

RECEIVED

FEB 15 2017

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

JUDGE EDGAR DICKSON , 1st Circuit

CASE # 2009-CP-18-2200

2016-002522

RENE McMASTERS.....Respondent

Vs.

HOWARD W. CHARPIAPetitioner

JODY E. CHARPIA.....Defendant

MOTION TO ALTER and AMEND / Clarification

PETITIONER , Howard W. Charpia , makes this Motion pursuant to Rule 59 (e) . Petitioner’s “ only “ argument with the Appellate Court and with his Writ of Certiorari was violation of “due process”.

The Appellate Court’s ruling filed October 5 , 2016 ; case 2013-002311 is in grave error and a manifest of injustice. In this ruling , # 1 ; “ *the judgment underlying the foreclosure is void because the ten years has expired without execution of the judgment* “.

The ten year active energy was not ruled upon by the Circuit Court . This matter and argument has never been brought up before this Appeal to the lower Courts .

Issues not raised and ruled upon in the trial Court will not be preserved or considered on Appeal .

Spreeuw v. Barker , 385 S.C. 45 (Court of Appeals 2009) # 4602

The Petitioner's Brief's , Record on Appeal nor the Respondent's Brief's never mention the ten year , 15-39-30 statute and/or argument.

Please see opinion # 2016-UP-423 # 1 . Please see Petitioner's " Notice of Appeal " . Please see the Briefs supplied to the Appellate Court . *all attached , Petitioner did curtail these for "ease of reading"*

The Appellate Court cites Linda Mc Co v Shore in it's Order of October 5, 2016 . This case *is not* cited in any of the Table of Authorities by the Petitioner or Respondent .

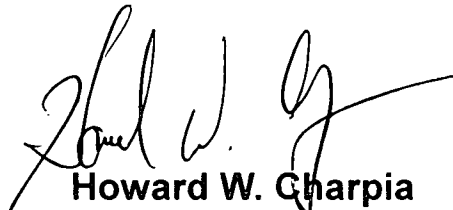
Chief Justice Beatty dissented in the Linda Mc Co v. Shore decision.

If the Law is to be changed , it must be done by the legislature not the Court .

This case is a matter of *life* and liberty for the Petitioner and his mentally incompetent brother . The Petitioner *was forced* to proceed in this endeavor as a Pro Se litigant by the lower Courts and the judicial system that is in place in the State of South Carolina.

It is a manifest of injustice if the Supreme Court is not vigilant in it's review of this matter and will shock the conscious of the judicial system .

WHEREFORE , the Petitioner , Howard W. Charpia prays that this Court look into this matter and alter and amend it's ruling of February 8 , 2017 .

A handwritten signature in black ink, appearing to read "Howard W. Charpia", with a long horizontal flourish extending to the right.

**Howard W. Charpia
1450 Jahnz Ave.
Summerville , SC 29485**

**cc: Attorney Frank Cisa , for Respondent
Dorchester County Clerk of Court**

**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**

Rene McMasters now known as Rene McMasters
Ronaghan, Respondent,

v.

H. Wayne Charpia a/k/a Howard W. Charpia and Jody E.
Charpia, Appellants.

Appellate Case No. 2013-002311

Appeal From Dorchester County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2016-UP-423
Submitted September 1, 2016 – Filed October 5, 2016

AFFIRMED

Howard W. Charpia and Jody E. Charpia, of
Summerville, pro se.

Frank M. Cisa, of The Law Firm of Cisa & Dodds, LLP,
of Mt. Pleasant, for Respondent.

PER CURIAM: Howard W. Charpia and Jody E. Charpia (the Charpias) appeal
the denial of their motions to reconsider the granting of a foreclosure of a judgment
lien and to vacate or void the compulsory order of reference. The Charpias argue

(1) the judgment underlying the foreclosure is void because ten years has expired without execution of the judgment and (2) the circuit court lacked jurisdiction and violated the Due Process Clause because the Charpias were not properly notified of the hearings. We affirm.¹

1. We find the judgment underlying the foreclosure was not void because Rene McMasters Ronaghan sought to enforce it within the ten-year statutory period. *See* S.C. Code Ann. § 15-39-30 (2005) ("Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof . . ."); *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 554, 703 S.E.2d 499, 505 (2010) ("[W]hen a party has complied with the applicable statutes . . . and is merely waiting on a court's order regarding execution and levy, the ten[-]year limitation found in section 15-39-30 is extended to when the court finally issues an order."); *id.* at 555, 703 S.E.2d at 505 ("[I]f a party takes action to enforce a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired.").

2. We find the circuit court properly exercised jurisdiction. *See Milgroom v. McDaniel*, 308 S.C. 5, 8-9, 416 S.E.2d 626, 627-28 (1992) (finding the master-in-equity properly returned the matter to the circuit court because of a potential conflict and the circuit court "reached [its] own findings only after conducting an independent hearing and review of the record"). Additionally, the circuit court did not violate the Charpias' due process rights. Although the Charpias were not properly notified of the January 9, 2013 hearing, the circuit court had already held a July 30, 2012 hearing on the foreclosure action that the Charpias attended, and it issued a thorough order granting foreclosure. *See Murdock v. Murdock*, 338 S.C. 322, 334, 526 S.E.2d 241, 248 (Ct. App. 1999) ("It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have *a day in court, or opportunity to be heard*, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights." (emphasis added) (quoting *Webster v. Clanton*, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972))). Further, the January 9, 2013 hearing consisted primarily of discussion about whether the Charpias received notice, and the circuit court's order did not indicate it considered anything presented at the hearing. Thus, we find the circuit court did not err in denying the Charpias' motion to reconsider. *See* Rule 59(f), SCRCPP ("The motion [to alter or amend the judgment] may in the

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

discretion of the court be determined on briefs filed by the parties without oral argument.").

