

APPEAL IN A CIVIL CASE  
THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Honorable Kristi L. Harrington

Case No.: 2016-CP-10-3504

RECEIVED  
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SC Court of Appeals

Ernest McKnight.....Appellant,

v.

Anna Michelle Porcher, Eugene D. Gathers, Estate of Ned Wright, Estate of Hattie Gasden, Edward Wright, Estate of Samuel Wright, James Wright, Estate of Earline Wright Maxwell, Ida Wright, Estate of Wileminia Wright, Henry Wright, Jr., Estate of Henry Wright, Estate of Ernestine Wright, Estate of Samuel Wright, Edward Wright, Estate of James Wright, Estate of Oscar Wright, Martha Wright, Estate of Leroy Wright, Estate of Edward Wright, Estate of Harold Wright, Estate of Charles Wright, Jr., Estate of Hattie Wright Gaston a/k/a Hattie Wright Gadsden, Estate of Earline Wright, Estate of Annie Wright, Walter Nathaniel Porcher, III, Keisha Kenyatta Porcher, and John Doe and Mary Roe, fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as the Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and fictitious names representing unknown heirs, devisees, distributes, of personal representatives of any deceased persons, Respondents.

RECORD ON APPEAL

Other Counsel of record:

Willie B. Heyward, Esq.  
27 Gamecock Avenue, Suite 200  
Charleston, S. C. 29407  
Attorney for Appellant

Jonathan Altman, Esq.  
575 King Street, Suite B  
Charleston, S. C. 29403  
Attorney for Respondent

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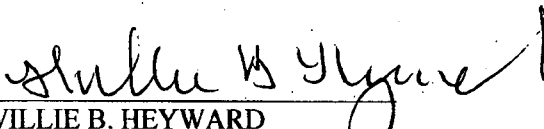
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| STATE OF SOUTH CAROLINA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | IN THE COURT OF COMMON PLEAS                                                                                                              |
| COUNTY OF CHARLESTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | NINTH JUDICIAL CIRCUIT                                                                                                                    |
| ERNEST MCKNIGHT<br>Plaintiff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | CASE NO: 2016-CP-10- <u>3504</u>                                                                                                          |
| vs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                           |
| <p>ANNA MICHELLE PORCHER, EUGENE D, GATHERS, ESTATE OF NED WRIGHT, ESTATE OF HATTIE GASDEN, EDWARD WRIGHT, ESTATE OF SAMUEL WRIGHT, JAMES WRIGHT, ESTATE OF EARLINE WRIGHT MAXWELL, IDA WRIGHT, ESTATE OF WILEMINIA WRIGHT, HENRYWRIGHT, JR. ESTATE OF HENRYWRIGHT, ESTATE OF ERNESTINE WRIGHT, ESTATE OF SAMUEL WRIGHT, EDWARD WRIGHT, ESTATE OF JAMES WRIGHT, ESTATE OF OSCAR WRIGHT, MARTHA WRIGHT, ESTATE OF LEROY WRIGHT, ESTATE OF EDWARD WRIGHT, ESTATE OF HAROLD WRIGHT. ESTATE OF CHARLES WRIGHT, JR., ESTATE OF HATTIE WRIGHT GASTON, a/k/a, HATTIE WRIGHT GADSDEN,, ESTATE OF EARLINE WRIGHT, ESTATE OF ANNIE WRIGHT; WALTER NATHANIEL PORCHER, III., KEISHA KENYATTA PROCHER, and JOHN DOE and MARY ROE, fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as The Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and fictitious names representing unknown heirs, devisees, distributes, or personal representatives of any deceased persons.</p> <p>Defendants</p> | <p><b>SUMMONS</b><br/>(QUIET TITLE and FORECLOSURE)</p> <p>2016 JUL -7 PM 3:27<br/>JULIE J. ARMSTRONG<br/>CLERK OF COURT<br/>BY _____</p> |

1)

**TO: THE DEFENDANTS ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber, at his office situated at 27 Gamecock Avenue, Suite 200, Charleston, South Carolina, 29407, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid judgment by default will be rendered against you for the relief demanded in the Complaint.

  
WILLIE B. HEYWARD  
HEIRS' PROPERTY LAW CENTER, LLC  
27 Gamecock Ave., Ste. 200  
Charleston, South Carolina 29407  
(843) 225-8754  
ATTORNEY FOR THE PLAINTIFF

Charleston, SC

July 7, 2016

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | IN THE COURT OF COMMON PLEAS                                                                                                                   |
| COUNTY OF CHARLESTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | NINTH JUDICIAL CIRCUIT                                                                                                                         |
| ERNEST MCKNIGHT<br>Plaintiff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | CASE NO: 2016-CP-10- <u>3504</u>                                                                                                               |
| vs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                |
| <p>ANNA MICHELLE PORCHER, EUGENE D, GATHERS, ESTATE OF NED WRIGHT, ESTATE OF HATTIE GASDEN, EDWARD WRIGHT, ESTATE OF SAMUEL WRIGHT, JAMES WRIGHT, ESTATE OF EARLINE WRIGHT MAXWELL, IDA WRIGHT, ESTATE OF WILEMINIA WRIGHT, HENRYWRIGHT, JR. ESTATE OF HENRYWRIGHT, ESTATE OF ERNESTINE WRIGHT, ESTATE OF SAMUEL WRIGHT, EDWARD WRIGHT, ESTATE OF JAMES WRIGHT, ESTATE OF OSCAR WRIGHT, MARTHA WRIGHT, ESTATE OF LEROY WRIGHT, ESTATE OF EDWARD WRIGHT, ESTATE OF HAROLD WRIGHT. ESTATE OF CHARLES WRIGHT, JR., ESTATE OF HATTIE WRIGHT GASTON, a/k/a, HATTIE WRIGHT GADSDEN,, ESTATE OF EARLINE WRIGHT, ESTATE OF ANNIE WRIGHT; WALTER NATHANIEL PORCHER, III., KEISHA KENYATTA PROCHER, and JOHN DOE and MARY ROE, fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as The Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and fictitious names representing unknown heirs, devisees, distributes, or personal representatives of any deceased persons.</p> <p>Defendants</p> | <p><b>COMPLAINT</b><br/>(QUIET TITLE and FORECLOSURE)</p> <p>2016 JUL -7 PM 3:27<br/>JULIE J. ARMSTRONG<br/>CLERK OF COURT</p> <p>BY _____</p> |

FILED

The Plaintiff would respectfully show unto this Honorable Court:

1 Ernest McKnight vs. Anna Michelle Porcher, et. al.  
Complaint  
July 2016

3)

1. **THAT**, the Plaintiff, ERNEST MCKNIGHT, is a resident of the State of South Carolina.
2. **THAT**, upon information and belief the Defendant, specifically, Anna Wright Procher is a resident of Charleston County, State of South Carolina.
3. **THAT**, by virtue of the subject property being situated in the County of Charleston, State of South Carolina, and the Plaintiff alleges that this Court is possessed with subject matter and in *personam jurisdiction* in this action.
4. **THAT**, the Plaintiff commenced this action against the Defendants named herein and more particularly against the other tenants in common of the subject property and JOHN DOE; adults and MARY ROE, representing infants, insane persons, incompetents, being fictitious names designating a class of persons, know or unknown, who may be heirs, distributes, devisees, legatees, widow, widower, assignees, executors, administrators, creditors, successors, issue, and alienees of any deceased persons herein, and any other persons or entity, known or unknown, claiming any right, title, estate, interest in or lien upon, the parcel of real estate that is the subject of this action, and that it is proper for the Court to appoint a Guardian ad Litem during the pendency of this action to protect any such interests that may exist as to these parties.
5. **THAT**, also joined as Defendants is other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Complaint herein.
6. **THAT**, the Plaintiff does not know the true names of any Defendants, all persons unknown, claiming any legal or equitable right, title, estate, lien or interest in the property described in the Complaint adverse to Plaintiffs' title or any cloud on Plaintiffs' title, and therefore sues them by those fictitious names. Plaintiffs are informed and believe, and on that basis allege, that each such Defendant claims, or may claim, some interest in the real property described in Paragraph Eight of this Complaint.

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7. **THAT**, Anna Porcher is named as a Defendant because Plaintiff believes that they are heirs to the estate of the deceased Defendant, Ned Wright.

8. **THAT**, the real property that is the subject of this action is located in Charleston County, State of South Carolina, and more specifically described as follows:

ALL that certain lot, parcel, or tract pf land situated, lying and being in Adams Run Township, formerly of Colleton County and now of Charleston County, in the State of South Carolina, containing ten and one-fourths acres, more or less, and bounded as follows: North by Jacksonboro Road, east by lands of Abner Young, and on the South and West by lands formerly owned by J.T. Mitchell, now owned by Fitzimons, as will more fully appear when reference is had to plat of property made by Wm. Horne, Surveyor, and dated March 12, 1875.

BEING the same property conveyed to Ned Wright by Deed of Margaret Singleton and J. William Washington dated January 21, 1908, and recorded in the Office of the Register of Deeds for Colleton County in Deed Book 31, at Page 86 on January 30, 1908, and recorded in the Office of Register of Deeds for Charleston County in Deed Book N27, at Page 19.

