

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2010-CP-12-00595

Mell Woods Appellant,

v.

John D. Hinson, Christine E. Jones,
John C. Hinson, Kathy Huffstickle,
Robert H. Hinson, Darrell W. Hinson,
Charles J. Hinson, William L. Hinson,
Elaine H. Hensley, William C. Hinson, Jr.,
John Does, (1-5), Jane Does, (1-2), Respondents.

Second Final Brief of Appellant

(With the Record references in the First Final Brief at the bottom of page 6 being redacted per the Order of the Honorable Jasper M. Cureton, date of June 05, 2013)

Court Of Appeals Internal Tracking Number: 2012 212429

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JUN 19 2013

SC Court of Appeals

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TABLE OF CONTENTS

Cases and Authorities	ii
Issues Presented	01
Statement of the Case	02-03
Argument	05-06
Issue 1:	05-06
Issue 2:	06
Conclusion	07

TABLE OF CASES AND AUTHORITIES

<u>CASES</u>	Page:
<u>Gilmore v. Ivey</u> , 290 S.C. 53, 348 S.E.2d 180	05, 06
<u>Hancock v. Mid-South Management Co., Inc.</u> , 381 S.C. 326, 673 S.E.2d 801, (2009)	01, 06
<u>In the Matter of Ned Gregory, II.</u> , Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991).	02
<u>State v. King</u> , 367 S.C. 131, 623 S.E.2d 865	06

OTHER AUTHORITIES

Rule 601(a) SCRE	06
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ISSUES PRESENTED

1. Did an abuse of discretion occur where the trial court relied only on the arguments of counsel instead of inspecting the record to find issues of fact, before entry of a summary judgment based solely on the defense counsel's arguments?

2. Did the trial court err in entering summary judgments in two claims, malicious civil prosecution, and quantum meruit, where only a scintilla of evidence is required to defeat a summary judgment motion under the ruling in Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801, (2009)?

STATEMENT OF THE CASE

Although this case is in the court of common pleas, it has roots in the probate court of Chester County. In another action appellant Mell Woods has charged that the Hinson family allowed a fraud to be perpetrated upon the Probate Court of Chester County by causing a revoked will to be admitted to probate, all the while covering up the existence of the actual will of the decedent, Mrs. Reba Hinson. The fraud upon the probate court using extrinsic tactics case, is still pending. All of this involves appellant Mell Woods, because appellant purchased some land from the decedent, Mrs. Hinson. The land was purchased in good faith, for value, and without notice of any infirmity, (R.pp. 362-367, R.pp. 636-641). Mrs. Hinson died and Ned Gregory, II, a licensed South Carolina attorney prepared a standard probate form, or petition, #300, (R. pp. 103-108, R.pp. 63-64).

In Section II of the form the direct question is asked: "Are you aware of any instrument or document amending or revoking the Will?" The answer was, "No." (R.107, R.63).

Ned Gregory, II, is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991), where Gregory was disciplined for forging documents, R.pp. 65-67. Gregory

filled out the probate form for the probate court, and then obtained the signature under oath of Robert Breakfield, the purported personal representative of the Hinson Estate, (R. 64, R.269, R.pp. 159-163).

Appellant Mell Woods received written notice of the trial court summary judgment orders on December 08, 2011, and served a Rule 59(e) Motion within 10 days thereof. The motion was also denied in a summary manner by the trial court and will be included in the Record on Appeal. Jury trial has been demanded since day one in the complaint, and with all other papers filed.

Other Information Required by Rule 208(b)(1)(c) SCACR:

This action was filed in the Chester County Court of Common Pleas on December 09, 2010; defense is general denial; the case consists of three claims: one for malicious civil prosecution, (stemming from an abandoned eviction action), one for quantum meruit, and one for outrage. The trial court granted summary judgments on all three claims on November 14, 2011. A first Notice of Appeal was served on December 30, 2011, and a second one on May 29, 2012.

STANDARD OF REVIEW

The grant of summary judgment is appropriate only if it is perfectly clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that movant is entitled to judgment as a matter of law.

ARGUMENT

As to Issue Number 1:

This case is not much different from the one reported at 290 S.C. 53, 348 S.E.2d 180, Gilmore v. Ivey, where the South Carolina Court of Appeals ruled that *statements of counsel* are not evidence, and that when a trial court bases a decision on argument, instead of facts, reversible error occurs. It is no different here. The hearing transcript shows, R.pp. 713-751 that the trial court never had time to even look at the evidence presented by the defense, which is in fact evidence produced by Appellant Mell Woods, in response to a subpoena. In less than twenty minutes after the defense handed the Griffin video tape to the court, the case was decided without looking at the tape, page 42 lines 9-13, R. 751, the case is ruled on based upon the argument of the defense counsel. And in fact, the court stated so: "and in making the ruling, the court adopts the arguments made by defendant on that motion." (Hearing transcript, pg. 42 lines 12-13), R. 751.

The Griffin tape shows exactly what outrage is. The tape will be in the record, R. 659.

Argument as to Issue 1 continues:

Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d. 180, proscribes the type of ruling made by the trial court in this case:

"In determining whether a genuine issue of material fact exists, a court must consider everything in the record -- pleadings, depositions, interrogatories, admissions on file, affidavits, etc."

Argument as to Issue 2:

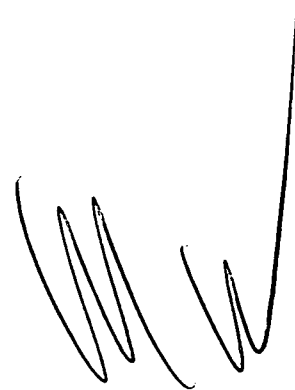
Appellant Mell Woods as an aggrieved party can testify in his own case, Rule 601(a) SCRE says he can, State v. King, 367 S.C. 131, 623 S.E.2d 865, says he can, and there is plenty of sworn testimony in the record in amounts enough to defeat a summary judgment motion. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801, (2009). (References to the Record will be supplied as soon as the Record is assembled)

CONCLUSION

Appellant Mell Woods asks that the three rulings of the trial court be modified, and squared with South Carolina Case law.

Respectfully submitted,

This 15 day of June, 2013.



Mell Woods

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Certificate of Appellant Rule 211(a) SCACR:

Appellant hereby certifies that the final brief in this case complies with Rule 211(b) SCACR, the content is the same as the initial brief served on August 06, 2012 excepting references to the Record.

This 15 day of June, 2013.



Mell Woods

Proof of Service

Trial Court Case Number: 2010-CP-12-00595

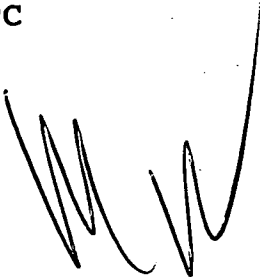
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Woods v. Hinson

I hereby certify that I have on the 15 day of June, 2013, served the respondents with a true copy of the within and foregoing *Second Final Brief of Appellant*, and the Certificate of Appellant, Rule 211(a) SCACR by placing the documents in the U.S. Mail with sufficient postage addressed to:

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