

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Hon. Charles B. Simmons, Jr.
Master in Equity

Case No. 2014-CP-23-4097

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SC Court of Appeals

First Citizens Bank and Trust Company, Inc.

Respondents

v.

Ronald D. Taylor and Ted D. Smith

Defendants

Of Whom Smith Family, LLC, WHS Properties, LLC,
And Wanda H. Smith are the Appellants.

INITIAL BRIEF

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STATEMENT OF THE CASE

The proceedings resulting in the Orders appealed from were commenced by the filing of a verified Petition for Supplemental Proceedings on November 2, 2016 against Ronald D. Taylor and Ted D. Smith.

Ted Smith appeared without counsel for the supplemental proceeding on January 23 at 10:30am.

Thereafter Respondent noticed and took discovery depositions of Appellants under Rule 69, S.C.R.C.P. and on June 1, 2017 filed a motion to join Appellants as parties in the supplemental proceedings and a motion to execute on funds/assets held in the name of Appellants.

A hearing was held on June 23, 2017.

The Master in Equity entered an Order on July 5, 2017 and a motion to alter and/or amend Order was filed by Appellants on July 7, 2017. A teleconference was held between counsel and the Master in Equity resulting in an August 7, 2017 Order denying the relief requested. This appeal timely followed.

FACTS

On October 1, 2015 Respondent obtained a judgment in the amount of \$74,843.23 against Ronald D. Taylor and Ted D. Smith. (R) Subsequent to a Sheriff's return *nulla bona* to execution Respondents filed their verified Petition for Supplemental Proceedings against the judgment debtors. (R) Ted Smith attended a supplemental proceeding without representation on January 23, 2017. (R)

Subsequent to the supplemental proceedings Respondent issued discovery subpoenas and took Rule 69 S.C.R.C.P. depositions of Ted Smith's wife, Wanda Smith, and entities wholly owned by her (Appellants).

The sole grounds claimed by Respondent in its motion to execute on funds held in accounts owned by Appellants was the *Statute of Elizabeth*, S.C. Code Ann. Section 27-23-10(a)(2007). (R) No allegation was ever made, nor could it have been, that the accounts in which the funds were held were not owned by the Appellants.

Twenty three days after the filing of the motions, including the motions to make the Respondents a party to a supplemental proceeding, the Master in Equity held a non-testimonial hearing and adjudicated the *Statute of Elizabeth* claim based upon the discovery depositions.

EXCEPTIONS

- I. The Master in Equity erred in adjudicating the *Statute of Elizabeth* claim as part of a supplementary proceeding thereby adjudicating the rights of the Appellants without the benefit of due process, a complaint, an answer or an opportunity to present evidence or testimony before a trial court.
- II. The Master in Equity erred in adjudicating facts without the opportunity for the Appellants to present any evidence or testimony.
- III. The Master in Equity erred in not making any determination as to whether the alleged property was exempt or nonexempt.
- IV. The Master in Equity erred in granting the motion to join the Appellants, the error being that the Court lacked subject matter jurisdiction over any claims as to the Appellants.
- V. The Master in Equity lacked subject matter jurisdiction to add parties to an order for discovery of property supplemental to execution of judgment.

ARGUMENTS

I. The Master in Equity erred in adjudicating the *Statute of Elizabeth* claim as part of a supplementary proceeding thereby adjudicating the rights of the Appellants without the benefit of due process, a complaint, an answer or an opportunity to present evidence or testimony before a trial court.

II. The Master in Equity erred in adjudicating facts without the opportunity for the Appellants to present any evidence or testimony.

On June 1, 2017 Respondent filed a motion to add the Appellants as parties to an order of discovery of property brought against Ted Smith pursuant to Section 15-39-310, *et seq.*, *South Carolina Code of Laws*. On the same date Respondent filed a notice of motion and motion to execute on funds/assets held in the name of Appellants. A hearing had already been scheduled for June 23, 2017 on the motion.

Respondent argued at the motion hearing that the Court should adjudicate its claim that the transfer of funds from Ted Smith to Respondents during the pendency of the judgment lien was a fraudulent conveyance pursuant to the *Statute of Elizabeth*, SC Code Annotated Section 27-23-10(a).