TMS No.: 245-00-00-026 (Parent Parcel)

AND

All that certain lot, piece, parcel or lot of land, situate, lying and being in St. Paul's Parish, County of Charleston, State of South Carolina, known and designated as Lot 2, on a plat thereof entitled " PLAT OF LANDS OF THE SUBDIVISION OF THE ESTATE OF NED WRIGHT" said plat being dated November 26, 1986 was made by James G. Pennington RLS and recorded in the RMC Office for Charleston County on January 14, 1987 in plat Book BL, at page 150. The aforesaid plat is made a part and parcel of this description by reference .

TMS: 245-00-00-169

AND

All that certain lot, piece, parcel or lot of land, situate, lying and being in St. Paul's Parish, County of Charleston, State of South Carolina, known and designated as Lot 3, on a plat thereof entitled "PLAT TO SUBDIVIDE THE ESTATE OF NED WRIGHT" said Plat being dated March 4, 1991 and revised on April 16, 1991 and again on May 20, 1991 was made by James G. Pennington RLS and recorded in the RMC Office for Charleston County on July 2, 1991 in plat Book CD at page 47. The aforesaid plat is made a part and Parcel of this description by reference.

Being the same property conveyed to Ned Wright by deed dated January 2, 1908 and Recorded in Book N27 at Page 19 in the RMC Office for Charleston County.

TMS: 245-00-00-183

AND

All that certain lot, piece, parcel or lot of land, situate, lying and being in St. Paul's Parish, County of Charleston, State of South Carolina, known and designated as Lot 1, on a plat thereof entitled "PLAT OF LANDS OF NED WRIGHT ESTATE" said plat being dated June 7, 1983 was made by George D. Sample, PE & LS and recorded in the RMC Office for Charleston County on September 6, 1983 in plat Book AY, at page 35. The aforesaid plat is made a part and parcel of this description by reference.

Being the same property conveyed to Ned Wright by deed dated January 2, 1908 and recorded in Book N27 at Page 19 in the RMC Office for Charleston County.

TMS: 245-00-00-031

9. **THAT** the Defendant, Anna Porcher, and/or her predecessors in interest have partitioned the subject property into three (3) separate parcels as depicted on a recorded plat entitled "PLAT OF LANDS OF THE SUBDIVISION OF THE ESTATE OF NED WRIGHT" said plat being dated November 26, 1986 was made by James G. Pennington RLS and recorded in the RMC Office for Charleston County on January 14, 1987 in plat Book BL, at page 150.

10. **THAT**, upon information and belief, Plaintiff believes that the Defendant Anna Michelle Porcher has paid the taxes on the subject property, lives on a portion of the subject property that is designated as TMS Nos: 2450000183, 2450000031 and 2450000169 and has made claims and paid taxes on the portion of the property since the partition.

11. **THAT** the Plaintiff still maintains a mortgage on the parcels designated as having TMS Nos.: TMS Nos: 2450000183, TMS Nos: 2450000031 and TMS Nos: 2450000169.

12. **THAT**, the Defendants John Wright, Anna Michelle Porcher and Harold Wright executed mortgage, secured by the subject property, with the Plaintiff as the mortgagee in the amount of Six Thousand One Hundred Seven and 52/100 (\$6,187.52) Dollars Said property being at the time titled in the name of the deceased Ned Wright.

6)

## FRAUD

13. **THAT** the Defendant, Eugene D. Gathers was conveyed a portion of the subject property, saving and excepting Lot 1 (.88 Ac.), Lot 2 (.7 Ac.) and Lot 3 (1.0 Ac.), by quitclaim deed of John Wright on August 3, 2010 and recorded in the RMC Office for Charleston County in Book 0137, page 112 on August 6, 2010.
14. **THAT** the interest purportedly conveyed to the grantee, Eugene D. Gathers, by this deed was previously conveyed to the Plaintiff via a mortgage, executed by John Wright, Anna Michelle Porcher and Harold Wright, as mortgagors, until the Note was re-paid. As of the date of the quitclaim deed to Eugene Gathers, said Note remains unpaid.
15. **THAT**, Plaintiff was substituted for John Wright, who died on August 21, 2010, as the Plaintiff in a quiet title and Partition action entitled, "John Wright vs. Ned Wright, et. al., Case No. 2010-CP-10-250". An Order pursuant to a decision in favor of John Wright in that action awarded the larger portion of the subject property to the deceased John Wright. No members of the estate or the Estate of John Wright were named as parties in the in this Order.
16. **THAT** the Defendant Eugene Gathers, (hereinafter "Defendant Gathers"), did submit an Affidavit in support of the decision in favor of John Wright declaring among other things, that he was the son of John Wright and that either he or his predecessor in interest paid the property taxes on the subject property.
17. **THAT** the basis of the court's decision and the pursuant conveyance of a portion of the subject property to Defendant Gathers was the claim by John Wright of Adverse Possession, in that his possession was "....open, notorious, hostile...." for over a period of over twenty years and that his actions amounted to an "ouster" of all other possible claimants.
17. **THAT** the Defendant Gathers knew at the time these assertions were made that they were

false and that they were made to induce the court to divest any and all other claimants of their interest in the subject property including the Plaintiff, Ernest McKnight.

18. **THAT** the required elements of such claimed ouster would fail upon a showing that the property taxes were not paid by Defendant Gathers of John Wright.. See "Fender v. Smashum, 581 S.E.2d 853,(S.C. App (2003))". The elements presented by Plaintiff to the court lacked the required showing of "actual" and "exclusive" possession as against Wright's fellow co-tenants for the requisite twenty (20) year period for implied ouster by possession without the payment of property taxes.

19. **THAT** a portion of the subject property was surveyed and plats recorded in the RMC Office for Charleston County in Plat Books BL-150 (245-00-00-169), CD-97 (245-00-00-183) and AY-35 (245-00-00-031) that is now claimed by the heirs of Henry William Wright, Sr.

20. **THAT** Henry William Wright, Sr. died in Charleston County on June 26, 1997. His estate being probated in Estate File No. 1997-ES-10-0095720. A Deed of Distribution from the Estate of Henry William Wright, Sr. conveyed portions of the subject property as follows:

- A. TMS No. 245-00-00-169 to Anna Michelle Porcher (Lot #2)
- B. TMS No. 245-00-00-183 to Keisha Kenyatta Porcher (Lot #3)
- C. TMS No. 245-00-00-031 to Anna Michelle Porcher (Lot #1)

21. **THAT**, upon information and belief, Keisha Kenyatta Porcher now resides on the parcel designated as having TMS No. 245-00-00-169.

22. **THAT**, upon information and belief, Walter Nathaniel Procher, III now resides on the parcel designated as having TMS No. 245-00-00-183.

23. **THAT**, upon information and belief, Anna Michelle Procher, now resides on the parcel designated as having TMS No.: 245-00-00-031.

8)

24. **THAT** there has never been a judicial determination of the heirs of the deceased title-holder Ned Wright.

24. **THAT** of the above referenced parcels were included in the mortgage executed by John Wright, Anna Michelle Porcher and Harold Wright in favor of the mortgagee, Earnest McKnight. Said mortgage instrument conveying their interest in the subject property to Earnest McKnight until the outstanding balance of the accompanying Note was paid.

25. **THAT** on Anna Michelle Porcher filed a Motion to Intervene in the Ned Wright action asserting that she had an interest in the subject property, that she paid the property taxes for a portion of the property and that she was a lawful heir of Ned Wright.

26. **THAT** Defendant Gathers filed an affidavit in opposition to this Motion which stated numerous knowingly false statements, such as he and/or his predecessor in interest paying taxes on the subject property to support a claim for adverse possession because of the ouster of all other possible claimants and that his relationship to the deceased John Wright was one of father and son.

27. **THAT** Plaintiff had to secure the services of attorney for the persecution of this action and asks that he be reimbursed for the costs and fees of doing so.

28. **THAT** certain persons were made parties to this action because, upon information and belief, they may have and interest in the subject property as heirs of Ned Wright.

**WHEREFORE**, Plaintiff requests adjudication by the Honorable Court and declare:

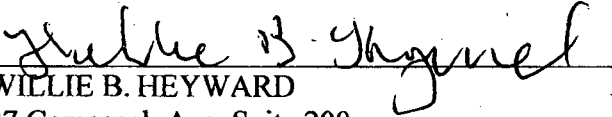
1. **THAT** the deed conveying a portion of the subject property to Eugene Gathers pursuant to the prior quiet title action entitled "John Wright vs, Ned Wright, et. al., Case No. 2010-CP-10-250", be set-aside because of the fraudulent assertions of the Defendant Eugene Gathers
2. **THAT** the Court determine the lawful heirs of the deceased title-holder Ned Wright and

their respective interest in the subject property.

3. **THAT** Plaintiff be awarded attorney fees and costs for the prosecution of this action.

4. **THAT** the Plaintiff has suffered damages as a result of the fraudulent actions of the Defendant, Eugene Gathers, to include divestment of his interest in the subject property, lost of the value of betterments and the lost of his statutory right of first refusal.

