's cause of action for injunction to this case. On or about August 10, 2015, Appellant commenced case no. 2015-CP-12-0368 by filing a complaint alleging two causes of action. First, he sought a writ of mandamus to compel the Magistrate to file a Return of the magistrate's court proceedings in 2015-CP-12-0179 (the trespass case); and second, he sought an injunction to enjoin the Magistrate from issuing a warrant or writ of ejectment in the trespass case. In effect, Appellant seeks a preliminary injunction to enjoin a future action pending the outcome of his appeal. Respondent Breakfield, as attorney-in-fact for the Hinson remaindermen, moved to intervene and the motion was granted. Respondent Breakfield in his representative capacity opposes the cause of action for preliminary injunction.

A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief he will suffer irreparable harm, that he has a likelihood of success on the merits, and that there is no adequate remedy at law. Poynter Invs. Inc. v. Century Builders of Piedmont, Inc., 694 S.E.2d 15 (S.C. 2010).

This court denies the Appellant's request for a preliminary injunction. First, the action for injunction is untimely pursuant to the terms of S.C. Code Ann. § 15-67-640. Additionally, on the merits, Appellant has not satisfied the requirements for preliminary injunctive relief. Paragraph 10 of his complaint in case no. 2015-CP-12-0368, the cause of action for an injunction, alleges that "the aim of the magistrate action is to evict plaintiff [Appellant] from land that plaintiff Mell Woods acquired through ten years adverse possession." He does not allege another source for his purported title apart from adverse possession. Appellant further alleges that he therefore holds an ownership interest in the land and is entitled to participate in a separate partition action in which the Hinson

remaindermen are partitioning the land.

Appellant had an adequate remedy at law, and he sought it in his action to construe the Levie Hinson last will. That action resulted in Court of Appeals unpublished opinion no. 2014-UP-010 which expressly ruled that Appellant acquired no ownership by adverse possession. Appellant cannot show a likelihood of success on the merits of his appeal. His claim to right of possession of the real property at issue is based on either adverse possession, as alleged in case no. 2015-CP-12-0368, or having acquired title from Reba Hinson. The Court of Appeals' unpublished opinion no. 2014-UP-010 decided both of those claims adversely to the Appellant. Accordingly, Appellant is not entitled to injunctive relief, and his action/motion for such is denied. The magistrate is free to issue a warrant or writ of ejectment.

On the basis of the rulings herinabove, it is the Order of this Court, sitting as an appellate court, that:

1. The Magistrate's Court's Final Order and Judgment dated March 27, 2015 is affirmed.
2. The Magistrate's Court's July 15, 2015 Order denying Appellant's Motions for Reconsideration is affirmed.
3. The Magistrate's Court's August 24, 2015 Order denying Appellant's motion to change venue and motion to dismiss is affirmed.
4. Appellant's cause of action or motion for injunction to enjoin the magistrate from issuing a warrant or writ of ejectment is denied.

IT IS SO ORDERED.

July 7
[Signature], 2016.

[Signature]
Brian M. Gibbons
Judge, Sixth Judicial Circuit

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CHESTER CO. S.C.
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

2015-CP-12-0368

Mell Woods,

Plaintiff,

v.

Order Granting Motion to Intervene and
Dismissing Action

Yale Zamore, Chester County
Magistrate Judge,

Defendant.

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CHESTER CO. S.C.

This case is related to 2015-CP-12-0179, an appeal from Magistrate's Court in a summary trespasser ejectment proceeding. In that case, the Magistrate, the above-captioned Defendant, found the above-captioned Plaintiff to be a trespasser. The Final Order and Judgment was dated March 27, 2015. Plaintiff appealed that Judgment Order. On or about August 10, 2015, Plaintiff commenced this action by filing a complaint alleging two causes of action. First, Plaintiff sought a writ of mandamus to compel the Magistrate to file a Return of the magistrate's court proceedings in 2015-CP-12-0179; and second, Plaintiff sought an injunction to enjoin the Magistrate from issuing a warrant or writ of ejectment. Robert Breakfield, as attorney-in-fact for the landowners in the trespass case, was not named as party in this case, and upon learning of the action and Plaintiff's request for an injunction in the trespass case, Breakfield moved to intervene for the purpose of opposing Plaintiff's requested injunction.

The motion to intervene was heard on June 1, 2016. Present were the Plaintiff, appearing pro se, Robert Breakfield and his attorney Mike Brackett, and the Defendant Magistrate Judge Yale Zamore.



Although Plaintiff filed a motion for continuance of the motion hearing, the motion was waived when Plaintiff represented to the court that he was ready to proceed with the hearing and actually participated in the hearing without objection and without the court having acted on the motion. 17 C.J.S. Continuances §14 (1999).

After reviewing the matters of record and receiving the arguments of the parties, the court finds that Mr. Breakfield, in his capacity as attorney-in-fact, is entitled to intervene as a matter of right, pursuant to Rule 24(a), SCRCF, because he (more accurately his principals), claims an interest in the property, and disposition of Mr. Woods' action herein may impair or impede Breakfield's ability to protect his principals' interests, and his interest is not adequately represented by existing parties. Additionally and alternatively, Mr. Breakfield, as attorney-in-fact, is entitled to permissive intervention, pursuant to Rule 24(b), SCRCF, because his principals have a claim to the property that involves a question of law or fact in common with Mr. Wood's claim in the above-captioned main action. Accordingly, the motion to intervene is granted.

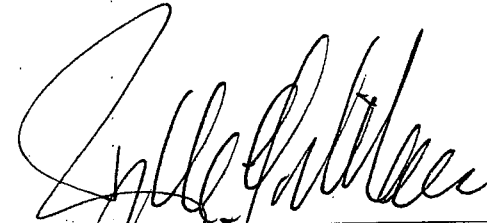
The Court proceeded to consider the cause of action seeking to compel Magistrate Zamore to file a Return. From the record before the Court, it appears that Magistrate Zamore filed a Return on September 4, 2015, a Corrected and Supplemental Return on April 15, 2016 and a Second Supplemental Return on May 17, 2016. The Court finds the Return, as corrected and supplemented, to be more than sufficient under the common law and applicable statutes, and to be above and beyond what the Court deems to be a suitable and customary Return in cases of this nature. Accordingly, the first cause of action is hereby dismissed.

Regarding the second cause of action seeking an injunction in the trespass case, the Court announced its intention to consider the injunction as part of the appeal in case 2015-CP-12-0179. No one objected.

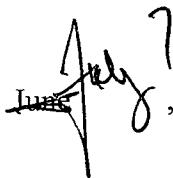
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There being nothing left in dispute in the above-captioned case, and there being no objection, it is Ordered that this case is hereby dismissed, with prejudice, reserving the injunction cause of action for consideration in 2015-CP-12-0179.

IT IS SO ORDERED.



Brian M. Gibbons
Judge, Sixth Judicial Circuit

 July 7, 2016

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July 29, 2016	Pre-Shipment Info Sent to USPS	

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

Sign up for My USPS ›



USPS.COM

EXHIBIT

C

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

JUL 22 2014

Trial Court Case No. 2011-CP-12-0291

Supreme Court Appellate Case No. 2014-001039 S.C. Supreme Court

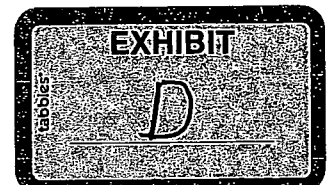
Robert H. Breakfield, as attorney in fact Respondent,

v.

Mell Woods Petitioner.

Respondent's Return to Petitioner's Motion to Reinstate Appeal

The Circuit Court's Order affirming the Magistrate's Court's Order was affirmed by the Court of Appeals in the per curiam Unpublished Opinion No. 2014-UP-076, filed February 26, 2014. The Petitioner's Petition for Rehearing was denied by Order filed April 24, 2014. Petitioner moved this court for an extension of time to file and serve his Petition for Writ of Certiorari and the Appendix. By Order dated May 16, 2014, Petitioner's deadline for filing a Petition for Writ of Certiorari and Appendix was extended through June 21, 2014. Because June 21 was a Saturday, Petitioner's filing deadline was extended to June 23 pursuant to Rule 263(a), SCACR.



