

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Thomas L. Hughston, Circuit Court Judge

Case No. 2015-CP-18-1308

Adrian Smalls,

Respondent,

v.

Brenda Lee Barnett,

Appellant.

INITIAL BRIEF OF APPELLANT

Louis S. Moore, Esquire
The Moore Law Firm, LLC of Charleston
171 Church Street, Suite 340
Charleston, South Carolina 29407
(443) 469-4635 (P)
(843) 491-4438 (Fax)
lou@themoorelawfirmllc.com
Attorney for Appellant

November 16, 2016

RECEIVED
NOV 18 2016
SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Arguments

1. THE CIRCUIT COURT ERRED BY RULING THE MAGISTRATE DID NOT HAVE TO SCHEDULE A HEARING ON BARNETT’S MOTION FOR RECONSIDRATION.....1

2. THE CIRCUIT COURT ERRRED IN HEARING THE APPEAL WITHOUT A RULING BY THE MAGISTRATE ON THE MOTION FOR RECONSIDERATION2

3. THE CIRCUIT CORT ERRED BY FAILING TO FIND THE MAGISTRATE COURT LACKED SUBJECT MATTER JURISDICTION.....4

Conclusion6

TABLE OF AUTHORITIES*

CASES

Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452,
636 S.E.2d 598, 614 (2006)2

Mathews v. Eldridge, 424 U.S. 319, 332 (1976)2

Elam vs. S.C. Dep’t of Transportation, 361 S.C. 9, 21 (2004)3

Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)3

Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003)4

Little vs. Little, 223 SC 332, 75 SE2d 871(1953).....4

Sims vs. Davis, 70 SC 362, 373, 49 SE872, 875 (1904)..... 5

STATUTES

Section 27-40-120 of the Landlord Tenant Act of South Carolina 6

South Carolina Code Ann. Section 15-67-610 6

OTHER AUTHORITIES

U.S. Const. Amend. XIV, § 12

S.C. Const. art. I, § 3.....2

Chapter IV, Rule 2 of the Magistrate Court Rules.....2

Rule 59 of the South Caroline Rules of Civil Procedure3

STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN FAILING TO FIND THE MAGISTRATE COURT'S FAILURE TO SCHEDULE A HEARING WAS ERROR?
2. DID THE CIRCUIT COURT ERR IN HEARING THE APPEAL ALTHOUGH THERE WAS A PENDING MOTION BEFORE THE MAGISTRATE THAT WAS NEITHER HEARD OR RULED UPON?
3. DID THE CIRCUIT COURT ERR IN FAILING TO FIND THE MAGISTRATE LACKED SUBJECT MATTER JURISDICTION?

STATEMENT OF THE CASE

On June 17, 2015, Adrian Smalls brought a trespass action against Brenda Lee Barnett. A Notice to Quit was issued on June 17, 2015. Although Barnett filed a response to the Notice to Quit but the Answer was a day late based on the Magistrate Court calculations and a Writ for Ejectment was issued.

A Motion for Reconsideration and for Stay of the Execution of the Writ for Ejectment on the morning of June 30, 2015. However, the Magistrate, through court staff, intimated a refusal to schedule a hearing or rule on the Motion. Later on the afternoon of June 30, 2015, Barnett filed an Appeal to the Circuit Court for Dorchester County, South Carolina. A hearing was held one December 15, 2015 and the Court denied the appeal.

ARGUMENTS

- I. THE CIRCUIT COURT ERRED BY RULING THAT THE MAGISTRATE COURT DID NOT HAVE TO SET A HEARING ON BARNETT'S MOTION FOR RECONSIDERATION.

Barnett filed a very timely Motion for Reconsideration on June 20, 2015 in the Magistrate Court. However, the Magistrate refused to schedule a hearing or even rule on

Motion. As a result, Barnett was forced to Appeal to Circuit Court which she filed on June 30, 2015.

One of the critical points argued by Barnett was that she was not a trespasser and there was a genuine dispute over title to the property. (Transcript-Page 8, Line 25 thru Page 9, 1-11). By not hearing or even ruling on the Motion for Reconsideration, Barnett was denied an opportunity to be heard on a matter involving a substantial property right. No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. "In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006); see Mathews v. Eldridge, 424 U.S. 319, 332 (1976) (recognizing that before due process guarantees are implicated, there must be a deprivation by the government of constitutionally protected interest).