5. And for any other relief that the Court may deem just and proper.

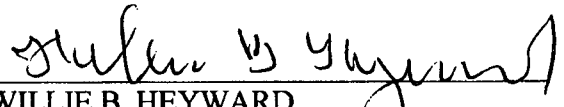
  
WILLIE B. HEYWARD  
27 Gamecock Ave, Suite 200  
Charleston, South Carolina 29407  
(843) 225-8754  
ATTORNEY FOR THE PLAINTIFF

July 7 2015

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | IN THE COURT OF COMMON PLEAS                                                                                                     |
| COUNTY OF CHARLESTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | NINTH JUDICIAL CIRCUIT                                                                                                           |
| ERNEST MCKNIGHT<br>Plaintiff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | CASE NO: 2016-CP-10- <b>3504</b>                                                                                                 |
| vs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                  |
| <p>ANNA MICHELLE PORCHER, EUGENE D, GATHERS, ESTATE OF NED WRIGHT, ESTATE OF HATTIE GASDEN, EDWARD WRIGHT, ESTATE OF SAMUEL WRIGHT, JAMES WRIGHT, ESTATE OF EARLINE WRIGHT MAXWELL, IDA WRIGHT, ESTATE OF WILEMINIA WRIGHT, HENRYWRIGHT, JR. ESTATE OF HENRYWRIGHT, ESTATE OF ERNESTINE WRIGHT, ESTATE OF SAMUEL WRIGHT, EDWARD WRIGHT, ESTATE OF JAMES WRIGHT, ESTATE OF OSCAR WRIGHT, MARTHA WRIGHT, ESTATE OF LEROY WRIGHT, ESTATE OF EDWARD WRIGHT, ESTATE OF HAROLD WRIGHT. ESTATE OF CHARLES WRIGHT, JR., ESTATE OF HATTIE WRIGHT GASTON, a/k/a, HATTIE WRIGHT GADSDEN,, ESTATE OF EARLINE WRIGHT, ESTATE OF ANNIE WRIGHT; WALTER NATHANIEL PORCHER, III., KEISHA KENYATTA PROCHER, and JOHN DOE and MARY ROE, fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as The Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and fictitious names representing unknown heirs, devisees, distributes, or personal representatives of any deceased persons.</p> <p>Defendants</p> | <p><b>NOTICE OF RIGHT OF FIRST REFUSAL</b></p> <p>2016 JUL -7 PM 3:28<br/>JULIE J. ARMSTRONG<br/>CLERK OF COURT<br/>BY _____</p> |

**TO THE DEFENDANTS ABOVE ALL KNOWN AND UNKNOWN NAMED:  
PLEASE TAKE NOTICE OF YOUR STATUTORY RIGHT OF FIRST REFUSAL.**

"The Court shall provide for the non-petitioning joint tenants or tenants in common who are interested in purchasing the property to notify the Court of that interest no later than (10) days prior to the date set for the trial of the case. The non-petitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not." 1976 S.C. Code of Laws, § 15-61-25 (A).

  
WILLIE B. HEYWARD  
HEIRS PROPERTY LAW CENTER, LLC  
27 Gamecock Ave., Suite 200  
CHARLESTON, S.C. 29407  
(843) 573-0143  
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina  
July 7 2016

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Ernest McKnight, )  
Plaintiff, )  
v. )

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
Members Civil Relief Act of 2003, )  
Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

**ANSWER OF DEFENDANT  
ANNA MICHELLE PORCHER**

FILED  
2016 JUL 21 PM 3:49  
JULIE J. ARMSTRONG  
CLERK OF COURT

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Defendant Anna Michelle Porcher (hereinafter "Defendant Porcher"), answering the Complaint of Plaintiff Ernest McKnight (hereinafter "Plaintiff") and reserving her right to assert affirmative defenses and counterclaims upon the Court's hearing of Defendant Porcher's Motion to Dismiss filed herewith, respectfully states as follows:

1. Defendant Porcher denies each and every allegation of the Complaint not specifically admitted herein.
2. Defendant Porcher admits the allegations of paragraphs 1 and 2.
3. Paragraph 3 sets forth a legal conclusion to which no response is required. In the event that a response is required, said allegations are denied.
4. Paragraphs 4, 5, and 6 require no response from Defendant Porcher. In the event that a response is required, said allegations are denied.
5. Paragraphs 7 and 8 set forth legal conclusions to which no responses are required. In the event that responses are required, said allegations are denied.
6. With regard to the allegations of paragraph 9, Defendant Porcher admits matters of public record. All other allegations contained therein are denied.
7. Defendant Porcher admits so much of paragraph 10 that alleges that she resides on a portion of the subject property and has paid taxes associated therewith. Defendant Porcher denies the remaining allegations of paragraph 10.
8. Defendant Porcher denies the allegations of paragraph 11 and makes specific reference to the Honorable J.C. Nicholson, Jr.'s Order of December 29, 2014 awarding Plaintiff the sum of

\$12,646.27 relative to a purported mortgage. Upon information and belief, this sum has been paid to Plaintiff by Defendant Eugene D. Gathers through the Charleston County Clerk of Court in accordance with said Order.

9. With regard to the allegations of paragraph 12, Defendant Porcher admits matters of public record. All other allegations contained therein are denied.

10. Defendant Porcher admits the allegations of paragraph 13.

11. Defendant Porcher denies the allegations of paragraph 14.

12. Defendant Porcher admits so much of paragraph 15 that alleges that Defendant Eugene D. Gathers was substituted for Plaintiff John Wright in the action originally captioned John Wright v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, Case No. 2010-CP-10-00250. Defendant Porcher denies the remaining allegations of paragraph and makes specific reference to Judge Nicholson's Order for its specific terms and import.

13. Defendant Porcher admits the allegations of paragraph 16 in so much that they are consistent with the filings in the prior action. All remaining allegations of paragraph 16 are denied.

14. Paragraph 17 sets forth a legal conclusion to which no response is required. Defendant Porcher refers Plaintiff to the orders issued in the prior cases for their specific terms and import. In the event that a response is required, said allegations are denied.

15. Defendant Porcher denies the allegations of paragraph 18.

16. Defendant Porcher is without specific information as to the allegations of paragraphs 19, 20, 21, and 22 and, therefore, denies the same.

17. Upon information and belief, Defendant Porcher admits the allegations of paragraph 23.

18. Defendant Porcher denies the allegations of paragraph 24 and notes that Plaintiff's Complaint contains two paragraphs designated as number 24.

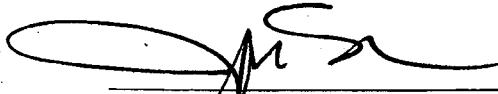
19. With regard to paragraph 25, Defendant Porcher admits matters of public record with regard to filings made in the prior related actions. Defendant Porcher denies all allegations inconsistent therewith.

20. Defendant Porcher denies the allegations of paragraph 26.

21. Defendant Porcher is without information or belief as to the allegations of paragraphs 27 and 28 and, therefore, denies the same.

WHEREFORE, having fully answered the Complaint, Defendant Porcher respectfully requests that:

- A) This case be dismissed pursuant to Rule 12(b)(5) and 12(b)(6) of the South Carolina Rules of Civil Procedure;
- B) That an Order be issued that Plaintiff's filing of this action constitutes a violation of South Carolina's Frivolous Civil Proceedings Act (S.C. Code Ann. § 15-36-10, et seq.);
- C) That Defendant Porcher be awarded attorneys' fees and costs pursuant to the South Carolina Frivolous Civil Proceedings Act; and
- D) That an Order be issued barring Plaintiff and Plaintiff's counsel from filing additional frivolous actions relative to matters previously litigated.



---

Jonathan S. Altman, Esq.  
DERFNER & ALTMAN, LLC  
575 King Street, Suite B  
Charleston, SC 29403  
843-723-9804

July 21, 2016  
Charleston, SC

*Attorney for Defendant Anna Michelle Porcher*

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

Ernest McKnight, )  
Plaintiff, )  
v. )

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
Members Civil Relief Act of 2003, )  
Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

**ANSWER OF DEFENDANT  
EUGENE D. GATHERS**

**FILED**

AUG 25 2016 85

**JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.**

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Defendant Eugene D. Gathers (hereinafter "Defendant Gathers"), answering the Complaint of Plaintiff Ernest McKnight (hereinafter "Plaintiff") and reserving his right to assert affirmative defenses and counterclaims upon the Court's hearing of Defendant Gathers' Motion to Dismiss filed herewith, respectfully states as follows:

1. Defendant Gathers denies each and every allegation of the Complaint not specifically admitted herein.
2. Defendant Gathers admits the allegations of paragraphs 1 and 2.
3. Paragraph 3 sets forth a legal conclusion to which no response is required. In the event that a response is required, said allegations are denied.
4. Paragraphs 4, 5, and 6 require no response from Defendant Gathers. In the event that a response is required, said allegations are denied.
5. Paragraphs 7 and 8 set forth legal conclusions to which no responses are required. In the event that responses are required, said allegations are denied.
6. With regard to the allegations of paragraph 9, Defendant Gathers admits matters of public record. All other allegations contained therein are denied.
7. Paragraph 10 requires no response from Defendant Gathers. In the event that a response is required, said allegations are denied.
8. Defendant Gathers denies the allegations of paragraph 11 and makes specific reference to the Honorable J.C. Nicholson, Jr.'s Order of December 29, 2014 awarding Plaintiff the sum of \$12,646.27 relative to a purported mortgage. Upon information and belief, this sum has been

paid to Plaintiff by Defendant Gathers through the Charleston County Clerk of Court in accordance with said Order.