On June 27, 2014, having not received a Petition for Writ of Certiorari and Appendix, this Court issued an Order dismissing the matter. The Court of Appeals issued its Remittitur to the Circuit Court on June 27, 2014.

On July 3, 2014 Petitioner's Petition and Appendix were delivered to the Court by United States Postal Service delivery. By letter to the Petitioner dated July 7, 2014, the Clerk of Court advised Petitioner of the dismissal and returned his filing fee. By letter dated July 11, 2014 the Clerk of Court, in response to Petitioner's July 7 letter, advised the Petitioner that United States Postal Service records indicated that he had not timely mailed/filed the Petition and Appendix and for that reason the matter had been dismissed. The Postal Services's tracking report was enclosed with the Clerk of Court's July 11 letter. On July 14, 2014, Petitioner filed his motion to reinstate appeal.

Petitioner has been abusing the courts and the Respondents since 2010 with his *pro se* mischief. He is using the courts as a tool to create delay so that he can stay on real property owned by the various Respondents, and to impose great costs on the Respondents, no doubt in the hope that they will grow tired and offer Petitioner some settlement concession. It is time for the Court to put a stop to this.

Five cases are now before this Court involving the Petitioner, Mell Woods, and the Hinson family. They are:

1. 2010-CP-12-0201 (Supreme Court Case No. 2013- 001946;)
2. 2010-CP-12-0168 (Supreme Court Case No. 2013-001947;)
3. 2011-CP-12-0323 (Supreme Court Case No. 2014-000660;)
4. 2011-CP-12- 0291 (Supreme Court Case No. 2014-001039;) and

5. 2011-CP-12-0595 (Supreme Court Case No. 2014-001246.)

Matters of record in this Court related to these cases are incorporated herein by reference.

In case no. 1, Mr. Woods tried to insert himself into matters of probate estate administration in the estate of Reba Hinson. The probate court denied Petitioner's various efforts to interfere in estate administration. Petitioner appealed to circuit court where the probate court orders were affirmed. Petitioner appealed to the Court of Appeals where the circuit court was affirmed in a per curiam unpublished opinion. His Petition for Writ of Certiorari is now pending in this court, a case commenced in 2010.

In case no. 2, Petitioner filed claims against the Reba Hinson estate. The claim proceeding was removed to circuit court. After slogging through many procedural delays, the Respondents were granted summary judgment by the circuit court. Petitioner appealed to the Court of Appeals, but he appealed only the Order denying his motion for reconsideration and did not appeal the summary judgment order itself. On motion of Respondents, the Court of Appeals dismissed the appeal, and rightfully so based on clear and consistent precedent. Petitioner filed a Petition for Writ of Certiorari to this court which, for reasons the undersigned will never understand, was granted with direction to the Court of Appeals to hear the appeal. The pro se Petitioner was excused, and the case went on, with attendant costs to the Respondents, resulting in the Court of Appeals affirming the circuit court in a per curiam unpublished opinion. Petitioner's Petition for Writ of Certiorari is now pending in this Court, a case commenced in 2010.

In case no. 3, Mr. Woods sought to have the last will of Reba Hinson's deceased husband construed to have devised a fee interest in the land to Reba Hinson rather than having devised a life estate. Petitioner is not a member of the Hinson family; he was neither a devisee in Mr. Hinson's

last will nor an intestate heir of Mr. Hinson. Nevertheless, Petitioner had his day in court, and the circuit court granted summary judgment to the Hinson family. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. Petitioner's Petition for Writ of Certiorari is now pending in this Court, a case commenced in 2011.

Cases 4 and 5 are now in the same procedural place in the time line of this never-ending saga. Case no. 4 is the above-captioned case, an eviction case commenced in the magistrate's court by the Respondents to have Mr. Woods evicted from Respondents' land. Petitioner herein appealed a magistrate's court pretrial Order to the circuit court. The circuit court affirmed the magistrate's court. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. Petitioner was granted an extension to file a petition for a writ of certiorari, and for reasons addressed hereinbelow, the matter was dismissed before the petition was filed and served. Petitioner has filed a Motion to Reinstate Appeal that is now under consideration of the court.

Case no. 5 is in the same procedural posture as case no. 4. Petitioner filed an action against the Respondents in circuit court for various and sundry frivolous causes of action. The circuit court granted summary judgment in favor of the Hinson family. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. Petitioner was granted an extension to file a petition for a writ of certiorari, and for reasons addressed hereinbelow, the matter was dismissed before the petition was filed and served. Petitioner has filed a Motion to Reinstate Appeal that is now under consideration of the court.

Petitioner's unverified motion herein is supported only by his affidavit dated July 14, 2014 in which he represents that his package containing the Petition and Appendix addressed to this Court for filing was deposited in the "post office 28209" on June 23, 2014 at approximately 8:30 pm. Although Petitioner had been advised by the Clerk of Court that the postal service tracking report for his package indicated that the package was deposited with the postal service on July, 1, 2014, Petitioner's affidavit does not expressly address that fact. His affidavit, by implication, charges that the postal service mishandled or lost the package and was seven days tardy in scanning the package. A convenient excuse to be sure. The Petitioner chose to use the Postal Services' Click-N-Ship program, with its attendant tracking procedures, to deliver his filings to the Court and to Respondents' attorney. He now tries to disavow the tracking report. Why Petitioner crossed the state line to use a Charlotte, NC post office rather than the Great Falls or Lancaster, SC post offices is anyone's guess.

Filed and served with this Return, and incorporated herein, is the Affidavit of the manager of the 28209 post office station located as 4117 Park Road in Charlotte, NC. The Affidavit explains the Click-N-Ship procedure used by the Petitioner and refutes the implication that the postal service took possession of the Petitioners' packages on June 23, 2014 and did nothing with them for seven days. The undersigned hereby notes that Petitioner's affidavit does not mention his second package, addressed to the undersigned as attorney for Respondents, containing and serving copies of the Petition and Appendix. The Affidavit identifies the Postal Service tracking reports for each package, the one to be filed with the court and the one to be served on the Respondents' attorney.

That two separate packages would be mishandled, lost and delayed on identical time lines is too far-fetched to believe. And, when considered in light of the events in Case No. 2014-001246, where the exact circumstances were alleged to have occurred several days earlier: labels dated June 19, tracking reports shows USPS receipt of packages addressed to the Court and to the undersigned on June 26, 2014, with the Petitioner again blaming the postal service for the seven-day delay, makes the Petitioner's story even more a work of fiction. It appears that the Petitioner has made serious misrepresentations to the Court in his July 14, 2014 affidavit and in his certificate of service wherein he claims to have served the undersigned by mail on June 23, 2014.

Appellate Court Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Forner v. Butler, 319 S. C. 275, 460 S.E.2d 425 (Ct. App. 1995) citing Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992).

The term "mail," a verb, is not expressly defined in either the Rules of Civil Procedure or the Appellate Court Rules. However, see Rule 262(a), SCACR, which provides that filing, with certain exceptions, is accomplished "[b]y depositing the document in the U.S. mail, properly addressed to the clerk . . ." Rule 262(b), SCACR, provides that service by mail is complete upon mailing. Common law defines the term to mean "[t]o deposit (a letter, package, etc.) with the U.S. Postal Service." Black's Law Dictionary 972 (8th Ed. 2004.) In 62 Am.Jur.2d Post Office §53 (2005) it is stated that "[t]he process of mail transportation begins with the deposit of mail in the post." To effectively mail an item, it must be placed in the custody of the Postal Service. Marshall v. Hendricks, 103 F.Supp.2d 749, 783-784 (D.N.J. 2000); decision aff'd in part, rev'd in part on other grounds, 307 F.3d 36 (3d Cir. 2002); cert den. 538 U.S. 911. In American Chain Association

v. U.S., 746 F.Supp. 112 (CIT. 1989) the United states Court of International Trade construed Rule 5(g) of the Rules of that court. Rule 5(g) concerns "service and filing" and provides that:

Service or filing of any pleading or other paper by delivery or by mailing is completed when received, except that a pleading or other paper mailed by registered or certified mail property addressed to the party to be served, or to the clerk of court, with the proper postage affixed and return receipt requested, shall be deemed served or filed as of the date of mailing.