AFFIRMED.

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 21 2013

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

EDGAR W. DICKSON , FIRST CIRCUIT JUDGE

CASE # 2009-CP-18-2200

RENE McMASTERS (RONAGHAN)RESPONDENT

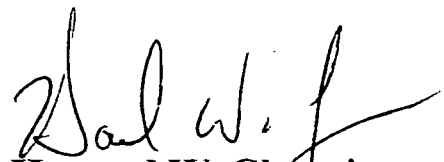
VS.

HOWARD W. CHARPIA.....APPELLANT
and Jody E. Charpia.....Defendant

NOTICE OF APPEAL

I, Howard W. Charpia , hereby appeal the Order of Judge
Edgar W. Dickson dated June 26 , 2013 . I, Howard W. Charpia ,
received said Order on July 16 , 2013 .

"Motion to Reconsider"


Howard W. Charpia
1450 Jahnz Ave.
Summerville, SC 29485

RECEIVED

JUN 23 2014

THE STATE OF SOUTH CAROLINA **SC Court of Appeals**
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

EDGAR W. DICKSON, First Circuit

Case # 2009-CP-18-2200

RENE McMASTERS (RONAGHAN).....Respondent

V.

HOWARD W. CHARPIA and JODY E. CHARPIA.....Appellants

INITIAL BRIEF

“Motion to Reconsider” and “Motion to Vacate”
Appellant # 2013-002311

Howard W. Charpia
Jody E. Charpia
1450 Jahnz Ave.
Summerville, SC 29485
843-873-0976

Attorney Frank M. Cisa, for respondent

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of the Issues.....1

Statement of the Case.....1

Facts.....2

Arguments.....3

- 1. The Court erred in violating the Appellant's rights of due process and the due process clause.**

Conclusion.....4

TABLE OF AUTHORITIES

Webster v. Clanton , 259 S.C. 387 , 391 (1972) Supreme Court

Moore v. Moore , 376 S.C. 467 , 657 S.E. 2d 743 (2008)

Cameron & Barkley Co. v. SC Procurement Panel , 317 S.C.

Dept. Social Services v. Holden , 319 S.C. 72, 78) (1995)

Ballenger v. SC Dep't of Health and Env'tl. Control , 331 S.C)

Tyron Federal Savings v. Phelps , 307 S.C. 361) (1992)

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Case No.: 2009-CP-18-2200
EDGAR W. DICKSON

Howard W. Charpia and Jody E. Charpia.....Appellants

Rene McMasters Ronaghan.....Respondent

RESPONDENT'S INITIAL BRIEF

CISA & DODDS, LLP

Frank M. Cisa
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
Phone: (843) 881-6530
Fax: (843) 881-5433
E-mail: frank@cisadodds.com

Attorneys for the Respondent,
Rene McMasters Ronaghan.....

RECEIVED

AUG 11 2014

SC Court of Appeals

11, 2011 by an Unpublished Opinion number 2011-UP-445. The Appellant's Motion to Void and Vacate the Order of Reference was filed more than a year after the Order was affirmed by the Court of Appeals.

Appellant's Motion to Reconsider sets forth grounds for Judge Dickson to review. (Motion to Reconsider filed December 3, 2012). Judge Dickson, in his discretion, decided to rule on the Appellant's two (2) motions without any further argument. Judge Dickson consulted the court file, written submissions, and his notes from the prior hearing. (Email from Judge Dickson's law clerk dated January 10, 2013).

ARGUMENT

I. The trial Court did not err in ruling on the Appellant's Motion to Void and Vacate the Court's Compulsory Order of Reference dated April 27, 2010 without a hearing.

The Appellant sought to void and vacate the Compulsory Order of Reference signed by Judge Edgar W. Dickson on April 27, 2010. The Appellant, however, had previously appealed Judge Dickson's Compulsory Order of Reference to the Court of Appeals. By Unpublished Opinion filed October 11, 2011, the Court of Appeals affirmed Judge Dickson's Compulsory Order of Reference. (Unpublished Opinion number 2011-UP-445).

Since the Court of Appeals had already affirmed Judge Dickson's Compulsory Order of Reference, the Appellant had no legal basis to request that Judge Dickson's void or vacate his Order Granting Compulsory Order.

II. The trial court did not err in ruling on the Appellant's Motion to Reconsider the Order of Foreclosure and Sale dated October 29, 2012 without further

argument.

Rule 59(f) SCRPC provides that a motion to alter or amend "may in the discretion of the Court be determined on briefs filed by the parties without oral argument (Rule 59(f) SCRPC).

The Appellant set forth the grounds for his argument in his motion to reconsider. Since the Appellant's motion set forth the grounds for his arguments, the trial court was not required to hold oral argument.

In Pollard v. County of Florence, 314, S.C., 397, 402, 444 S.E.2d 534, 536 Ct. App. (1994), the Court of Appeals held the trial court did not err in declining to entertain oral argument on a motion to alter or amend as the arguments were raised in the motion.

CONCLUSION

Based upon the foregoing it is respectfully requested that the Order of Foreclosure and Sale dated October 29, 2012; the trial court's Order Denying Motion to Void Order dated June 26, 2013; and the trial court's Order Denying Motion to Reconsider dated June 26, 2013 be affirmed.

CISA & DODDS, LLP



Frank M. Cisa
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 881-6530

Fax: (843) 881-5433

This 9th day of August, 2014
Mt. Pleasant, SC