9. With regard to the allegations of paragraph 12, Defendant Gathers admits matters of public record. All other allegations contained therein are denied.

10. Defendant Gathers admits the allegations of paragraph 13.

11. Defendant Gathers denies the allegations of paragraph 14.

12. Defendant Gathers admits so much of paragraph 15 that alleges that Defendant Gathers was substituted for Plaintiff John Wright in the action originally captioned John Wright v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, Case No. 2010-CP-10-00250. Defendant Gathers denies the remaining allegations of paragraph 15 and makes specific reference to Judge Nicholson's Order for its specific terms and import.

13. Defendant Gathers admits the allegations of paragraph 16 in so much that they are consistent with prior filings. All remaining allegations of paragraph 16 are denied.

14. Paragraph 17 sets forth a legal conclusion to which no response is required. Defendant Gathers refers Plaintiff to the orders issued in the prior cases for their specific terms and import. In the event that a response is required, said allegations are denied.

15. Defendant Gathers denies the allegations of paragraph 18.

16. Defendant Gathers is without specific information as to the allegations of paragraphs 19, 20, 21, and 22 and, therefore, denies the same.

17. Upon information and belief, Defendant Gathers admits the allegations of paragraph 23.

18. Defendant Gathers denies the allegations of paragraph 24 and notes that Plaintiff's Complaint contains two paragraphs designated as number 24.

19. With regard to paragraph 25, Defendant Gathers admits matters of public record with regard to filings made in the prior related actions. Defendant Gathers denies all allegations inconsistent therewith.

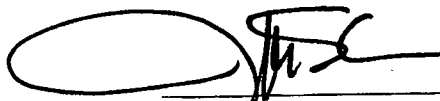
20. Defendant Gathers denies the allegations of paragraph 26.

21. Defendant Gathers is without information or belief as to the allegations of paragraphs 27 and 28 and, therefore, denies the same.

WHEREFORE, having fully answered the Complaint, Defendant Gathers respectfully requests that:

- A) This case be dismissed pursuant to Rule 12(b)(5) and 12(b)(6) of the South Carolina Rules of Civil Procedure;
- B) That an Order be issued that Plaintiff's filing of this action constitutes a violation of South Carolina's Frivolous Civil Proceedings Act (S.C. Code Ann. § 15-36-10, et seq.);
- C) That Defendant Gathers be awarded attorneys' fees and costs pursuant to the South Carolina Frivolous Civil Proceedings Act; and
- D) That an Order be issued barring Plaintiff and Plaintiff's counsel from filing additional frivolous actions relative to matters previously litigated.

August 23 2016



Jonathan S. Altman, Esq.  
DERNER & ALTMAN, LLC  
575 King Street, Suite B  
Charleston, SC 29403

*Attorney for Defendant Eugene D. Gathers*

21)

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

Ernest McKnight, )  
)  
Plaintiff, )  
)  
v. )

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
Members Civil Relief Act of 2003, )  
Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTIONS TO DISMISS**

FILED  
2017 JAN -4 PM 1:56  
JULIE J. ARMSTRONG  
CLERK OF COURT

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

This memorandum is respectfully submitted in support of Defendants Anna Michelle Porcher and Eugene D. Gathers' (hereinafter collectively referred to as "Defendants") Motions to Dismiss.

### INTRODUCTION

On January 12, 2010, John Wright, Eugene D. Gathers' predecessor in title, filed a suit to quiet title in the case captioned John Wright v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, et al., Case No.: 2010-CP-10-00250 (hereinafter "Case No. 1"). The real property which was the subject of Case No. 1 (and is also the subject of this case) is situated in Charleston County, South Carolina and is more fully described as follows:

6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

A portion of TMS No. 245-00-00-026

A copy of the Complaint filed in Case No. 1 is attached hereto as Exhibit A.

Ernest McKnight (hereinafter "McKnight"), the Plaintiff in the present action, filed an Answer and Counterclaim in Case No. 1 on March 18, 2010 asserting claims for adverse possession, foreclosure of mortgage, and reimbursement of taxes. A copy of McKnight's Answer and Counterclaim is attached hereto as Exhibit B. A Consent Order dismissing McKnight's claim for adverse possession but reserving his counterclaims for foreclosure of mortgage and reimbursement of taxes was filed on August 2, 2010. A copy of said Order is attached hereto as Exhibit C.

An Order granting Plaintiff's Motion for Summary Judgment as to all Defendants except McKnight was issued on April 21, 2011 in Case No. 1. This Order quieted title to the property and preserved McKnight's counterclaims and is attached hereto as Exhibit D.

The trial of Case No. 1 was held before Judge Nicholson on November 14, 2014. McKnight testified and sought reimbursement for payment of taxes and pursued his counterclaim for foreclosure of mortgage. An Order was issued by Judge Nicholson on December 29, 2014 quieting title to the property in the name of Gathers and finding that Gathers owed McKnight the total sum of \$12,646.27. A copy of said Order is attached hereto as Exhibit E. On February 16, 2015, Gathers paid this sum to the Clerk of Court in accordance with said Order. Copies of the cover letter to the Clerk of Court and check are attached hereto as Exhibit F.

On February 19, 2015, McKnight appealed the Court's Order of December 29, 2014. McKnight's appeal was dismissed on March 6, 2015. A copy of this Order of Dismissal is attached hereto as Exhibit G.

On July 21, 2015, McKnight filed a Complaint in Ernest McKnight v. Eugene D. Gathers, Estate of Ned Wright, Estate of Hattie Gasden, Anna Michelle Porcher, Edward Wright, Estate of Samuel Wright, James Wright, Estate of Earline Wright Maxwell, Ida Wright,

Estate of Wilminia Wright, Henry Wright, Jr., Estate of Henry Wright, Estate of Ernestine Wright, Estate of Samuel Wright, Edward Wright, Estate of James Wright, Estate of Oscar Wright, Martha Wright, Estate of Leroy Wright, Estate of Edward Wright, Estate of Harold White, Estate of Charles Wright, Jr., Estate of Hattie Wright Gaston a/k/a Hattie Wright Gadsden, Estate of earline wright, Estate of Annie Wright, Walter Nathaniel Porcher, III, Keisha Kenyatta Porcher, et al., Case No. 2015-CP-10-04071 (hereinafter "Case No. 2") against Gathers and the Defendants in Case No. 1. In Case No. 2, McKnight sought to re-litigate the issues determined in Case No. 1 and sought the following relief in his prayer:

- A. *That the deed conveying a portion of the subject property to Eugene Gathers pursuant to the prior quiet title action entitled "John Wright v. Ned Wright, et al., Case No. 2010-CP-10-00250", be set aside because of the fraudulent assertions of the Defendant Eugene Gathers;*
- B. *That the Court determine the lawful heirs of the deceased title-holder Ned Wright and their respective interest in the subject property;*
- C. *That Plaintiff be awarded attorney fees and costs for the prosecution of this action;*
- D. *That the Plaintiff has suffered damages as a result of the fraudulent actions of the Defendant, Eugene Gathers, to include divestment of his interest in the subject property, lost of the value of betterements and the lost of his statutory right of first refusal; and*
- E. *And for any other relief that the Court may deem just and proper.*

On January 21, 2016, Judge Nicholson issued an Order dismissing McKnight's Complaint in Case No. 2 pursuant to the doctrine of *res judicata*.

On July 7, 2016, McKnight filed a Complaint in the present case (hereinafter "Case No. 3"). McKnight's claims in Case No. 3 arise out of the same occurrences that were the subject of Case No. 1 and Case No. 2 and involve the identical parties. McKnight's prayer for relief in Case No. 3 is identical to his prayer in Case No. 2:

- A. *That the deed conveying a portion of the subject property to Eugene Gathers pursuant to the prior quiet title action entitled "John Wright v. Ned Wright, et al., Case No. 2010-CP-10-00250", be set aside because of the fraudulent assertions of the Defendant Eugene Gathers;*
- B. *That the Court determine the lawful heirs of the deceased title-holder Ned Wright and their respective interest in the subject property;*
- C. *That Plaintiff be awarded attorney fees and costs for the prosecution of this action;*
- D. *That the Plaintiff has suffered damages as a result of the fraudulent actions of the Defendant, Eugene Gathers, to include divestment of his interest in the subject property, lost of the value of betterements and the lost of his statutory right of first refusal; and*
- E. *And for any other relief that the Court may deem just and proper.*

As such, it is barred by the doctrine of *res judicata*. See Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E. 2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 537, 520 S.E. 2d 817 (Ct. of App. 1999). Furthermore, when an issue of fact or law is litigated and determined by a valid and final judgment, the determination is conclusive and a subsequent action between the parties, whether on the same or different claim is barred under the doctrine of collateral estoppel. See McKnaughton-McKay Elec. Co. of NC v. Andrich, 324 S.C. 275, 482

S.E. 2d 564 (Ct. of App. 1996). McKnight is prohibited from re-litigating these issues and any attempt to do so is not only frivolous, but unduly burdensome, to the parties and the Court.