In that context the Court held that, at the very least, an item is deemed mailed when it is placed in the custody of the U.S. Postal Service by placing it in an appropriate mail receptacle, giving it to a mail carrier or delivering it to the post office. Id. Rule 5(g) of the U.S. Court of International Trade is very similar to Rule 262, SCACR.

Rule 260(a), SCACR, provides that a case that has been dismissed for failure to comply with the requirements of the Appellate Court Rules shall not be reinstated except by leave of the court, **upon good cause shown**. A motion or petition to reinstate an appeal is addressed to the discretion of the court. Dillishaw v. Bell, 115 S.C. 258, 105 S.E. 410 (1920.) Good cause is defined as "[a] legally sufficient reason. Good cause is often the burden placed on the litigant... to show why a request should be granted or an action excused." Black's Law Dictionary 251 (9th ed. 2009).

The question now presented is whether the Petitioner has shown good cause by evidence in his affidavit averring that he timely filed and served his Petition by personally depositing it with the Postal Service by the extended court rule deadline - June 23, 2014. Petitioner says he did; the Postal Service says he did not.

This same issue was addressed in the case of In re Powell's Estate, 158 P.2d 545 (Nev. 1945). In Powell's Estate, Respondents moved to dismiss the Appellant's appeal because the service of the notice of appeal was untimely. Service of the notice of appeal was mandatory and jurisdictional, so

the date of mailing was crucial. The governing rule required the notice of appeal to be served within three days after the filing of the notice of appeal with the clerk of court. The notice of appeal was filed on August 12, 1944, meaning that it had to be served/mailed no later than August 15, 1944.

In support of the motion to dismiss appeal, Respondents submitted affidavits showing that the notice of appeal was received by each Respondent by mail delivery on August 17, 1944, and that the envelopes containing the copies of the notice of appeal showed on their face that the envelopes were mailed in Reno, Nevada on August 16, 1944 at 4:30 pm. Respondents also submitted an affidavit from the Postmaster for the City of Reno explaining the practices of the post office with regard to cancellation marks on envelopes, and averring that the envelopes in question had been mailed (placed with the post office) on August 16, 1944.

In opposition to the motion to dismiss appeal, the Appellant's attorney submitted his affidavit averring that he mailed the notice of appeal to each Respondent on August 14, 1944, that the Postmaster's affidavit was based on supposition; and that the Respondents were mistaken about the date of their receipt of their respective notices of appeal.

On these competing affidavits, the Nevada Supreme Court wrote,

When as here, two letters [click-n-ship packages] written by the same individual [Petitioner], bear a postmark [tracking scan record] of the same date, the circumstances become stronger because the chance that both were overlooked and not stamped in the post office until a later date than their deposit, becomes less likely. That two such letters [click-n-ship packages] were not noticed from the time of their deposit, as claimed on the 14th of August [June 23, 2014], until the 16th of that month [July 1, 2014], is so improbable as to cast doubt upon the verity of appellant's [Petitioner's] affidavit.

The inference of a deposit in the post office on the latter date gains force from the affidavit of the Reno postmaster as to the regularity of procedure in that office in collecting and transmitting mail, and from the presumption that those in charge of receiving and transmitting mail perform their duties in a regular and proper manner.

Inserting the bracketed terms from the case now before the Court into the Nevada Supreme Court's opinion shows just how seamlessly the facts compare. And, in the above-captioned case, there are not just two packages allegedly overlooked by the postal service, but four. The other related appeal, 2014-001246, is explained below. Two appeals, involving two packages each, all having been processed in the same way, and all claimed by the Petitioner to have been mishandled in the same way by the Postal Service. If two allegedly overlooked letters served to cast doubt on appellant's affidavit in Powell's Estate, four such allegedly overlooked letters/packages should more convincingly cast doubt on the verity of Petitioner's affidavits herein. In Powell's Estate, the Court dismissed the appeal notwithstanding the appellant's affidavit.

2014-001246

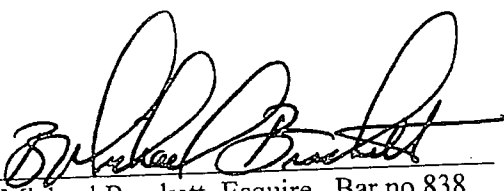
Petitioner's motion to reinstate appeal in the related case no. 2014-001246 is addressed in Respondents' Return in that case, but it is also mentioned herein to demonstrate how unreliable and unpersuasive Petitioner's affidavit is.

In the 2014-001246 case, the trial court's summary judgment was affirmed by the Court of Appeals in the per curiam Unpublished Opinion No. 2014-UP-158, filed April 2, 2014. The Petitioner's Petition for Rehearing was denied by Order filed May 8, 2014. Petitioner moved this court for an extension of time to file and serve his Petition for Writ of Certiorari and the Appendix. By Order dated June 10, 2014, Petitioner's deadline for filing a Petition for Writ of Certiorari and Appendix was extended through June 19, 2014. On June 27, 2014, the Petition and Appendix not having arrived at the Court, the matter was dismissed. The Court of Appeals also issued the

Remittitur. Petitioner voiced objection in his letter to the Clerk of Court dated July 7, 2014. The Clerk of Court responded by letter dated July 11, which included the Postal Service's tracking report indicating that Petitioner's package was not deposited with the postal service until June 26, 2014. Petitioner's affidavit in support of his motion to reinstate appeal does not expressly address that fact, and, by implication, avers that the postal service mishandled or lost the package and was seven days tardy in scanning the package. If this sounds familiar, it is because it is the same excuse offered by Petitioner in 2014-1039.

Conclusion

Just as in Powell's Estate, *supra*, the Petitioner has not made a persuasive, good faith showing of timely compliance, or even the attempt at timely compliance, with the rules governing petitions for certiorari. To the contrary, he has placed his own credibility in question, in an unfavorable way. If his blame-the-post-office-notwithstanding-contemporaneous-tracking-records excuse can carry the day, then all appeal deadlines are subject to this mischief. Petitioner's Motion to Reinstate Appeal should be denied.


B. Michael Brackett, Esquire Bar no. 838
Moses & Brackett, PC
1333 Main Street, Suite 260
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
mbrackett@mkb-law.com
Attorney for Respondents

July 22, 2014

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Affidavit of Paris N. Cherry

Personally appeared before me Paris N. Cherry, who being duly sworn, deposes and says
that:

1. I am the manager of the USPS post office at 4117 Park Road, Charlotte, NC. The post office at 4117 Park Road, Charlotte, NC has been assigned the zip code 28209. I have worked for the United States Postal Service (USPS) for 17 years, and I am familiar with the Click-N-Ship service and tracking program.
2. Click-N-Ship is a service offered by the USPS which allows customers to create pre-paid shipping labels on standard printing paper. This covers the postage due and includes a delivery confirmation number to show the date and time of delivery or an attempted delivery. Minus the cost of postage, there is no fee for users to create labels for Priority Mail, Priority Mail Express, Global Priority Mail or Global Express Mail. After affixing the label, customers can ship the package by dropping it in a mail box, bringing it to a post office, giving it to their regular mail carrier, or requesting a special pickup
3. I have been asked to examine the four attached Click-N-Ship labels (Exhibits A to D) and to explain the steps in the process of mailing a package using these labels. I have also been asked to examine the attached tracking reports (Exhibits E to H) that correspond to the labels (Exhibits A to D).

