

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002526

RECEIVED
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SC Court of Appeals

Janice Pitts, Appellant,

v.

Gerald Pitts, Respondent.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL iii

STATEMENT OF THE CASE 1

ARGUMENT

I. THE LOWER COURTS ERRED IN ORDERING AND UPHOLDING THE
RELIEF ON THE BASIS OF CLAIM AND DELIVERY WHERE RESPONDENT
DID NOT HAVE LEGAL TITLE TO THE PROPERTY 2

II. THE MAGISTRATE ERRED IN REFUSING TO ALLOW THE APPELLANT TO
IMPEACH THE RESPONDENT WITH PRIOR CONVICTIONS 7

CONCLUSION 8

TABLE OF AUTHORITIES

Cases

American Employers Insurance Co. v. Zablosky, 5 Cir., 292 F.2d 412	
Bankers Ins. Co. of Pa. v. Griffin, 244 S.C. 552, 556, 137 S.E.2d 785, 786 (1964)	
Clerks' Benevolent Union v. Knights of Columbus, 70 S.C. 543, 50 S.E. 206, 207 (1905)	
Kirven v. Pinckney, 47 S. C. 229, 25 S. E. 202	
Peeples v. Warren, 51 S. C. 560, 29 S. E. 659	
Penton v. Hansen (Okl.) 73 Pac. 843	
United States Casualty Co. v. Bain, 191 Va. 717, 62 S.E.2d 814	

Statutes

Section 46-150.11, Code of Laws of South Carolina, 1962	
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Rules

South Carolina Rules of Evidence,	609
South Carolina Magistrate Court Rules,	Rule 13

Other Authority

7 Am.Jur. (2d), Automobile Insurance, Section 20, p. 318	
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STATEMENT OF THE ISSUES

1. Did the magistrate err in granting relief on claim and delivery where the neither the complaint nor evidence at trial showed that Respondent had legal title to the property?
2. Did the magistrate err in refusing to assist or allow the Appellant to impeach the Respondent with prior convictions?
3. Did the circuit court err in failing to reverse the decision of the magistrate?

STATEMENT OF THE CASE

This case was initiated by the Respondent filing an Affidavit and Complaint for Claim and Delivery in the Magistrate Court in Spartanburg County on August 2, 2017. On August 2, 2017 a Summons for Claim and Delivery was issued by the magistrate compelling the Appellant to appear in court on August 15, 2017. A hearing was held before Magistrate Tina McMillian in the Landrum Magistrate's Office on August 15, 2017, with the parties to this action appearing pro se. The Magistrate ordered relief in favor of the Respondent. Appellant timely appealed to the circuit court and a hearing was held before the Hon. R. Kieth Kelly in the Court of Common Pleas in Spartanburg County on October 18, 2017. The parties again appeared pro se and on December 11, 2017 judgment was rendered by way of a Form 4 affirming the decision of the magistrate. Appellant obtained representation of J. Falkner Wilkes and timely notice of appeal was served and filed and this brief follows.

STATEMENT OF FACTS

Magistrate trial

Respondent testified that he transferred title to the motorcycle to the Appellant. Title was therefore in the Appellant's name. Respondent claimed he transferred title because she had paid for the repairs to the motorcycle. Respondent claimed that he had a verbal agreement with the Appellant whereby the Appellant would transfer title back to him if and when he paid her back. 5-8. Appellant claimed that he attempted to pay the Appellant back \$1,200 but the Appellant claimed that he owed her \$5,000. 8-9. Respondent claimed he had a verbal agreement and offered no proof as to the amount of money he was to repay other than testifying: "11 -- 1,200 some odd dollars if I ain't mistaken." 9, l. 1-5. Respondent also claimed that he had various personal items that were "gone" that he "didn't put on that paper". 9. In his testimony the Respondent failed to identify any tools or testify to the value of the personal property. 8-9. Respondent was evicted from the Appellant's house. 9.

Respondent called Gene Blackwell as a witness. Blackwell testified that the Respondent had purchased a Murray lawnmower from him about a year and a half earlier. 12. However, Blackwell admitted that the Appellant had given him and the Respondent two push mowers and a riding mower for the Murray. 14-15. Blackwell also admitted that the lawnmowers were essentially scrap. 16. Blackwell did not testify as to the value of the Murray lawnmower.