(R)

Respondent's position then, and now, is that a proceeding under the *Statute of Elizabeth* is just that, a cause of action which must be pled, served and all of the rights to answer, conduct discovery and be afforded a trial be made available to the Defendant.

The circumstances of the within order are virtually identical to that of Wannamaker v. Bryant, 162 S.C. 779 (1932). In that case the issue was whether certain real property had been transferred in violation of the *Statute of Elizabeth*. Upon a finding by the Court in proceeding supplementary to the execution of the judgment that the transfer had been made to keep the bank from getting the property the Supreme Court reversed stating "No provision appears that either expressly or by implication gives authority to the Court to summarily dispose of the issue of ownership, or to order property claimed by another to be applied towards the satisfaction of an execution against the judgment debtor. Nor can an appearance and return to such a rule, when made in obedience to the order of the Court, be given effect as consent to a mode of trial not authorized by the provisions of the statutes." (Quoting, Palmetto Bank and Trust Company v. McCown-Clark Co.,

141 S.C. 155 (1928)). The Court thus found that both Bryant, the Grantee in the deed from his wife, and the wife, and the issue as to the ownership of the property, are entitled “to a mode of trial authorized by the provisions of the statutes. Such trial was not had in the supplementary proceedings before the Circuit Judge.” Wannamaker, of course, cites to Palmetto Bank and Trust Company v. McCown-Clark Co., 141 S.C. 155 (1928) which stands for nothing more than affirming the very foundation of our legal system, due process. In that case at issue were the ownership of insurance proceeds which the debtor claimed were owned by his spouse. The court made her a party to the action and subsequently ruled that the funds be applied to the judgment of the creditor. In reversing, The Supreme Court stated, “The right to trial under established forms of procedure, so as to permit a complete hearing of all matters involved in a controversy, was recognized at common law, and it has been safeguarded by statute set forth in our code of civil procedure...” citing a former section of the code virtually identical to Rule 2, S.C.R.C.P., and to previous statutes related to supplementary proceedings virtually identical to the present day statutes. The Court specifically pointed out that then Section 7 of the Code of Civil Procedure in Volume 1 of the *South Carolina Code of Laws*, which is identical to current Section 15-39-460, provided the only remedy for proceedings on claims of others to property, which states:

If it appears that a person or corporation allege to have property of the judgment debtor are indebted to him claims and interest in the property adverse to him or denies the debt such interest or debt shall be recoverable only in an action against such person or corporation by the receiver. But the judge may, by order, forbid a transfer or other disposition of such property or interest until a sufficient opportunity be given to the receiver to commence the action and prosecute it to judgment and execution. Such order may be modified or dissolved at any time by the judge granting it on such security as he shall direct.

Based upon the forgoing the Supreme Court stated, “It appears manifestly intended by the forgoing sections that a third person claiming property rights which have not been passed upon in the original action under which the execution is issued should not be deprived either of his day in court or of the right of trial in the form prescribed by law for a regular judicial procedure.”

The order of the Master in Equity does just that.

Under the facts of this appeal the Respondents were made a party to the proceeding on the same date that the Master in Equity held a “trial” on the statutory cause of action under the *Statute of*

Elizabeth. There was no showing, finding or otherwise, nor was there ever even a claim made by the Appellant that the funds that were then in the accounts owned by the Respondents were owned by or were the property of Ted Smith. Appellants have been deprived of their day in Court and of their right to trial in the form prescribed by law for regular judicial procedures by the orders issued by the Master in Equity in this case and they must be reversed with leave for Respondent to pursue such remedies as it may deem appropriate while providing Respondents an opportunity to defend under our rules of civil procedure.

III. The Master in Equity erred in not making any determination as to whether the alleged property was exempt or nonexempt.

The Master in Equity's order finding that the sum of \$81,026.76 was transferred to Appellants in violation of the *Statute of Elizabeth* and ordering the funds to be paid from Appellants' accounts without allowing for, or identifying, whether or to what extent they were exempt from execution violates Section 15-39-410 of the *South Carolina Code of Laws*.