The June 19, 2014 Labels

4. Exhibit A is a click-n-ship label addressed to the South Carolina Supreme Court bearing USPS tracking no. 9405 5036 9930 0319 7810 95. Exhibit B is a click-n-ship label addressed to B. Michael Brackett bearing USPS tracking no. 9405 9036 9930 0205 7170 52.
5. Exhibits A and B were printed on a non-USPS computer. When the Click-N-Ship label is printed, a digital payment is automatically made to the USPS as a part of the label printing procedure. Buying and printing a Click-N-Ship label is the equivalent of buying a postage stamp for a regular envelope. Merely printing and paying for a Click-N-Ship label does not signify that a package has been deposited or placed with the USPS for delivery. When a Click-N-Ship label is printed, digital notice is automatically given to the USPS. Exhibits A and B confirm on their face that they were purchased and printed on June 19, 2014.
6. Exhibit E is the USPS tracking report for the Exhibit A Click-N-Ship label addressed to the South Carolina Supreme Court. Exhibit F is the USPS tracking report for the Exhibit B Click-N-Ship label addressed to B. Michael Brackett. When a Click-N-Ship package is placed with the USPS for delivery, it is promptly scanned into the system for tracking purposes and is thereafter scanned at each step of the delivery process. Exhibit E shows that the package bearing the Exhibit A label was first accepted by the USPS and scanned into the tracking system at 7:06 pm on June 26, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at

8:21 pm on June 26, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on June 27, 2014. It arrived at the addressee's post office, zip code 29211, on June 28, 2014.

7. Exhibit F shows that the package bearing the Exhibit B label, addressed to B. Michael Brackett, was first accepted by the USPS and scanned into the tracking system at 7:03 pm on June 26, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at 8:18 pm on June 26, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on June 28, 2014. It arrived at the addressee's post office, zip code 29202, on June 28, 2014.

The June 23, 2014 Labels

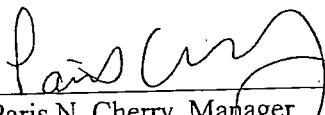
8. Exhibit C is a click-n-ship label addressed to the South Carolina Supreme Court bearing USPS tracking no. 9405 9036 9930 0207 7880 98. Exhibit D is a click-n-ship label addressed to B. Michael Brackett bearing USPS tracking no. 9405 9036 9930 0207 7970 83.
9. Exhibits C and D were printed on a non-USPS computer. When the Click-N-Ship label is printed, a digital payment is automatically made to the USPS as a part of the label printing procedure. Buying and printing a Click-N-Ship label is the equivalent of buying a postage stamp for a regular envelope. Merely printing and paying for a Click-N-Ship label does not signify that a package has been deposited or placed with the USPS for delivery. When a Click-N-Ship label is printed, digital notice is automatically given to

the USPS. Exhibits C and D confirm on their face that they were purchased and printed on June 23, 2014.

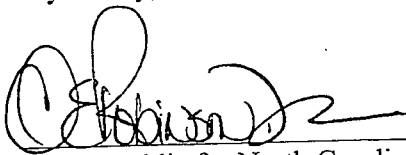
10. Exhibit G is the USPS tracking report for the Exhibit C Click-N-Ship label addressed to the South Carolina Supreme Court. Exhibit H is the USPS tracking report for the Exhibit D Click-N-Ship label addressed to B. Michael Brackett. When a Click-N-Ship package is placed with the USPS for delivery, it is promptly scanned into the system for tracking purposes and is thereafter scanned at each step of the delivery process. Exhibit G shows that the package bearing the Exhibit C label was first accepted by the USPS and scanned into the tracking system at 6:36 pm on July 1, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at 7:51 pm on July 1, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on July 2, 2014. It arrived at the addressee's post office, zip code 29211, on July 3, 2014.
11. Exhibit H shows that the package bearing the Exhibit D label, addressed to B. Michael Brackett, was first accepted by the USPS and scanned into the tracking system at 6:36 pm on July 1, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at 7:51 pm on July 1, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on July 2, 2014. It arrived at the addressee's post office, zip code 29202, on July 2, 2014.
12. Exhibits E, F, G and H, the USPS tracking reports, are USPS records made in the regular practice or business of USPS, at or near the time of the events reported therein, by a person or persons with knowledge, or from information transmitted by a person or persons with knowledge, that are made and kept in the course of USPS's regularly

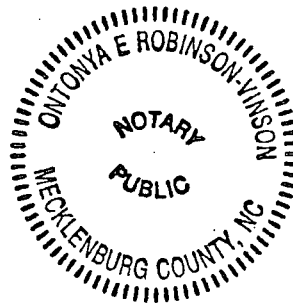
conducted business activity. It is a computer process created by scanning package bar codes at each step of the transportation and delivery process. According to the four tracking reports, all four packages mentioned above were mailed "priority mail 2-day" and were delivered to the addressees within two days of the initial scanning.

13. The drop box for packages in the 4117 Park Road, Charlotte, NC post office is emptied several times each day, and upon removal from the drop box, packages are then promptly scanned if they are being mailed using the USPS tracking and confirm program. Scanned and tracked packages are not "post-marked."
14. I do not know Mr. Mell Woods or Mr. Mike Brackett.

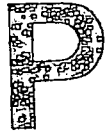

Paris N. Cherry, Manager
United States Postal Service

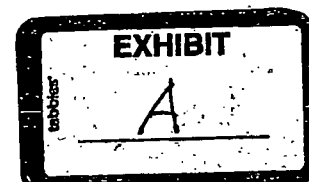
Sworn to before me this 22nd
day of July, 2014.

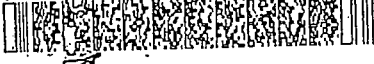
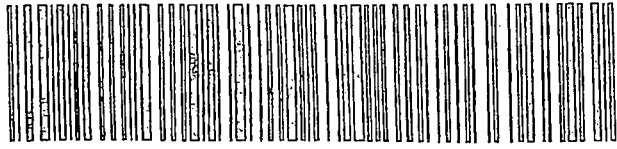

Notary Public for North Carolina
My Commission Expires: 4/18/17

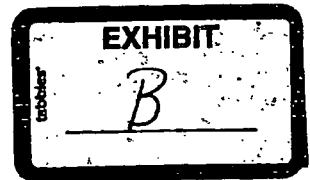


STATES
SERVICE

 UNITED STATES POSTAL SERVICE®		Click-N-Ship®	
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	\$6.16		
	US POSTAGE		
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06/19/14		Commercial Base Pricing Mailed from 28209 062S0000001307	
PRIORITY MAIL 2-DAY™			
MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603		Expected Delivery Date: 06/21/2014 0024	
B099			
SHIP TO: SOUTH CAROLINA SUPREME COURT PO BOX 11330 COLUMBIA SC 29211-1330			
USPS TRACKING #			
			
9405 5036 9930 0319 7810 95			
Electronic Rate Approved #038555749			



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PRIORITY MAIL 2-DAY™			
MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603		Expected Delivery Date: 06/21/2014 0024	
		E099	
SHIP TO: B. MICHAEL BRACKETT MOSES KOON & BRACKETT, PC PO BOX 100261 COLUMBIA SC 29202-3261			
USPS TRACKING #			
			
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Electronic Rate Approved #038555749			





UNITED STATES
POSTAL SERVICE®

Click-N-Ship®

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usps.com 9405 9036 9930 0207 7880 98 0061 6010 1402 9211

\$6.16
US POSTAGE
Regional Box B
INSURED



Commercial Base Pricing

06/23/14

Mailed from 28209 . 062S000000i301

PRIORITY MAIL 2-DAY™

MELL WOODS
PO BOX 2603
LANCASTER SC 29721-2603

Expected Delivery Date: 06/25/2014

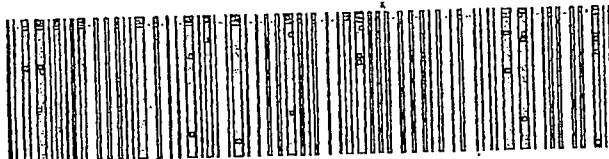
0024

B099

SHIP

TO: SOUTH CAROLINA
SUPREME COURT
PO BOX 11330
COLUMBIA SC 29211-1330

USPS TRACKING #



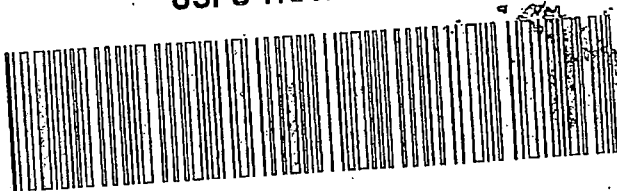
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Electronic Rate Approved #038555749

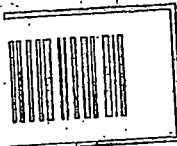
EXHIBIT

C

PRIORITY MAIL

 UNITED STATES POSTAL SERVICE®		Click-N-Ship®	
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PRIORITY MAIL 2-DAY™			
MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603		Expected Delivery Date: 06/25/2014 0024	
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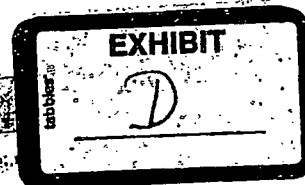
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AND INTERNATIONAL



RRB-A2, July 2013
ID: 10.9375 x 2.375
OD: 11.0625 x 2.5 x
ODCUT: 0.209062

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JNI
OS



liable to many major international destinations.