For the foregoing reasons, Defendants respectfully request that this case be dismissed with prejudice and an Order be issued awarding Defendants the costs incurred in defending this action and barring McKnight from filing additional frivolous actions relative to matters previously litigated.

Respectfully submitted,

January 3, 2017



Jonathan S. Altman, Esq.  
Derfner & Altman, LLC  
575 King Street, Suite B  
Charleston, SC 29403

*Attorney for Defendants Anna Porcher and  
Eugene D. Gathers*

## **EXHIBIT A**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-250

John Wright, )  
Plaintiff, )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )

Defendants.

## COMPLAINT

Suit to Quiet Title  
(Non-Jury)

FILED  
2010 JAN 12 AM 10:58  
JULIE J. ARMSTRONG  
CLERK OF COURT

The Plaintiff would respectfully show unto this honorable court as follows:

1. That the Plaintiff, John Wright (hereinafter "Plaintiff"), is a grandson of Ned Wright (hereinafter referred to as "Decedent") and the sole heir and son of Decedent's daughter, Hattie W. Gaston, who died in 1982.
2. That some of the defendants, including Defendant Ernest McKnight, are residents of Charleston County and the State of South Carolina.
3. By virtue of the subject property being situated in the County of Charleston, State of South Carolina, Plaintiff alleges that this Court possesses subject matter and *in personam* jurisdiction in this action.
4. That the Plaintiff commences this action against the defendants named herein and John Doe; adults and Mary Roe, infants, insane persons, incompetents being fictitious names designating a class of persons, known or unknown, claiming any right, title, estate, interest in or lien upon, the parcel of real estate that is the subject of this action and that it is proper for the Court to appoint a Guardian ad Litem during the pendency of this action to protect any such interests that may exist as to these parties.
5. That joined as Defendants are other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Complaint herein.
6. That the Plaintiff does not know the true names of all defendants, including persons unknown claiming any legal or equitable right, title, estate, lien or interest in the property described in the Complaint adverse to Plaintiff's interest or any cloud on Plaintiff's interest, and therefore sues them by those fictitious names, Plaintiff is informed and believes, and on that basis alleges, that each such defendant claims, or may claim, some interest in the real property described in this Complaint.

7. That any claim of an estate or interest in the real property by the unknown defendants would be adverse to the interest of the Plaintiff.

8. That the real property (hereinafter "the property") that is the subject of this action is located in Charleston County, State of South Carolina, and is more specifically described as follows:

ALL that certain lot, parcel, or tract of land situated, lying and being in Adams Run Township, formerly of Colleton County and now of Charleston County, in the State of South Carolina, containing ten and one-fourth acres, more or less, and bounded as follows: North by Jacksonboro Road, East by lands of Abner Young, and on the South and West by lands formerly owned by J. T. Mitchell, now owned by Fitzsimons, as will more fully appear when reference is had to plat of property made by Wm. Horne, Surveyor, and dated March 12, 1875.

BEING the same property conveyed to Ned Wright by Deed of Margaret Singleton and J. William Washington dated January 21, 1908, and recorded in the Office of the Register of Deeds for Colleton County in Deed Book 31, at Page 86 on January 30, 1908, and recorded in the Office of the Register of Deeds for Charleston County in Deed Book N27, at Page 19.

TMS No. 245-00-00-026

9. That the Decedent acquired the subject property by deed dated January 21, 1908 and recorded in the Colleton County RMC Office on January 30, 1908 and designated as TMS No. 245-00-00-026.

10. That the Plaintiff desires to have this Court determine the parties' respective interests in the property.

11. Defendant Ernest McKnight is named as a defendant herein by virtue of Defendant McKnight's status as an adjacent property owner and Plaintiff's belief that Defendant McKnight may claim an interest in the property.

12. That Decedent died intestate leaving as his heirs and distributees at law, his children, Defendants Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel

Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright and Henry Wright. Upon information and belief, the estates of said children of Decedent have not been probated and they are therefore identified as defendants herein.

13. Defendant Wright died during the 1960's and was survived by three children, Defendants Oscar Wright, Leroy Wright and a third son whose name is unknown. Defendants Oscar Wright and Leroy Wright have since died. Upon information and belief, their estates have not been probated and they are identified as Defendants.

14. Defendant Edward Wright died during the 1970's. Upon information and belief, his estate has not been probated and he is identified as a Defendant. Defendant Edward Wright was survived by two children, Defendants Delores Wright and Carolyn Wright, who, upon information and belief, are the sole heirs of his estate.

15. Defendant Samuel Wright died during the 1960's. Upon information and belief, Defendant Samuel Wright's estate has not been probated and he is identified as a Defendant in this action. Defendant Samuel Wright was survived by three children, Harold Wright, Charles Wright and Samuel Wright, Jr. who have all since died. Upon information and belief, their estates have not been probated and they are identified as Defendants.

16. Defendants James Wright and his wife, Hattie Wright, died during the 1960's. Neither Defendants James Wright or Hattie Wright's estates have been probated and they are identified as Defendants in this action. Upon information and belief, Defendants James Wright and Hattie Wright had no children.

17. Defendant Earline Wright Maxwell is deceased and her estate was not probated. Upon information and belief, Defendant Earline Wright Maxwell was survived by one

child, who has since died. Plaintiff has no information or belief as to whether Defendant Earline Wright Maxwell's child predeceased her or was survived by any heirs.

18. Defendant Wilmenia Wright died during the 1960's. Upon information and belief, her estate was not probated and she is identified as a Defendant in this action. Defendant Wilmenia Wright was predeceased by her spouse and, upon information and belief, was survived by no children.

19. Defendant Henry Wright died in 1982. His estate has not been probated and he is identified as a Defendant herein. Upon information and belief, Defendant Henry Wright was survived by his spouse, Defendant Ernestine Wright, who has since died, along with one child, Defendant Henry Wright, Jr., who died on June 26, 1997. Upon information and belief, the Estates of Ernestine Wright and Henry Wright, Jr. have not been probated and they are identified as Defendants herein.

20. Plaintiff paid taxes and maintained possession of the property for a period of over twenty years and that such possession was open, notorious, hostile and continuous for the stated period of time and as such constituted an ouster of all other heirs and possible claimants of the property. As a result of said acts, title to the subject parcel should vest in Plaintiff because of the ouster of all other claimants through adverse possession of the property.

21. Plaintiff possesses no knowledge or belief as to the existence of any other heirs of Decedent, defendants or interested parties other than those individuals identified herein. Plaintiff brings this action for the purpose of having an order issued by the Court recognizing Plaintiff's holding of fee simple title to the property. That unknown Defendants may exist or be deceased with heirs having been undetermined. Therefore, a

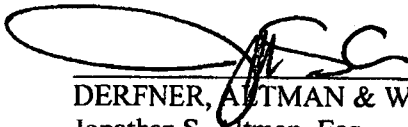
33

Guardian ad Litem should be appointed to represent the interests of said unknown persons.

WHEREFORE, Plaintiff prays that this Court inquire as to the matters herein and adjudge and declare:

1. That Plaintiff is the owner of the subject property holding fee simple title thereto;
2. That Plaintiff has acquired title to the subject property through adverse possession; and
3. That Defendants named and all entities joined as Defendants in this action in the fictitious names of John Doe, adults and Mary Roe, infants, insane persons, incompetents be declared forever barred of and from any claim, right, title, estate, interest and/or lien upon the parcel of real estate above described or any part thereof and that they be barred from claiming any right, title, estate, interest or lien thereon.

Date: 220 12, 2010  
Charleston, South Carolina

  
DERFNER, ALTMAN & WILBORN, LLC  
Jonathan S. Altman, Esq.  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29402  
843-723-9804

*Attorney for the Plaintiff*

340

## **EXHIBIT B**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NUMBER 2010-CP-10-0250

John Wright,

Plaintiff,

-versus-

Ned Wright, Hattie Wright Gaston,  
Annie M. Wright, Edward Wright,  
Samuel Wright, James Wright,  
Earline Wright Maxwell, Wilmenia  
Wright, Henry Wright, Oscar Wright,  
Leroy Wright, Leroy Wright, Harold  
Wright, Charles Wright, Samuel  
Wright, Jr., Ernestine Wright, Henry  
Wright, Jr., Ernest McKnight, along  
with John Doe or Mary Roe, fictitious  
names to designate minors, infants,  
persons of unsound mind, under  
disability or incompetent persons in  
prison, persons in the military service  
within meaning of Title 50, United  
States Code, commonly referred to as  
The Soldiers and Sailors Civil Service  
Act of 1940, if any, and Richard Roe  
and Sarah Roe, fictitious names to  
designate the unknown heirs,  
devisees, distributes, issue, executors,  
administrators, successors or assigns  
of Ned Wright, Hattie Wright Gaston,  
Annie M. Wright, Edward Wright,  
Samuel Wright, James Wright,  
Earline Wright, Wilmenia Wright,  
Henry Wright, Oscar Wright,  
Leroy Wright, Harold Wright,  
Charles Wright, Samuel Wright, Jr.,  
Ernestine Wright and Henry Wright,  
Jr., also all other unknown persons  
claiming any right, title, estate or lien  
upon the real estate which is the

ANSWER  
and  
COUNTERCLAIM

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2010 MAR 18 PM 12:37

FILED

subject of this action, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**COMES NOW THE DEFENDANT, ERNESTINE McKNIGHT,**  
answering the Summons and Complaint of the Plaintiff above named, who would  
show unto this Honorable Court as follows:

1.) **THAT** each and every allegation contained in the Plaintiff's  
Complaint which is not hereinafter specifically admitted, qualified and explained  
is hereby denied.

