

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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

RECEIVED
MAR 21 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 WoodsAppellant.

Respondent’s Return to Appellant’s
Most Recent Frivolous, Bad Faith, Harassing Motion, to wit:
Motion for Leave to File a Rule 60(b), SCRCP
Motion in Trial Court

Enough is enough, or, at least, it should be. This is but the latest effort of Appellant to delay this appeal until all of the Respondent’s principals, and attorney, are dead and gone. The Notice of Appeal was filed on September 23, 2016, two and one-half years ago, and the Record on Appeal has not yet been filed with the Court and served on the undersigned. Admittedly, a good

portion of the delay was attributed to the Motion to Dismiss Appeal which this Court decided to hold in abeyance pending a decision of the Supreme Court in Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC. The Supreme Court issued its opinion on February 28, 2018. Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 422 S.C. 211, 810 S.E.2d 856 (2018). By Orders dated March 22, 2018 and May 3, 2018, this court denied the Motion to Dismiss Appeal.¹

Since May 3, 2018 Appellant has requested and been granted two extensions for the service of his initial brief and designation, and one extension for service of the Record on Appeal.² The November 19, 2018 Order that granted the motion for extension of time to serve the Record on Appeal included the following: “No further extensions will be granted absent a showing of extraordinary circumstances.” Consequently, the deadline for serving the Record on Appeal was December 19, 2018.

On December 19, 2018, rather than serving the Record on Appeal, Appellant filed and served a Motion to Dismiss Appeal and for Remand. That motion was denied by Order entered February 13, 2019, which in addition to denying the motion, ordered Appellant to serve the Record on Appeal within thirty days – by March 15, 2019.

Neither the Court nor the undersigned received the Record on Appeal and/or proof of service of same on March 16, or on March 18, or on March 19, 2019. On Wednesday, March 20 both the Court and the undersigned received Appellant’s motion that is the subject of this Return.³

¹ The Motion to Dismiss Appeal was well grounded, but the Supreme Court decided to apply the Wells Fargo ruling prospectively.

² See Order dated November 19, 2018.

³ Appellant claims that the Motion was mailed on Thursday, March 14, 2019, presumably from Lancaster, South Carolina. As usual, the envelope from Appellant taken from the undersigned’s mailbox bore no postmark and took an unusually long time to reach Columbia from Lancaster.

The full history of Appellant's serial litigation against Respondent and his principals has been set out in numerous filings made in this Court, most recently in Respondent's Initial Brief in this case, filed and served on or about September 18, 2019.⁴ Pages 3-8 of Respondent's Initial Brief contains the "general background."

Action Sought From The Court By Respondent

1. Appellant has failed to serve the Record on Appeal by the court-ordered deadline. Further, Appellant's motion for leave to file a Rule 60(b) motion neither asks that the filing/service deadlines be stayed nor provides "extraordinary circumstances" for a stay/extension.⁵ The appeal should be immediately dismissed for cause. No more deficiency letters; no further extensions. Appellant has had more than sufficient time to print and serve the Record on Appeal. Respondent's principals have the right to get on with their lives without unending harassment from Appellant.
2. Additionally, Appellant's Motion for Leave should be denied because, on its face, it is without merit. Appellant claims that the Magistrate's Court trespass hearing was tainted by extrinsic fraud in two particulars: A. that Respondent and/or his attorney committed perjury by having identified Appellant as a trespasser and not as an owner of the real property at issue, (Appellant's Motion, ¶ 3), and a related claim that the undersigned as Respondent's attorney did not offer into evidence (or as Appellant describes it "chose to conceal the document from the Magistrate [sic] Court") what Appellant asserts to be a mortgage document evidencing that Appellant was an owner/purchaser and not a lessee/trespasser. (Appellant Motion, ¶ 7.) And, B. that inclusion of Elaine Hensley as an owner and principal of the Respondent's power of attorney

⁴ Respondent requests that the Court take judicial notice of the content of Respondent's Initial Brief herein.

⁵ See the November 19, 2018 Order.

when the trespass case was commenced constitutes extrinsic fraud on the court. (Appellant Motion, ¶ 6.)

Two responses to the mortgage document: A. when the trespass case was commenced in November, 2014, the courts had already determined and ruled that Appellant had no ownership interest in the property. (See Court of Appeals Unpublished Opinion 2014-UP-010. Appellant's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. [All documents are available on the South Carolina Judicial Department website.] Appeal costs were awarded to the Respondents. This case decided the question of Appellant's claim to an ownership interest in the subject real property, including by adverse possession.)⁶ And, B., Appellant testified at the Magistrate's Court hearing and offered exhibits into evidence. He had the opportunity to offer testimonial and documentary evidence to the court, including his so-called mortgage.

Regarding Elaine Hensley having mistakenly been identified as a joint owner of the property when the trespass case was commenced, that falls under the "no harm, no foul" rule. Appellant tried to use this argument to obtain another delay of the appeal in his recent Motion to Dismiss Appeal and to Remand. The motion was denied by Order of this Court filed February 13, 2019.

If the appeal is dismissed as it should be because Appellant has failed and refused to timely prosecute his appeal, he will no doubt file a Rule 60(b) motion in magistrate's court and appeal that all the way back to this court. It never stops with Appellant. His history makes clear that he is using the courts as a weapon against the Hinson family. Accordingly, the Court should include

⁶ Appellant thereafter continued to describe himself as an owner and not a tenant, as evidenced by his testimony in the trespass hearing. (transcript of trespass hearing, p. 68, l. 5-12; p. 71, l. 13-15, said pages are attached hereto.)

in its order a holding that Appellant's motion for leave to file a Rule 60(b) motion is denied, in part, because the grounds as stated to the court are legally insufficient for such relief.