* Limited International Indemnity

* For Domestic shipments.

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Customer Service

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Search USPS.com or Track Packages



Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

USPS Tracking™



Customer Service
Have questions? We're here to help.

Tracking Number: 9405503699300319781095

Expected Delivery Day: Monday, June 30, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™

Features:
\$50 insurance included

USPS Tracking™

DATE & TIME

June 28, 2014, 9:13 am

STATUS OF ITEM

Delivered

LOCATION

COLUMBIA, SC 29211

Your item was delivered at 9:13 am on June 28, 2014 in COLUMBIA, SC 29211.

June 28, 2014, 9:10 am

Arrival at Post Office

COLUMBIA, SC 29202

June 28, 2014, 12:30 am

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

June 27, 2014, 11:41 am

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

June 26, 2014, 8:21 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

June 26, 2014, 7:06 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 19, 2014

Electronic Shipping Info
Received

Available Actions

Text Updates

Email Updates

Track Another Package

What's your tracking (or receipt) number?

Track It

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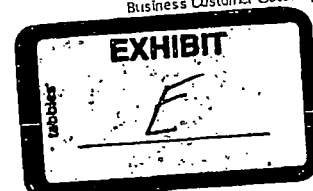
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Tracking Number: 9405903699300205717052

Expected Delivery Day: Saturday, June 28, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™Features:
Insured

USPS Tracking™

DATE & TIME

June 28, 2014, 3:56 am

STATUS OF ITEM

Delivered

LOCATION

COLUMBIA, SC 29202

Your item was delivered at 3:56 am on June 28, 2014 in COLUMBIA, SC 29202.

June 28, 2014, 3:56 am

Arrival at Post Office

COLUMBIA, SC 29201

June 26, 2014, 8:18 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

June 26, 2014, 7:03 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 19, 2014

Electronic Shipping Info
Received

Available Actions

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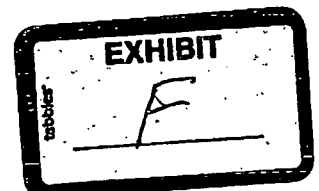
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Tracking Number: 9405903699300207788098

Expected Delivery Day: Thursday, July 3, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™

Features:
Insured

USPS Tracking™

DATE & TIME

STATUS OF ITEM

LOCATION

July 3, 2014, 8:34 am

Delivered

COLUMBIA, SC 29211

Your item was delivered at 8:34 am on July 3, 2014 in COLUMBIA, SC 29211.

July 3, 2014, 8:34 am

Arrival at Post Office

COLUMBIA, SC 29202

July 3, 2014, 3:46 am

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

July 2, 2014, 6:13 pm

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

July 1, 2014, 7:51 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

July 1, 2014, 6:36 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 23, 2014

Electronic Shipping Info
Received

Available Actions

Text Updates

Email Updates

Track Another Package

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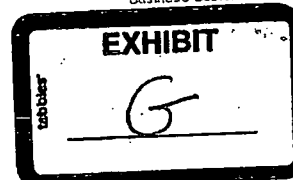
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Tracking Number: 9405903699300207797083

Expected Delivery Day: Thursday, July 3, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™Features:
Insured

USPS Tracking™

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DATE & TIME

STATUS OF ITEM

LOCATION

July 2, 2014, 11:37 pm

Delivered

COLUMBIA, SC 29202

Your item was delivered at 11:37 pm on July 2, 2014 in COLUMBIA, SC 29202.

July 2, 2014, 11:36 pm

Arrival at Post Office

WEST
COLUMBIA, SC 29172

July 2, 2014, 6:02 pm

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

July 1, 2014, 7:51 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

July 1, 2014, 6:36 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 23, 2014

Electronic Shipping Info
Received

Track Another Package

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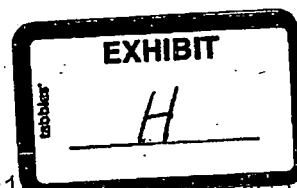
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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Trial Court Case No. 2011-CP-12-0291

Supreme Court Appellate Case No. 2014-001039

RECEIVED

JUL 22 2014

S.C. Supreme Court

Robert H. Breakfield, as attorney in fact Respondent,

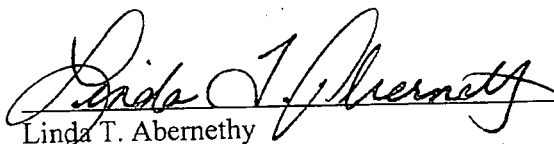
v.

Mell Woods Petitioner.

CERTIFICATE OF SERVICE

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served the Appellant, Mell Woods, with copies of Respondent's Return to Petitioner's Motion to Reinstate Appeal, postage prepaid and return address clearly indicated on said envelope, on this 22nd day of July, 2014 at the following address:

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


Linda T. Abernethy

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

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

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

Authenticating Affidavit of
Attorney Mike Brackett

Applicant, Respondent on Appeal,

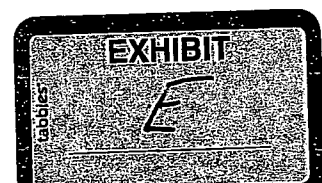
v.

Mell Woods,

Appellant-Trespasser.

I, attorney Mike Brackett, being duly sworn, depose and say that:

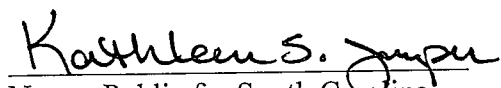
1. I am the attorney of record for the above-captioned Applicant-Respondent.
2. On July 12, 2016 I sent the attached email (Exhibit A to the Return), including the two identified attachments (Orders) to the Appellant, with a copy to the clerk of court. The attached email and attachments are true and accurate copies of the originals.
3. The email address used for the Appellant is the email address Appellant previously provided to the court in 2008-CP-12-00475.
4. I did not receive an email message or bounce-back indicating that the delivery of the email to the Appellant and/or to the clerk of court failed.
5. The attached mailing label (Exhibit B to the Return) is a true copy of the original mailing label that was affixed to the envelope which contained Appellant's Rule 59(e) Motion for Reconsideration. The envelope was received by the deponent in the regular mail delivery on August 3, 2016.
6. The attached United States Postal Service tracking report (Exhibit C to the Return) is a true copy of the report printed from the USPS website. The tracking number on the report corresponds to the tracking number on the Exhibit B mailing label.



7. Exhibit D to the Return is a true copy of the Return filed in Appellate Case no. 2014-001039 in response to Appellant's motion to reinstate appeal. It was printed from the South Carolina Judicial Department website. The Return incorporated and included an affidavit given by Paris Cherry, a postal service manager, explaining the click-n-ship program, including tracking reports.


B. Michael Brackett

Sworn to before me this 16th
day of August, 2016.


Notary Public for South Carolina
My Commission Expires: May 8, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

C.A.: 2015-CP-12-0179

2014CV121040003

FILED

AUG 31 10 3 15

CLERK OF COURT
CHESTER CO S.C.

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

Respondents,)

vs.)

Mell Woods,)

Appellant.)

**ORDER DENYING APPELLANT'S
MOTION TO RECONSIDER,
ALTER OR AMEND**

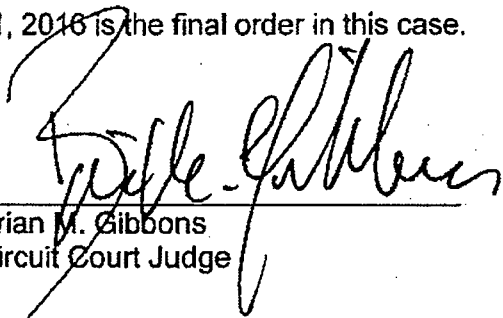
After having thoughtfully considered Appellant's motion to reconsider, alter or amend, and after reviewing the Court's notes and considering the applicable statutory law, case law and evidence presented, I respectfully deny Appellant's motion. Pursuant to Rule 59(f) of the SCRPC, I also find that oral argument is not necessary. Both parties have provided the Court with enough material to make this ruling without the necessity of another hearing.