2.) **THAT** the Defendant is without sufficient knowledge to either admit  
or deny the allegations contained in paragraph One (1) of the Plaintiff's Complaint  
and therefore demands strict proof thereof.

3.) **THAT** the Defendant admits paragraph Three (3) of the Plaintiff's  
Complaint.

4.) **THAT** the Defendant is without sufficient knowledge to either admit  
or deny the allegations contained in paragraphs Three (3) through Seven (7) of the  
Plaintiff's Complaint and therefore demands strict proof thereof.

5.) **THAT** the Defendant admits paragraph Eight (8) of the Plaintiff's  
Complaint.

6.) **THAT** the Defendant is without sufficient knowledge to either admit  
or deny the allegations contained in paragraphs Nine (9) through Ten (10) of the  
Plaintiff's Complaint and therefore demands strict proof thereof.

7.) **THAT** the Defendant admits paragraph Eleven (11) of the Plaintiff's Complaint.

8.) **THAT** the Defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraphs Twelve (12) through Nineteen (19) of the Plaintiff's Complaint and therefore demands strict proof thereof.

9.) **THAT** the Defendant denies paragraph Twenty (20) of the Plaintiff's Complaint and therefore demands strict proof thereof.

10.) **THAT** the Defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraph Twenty-one (21) of the Plaintiff's Complaint and therefore demands strict proof thereof.

**FURTHER ANSWERING THE ALLEGATIONS CONTAINED IN THE  
PLAINTIFF'S COMPLAINT THE DEFENDANT WOULD SAY AND  
SHOW THE FOLLOWING:**

11.) **THAT** the Defendant has paid the taxes and maintain continuous, open, notorious, hostile, unbroken and adverse possession of the subject premises for a period of ten years prior to the initiation of this action.

12.) **THAT** the Defendant is informed and believes that the Defendant has an equitable interest in the subject property and he therefore claims ownership of the same by adverse possession.

13.) **THAT** on September 25, 2003, John Wright, Anna Michelle Porcher and Harold L. Wright executed a Note in the amount of \$6,187.52 in favor of the Defendant Ernest McKnight.

14.) **THAT** on September 25, 2003, John Wright, Anna Michelle Porcher and Harold L. Wright executed a Mortgage in the principal amount of \$6,187.52 in favor of the Defendant Ernest McKnight and said mortgage was filed on September 29, 2003 in the Charleston County R.M.C. Office in Book M-469, at page 341.

**COUNTERCLAIM  
(Adverse Possession)**

15.) **THAT** the Defendant realleges the allegations contained in paragraphs One (1) through Fourteen (14) above as if full setforth fully herein.

16.) **THAT** the Defendant is informed and believes that he should be awarded ownership of the subject property and that he should be given title there by deed of the Master.

**COUNTERCLAIM  
(Reimbursement of Taxes)**

17.) **THAT** the Defendant realleges the allegations contained in paragraphs One (1) through Sixteen (16) above as if full setforth fully herein.

18.) **THAT** the Defendant is informed and believes that he should be reimbursed for the taxes he paid on the subject property.

**COUNTERCLAIM  
(Foreclosure of Mortgage)**

19.) **THAT** the Defendant realleges the allegations contained in paragraphs One (1) through Eighteen (18) above as if full setforth fully herein.

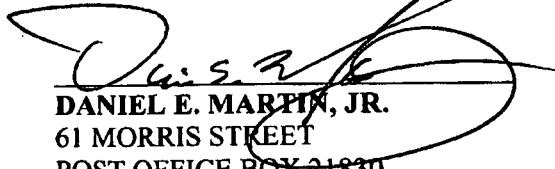
20.) **THAT** according to the terms and conditions of the said note and mortgage, it is provided that in the event the mortgagors failed to pay the taxes, the entire amount of the debt shall become due at the option of the mortgagee.

21.) **THAT** the Defendant is informed and believes that the mortgagors failed to pay taxes for 2003, 2004, 2005, 2006, 2007, 2008 and 2009 and that all of the taxes for those years were paid by the Defendant, Ernest McKnight.

22.) **THAT** the Defendant is further informed and believes that the mortgagors are in default of their obligations under the aforesaid note and mortgage and that he is entitled to have judgment of foreclosure for all amounts due and owing thereon, together with any taxes which may be due, or which have already been paid on behalf of the mortgagors, with a reasonable sum as attorney fees and for the costs incurred in this action.

**WHEREFORE**, the Defendant having set forth the above, prays that the Plaintiff's Complaint be dismissed and that he be granted the relief sought in his Counterclaim and for such other and further relief as this Court may deem just and proper.

**RESPECTFULLY SUBMITTED**



**DANIEL E. MARTIN, JR.**  
61 MORRIS STREET  
POST OFFICE BOX 21830  
CHARLESTON, S.C. 29403  
(843) 723-1686

**ATTORNEY FOR  
ERNEST McKNIGHT**

Charleston, South Carolina

March 16, 2010

## **EXHIBIT C**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-250

John Wright, )  
Plaintiff, )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )  
Defendants. )

CONSENT ORDER OF DISMISSAL

FILED  
2010 AUG -2 AM 9:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

10-012799

This matter comes before the court on Plaintiff's Motion for Summary Judgment on the Pleadings Pursuant to SCRCR Rule 12(c) or in the Alternative Motion for Summary Judgment as provided for in SCRCR 56 as to Defendant Ernest McKnight's Counterclaim for Adverse Possession. Prior to said motion being heard, the parties advised the court that Defendant McKnight had agreed to the dismissal of his counterclaim for adverse possession with prejudice. All other counterclaims set forth in Defendant McKnight's Answer and Counterclaim survive this order and remain pending.

WE SO MOVE.

WE CONSENT:



Jonathan S. Altman, Esq.  
DERFNER, ALTMAN & WILBORN, LLC  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29402  
(843) 723-9804  
Fax: (843) 723-7446

*Attorney for the Plaintiff*

WE CONSENT:

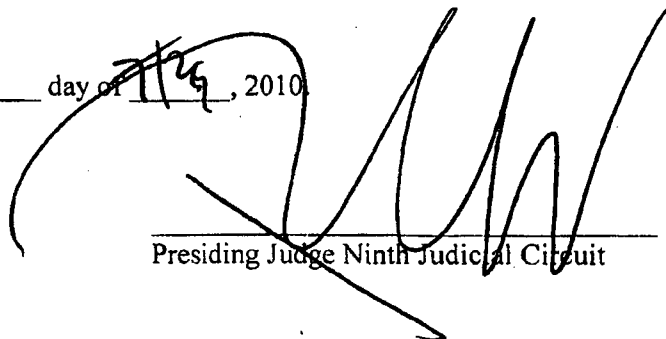


Willie B. Heyward, Esq.  
Heirs' Property Law Center, LLC  
2148 Dorchester Rd.  
North Charleston, SC 29405

*Attorney for the Defendant Ernest McKnight*

IT IS SO ORDERED, this \_\_\_\_\_ day of July, 2010.

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Presiding Judge Ninth Judicial Circuit

## **EXHIBIT D**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-250

John Wright, )

Plaintiff, )

vs. )

Ned Wright, Hattie Wright Gaston, )

Annie M. Wright, Edward Wright, )

Samuel Wright, James Wright, )

Earline Wright Maxwell, Wilmenia )

Wright, Henry Wright, Oscar Wright, )

Leroy Wright, Harold Wright, )

Charles Wright, Samuel Wright, Jr., )

Ernestine Wright, Henry Wright, Jr., )

Ernest McKnight, along with John )

Doe or Mary Roe, fictitious names to )

designate minors, infants, persons of )

unsound mind, under disability or )

incompetent, persons in prison, )

persons in the military service within )

meaning of Title 50, United States )

Code, commonly referred to as The )

Soldiers and Sailors Civil Service Act )

of 1940, if any, and Richard Roe and )

Sarah Roe, fictitious names to )

designate the unknown heirs, )

devisees, distributees, issue, )

executors, administrators, successors )

or assigns of Ned Wright, Hattie )

Wright Gaston, Annie M. Wright, )

Edward Wright, Samuel Wright, )

James Wright, Earline Wright, )

Wilmenia Wright, Henry Wright, )

Oscar Wright, Leroy Wright, Harold )

Wright, Charles Wright, Samuel )

Wright, Jr., Ernestine Wright, and )

Henry Wright, Jr., also all other )

unknown persons claiming any right, )

title, estate or lien upon the real estate )

which is the subject of this action, )

Defendants. )

ORDER

FILED  
2011 APR 21 PM 12:19  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter came before the Court on Plaintiff's Motion for Summary Judgment as to all Defendants except Defendant Ernest McKnight. Plaintiff's motion was filed on October 8, 2010. Present was Jonathan S. Altman, attorney for Plaintiff. No Defendants were present. Marcus W. Meetze, Esq., in his capacity as Guardian ad Litem was not present but provided a letter to the Court advising that he had been timely served with the Notice of Hearing and had received no communication or contact from any of the Defendants since his appointment on January 12, 2010.

