

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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2015-CP-12-0179  
Appellate Case No. 2016-002016

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**RECEIVED**

JAN 11 2019

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.

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Respondent's Return to Appellant's  
Motion to Dismiss Appeal

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Appellant has moved to have the appeal dismissed and the case remanded to the circuit court to substitute a successor to Elaine H. Hensley as a party to the appeal. Appellant asserts that Elaine H. Hensley was deceased at the time this trespasser ejection action was commenced and that her interest in the subject real property can only be represented by a duly appointed successor.

The relevant facts are:

1. The Respondent is Robert H. Breakfield, Esquire, in his capacity as attorney-in-fact for the owners of the real property that is the subject of this trespass case. Elaine Hensley is not a party. Elaine Hensley was named in the caption as one of Breakfield's owner-principals, but as explained below, Elaine Hensley's inclusion as an owner in this case was mistaken.
2. Elaine H. Hensley received an undivided interest in certain land as a remainderman to the life estate held by Reba Hinson. The land included the lot of land that Appellant has been litigating about against the Hinson family, unsuccessfully, for many years. See Court of Appeals unpublished opinion nos. 2013-UP-0256; 2013-UP-0257; 2014-UP-010; 2014-UP-076; and 2014-UP-0158. In summary, these various cases have held that Appellant has no ownership interest in the lot at issue. When Appellant would not vacate the property, the trespasser ejection proceeding herein was commenced in November, 2014.
3. By deed dated January 17, 2013, recorded in office of the Chester County Clerk of Court on January 17, 2013, Elaine H. Hensley conveyed her interest in the lot then occupied by Appellant, and being the lot of land at issue in this appeal, to her brother Robert H. Hinson. See the supporting affidavit of attorney Robert H. Breakfield which identifies and authenticates the deed from Elaine H. Hensley to Robert H. Hinson. (Exhibit A attached hereto.) Robert H. Hinson is an owner-principal in this case whose interest is represented by Breakfield, as agent.
4. Elaine H. Hensley died on November 30, 2013, thereby terminating her agent-principal relationship with Breakfield.
5. Elaine H. Hensley was mistakenly included as an owner-principal in the case caption because of her involvement in all of the prior legal proceedings brought by Appellant. Rather than being a necessary or indispensable party in the case *sub judice*, she is absolutely an unnecessary

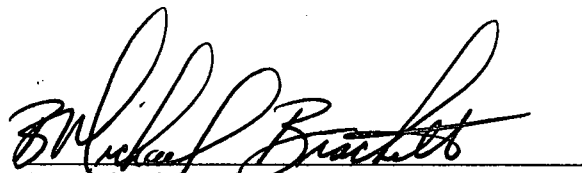
participant who no longer had an interest in the land at issue when the trespasser ejectment action was filed. At the time this action was commenced, her former interest in the land was owned by Robert H. Hinson.

Even if Elaine Hensley's principal-agent relationship with Breakfield had not terminated prior to the commencement of this case, Elaine Hensley should not have been named in any capacity in the caption because she did not then have an ownership interest in the land. Misjoinder of a party who has no interest in the subject matter of the action is not ground for dismissal. Rule 21, SCRPC. The court may drop the misjoined party on its own initiative as it deems appropriate. Id. Rule 264, SCACR, has no application because Elaine Hensley was not a "party" to the case, having died before the case was commenced.

#### Conclusion

1. Appellant's Motion should be denied. 2. Elaine H. Hensley can be dropped from the caption if the Court finds such to be appropriate. 3. Appellant should be ordered to immediately file and serve the Record on Appeal because the Record on Appeal was to have been served and filed at the time the motion to dismiss was filed.

January 11, 2019



B. Michael Brackett, Bar no. 838  
Moses & Brackett, PC  
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Columbia, SC 29223  
803.422.1158  
[mbrackettsc@gmail.com](mailto:mbrackettsc@gmail.com)  
Attorney for Respondent

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Affidavit in Support of Respondent's  
Return to Appellant's Motion to Dismiss Appeal

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Personally, appeared before me Robert H. Breakfield, Esquire, who being duly sworn,  
deposes and says that:

1. I am a licensed and practicing attorney in South Carolina.
2. I am the duly appointed and acting Persona Representative of the Estate of Reba Hinson,  
and in my capacity as attorney-in-fact for the Hinson family in regard to matters related to the

family's litigation with the Appellant herein, I am the Respondent in this trespasser ejection action.


3. The deed attached hereto and incorporated herein is a certified copy of the deed on file in the office of the Clerk of Court for Chester County in volume 1070 at page 303 whereby Elaine H. Hensley conveyed real property to her brother Robert H. Hinson. The derivation in the deed confirms that the property conveyed was the property received by Elaine H. Hensley from the Estate of Levie Hoyt Hinson by way of a remainder interest to the life estate devised to Reba Hinson, which includes the lot of land at issue in this trespasser ejection proceeding.

4. When the above-captioned trespasser ejection proceeding was commenced, Elaine H. Hensley no longer owned an interest in the land at issue herein and was mistakenly misjoined as a party plaintiff.