The Court's order entered on July 11, 2016 is the final order in this case.

AND IT IS SO ORDERED.

Chester, SC

August 31, 2016


Brian M. Gibbons
Circuit Court Judge

EXHIBIT

5

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

DEC 29 2015

S.C. Supreme Court

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

Supreme Court Case No. 2015-002318

Court of Appeals Case No. 2015-001036

Circuit Court Case No. 2015-CP-12-0179

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

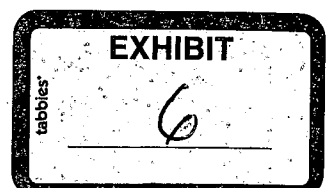
v.

Mell Woods Petitioner.

Respondent's Motion to Dismiss Petitioner's Petition for Writ of Certiorari/Appeal and to Stay
Normal Appeal Process; and

Respondent's Motion for Sanctions

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



Motion to Dismiss Petition/Appeal

By Order dated June 25, 2015, the Court of Appeals dismissed Petitioner's's frivolous appeal because the order purportedly being appealed was not a final order. (App. p. 3). Petitioner then filed a frivolous Petition for Rehearing. (App. p. 4-15). Respondent filed a Return to the Petition for Rehearing and an accompanying Motion for Sanctions in an effort to bring Petitioner's long-running abusive litigation to an end. (App. p. 16-83). Petitioner filed and served a Return to the Motion for Sanctions on July 30, 2015. (App. p. 148-155) and a Reply to the Motion for Sanctions (App. p. 156-159). By Order dated October 15, 2015, the Court of Appeals denied the Petition for Rehearing and denied Respondent's Motion for Sanctions. (App. p. 1). After receiving an extension, Petitioner served his Petition for Writ of Certiorari on December 1, 2015. As described below, Petitioner's pursuit of certiorari under the circumstances presented is further confirmation of his harassing litigiousness; a demonstration of his bad faith; and evidence that the court should not allow further pro se filings. (see Motion for Sanctions below).

Respondent moves the Court to expeditiously dismiss Appellant's Petition/appeal, commenced by the filing and service of a Notice of Appeal, dated and served April 15, 2015 (appeal to the circuit court), and an Amended Notice of Appeal dated May 1, 2015 (incorporating the circuit court's May 1, 2015 Order into the pending appeal). (App. p. 144- 147). The ground for the motion is that the Circuit Court Order that is the subject of the appeal (App. p. 147) is not a final order, and unless a recognized exception exists permitting the immediate appeal of an interlocutory order, only a final order is appealable. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 85 (2d ed.2002), citing S.C. Code Ann. § 14-3-330. The Court of Appeals dismissed the appeal on this ground (App. p. 3), and was correct to do so.

Motion to Stay Appeal Process Pending Decision on Motion to Dismiss

Pursuant to Rules 263(b) and 240(b), SCACR, Respondent further moves the Court to stay the normal process and filing deadlines for the Petitioner's Petition for Writ of Certiorari until the motions made herein are decided.

Respondent's Motion for Sanctions Against Petitioner

Respondent Breakfield moves the court to impose sanctions on the Petitioner in the form of:

- an award of litigation costs, including attorney fees, and an appropriate monetary sanction, and/or
- an order restricting Petitioner's access to the courts with respect to proceedings having any relationship with ownership of the subject real property (known as 1537 Hinton Road, Great Falls, SC), and/or
- an order that all court clerks decline to accept any filing from the litigant in any pending case or new case unless a judge of the Court has specifically authorized the filing after a hearing and confirmed that all appellate costs heretofore awarded against Petitioner have been paid in full, including any monetary sanction awarded herein, and
- an order prohibiting the Petitioner from filing any further legal actions or proceedings involving either the Reba Hinson estate or the Levie Hinson estate, or any other pleadings or submissions, unless Petitioner's pleadings and/or filings are signed by a licensed South Carolina attorney and a bond is posted in the amount of \$15,000 to cover litigation costs and reasonable attorney fees incurred in defending against the action. The grounds for the motion are as follows:

Petitioner is a serial litigant who has used the courts, including this court, to extend his occupancy and use of real property that he does not own. The Respondent's principals identified in the above caption are the owners of the property. These facts have been established in prior legal actions, but Petitioner refuses to acknowledge the prior decisions of the courts; files every possible motion, petition and appeal to delay the day of reckoning; repeatedly tries to re-litigate those decisions in subsequent proceedings, thereby triggering a new round of appeals; and has in bad faith mis-used the courts' process and rules to extend his use and occupancy of the land he does not own.

The Petitioner has commenced five actions in either the Chester County Probate Court or Circuit Court, all having to do with his dispute with the Hinson family over the administration of the Estate of Reba Hinson and his [Petitioner's] claim that he is entitled to a deed for a lot or parcel of land he originally leased from the decedent Reba Hinson. All five cases resulted in trial court Orders and/or appeal orders/opinions favorable to the above-captioned Respondents and to Robert Breakfield in his capacity as Personal Representative of the Reba Hinson Estate, usually by trial court summary judgments and unpublished per curiam opinions from appellate courts.¹ They are:

1. 2010-CP-12-0168 (Petitioner's claims against the Reba Hinson estate removed to circuit court from probate court)
2. 2010-CP-12-0201 (Petitioner's appeal from probate court regarding estate administration)

¹ All of the facts relevant to this history are established in the myriad filings in prior trial court and appellate court proceedings, and are subject to judicial notice in this proceeding. Courts may take judicial notice of matters of public record, Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F. Supp. 2d 553 (W.D.N.C. 1998); prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993); decisions of other courts, Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd., 181 F.3d 410 (3d Cir. 1999); and reliable sources found on the Worldwide Web. In re Yahoo Mail Litigation, 7 F.Supp. 3d 1016,1024 (N.D.Cal. 2014), and Rule 201, SCRE.

3. 2011-CP-12-0323 (Petitioner's quiet title action filed in circuit court)
4. 2011-CP-12-0595 (Petitioner's tort claim against the Reba Hinson estate and the Hinson family filed in circuit court)
5. A Rule 60 "independent action" in the Chester County Probate Court, in the Estate of Levie Hinson, 1986-ES-12-0188, asking that the Chester County Probate Court's October 15, 2007 Order in the Levie Hinson estate be vacated because of alleged fraudulent conduct on the part of Respondent Breakfield, which was expressly denied, in the administration of the Reba Hinson estate some 15 months after entry of the October 15, 2007 Order.

In case no. 1, Petitioner filed claims against the Reba Hinson estate. The claims proceeding was removed to circuit court. After slogging through many procedural delays, Respondent Breakfield, as Personal Representative, was granted summary judgment by the circuit court. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2013-UP-0257). Petitioner's petition for writ of certiorari to the South Carolina Supreme Court was denied. (all documents are available on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents.

In case no. 2, Petitioner Woods tried to insert himself into matters of probate estate administration in the estate of Reba Hinson. Petitioner sought to have Breakfield removed as personal representative because, among other things, he was probating the wrong will. The probate court found the Petitioner to be a stranger to the Reba Hinson estate and denied Petitioner's various efforts to interfere in estate administration. Petitioner appealed to circuit court where the probate court orders were affirmed. Petitioner appealed to the Court of Appeals where the circuit court and the probate court were affirmed in a per curiam unpublished opinion. (2013-UP-0256). Petitioner's

petition for certiorari to the South Carolina Supreme Court was denied. (all documents are available on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents.

In case no. 3, Petitioner described his action as one to quiet title to the land at issue by having the last will of Reba Hinson's husband, Levie Hinson, construed to have devised a fee interest in the land to Reba Hinson rather than having devised a life estate. Petitioner is not a member of the Hinson family; he was neither a devisee in Levie Hinson's last will nor an heir of Levie Hinson. Nevertheless, Petitioner had his day in court, and the circuit court granted summary judgment in favor of the Hinson family. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2014-UP-010). Petitioner's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. (all documents are available on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents. THIS CASE DECIDED THE QUESTION OF PETITIONER'S CLAIM TO AN OWNERSHIP INTEREST IN THE SUBJECT REAL PROPERTY.