The record in this case reflects Plaintiff's Suit to Quiet Title was filed on January 12, 2010. On that date, Marcus W. Meetze was appointed Guardian ad Litem for minors, imprisoned or incompetent persons, members of the military and unknown persons who may have claim or interest in the subject property. An Order for Publication was issued on January 12, 2010. An Affidavit of Publication was filed on February 17, 2010. No answers were filed by any of the Defendants other than Ernest McKnight and an Affidavit of Default was filed on March 30, 2010. An Order of Default was issued on March 31, 2010 and filed on April 1, 2010. Plaintiff's Motion for Summary Judgment was filed on October 8, 2010.

The real property that is the subject of this action is located in the County of Charleston, State of South Carolina and is more specifically described as follows:

ALL that certain lot, parcel, or tract of land situated, lying and being in Adams Run Township, formerly of Colleton County and now of Charleston County, in the State of South Carolina, containing ten and one-fourth acres, more or less, and bounded as follows: North by Jacksonboro Road, East by lands of Abner Young, and on the South and West by lands formerly owned by J. T. Mitchell, now owned by Fitzsimons, as will more fully appear when reference is had to plat of property made by Wm. Horne, Surveyor, and dated March 12, 1875.

BEING the same property conveyed to Ned Wright by Deed of Margaret Singleton and J. William Washington dated January 21, 1908, and recorded in the Office of the Register of Deeds for Colleton County in Deed Book 31, at Page 86 on January 30, 1908, and recorded in the Office of the Register of Deeds for Charleston County in Deed Book N27, at Page 19.

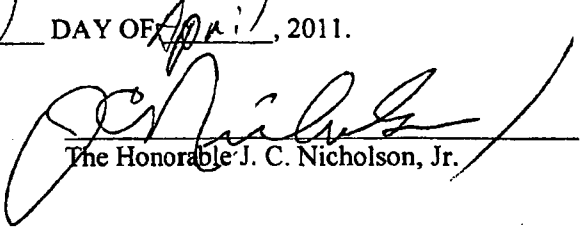
TMS No. 245-00-00-026

As alleged in his Complaint, Plaintiff paid taxes and maintained possession of the property for a period of over twenty years. Plaintiff's possession was open, notorious, hostile and continuous for this period. As such, Plaintiff's actions constitute an ouster of all other heirs and possible claimants. As a result of Plaintiff's acts, title to the subject property has vested in Plaintiff. The record reflects that the Defendants were properly served and an Order of Default has been entered against them.

WHEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff is the owner of the property holding fee simple title thereto by virtue of the ouster of all others who may claim an ownership interest in the property; and
2. All Defendants, except Defendant Ernest McKnight, and all entities joined as Defendants in this action and the fictitious names of John Doe, adults and Mary Roe, infants, insane persons, incompetents are forever barred of and from any claim, right, title, estate, interest and/or lien upon the parcel of real estate above described or any part thereof from claiming any right title, estate, interest or lien in the property.

IT IS SO ORDERED THIS 21 DAY OF April, 2011.

  
The Honorable J. C. Nicholson, Jr.

## **EXHIBIT E**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-0250

Eugene Gaithers  
PLAINTIFF(S)

Ned Wright et al.  
DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Summary Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Ernest McKnight                              | Eugene Gaithers                          | \$12,646.27 (counterclaim)                               |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117  
Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or  
placed in the appropriate attorney's box on this day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or  
to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

- 50)

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Eugene Gathers, )  
Plaintiff, )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devises, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-00250

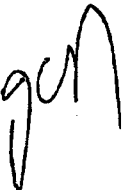
ORDER

FILED  
2014 DEC 30 PM 02:24  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED  
2015 JAN -6 PM 1:57  
JULIE J. ARMSTRONG  
CLERK OF COURT

The trial of the above captioned matter was held on November 14, 2014. Present were counsel for Plaintiff, Jonathan S. Altman, counsel for Defendant Ernest McKnight, Willie B. Heyward, and Defendant Ernest McKnight (hereinafter "Defendant McKnight"). From the testimony and evidence, I find and conclude as follows:

**Findings of Fact and Conclusions of Law**

- 
1. The Lis Pendens, Summons, and Complaint were filed on January 12, 2010.
  2. Defendant McKnight filed an Answer and Counterclaim asserting claims for Adverse Possession, Foreclosure of Mortgage, and Reimbursement of Taxes on March 18, 2010.
  3. A Consent Order dismissing Defendant McKnight's counterclaim for Adverse Possession and preserving Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes was filed on August 2, 2010.
  4. An Order granting Plaintiff's Motion for Summary Judgment as to all Defendants except Defendant McKnight was issued on April 21, 2011. This Order quieted title to the subject property and preserved Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes as the sole pending claims in this action.
  5. The real property (hereinafter the "property") which is the subject of this action is situated in Charleston County, South Carolina, more particularly described as follows:

6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

6. Plaintiff acquired the property by deed of conveyance from John Wright dated August 3, 2010 and recorded in the RMC Office for Charleston County on August 6, 2010 in Deed Book 0137, at Page 112.

7. On September 25, 2003, Plaintiff's predecessor in title, John Wright, and Anna Michelle Porcher, and Harold L. Wright executed a Note to Defendant McKnight in the amount of Six Thousand One Hundred Eighty-Seven Dollars and 52/100 Cents (\$6,187.52). Said Note was secured by a Mortgage on the 9.5 acres shown on a plat by George D. Sample entitled "Plat of Lands of Ned Wright Estate dated June 8, 1981 and recorded in Plat Book AU, Page 9, RMC Office for Charleston County." Plaintiff's property comprises seventy-three percent (73%) of the original 9.5 acre tract secured by the mortgage held by Defendant McKnight.

gcm  
8. At the trial of this case, the parties stipulated that the full balance of the Note remained outstanding. This Note was to bear interest at the rate of eight percent (8%) per annum. The parties further agreed that the total amount due under said Note as of the date of trial was Eleven Thousand Six Hundred Thirty-Two Dollars and 54/100 Cents (\$11,632.54). Seventy-three percent (73%) of this sum is Eight Thousand Four Hundred Ninety-One Dollars and 76/100 cents (\$8,491.76) which represents the amount due to Defendant McKnight from Plaintiff under the Note.

9. In addition to his counterclaim for Foreclosure of Mortgage, Defendant McKnight sought reimbursement for payment of real property taxes as to parcel number 245-00-00-026. Said parcel comprises the entire 9.5 acres referenced herein.

10. At the trial, Defendant McKnight produced two (2) checks in the respective amounts of One Thousand Eight Hundred Fifty-Five Dollars and 93/100 Cents (\$1,855.93) and One Thousand Five Hundred Ninety-Seven Dollars and 54/100 Cents (\$1,597.54) which Defendant

McKnight maintained represented payment of real property taxes for tax years 2008 and 2009. Said amounts were consistent with the property tax records for Charleston County for parcel number 245-00-00-026. Plaintiff's counsel stipulated that said checks represented the payment of real property taxes for this parcel. These two (2) payments total Three Thousand Four Hundred Fifty-Three Dollars and 47/100 Cents (\$3,453.47). Plaintiff is responsible for seventy-three percent (73%) of this sum or Two Thousand Five Hundred Twenty-One Dollars and 04/100 Cents (\$2,521.04).

11. The parties further stipulated that Defendant McKnight also attempted to pay real property taxes for tax year 2013 in the amount of \$1,633.47. Plaintiff's counsel is holding said sum in trust as said payment had previously been made by Plaintiff. Plaintiff stipulated that said sum would be reimbursed to Defendant McKnight.

gcm  
IT IS THEREFORE ORDERED THAT the property described herein, as set forth in the lis pendens is vested in the name of Eugene Gathers; and

IT IS FURTHER ORDERED THAT the following sums are due to Defendant McKnight from Plaintiff under his counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes:

- a. \$8,491.76 due under the Note;
- b. \$2,521.04 for reimbursement of taxes; and
- c. \$1,633.47 for tax year 2013.

Total: \$12,646.27

Upon payment of this sum, either to Defendant McKnight or to the Clerk of Court, if Defendant McKnight refuses to accept said payment, Defendant McKnight's Mortgage shall be satisfied of record as to Plaintiff's parcel.