Carla Pitts, called by the Respondent, testified that she never saw any of the personal property. 19. Carla Pitts testified to what is clearly hearsay. Pitts testified that she didn't know the amount involved in the "agreement" but that the title was transferred to the Appellant. 20. Pitts testified that when her father, Respondent, moved out of the Appellant's house "other

people” were moving stuff around trying to get the rest of his stuff in his building, going through what they wanted to. 20, l. 18-22. Pitts testified that the Appellant told the Respondent that he owed her \$5,000. 20. Pitts admitted that the Appellant had sent money to the Respondent while he was in prison. 22-23. It became clear that Pitts had no personal knowledge of any alleged agreement and was merely repeating what her father, Respondent, had told her. 23-24. The magistrate questioned Pitts about what she believed the terms of the agreement were but never questioned her as to whether her testimony was based on hearsay or personal knowledge. 25.

Appellant testified and attempted to offer the Respondent’s prior criminal history for the purpose of impeaching the Respondent’s testimony. 31-32. The magistrate refused to consider the Respondent’s record stating: “I don’t want to see his criminal record.” “I don’t want to prejudice him in any way.” 32, l. 9-11. The magistrate referenced the Respondent’s prior testimony about having been in prison but stated that “That doesn’t have anything to do with why we’re here today.” 32, l. 13-14.

Appellant testified that the Respondent put the motorcycle in her name because she had hired attorneys for him, got his truck out of pawn for \$1,500, and bailed him out of jail. 32. Appellant testified that the Respondent owed her \$8,400 but that she has stopped at \$5,000. 32. The Appellant provided documentation for the amounts that she claimed. 33. As to the attorney fees the magistrate stated that she was going to “call and verify that,” presumably with some of the attorneys. 33-34. The Appellant testified that the repairs to the motorcycle were \$1,160. 34. Appellant also paid \$1,300 in restitution and fines for the Respondent. 35. Appellant testified that the Respondent and Blackwell had been stealing her property and selling it, and that was part of the basis for her evicting him from her house. 38. Appellant testified that the Respondent

recovered all of his tools from her house. 39. Appellant testified that the Respondent told her “that [she] could have the bike for what he owed [her] or he’d pay me back”. 39, l. 20-25.

Cindy Turner testified on behalf of the Appellant. 47. Turner was witness to conversations between the parties wherein the Respondent promised to pay back the money for the things that were discussed in the trial. 49-50.

After all of the witnesses testified the parties’ daughter Carla Pitts indicated to the judge that she wanted to testify some more. 55. Pitts then contradicted some of her prior testimony and volunteered that the Respondent had fixed up the Appellant’s basement and cleaned up shrubs and miscellaneous stuff. 56. She went on to say that she had heard both parties discuss the “agreement”. Pitts went on essentially argue her father’s case against her mother bringing up things that had not raised in the complaint or mentioned by either party during their testimony. The trial then devolved into something close to a running argument between Pitts and her mother, the Appellant. 59-72.

The court ruled that the parties had a verbal agreement and that the Respondent owed the Appellant \$1,260 and that the Appellant had to sign over title and return the motorcycle to the Respondent. The court denied further relief as to any other personal property. 72-81.

Circuit Court Hearing

Appeal was taken alleging that the magistrate failed to take into account all evidence and further alleged that the complaint falsely alleged that the Respondent claimed that the motorcycle in question was the property of the Respondent and that title was in the Appellant’s name and had been since July 31, 2015 (over two years prior to the filing of this action). At the hearing the court advised the parties of a potential conflict. 2. Neither party objected to the judge proceeding

to hear the case. 2. The court did not advise the parties as to the right to obtain an attorney or otherwise advise or question them about proceeding in the circuit court pro se. 2. Appellant alleged that the magistrate erred in relying on the testimony of the Carla Pitts and that the magistrate failed to take into consideration the paperwork and evidence that the Appellant had establishing the debt owed to the Appellant by the Respondent. 2. The Appellant indicated that the magistrate refused to take paperwork into evidence. 3. Without further questions or argument the hearing was convened. 3-4. A Form 4 was subsequently issued affirming the magistrate without any analysis or explanation.

ARGUMENT

I. THE LOWER COURTS ERRED IN ORDERING AND UPHOLDING THE RELIEF ON THE BASIS OF CLAIM AND DELIVERY WHERE RESPONDENT DID NOT HAVE LEGAL TITLE TO THE PROPERTY.

The magistrate erred in ordering the Appellant to turn over title and possession of the motorcycle where the Respondent had voluntarily signed over the title and given possession to the Appellant two years earlier. Section 46-150.11, Code of Laws of South Carolina, 1962, provides that 'A certificate of title issued by the Department is *prima facie* evidence of the facts appearing on it.' The presumption of ownership evidence by the certificate of title may be overcome by evidence that the true owner of the vehicle is a person other than the one in whose name the vehicle is registered. 7 Am.Jur. (2d), Automobile Insurance, Section 20, p. 318; United States Casualty Co. v. Bain, 191 Va. 717, 62 S.E.2d 814; American Employers Insurance Co. v. Zablosky, 5 Cir., 292 F.2d 412. See Bankers Ins. Co. of Pa. v. Griffin, 244 S.C. 552, 556, 137 S.E.2d 785, 786 (1964). Here there was no evidence to show that the Respondent was the true owner of the motorcycle. The record leaves no question that the Respondent transferred both title and possession of the motorcycle to the Appellant. Pursuant to Section 46-150.11, legal title was in the name of the Appellant. Appellant was therefore the owner of the motorcycle.