Case no. 4 involved Petitioner's claim against the Reba Hinson estate for various and sundry frivolous causes of action. The claims were removed to circuit court. The circuit court granted summary judgment in favor of the Reba Hinson estate. Petitioner appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (2014-UP-0158). Petitioner's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. . (all documents are available on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents.

Case no. 5, Petitioner's Rule 60 independent action in the Levie Hinson estate, was commenced on March 4, 2015. This action involved the same issues and allegations that Petitioner

made in case no. 2 except that the allegations made in case no. 2 were made in proceedings in the Reba Hinson estate. In case no. 5, Petitioner sought to have probate court orders in the Levie Hinson estate vacated via Rule 60(b). Petitioner claimed that Breakfield was probating the wrong will and that he and others had committed a fraud on the court. He moved for Rule 60(b) relief in the form of vacating the Order appointing Breakfield as personal representative and vacating the order admitting Reba Hinson's June 23, 1998 last will to probate. Petitioner tried to relitigate the subject of Reba Hinson's title, and consequently the Petitioner's claim to title, by dressing it up as a Levie Hinson estate matter rather than a Reba Hinson estate matter. Respondents filed a motion to dismiss and a motion for sanctions. On the eve of the hearing, Petitioner took a voluntary dismissal of his complaint. (App. p. 80-81).

There are two other proceedings that were brought by the above-captioned Respondents against the Petitioner.

6. The Hinson family commenced an eviction action in magistrate's court to have Petitioner evicted as a hold-over tenant at will. Petitioner appealed a pretrial order to the Circuit Court, and to the Court of Appeals and to the Supreme Court. As with his other appeals, he was unsuccessful. (see Court of Appeals' unpublished opinion 2014-UP-076). His Petition for Writ of Certiorari was dismissed. Appeal costs were awarded to the Respondents.

7. In the course of his appeals, Petitioner asserted to the various courts that his interest in the subject land is as an owner and not as a tenant. Upon the tenant-eviction case (no. 6 above) returning to the magistrate's court, and based on Petitioner's express denial that he is a tenant, the Hinson family brought a new proceeding to have Petitioner put off the land as a trespasser.

(2014CV1210400037). (App. p. 43-47). The Chester County Magistrate's Court issued an Order dated and filed March 27, 2015, finding Petitioner to be a trespasser and announcing the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Petitioner from the

subject premises. (App. p. 25-37). On April 15, 2015, Petitioner herein, pro se, filed and served a Notice of Appeal to the circuit court (assigned case no. 2015-CP-12-0179). On April 24, 2015, Petitioner, pro se, served a Rule 59(e), SCRCF, motion for reconsideration with respect to the March 27, 2015 Final Order and Judgment.

Pursuant to Holmes v. East Cooper Community Hospital, Inc., 408 S.C. 138, 758 S.E.2d 483 (2014)², the undersigned notified the chief administrative judge, Judge Gibbons, that Petitioner filed a timely Rule 59(e) post-trial motion after his notice of appeal had been filed and served. (App. p. 109-111). By Order dated May 1, 2015, Judge Gibbons dismissed the appeal from magistrate's court, without prejudice. (App. p. 147). Petitioner appealed the May 1, 2015 Order to the Court of Appeals. By Order dated June 25, 2015, the Court of Appeals dismissed Petitioner's appeal (a frivolous, bad faith appeal in the eyes of the Respondents) because the order purportedly being appealed was not a final order. (App. p. 3). Petitioner then filed a frivolous Petition for Rehearing.

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

Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 758 S.E.2d 483 (2014). (emphasis added).

It was also denied. (App. p. 1-2). This brings us to the Petition for Writ of Certiorari now before this Court. Pursuant to Rule 11, SCRCP; S.C. Code Ann. §15-36-10; and Holmes v. East Cooper Community Hospital, Inc., 408 S.C. 138, 758 S.E.2d 483 (2014); and the Courts' inherent power to sanction parties for certain bad faith conduct and to preserve the sound and orderly administration of justice; Respondents move the court to sanction the Petitioner for his past bad faith actions and his ongoing bad faith actions in the form of continuing to pursue legal actions and appeals and to make arguments that prior court rulings have found to have no merit. Respondents ask the Court to take judicial notice of filings on record in this Court and in the Court of Appeals in case nos. 1, 2, 3, 4, 6 and 7 identified hereinabove.

- 1. 2010-CP-12-0168
Court of Appeals no. 2011-191876
Supreme Court no. 2013-001947
- 2. 2010-CP-12-0201
Court of Appeals no. 2011-201066
Supreme Court no. 2013-001946
- 3. 2011-CP-12-0323
Court of Appeals no. 2012-212330
Supreme Court no. 2014-000660
- 4. 2011-CP-12-0595
Court of Appeals no. 2012-212429
Supreme Court no. 2014-001246
- 6. 2011-CP-12-0291
Court of Appeals no. 2012-212318
Supreme Court no. 2014-001039
- 7. The Appendix herein.
- With respect to case no. 5, the probate proceeding brought by Petitioner and dismissed on the eve of the hearing on Respondents' motion to dismiss and for sanctions, there was no

appeal. Accordingly, the Petitioner's petition dated February 12, 2015 is attached hereto as **Exhibit A**. The allegations are merely a rehash of the various issues already decided adversely to Petitioner in his other cases.

The particular grounds for the sanctions motion are as follows:

1. **Appeal costs have been awarded to the Respondents in each of the aforementioned appeals, but Petitioner has not paid a penny on any award. Nevertheless, his drumbeat of litigation marches on.**

2. Rule 11 sanctions. Rule 11(a), SCRCP, imposes a duty on parties and attorneys representing parties by construing a signature on pleadings as a certificate that (s)he has read the pleading and "that to the best of his knowledge, information and belief there is good ground to support it . . ." The history of the proceedings between the captioned parties belie any suggestion that this appeal from a clearly non-final order was filed in good faith. Petitioner has pursued repeated and vexatious litigation, with the captioned appeal being only the latest installment.

3. S.C. Code Ann. §15-36-10, The South Carolina Frivolous Civil Proceedings Sanctions Act.

Section 15-36-10(C) provides that

(C)

(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his

procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based. (emphasis added.)

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

4. Bringing and/or continuing a lawsuit based on allegations that prior court rulings have found to have no merit can be the basis for awarding sanctions, Holmes v. East Cooper Community Hospital, Inc., 408 S.C. 138, 758 S.E.2d 483 (2014), including ordering the Plaintiff to pay the Defendant's attorney fees and other related litigation costs, and enjoining the Plaintiff from filing any future legal proceedings in the probate court against the Defendants without first posting bond. Id. The plaintiff may also be sanctioned and enjoined from filing any future legal proceedings against the Defendants without representation on the pleadings by a licensed attorney. Id., fn. 18.

5. In Balcar v. Bell and Associates, LLC, 295 F.Supp.2d 635 (N.D.W.Va. 2003) the Court wrote:

... courts may sanction for bad faith conduct via their inherent authority. "The case law is well-established that district courts have the inherent power to sanction parties for certain bad faith conduct, even where there is no particular procedural rule that affirmatively invests the court with the power to sanction." Strag v. Bd. of Tr., 55 F.3d 943, 955 (4th Cir. 1995). The Fourth Circuit has also held that Rule 11 and § 1927 do not displace the inherent authority of the court to impose sanctions for bad faith conduct as these other methods of sanctions "are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions." United States v. Shaffer Equip. Co., 11 F.3d 450, 458 (4th Cir. 1993)(quoting Chambers v. NASCO, Inc., 501 U.S. 32, 46, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)).

