

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-5343

RECEIVED

JUL 20 2012

SC Court of Appeals

Roosevelt Simmons,.....Appellant,

v.

Hattie Bailum, Ruby Bailum, Verdona Gray,
Julie B. Johnson, Monica Middleton, Marie
Smith, Melvin Singleton, Franklin Smith,
LMC, LLC, John Martin, Esq., as Trustee

of which,

Hattie Bailum, Ruby Bailum, Verdona Gray,
Julie B. Johnson, Monica Middleton, Melvin
Singleton, LMC, LLC, and John Martin, Esq.,
as Trustee, are.....Respondents.

SUPPLEMENTAL RECORD ON APPEAL

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Transcripts

Transcript pages 23, 24, 25, 37 and 38 of hearing before the Hon. Joseph S. Mendelsohn,
(04-CP-10-1459)..... R666

Certificate of Counsel R669

June 6, 2007

Transcript of Special Referee Hearing
Hon. Joseph S. Mendelsohn

1 predecessor, Mr. Simmons was entitled to a
2 percentage interest in the real estate, whatever
3 that may be. That has not changed from the date of
4 the last death of the person who he claims title
5 through. Now, I'm going to stop there for a
6 second. Is that a fair statement of the law?

7 MR. MARTIN: It is a fair statement of the
8 law, because under the intestacy statute, his
9 percentage is vested upon the death of Hester
10 Bailum. I mean, you know, when Sam died, Hester
11 got one-third, which is where Roosevelt's share
12 comes from, and that is just by statutory
13 intestacy, descent, and distribution.

14 THE COURT: Mr. Simmons, I don't when Hester
15 died. It's in here someplace. Mr. Simmons is
16 entitled to two-ninths of the various parcels that
17 he's entitled to, number one. He had that
18 entitlement from the date that Hester, who was his
19 predecessor in title, died, and that -- is that in
20 this order?

21 MR. MARTIN: I don't know if her date of
22 death is in the order, but he actually has acquired
23 a two-ninths interest by going to other Hester
24 Bailum heirs and getting --

25 THE COURT: I'm not talking about that part.

1 THE COURT: So that's where we are. And
2 where we are, because it is on appeal, which based
3 upon the documents that you've sent me, the appeal
4 has lapsed and the Supreme Court hadn't reinstated
5 it, unless you've got something else to show me.
6 So where we are is that whatever issues you've
7 appealed have lapsed.

8 MR. HOUSTON: No. We filed a motion for --

9 THE COURT: I understand that, Mr. Houston,
10 but the Supreme Court hasn't done anything.

11 MR. HOUSTON: No. They haven't ruled on it,
12 no.

13 THE COURT: So let's assume that you're
14 reinstated, and let's get back to what the bottom
15 line is, I think. The bottom line of this case is,
16 as I see it -- and if I'm wrong, the Supreme Court
17 will deal with that. I've thought about this
18 before this hearing. I believe that Mr. Roosevelt
19 Simmons, as is the law of this state, the title to
20 real estate never is unvested. It always vests.
21 It vests in whoever the heir is. It's not like a
22 chattel of personal property. You lawyers correct
23 me if I'm wrong.

24 At the time of the death of the last heir
25 that would have predeceased or was Mr. Simmons'

1 Well, he had two-ninths -- in fact, when Hester
2 Bailum died he had less than two-ninths, and he's
3 acquired more. So nothing has changed. He has got
4 what he's got.

5 Now, if he goes to court, if you get the
6 appeal reinstated, and if you prevail that appeal,
7 the major issue as I remember it is adverse
8 possession, and then I don't know what the other
9 issues are, other than technical matters that the
10 court did or didn't do. But let's just assume --

11 MR. HOUSTON: Well --

12 THE COURT: Hold on a second, Mr. Houston.
13 Let's just assume that you prevail on the technical
14 parts, that the process that we used was flawed and
15 the case needs to be remanded for a trial in whole
16 or in part. Okay.

17 Number one, I don't believe that's going to
18 happen. And the reason I don't believe it's going
19 to happen is because if, in fact, there was any
20 error, the error was corrected to the best of my
21 ability by the various lawyers that came in this
22 case. And if there are any remaining errors, I
23 believe the court would find them to be harmless,
24 because they really haven't done anything to
25 Mr. Simmons' interest in this piece of property.

June 6, 2007

Transcript of Special Referee Hearing
Hon. Joseph S. Mendelsohn.

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1 simply to put them in the record. And what else do
2 you want me -- what else do you want to tell me
3 about why I should not sign these deeds? That's to
4 me the issue.

5 ~~MR. HOUSTON: The other reason, Your Honor,~~
6 Is that no irreparable harm would be done to anyone
7 by any delay in their being conveyed at this
8 particular time. But it would be entirely
9 cumbersome if they were, the deeds were made now,
10 people started acting on the fact that they think
11 they have complete possession, where still the lis
12 pendens in the case is still going on. And then if
13 the case were reversed, look at the position
14 everybody would be in.

15 You know, people say, "Well, I spent the
16 money. I don't own the property anymore. So how
17 can I convey it back?"

18 THE COURT: Okay. No irreparable harm to
19 anybody else at this time, to other heirs or the
20 potential buyers. Okay. What else, Mr. Houston?
21 Anything else?

22 MR. HOUSTON: That's basically it, Your
23 Honor.

24 THE COURT: All right. Good.
25 Mr. Berlinsky, what do you want to tell me?

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Transcript of Special Referee Hearing

Hon. Joseph S. Mendelsohn

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1	MR. BERLINSKY: I think it's more of what	1
2	Mr. Martin wants to tell you, because I think as to	2
3	how it affects my client is my client is keeping	3
4	the property. We're not doing anything with it.	4
5	So if it was reversed on appeal	5
6	THE COURT: You're right. I think you're	6
7	probably right. Let me hear from, Skip, let me	7
8	hear from you. Where are you?	8
9	MR. MARTIN: Judge, as you know, this case	9
10	has been pending for over three years now. There	10
11	have been periods of time when Mr. Simmons has been	11
12	pro se. He's been through numerous attorneys. We	12
13	show up now two motions post-verdict contrary to	13
14	his position. He's saying, "Wait. I've got new	14
15	evidence." If it is census evidence, I haven't	15
16	seen it. It's readily available. It was readily	16
17	available. It should not be considered, because	17
18	it's too little too late.	18
19	But even so, when you look at the order that	19
20	you signed, and I find it interesting that	20
21	Mr. Houston wants to talk about the problems with	21
22	the ancestry and problems with the evidence at the	22
23	hearing, yet he's never read the transcript and he	23
24	wasn't present at the trial.	24
25	But if he were to hear or if he had read the	25

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CERTIFICATE OF COUNSEL

I certify that the Supplemental Record on Appeal contains the materials omitted from the Record and ordered to be included by the Court of Appeals' July 11, 2012 Order, and not any other material.

July 17, 2012



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R669

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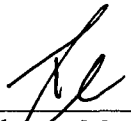
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PROOF OF SERVICE

I certify that I have served the Supplemental Record on Appeal by depositing a copy of it in the U.S. Mail, postage prepaid, on July 19, 2012, addressed to Appellant's attorney of record, Edward A. Bertele, Esquire, 1812 Pierce Street, Charleston, SC 29492.

July 19, 2012



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