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003), citing Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). Appellant cannot possibly satisfy these conditions because he attended the trespass hearing in Magistrate's Court, where he offered evidence, in the form of both testimony and documents. He fully argued his claim of ownership, but was unable to overcome the prior rulings of the various courts that he was not an owner.

Please stop the Appellant from hereafter filing any sort of pleading designed to relitigate the question of the ownership of the real property at issue herein. No complaints, petitions, motions or pleadings of any kind without prior court approval and that are not signed by a South Carolina attorney. Sanctions such as these are merited. Section IV. of Respondent's Initial Brief herein (pages 18-22 of the Initial Brief), incorrectly shown on page 18 to be Section V, sets out the authorities for such relief.⁷



B. Michael Brackett, #838
Of Counsel, Moses & Brackett, PC
133 Brookspring Road
Columbia, SC 29223
803.422.1158
Attorney for Respondent

March 21, 2019

⁷ The Court can take judicial notice of this material.

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE COURT
)
 COUNTY OF CHESTER) C/A No. 2014-CV1210400037
)
 Robert H. Breakfield, Esq. 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.,)
)
 Applicants,)
 v.)
 Mell Woods,)
)
 Respondent.)
 -----)

COPY

HEARING

Friday, January 30, 2015
 1:09 p.m. - 3:31 p.m.

The hearing before the Honorable Yale Zamore, was held at the Chester County Magistrate's Office, 1 Argon Avenue, Great Falls, South Carolina on the 30th day of January, 2015, before Jennifer Cash, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

APPEARANCES

B. Michael Brackett, Esquire
 Moses, Koon & Brackett, P.C.
 1333 Main Street, Suite 600
 Columbia, South Carolina 29201
 Attorney for the Plaintiffs

Mell Woods, of Lancaster, Pro Se
 Post Office Box 2603
 Lancaster, South Carolina 29721

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EXHIBITS

(All Exhibits were retained by Judge Zamore.)

Plaintiff's Exhibit Number One	41
(Order Case No 1986-ES-12-188)	
Plaintiff's Exhibit Number Two	42
(Verified Complaint 2011-CP-12-00323)	
Plaintiff's Exhibit Number Three	45
(Defendant's Answer and Counterclaim)	
Plaintiff's Exhibit Number Four	46
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1 years.

2 **THE COURT:** Okay.

3 **MR. WOODS:** About this land.

4 **THE COURT:** Uh-huh.

5 **MR. WOODS:** It's got a hand-drawn plat of the land
6 on there. And more importantly than that, it
7 has a contract, where I signed it, and Ms. Reba
8 Hinson signed it, where she sold me this land.
9 And it's on file with the State of South
10 Carolina. That's the part that he doesn't want
11 to talk about. Trespassers don't have
12 paperwork.

13 **MR. BRACKETT:** May I have a copy of that please?

14 **THE COURT:** Yes, absolutely. We'll pause for just a
15 minute ---

16 **MR. WOODS:** Yeah.

17 **THE COURT:** --- while ---

18 **MR. WOODS:** Can I just loan you this, it's the only
19 certified copy ---

20 **THE COURT:** Sure, no problem. Yeah. I want -- I
21 want, I want a -- I want Ms. Fox to make a copy
22 of it.

23 **MR. WOODS:** This has been in the Plaintiff's ---

24 **THE COURT:** We'll pause -- we'll pause for just a
25 minute.



1 **THE COURT:** I understand.

2 **MR. WOODS:** --- with the state of South Carolina.

3 **THE COURT:** Yes, sir. And it says what it says.

4 **MR. WOODS:** And it describes the land.

5 **THE COURT:** Yes, sir.

6 **MR. WOODS:** To a T.

7 **THE COURT:** Yes, sir. I understand.

8 **MR. WOODS:** And she signed it, and I signed it.

9 **THE COURT:** I understand that too.

10 **MR. WOODS:** But this is the crux of the matter right
11 here.

12 **THE COURT:** Okay.

13 } **MR. WOODS:** There's some more to go with it, but
14 } trespassers and squatters don't have papers
15 } like this.

16 **THE COURT:** Uh-huh.

17 **MR. WOODS:** A squatter is somebody goes out and sets
18 up tent on your land somewhere and has no right
19 whatsoever to be there.

20 **THE COURT:** Okay.

21 **MS. FOX:** Mr. Woods, could you please step back and
22 off the bench, thank you.

23 **MR. WOODS:** I can sit down, whatever you want me to
24 do.

25 **MS. FOX:** No, you can stand, I just don't want you



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as Personal Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and William C. Hinson, Jr.; Respondent,

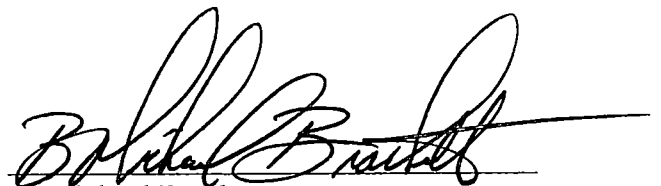
v.

Mell WoodsAppellant.

Certificate of Service

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 for Leave to file Rule 60(b) Motion, postage prepaid and return address clearly indicated on said envelope, on this 21st day of March, 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

March 21, 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

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Respondent's Return to Appellant's Motion for Leave to File a Rule 60(b) Motion. 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

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