The only evidence on this issue before the Court was contained within the discovery deposition of the debtor, Ted D. Smith, who testified that he received an inheritance from his mother's estate of approximately \$13,000.00 and had earnings for personal services of approximately \$68,000.00 which he had deposited into his wife's accounts (the Appellants) for the purpose of paying household expenses. Even assuming, arguendo, that all of those funds remained segregated within the account at the time of the supplemental proceeding, the issue of whether Mr. Smith was entitled to an exemption pursuant to Section 15-41-30 was mandatory.

The Master's power under Chapter 39 of Title 15 is limited to non-exempt property. Section 15-41-30(A)(1-6), even without any testimony, provides a minimum exemption of \$10,000.00. With testimony, it could reach as high as \$60,000.00. The Master's order directly violates the Section which authorizes the very power being exercised, Section 15-39-410. Absent a determination of what is "not exempt from execution" there is no power to order the property of the judgment debtor to be applied toward the satisfaction of the judgment.

IV. The Master in Equity erred in granting the motion to join the Appellants, the error being that the Court lacked subject matter jurisdiction over any claims as to the Appellants.

V. The Master in Equity lacked subject matter jurisdiction to add parties to an order for

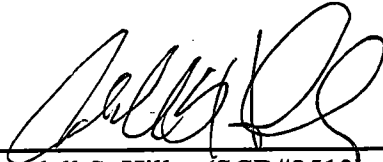
discovery of property supplemental to execution of judgment.

Rule 2, S.C.R.C.P., prescribes one form of action known as a civil action which is commenced by the filing of a summons and complaint, Rule 3, S.C.R.C.P.

A judgment finally determines the rights of any party, Rule 54(a), S.C.R.C.P., and after entry pursuant to Rule 58, S.C.R.C.P., may only be modified by the Appellate Court or pursuant to Rule 59 or 60, S.C.R.C.P. The process to enforce a judgment is pursuant to Rule 69, S.C.R.C.P., and 15-39-310, *et seq.*, *South Carolina Code of Laws*. The latter allows for the examination of witnesses and for non-exempt property of the judgment debtor to be applied to the execution of the judgment. As to the latter, in the event that the person or corporation alleged to have property of the judgment debtor claims an interest in the property or denies the debt, it is recoverable only in an action against such person or corporation, 15-39-460 *South Carolina Code of Laws*. There is simply nothing within the rules of civil procedure that would allow the modification of a judgment to add additional parties after a judgment has been rendered and filed with the Clerk. The proper remedy when a creditor claims that a third party has property which belongs to the debtor is to request the appointment of a receiver who may only then bring "an action" against such person or corporation to determine ownership or pursue a claim under the *Statute of Elizabeth*.

CONCLUSION

For the reasons set forth above the Court should reverse the Order of the Master in Equity adjudicating the property rights of the Appellants with leave to Respondent to pursue whatever remedies it believes appropriate in the Court of Common Pleas.



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November 28, 2017

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**Re: First Citizens Bank and Trust v. Taylor, et al
2014-CP-23-4097**

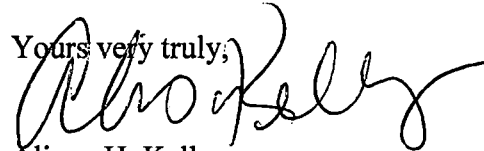
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Dear Madam Clerk:

Please find enclosed one original and two copies of our Initial Brief, Designation of Matter and Proof of Service regarding the above. Please file the original and return the stamped copies to me in the envelope provided.

By copy of this letter I am providing opposing counsel with same.

Yours very truly,



Alison H. Kelley
Paralegal to Randall S. Hiller

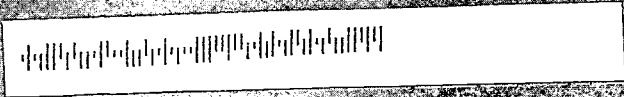
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Enclosures.

Cc: Joey R. Floyd, Esq.



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