Among her contentions, Barnett was defrauded into signing the quit claim deed by Respondent Smalls. (Transcript Page 9, lines 1-11; Page 10, lines 1-9). Barnett had a right to be heard on those issues but was simply denied by both the Magistrate court and the Circuit Court. As a result she was denied a substantial property interest, a home she had resided in for several years.

Chapter IV, Rule 2 of the Magistrate Court Rules provides, in pertinent part that in the absence of a specific procedural rule for Magistrates, the Magistrate shall govern consistent with the South Carolina Rules of Civil Procedure and the conduct of the

Circuit Court. One can hardly countenance that a Circuit Court Judge would totally disregard ruling, if not otherwise hold a hearing, on a Motion for Reconsideration. The Magistrate's failure to do so hear was a clear deprivation of Barnett's rights and the Circuit Court's failure to acknowledge that on appeal amounted to a continuing prejudice of Barnett's rights.

II. THE CIRCUIT COURT ERRED IN HEARING THE APPEAL WITHOUT A RULING BY THE MAGISTRATE ON THE MOTION FOR RECONSIDERATION

A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion. See Rule 203(b)(1), SCACR; 59(f), SCRCP.

Here, Barnett filed a timely Motion seeking relief under Rule 59. The Magistrate refused to schedule the hearing and, further, refused to make a ruling. This impacted any possible rights of stay and impaired Barnett's ability to raise issues not previously heard by the Magistrate. Again, this also implicates and embraces the right to be heard and invokes due process protections.

A party or litigant "...usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented". Elam vs. S.C. Dep't of Transportation, 361 S.C. 9, 21 (2004). See, e.g., Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRCP, to alter or amend the judgment

is to request the judge to reconsider matters properly encompassed in a decision on the merits”); Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003), In Elam, the court went further to state that “... there is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity”. Elam, 361 SC 9, 22. Here, the Circuit erred in proceeding forward where in hearing the Appeal without a ruling from the Magistrate on the Rule 59 Motion for Reconsideration.

The Magistrate, by failing to do make any decision or ruling on the Rule 59, still retain jurisdiction to the extent there was no ruling and could have actually changed the result of her earlier ruling. The Circuit refusal to recognize there was a pending Motion and yet proceeding to consider the appeal was reversible error.

III. THE CIRCUIT COURT ERRED BY FAILING TO FIND THE MAGISTRATE COURT LACKED SUBJECT MATTER JURISDICTION

Respondent Smalls filed an Application for Notice to Quit Premises based on Trespass. However, in the Answer and Motion for Reconsideration, Barnett responded, pertinent part, that she had an equitable interest in the property, the deed was procured by the fraud and misrepresentations of Respondent Smalls and there was a genuine dispute as to title. In the case of Little vs. Little, 223 SC 332, (1953), the Plaintiff had a duly recorded deed and sought relief to eject the Defendant based upon trespass an ongoing trespass. *Id.* at 335. However, the Court found that the action was more than a mere trespass and was a case where a dispute of Title was implicated because the Defendant

had contested possession and submitted a genuine dispute as to title. Id. at 338.

The Little Court citing another case made this observation:

"It is quite true, when the plaintiff alleged that he was not only in possession, but was the owner of the land at the time of the trespass, and the defendant denies this allegation, the question of title was raised, and, if the defendant had lived to have a verdict and judgment for damages entered against him, the question of title would have been effectually determined." Id. (Quoting from Sims vs. Davis, 70 SC 362, 373, 49 SE872, 875 (1904). It is quite true here that Barnett not only disputed trespass but disputed title as well in the pleadings she presented. As such, it was error for the Circuit for ruling the Magistrate Court had jurisdiction.

In fact, when Respondent Smalls attempted to get relief under the Landlord-Tenant Act before a different Magistrate (not the one appealed from to the Circuit Court), he was denied and the action was dismissed for failure to establish a Landlord-Tenant relationship. This is pertinent because in that case, (Magistrate Court Civil Case No. 2015 CV181030 1157), Barnett presented a Memorandum in support of dismissal wherein she highlights the various breaches by Respondent Smalls, witnesses to the said breaches, and the fact that Barnett continued to pay taxes. Barnett argued further that the breach by Respondent Smalls relieved her obligation on the Note and could therefore treat the premises as her own notwithstanding the agreement. Apparently, the Magistrate in that case agreed with Barnett and dismissed the action.