Courts may impose monetary sanctions. Balcar, *supra*. However,

A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court. See generally In Re Urban, 768 F.2d 1497, 1500 (D.C.Cir.1985); Green v. Warden, U.S. Penitentiary, 699 F.2d 364 (7th Cir.1983). In fashioning such a remedy in Lysiak's case we act on our "obligation to protect and preserve the sound and orderly administration of justice," In Re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir.1984). At the same time we must take care to protect Lysiak's undeniable right of access to the court's processes, see In Re Green, 598 F.2d 1126, 1127 (8th Cir.1979) (en banc).

Lysaiak v. C.I.R., 816 F.2d 311 (7th Cir. 1987). Courts may also impose sanctions to limit access to the courts by ordering that all court clerks decline to accept any filing from the litigant unless a judge of the Court has specifically authorized the filing. Vinson v. Heckmann, 940 F.2d 114 (5th Cir. 1991). In BKS Properties v. Shumate, 271 B.R. 794 (N.D. Tex. 2002) the Court imposed a hybrid sanction. If monetary sanctions are imposed, the Court can also require that until the monetary sanction is paid that

the clerk of the bankruptcy court not accept for filing any pleading or paper filed by Shumate. As a matter of comity and sound judicial administration, this court requested that all courts, state and federal, recognize and honor that order. As a further sanction, this court recommends that the district court enter a similar directive to the clerk of the district court, as well as to the clerks of all courts, not to accept any pleading or paper filed by Shumate until he pays the sanctions. . . [and] the order should further direct that if Shumate files either a paper or pleading in violation of this order, that a named defendant immediately remove the litigation to federal court, and that the federal court immediately sua sponte dismiss the matter with prejudice."

Additionally, the court may enter an injunction requiring the litigant to seek leave of court in order to file an appeal. Billman v. C.I.R., 847 F.2d 887 (D.C. Cir. 1988).

The Magistrate's Court's Order dated March 27, 2015 was not an appealable final order so long as Petitioner's timely Rule 59(e) motion was pending. Likewise, the Circuit Court's Order dated May 1, 2015, dismissing the appeal without prejudice to allow for the Rule 59(e) motion to

be decided, is not an appealable final order. Petitioner's petition herein is yet another effort to use his pro se status to stall, delay, and harass, by continuing to claim some ownership interest in the real property that Petitioner is occupying but which is owned by the Respondents. Reba Hinson died in 2007. Case no. 3 above, S.C. Court of Appeals unpublished opinion (2014-UP-010), cert. denied, established that (a) Reba Hinson's husband devised a life estate to Reba Hinson, including the lot of land occupied by Petitioner, (b) that the Respondents are the remaindermen to the life estate, (c) that Petitioner herein has no claim to the land via adverse possession. Notwithstanding these legal judgments, Petitioner continues to this day, nine years next month from the date of Reba Hinson's death, to occupy the land that the courts have ruled belongs to the Respondents. Petitioner is using the courts and the courts' procedural rules and the time consuming nature of those rules, to deny the Respondents' rightful possession of their land.

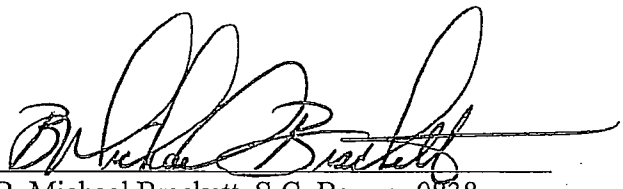
In the trespass case, the Magistrate made the effort to set out the history of the Petitioner's litigation, including the trial court orders, the Court of Appeals' unpublished opinions, and this court's denials of certiorari. (App. p. 25-37). In his appeal to circuit court, the same appeal interrupted by the May 1, 2015 Order dismissing the appeal without prejudice because of the pending Rule 59(e) motions, the Petitioner's Grounds for Appeal nos. 1, 2, 4 and 5 make clear that he is again trying to re-litigate title to the land. (this document was not included in the Petitioner's Appendix, so it is attached hereto as **Exhibit B.**)

This must stop. Respondents ask that the Court:

1. expeditiously deny the Petition for Writ of Certiorari;
2. permit the Respondents to move for customary appellate costs in this proceeding;
3. award monetary sanctions against Petitioner;

4. enjoin the Petitioner from hereafter filing any pleadings, appeals, motions or submissions to any court involving in any way one or more of the Respondents, and/or the estates of Levie and Reba Hinson, and/or the subject of title to the real property now occupied by Petitioner but owned by the Respondents and known as 1537 Hinton Road, Great Falls, SC, unless the filings are signed by a licensed South Carolina attorney, and leave of court for the filings has been granted by the court;
5. Any other relief that the Court finds to be proper.

December 29, 2015



B. Michael Brackett, S.C. Bar no. 0838
Adam T. Silvernail, S.C. Bar no. 80219
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorneys for Respondent Breakfield

The Supreme Court of South Carolina

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

v.

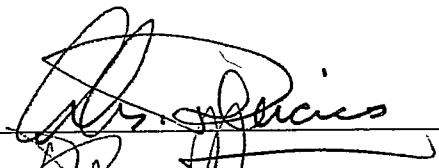
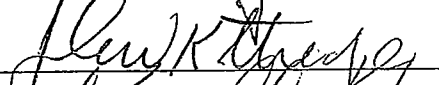
Mell Woods, Petitioner.

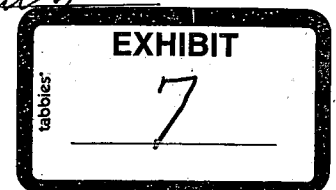
Appellate Case No. 2015-002318

Lower Court Case No. 2015-CP-12-00179

ORDER

This matter is before the Court by way of a petition for a writ of certiorari to review the Court of Appeals' dismissal of petitioner's appeal. Respondent Breakfield has filed motions to dismiss the petition, stay the time limits for filing a return to the petition for a writ of certiorari, and for sanctions. Petitioner has filed a return in opposition to the motions. The petition for a writ of certiorari to the Court of Appeals is denied, and as a result, the motions to dismiss and to stay the time limits are denied as moot. The motion for sanctions is also denied. However, we take this opportunity to warn petitioner that if he continues to abuse the judicial process by way of frivolous filings, sanctions may be imposed by any of the courts in which such frivolous filings are made, including this Court, and may include, in addition to monetary sanctions, restrictions on future filings.

	C.J.
	J.
	J.
	J.



Columbia, South Carolina

February 10, 2016

cc: B. Michael Brackett, Esquire
Mell Woods
The Honorable Sue K. Carpenter
The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

2015-CP-12-0179

Appellate Case No. 2016-002016

RECEIVED

SEP 30 2016

SC Court of Appeals

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

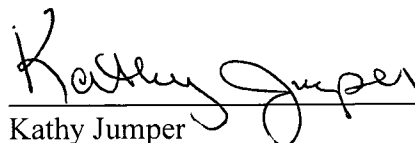
v.

Mell Woods Appellant.

Certificate of Service

I, Kathy Jumper, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served the pro se Appellant, Mell Woods, by mail with a copy of the foregoing **Motion to Dismiss Appeal** postage prepaid and return address clearly indicated on said envelope, on this 30th day of September, 2016 at the following address:

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


Kathy Jumper

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

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Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

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

September 30, 2016

Hand Delivery

The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

Re: Breakfield, as Attorney-in-Fact v. Woods
Appellate Case No. 2016-002016
Our File No. 12085.3

RECEIVED

SEP 30 2016

SC Court of Appeals

Dear Ms. Kitchings:

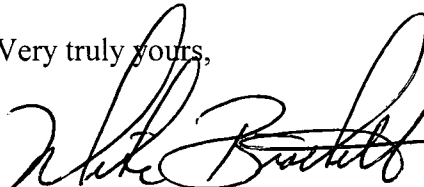
Enclosed for filing please find the original and six copies of Respondent's Motion to Dismiss Appeal. Also enclosed is my check in the amount of \$25.00 for the required motion fee.

By copy of this letter, a copy of the enclosed Motion is being served upon the Appellant.

Please return a clocked copy of the face page of the motion using the envelope provided.

For the court's information, as of the writing of this letter I have not received a Notice of Appeal from Appellant. I learned of the appeal from the clerk of court and printed a copy of the Notice of Appeal from the C-Track site.

Very truly yours,



B. Michael Brackett

Enclosures

cc. Robert H. Breakfield, Esquire
Mell Woods