Claim and deliver requires that the complainant own the property subject to the action. If the complaint does not properly allege and show ownership, the complaint is defective. Here the complaint does not state facts sufficient to support an action for claim and delivery of personal property. The plaintiff in such action, in order to recover, must allege that the property detained is his, or that it was taken from his possession, and he cannot recover without showing title in himself. Peeples v. Warren, 51 S. C. 560, 29 S. E. 659; Kirven v. Pinckney, 47 S. C. 229, 25 S.

E. 202. The complaint in the present case shows no title in plaintiff. As said in Penton v. Hansen (Okl.) 73 Pac. 843, the action of claim and delivery 'is not a chancery proceeding. Its purpose is to take property from one who wrongfully withholds it, and to give it to another, who has a *plain legal right* thereto.' Clerks' Benevolent Union v. Knights of Columbus, 70 S.C. 543, 50 S.E. 206, 207 (1905). *emphasis added*.

The evidence showed that legal title was held, as was possession, by the Appellant. The Respondent did not allege that he held legal title or that the motorcycle was wrongfully taken from him. The evidence is undisputed that the title was transferred by the Respondent to the Appellant. It is also undisputed that possession voluntarily transferred to the Appellant by the Respondent. The Respondent claimed that there was a verbal agreement that the Appellant would transfer the title and possession to him if he repaid her a certain amount. The evidence therefore conclusively shows that the Respondent did not have legal title, and therefore, relief could not be granted under a cause of action for claim and delivery.

The magistrate erred in granting relief under claim and delivery and the circuit court erred in failing to reverse the magistrate.

II. THE MAGISTRATE ERRED IN REFUSING TO ALLOW THE APPELLANT TO IMPEACH THE RESPONDENT WITH PRIOR CONVICTIONS.

The Appellant attempted to impeach the Respondent with evidence of his prior convictions. After the Respondent testified and the Appellant allowed to testify she attempted to offer the Respondent's prior criminal history for the purpose of impeaching the Respondent's testimony. he magistrate refused to consider the Respondent's record stating: "I don't want to see

his criminal record." "I don't want to prejudice him in any way." The magistrate referenced the Respondent's prior testimony about having been in prison but stated that "That doesn't have anything to do with why we're here today." In the circuit court the Appellant raised the magistrate's refusal to accept documents because they were "irrelevant". 2.

From the record it is clear that the Respondent had prior convictions, at least one of which caused him to be on probation and therefore, a felony. Prior convictions are a proper consideration for the fact finder as they bear on the issue of credibility. Although the Appellant did not follow the proper procedure in raising the prior convictions, the magistrate should nevertheless have reviewed the convictions and considered any that under the rules would bear on the issue of credibility. In magistrate courts "[t]rials should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice. In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order that all claims and defenses are fully presented." Rule 13, Magistrate Court Rules.

As this case turned on credibility, the prior convictions of the Respondent were of particular importance. The Respondent's prior convictions were admissible for the purpose of impeachment pursuant to Rule 609, SCRE:

(a) General Rule. For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

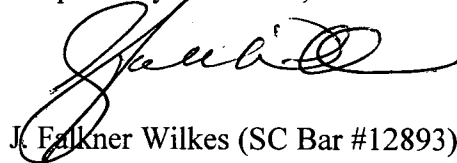
Rule 609, SCRE.

The Appellant was entitled to impeach the Respondent with prior convictions and the magistrate, under a duty to relax the rules to reach justice, should have questioned the Respondent about his prior convictions based on the records provided by the Appellant. Failure to do so violated the duty of the magistrate under Rule 13, SCRMC and Rule 609, SCRE. As this case turned on credibility as to details of a verbal agreement, failure to allow the Appellant to impeach the Respondent constituted reversible error. The lower court's erred in ordering and upholding an award under claim and delivery.

CONCLUSION

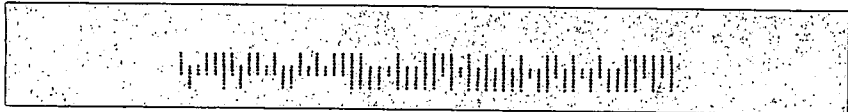
The decision of the lower court should be reversed and the judgement and order set aside.

Respectfully submitted,



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