Robert H. Breakfield, as Attorney-in-Fact

Sworn to before me this 9th  
day of January, 2019.



Notary Public for the State of South Carolina  
My Commission Expires: 1/16/2019



2(C) Third Tract: BEGINNING at a stake, said stake being N. 59-41 W. 373.8 feet from a second stake, said second stake being S. 49-19 W. 49.9 feet from the westerly corner of the Second Tract above (2B) and runs thence the following courses and distances with contour at elevation 417 feet above mean sea level, U.S.G.S. datum: S. 22-53 E. 120.5 feet; S. 19-37 E. 94.7 feet; thence with the L.H. Hinson property seven courses and distances as follows: (1) N. 67-47 W. 151.6 feet; (2) N. 43-15 W. 134.7 feet; (3) N. 70-34 W. 47.0 feet; (4) N. 74-35 W. 240.8 feet (5) N. 38-07 W. 38.7 feet; (6) N. 33-47 W. 398.2 feet; and (7) S. 59-37 E. 783.4 feet to the BEGINNING, containing 2.5 acres

TRACT 3: All that piece, parcel or tract of land lying, being and situate in Chester County, South Carolina, and being shown and designated as Lot No. 7 containing 47.50 acres, more or less, on a plat of property belonging to the Estate of G.W. Pettit by L.H. Melton dated October 30, 1952; said tract of land being bounded generally on the south by other lands of L.H. Hinson; on the east by lands of Duke Power Company; on the north lands now or formerly of Estate of Ben Pettit, the same being known as Lot No. 6 on the aforesaid plat filed in Plat Book B, at Page 106.

TRACT 4: All that certain tract of land situate, lying and being in Rossville Township, Chester County, South Carolina and more particularly described as follows: Beginning at the northeasterly corner of the L.H. Hinson property and runs thence with the northerly line of said property N. 69-17 W. 71.4 feet; thence with the easterly line of said property two courses and distances as follows: (1) N. 0-06 W. 734.0 feet; and (2) N. 34-24 W. 212.2 feet; thence N. 86-00 E. 255.7 feet; thence with contour at elevation 417 feet above mean sea level, U.S.G.S. datum, in a southerly direction 924.8 feet to the beginning, containing 2.8 acres, as shown on print dated June 12, 1969, marked Fishing Creek File No. 80.

Elaine H. Hensley acquired interest in the property by and through the Estate of Levie Hoyt Hinson, who died Testate on August 1, 1986, and were devised, pursuant to the terms of the Last Will and Testament of Levie Hoyt Hinson executed April 21, 1977, to Reba P. Hinson for life with remainder to Lois H. Griffin, John C. Hinson, Kathy H. Huffstickle and the eight children of William C. Hinson, a child who predeceased Levie Hoyt Hinson. For further reference, see Chester Probate Court File 1986-ES-12-188.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantee's Address: P.O. Box 98  
McConnells, SC 29726

CHESTER COUNTY TAX ASSESSOR  
DATE 1-18-13  
TAX MAP NO. 138-0-0-3

I hereby certify that the within Deed  
has been this 18 day of  
January A.D. 2013  
recorded in Book 1 of Deeds.  
Donald O. Wade  
AUDITOR, CHESTER COUNTY

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 17th day of January, 2013.

Signed, Sealed and Delivered in the Presence of:

[Signature]

Elaine H. Hensley  
Elaine H. Hensley

Heather J Pate

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that she saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 17th day of January, 2013,

Heather J Pate

[Signature]  
Notary Public for the State of South Carolina  
My Commission Expires: 7/30/20

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Certificate of Service

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The undersigned, as attorney for Respondent, hereby certifies that I have served the pro se Appellant, Mell Woods, by mail with a copy of the foregoing Respondent's Return to Appellant's Motion to Dismiss Appeal, postage prepaid and return address clearly indicated on said envelope, on this 11<sup>th</sup> day of January, 2019, at the following address:

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

  
B. Michael Brackett  
Attorney for Respondent

Moses & Brackett, PC  
133 Brookspring Road  
Columbia, SC 29223

January 11, 2019

HAND DELIVERY

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

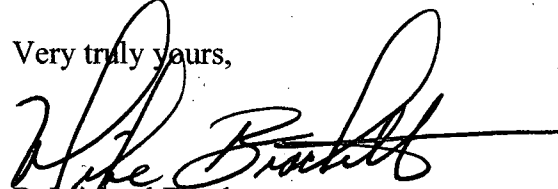
Re: Breakfield, as Attorney-in-Fact v. Woods  
2016-002016

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Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Respondent's Return to Appellant's Motion to Dismiss Appeal. By copy of this letter, a copy of the enclosed Return has been served on Appellant. This appeal has dragged on for far too long, so anything you can do to expedite consideration of the Motion and Return will be appreciated.

Very truly yours,



B. Michael Brackett

cc. Robert H. Breakfield, Esq. (by email)  
Mell Woods