The Landlord-Tenant Act precludes review by the Magistrate Court where there is

an "... occupancy under a contract of sale of a dwelling or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest." Title 27-40-120 exclusions from governance of the Landlord-Tenant Act.

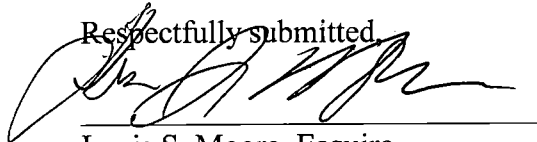
In like consideration, Barnett made this argument in her Answer, Memorandum for Reconsideration under Rule 59 and in the Circuit Court Appeal to demonstrate she was not a trespasser at all but an occupant with a genuine title interest that was in dispute. South Carolina Code Ann. Section 15-67-610 does not embrace someone who has always lived on the land, was legal title holder in the chain of title, and now has a genuine dispute over the title being vested in Respondent Smalls. In that regard, the Trespass action was not proper before the Magistrate Court and jurisdiction was not proper. Accordingly, the Court erred in not finding subject matter jurisdiction was lacking.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

November 16, 2016.

Respectfully submitted,



Louis S. Moore, Esquire
171 Church Street, Suite 340
Charleston, South Carolina 29407
(443) 469-4635
(843) 491-4438 (Fax)
lou@themoorelawfirmllc.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

NOV 18 2016

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Thomas L. Hughston, Circuit Court Judge

2015-CP-18-1308

Adrian Smalls,

Respondent,

v.

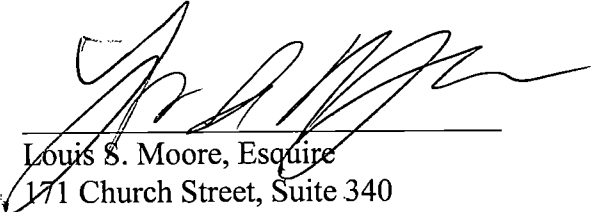
Brenda Lee Barnett,

Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the foregoing Appellant's Initial Brief and Designation of Matters upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on 16th day of September, 2016 addressed to his attorneys of record, Kevin D. Hackler and Theron W. Sandy, II 3 Broad Street, 2d Floor, Charleston, South Carolina 29401.

16TH Day of November, 2016



Louis S. Moore, Esquire
171 Church Street, Suite 340
Charleston, South Carolina 29401
(443) 469-4635
Attorney for Appellant

THE MOORE LAW FIRM, LLC

Of Charleston

November 16, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
NOV 18 2016
SC Court of Appeals

RE: Adrian Smalls, Respondent vs Brenda Lee Barnett, Appellant,

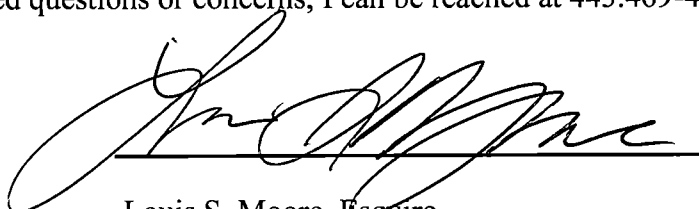
Case No. 2016-000100

Initial Brief, Designation of Matters, and Certificate of Service

Dear Ms. Kitchings:

Enclosed please find Appellant's Initial Brief and Designation of Matters, as well as Certificate of Service.

If you have any added questions or concerns, I can be reached at 443.469-4635.



Louis S. Moore, Esquire
The Moore Law Firm, LLC of Charleston
171 Church Street, Suite 340
Charleston, South Carolina 29401
(843) 471-0174

Other Counsel of Record:

Kevin D. Hackler, Esquire
Theron W. Sandy II, Esquire
3 Broad Street, 2d Floor
Charleston, South Carolina 29401

PRIORITY[®] ★ MAIL ★

UNITED STATES
POSTAL SERVICE.

Retail

P

US POSTAGE PAID
\$6.45

Reserved

Origin: 29403
Destination: 29211
0 Lb 4.50 Oz
Nov 18, 18
4514880242-21

1024

PRIORITY MAIL[®] 2-Day

B012

Expected Delivery Day: 11/18/2016

USPS TRACKING NUMBER



9505 5127 2833 6321 0456 81

FROM:

MOORE LAW FIRM
171 Church ST, Suite 340
~~PO Box 11629~~
Chas. SC 29401

TO:

Hon. Jenny Abbot + Kitchey
Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211