IT IS FURTHER ORDERED THAT the title to the property, more particularly described below, is hereby quieted in the name of Eugene Gathers who is the owner of one hundred percent (100%) undivided interest in fee simple with all rights, title, and interest therein:

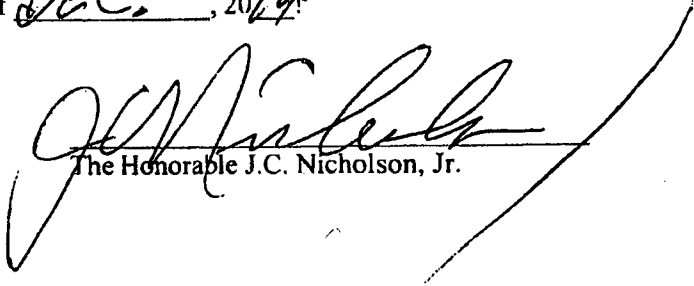
6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

IT IS FURTHER ORDERED THAT Plaintiff's interest in the subject property shall be to the exclusion of any other party claiming any right, title, or interest therein.

IT IS SO ORDERED this 29 day of DEC., 2024

  
The Honorable J.C. Nicholson, Jr.

## **EXHIBIT F**

# D A W

DERFNER  
ALTMAN &  
WILBORN

February 16, 2015

Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

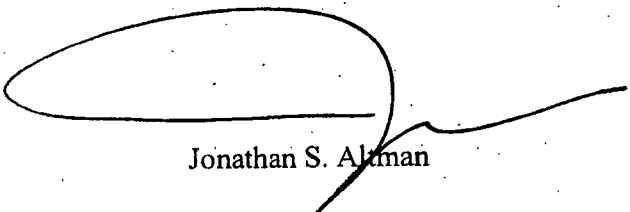
RE: Eugene Gathers v. Ernest McKnight, et al.  
Case No.: 2010-CP-10-00250

Dear Madam Clerk:

I represent the Plaintiff in the above referenced matter. On December 29, 2014, Judge Nicholson issued an Order finding the total amount of Plaintiff's debt to Defendant Ernest McKnight to be in the amount of \$12,646.27. A copy of Judge Nicholson's Order is attached hereto. Judge Nicholson expressly provided that in the event Defendant McKnight refused to accept said sum from Plaintiff, payment was to be made to the Clerk of Court. I am enclosing a copy of correspondence received from Defendant McKnight's counsel confirming Defendant McKnight's refusal to accept payment. Accordingly, I am forwarding my firm's check in the amount of \$12,646.27 made payable to the Charleston County Clerk of Court in accordance with Judge Nicholson's Order and requesting that Plaintiff's satisfaction of this judgment be filed of record. Please contact me if you have any questions regarding the above.

Yours Very Truly,

DERFNER & ALTMAN, LLC



Jonathan S. Altman

JSA/rs

Enclosures

cc: Willie B. Heyward, Esq.  
The Honorable J.C. Nicholson, Jr.  
Eugene Gathers

**DERFNER, ALTMAN & WILBORN, L.L.C. - OPERATING ACCOUNT**  
CHARLESTON, SC 29402

3208

DATE : Feb/13/2015  
CHE # : 32084  
AMOUNT : \$12,646.27  
ACCOUNT: GENERAL - 6  
PAID TO: Charleston County Clerk of Court

Full and Final Settlement for Defendant Ernest McKnight (#145700)

CLIENT: 1457 - Gathers, Eugene  
MATTER: 145700

**DERFNER, ALTMAN & WILBORN, L.L.C.**  
ATTORNEYS AT LAW - OPERATING ACCOUNT  
575 KING STREET SUITE B  
CHARLESTON, SC 29403  
(843) 723-9804

TIDELANDS BANK  
MOUNT PLEASANT, SC 29464  
67-809-532

EZCHECK® Check Fraud  
Protection for Business

32084

Twelve Thousand Six Hundred Forty Six \*\*\*\*\* 32084  
DATE 27/100  
AMOUNT

Feb/13/2015 \$12,646.27

PAY  
TO THE  
ORDER  
OF

Charleston County Clerk of Court

DERFNER, ALTMAN & WILBORN, L.L.C. • OPERATING ACCOUNT

AUTHORIZED SIGNATURE

⑈032084⑈ ⑆053208095⑆ 0120009840⑈

Security features. Details on back.



## **EXHIBIT G**

2010-CP-10-250

## The South Carolina Court of Appeals

Eugene Gathers, Respondent,

v.

Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, along with John Doe or Mary Roe, fictitious names to designate minors, infants, person of unsound mind, under disability or incompetent. Person in prison, persons in the military service within meaning of Title 50, United States Code, commonly referred to as The Soldiers and Sailors Civil Service Act of 1940, if any, and Richard Roe and Sarah Roe, fictitious names to designate the unknown heirs, devisees, distributees, issue, executors, administrators, successors or assigns of Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, and Henry Wright, Jr., also all other unknown person claiming any right, title, estate of lien upon the real estate which is the subject of this action, Defendants,

of whom Ernest McKnight is the Appellant.

Appellate Case No. 2015-000471

The Honorable J. C. Nicholson, Jr.  
Charleston County  
Trial Court Case No. 2010cp1000250

FILED  
2015 MAR 26 PM 12:02  
JULIE J. ARMSTRONG  
CLERK OF COURT

ORDER

The notice of appeal in this case was not timely served pursuant to Rule 203(b)(1), SCACR. The notice of appeal was served one day late. The Court cannot extend the time for serving the notice of appeal. Rule 263(b), SCACR. Accordingly, the appeal is dismissed.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

**FILED**

3-6-15 AS

cc:

Willie Bruce Heyward, Esquire  
Jonathan Scott Altman, Esquire

ter)



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

March 24, 2015

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

### REMITTITUR

Re: Eugene Gathers v. Ned Wright(2)  
Lower Court Case No. 2010cp1000250  
Appellate Case No. 2015-000471

FILED  
2015 MAR 26 PM 12:02  
JULIE J. ARMSTRONG  
CLERK OF COURT

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Willie Bruce Heyward, Esquire  
Jonathan Scott Altman, Esquire

(62)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | IN THE COURT OF COMMON PLEAS                                                                                                                                           |
| COUNTY OF CHARLESTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | NINTH JUDICIAL CIRCUIT                                                                                                                                                 |
| ERNEST MCKNIGHT<br>Plaintiff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | CASE NO: 2016-CP-10-03504                                                                                                                                              |
| vs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                        |
| <p>ANNA MICHELLE PORCHER, EUGENE D, GATHERS, ESTATE OF NED WRIGHT, ESTATE OF HATTIE GASDEN, EDWARD WRIGHT, ESTATE OF SAMUEL WRIGHT, JAMES WRIGHT, ESTATE OF EARLINE WRIGHT MAXWELL, IDA WRIGHT, ESTATE OF WILEMINIA WRIGHT, HENRYWRIGHT, JR. ESTATE OF HENRYWRIGHT, ESTATE OF ERNESTINE WRIGHT, ESTATE OF SAMUEL WRIGHT, EDWARD WRIGHT, ESTATE OF JAMES WRIGHT, ESTATE OF OSCAR WRIGHT, MARTHA WRIGHT, ESTATE OF LEROY WRIGHT, ESTATE OF EDWARD WRIGHT, ESTATE OF HAROLD WRIGHT. ESTATE OF CHARLES WRIGHT, JR., ESTATE OF HATTIE WRIGHT GASTON, a/k/a, HATTIE WRIGHT GADSDEN,, ESTATE OF EARLINE WRIGHT, ESTATE OF ANNIE WRIGHT; WALTER NATHANIEL PORCHER, III., KEISHA KENYATTA PROCHER, and JOHN DOE and MARY ROE, fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as The Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and fictitious names representing unknown heirs, devisees, distributes, or personal representatives of any deceased persons.</p> <p>Defendants</p> | <p>FILED</p> <p>2016 AUG 26 PM 2:41</p> <p>JULIE J. ARMSTRONG<br/>CLERK OF COURT</p> <p>PLAINTIFF'S RETURN TO<br/>DEFENDANT PORCHER'S MOTION<br/>FOR<br/>DISMISSAL</p> |

In support of this Return to Defendant Anna Michelle Porcher's Motion to Dismiss, undersigned counsel for the Plaintiff shows the Court the following:

### **BACKGROUND / INTRODUCTION**

1. This matter originally came before the Court by way of a complaint to quiet title filed by Eugene Gathers alleging adverse possession and ouster against the other lawful heirs of the Estate of Ned Wright.
2. In that action the Plaintiff challenged the granting of title in the real property to Eugene Gathers to the South Carolina Court of Appeals. That court's order determined the Ernest McKnight (hereinafter "McKnight") had a right of first refusal in the subject property as a result of the mortgage and note that conveyed the interest of certain heirs of Ned Wright, including Anna Michelle Porcher (hereinafter "Porcher") to McKnight until the debt was satisfied.  
(Exhibit One)
3. Mr. McKnight was served, through his counsel, a notice of a motion hearing scheduled for November 14, 2014 and at that hearing was then informed that it was not a motion hearing but a full evidentiary hearing on all matters concerning the Note and that he had two hours to appear and to produce all of the necessary documents to support his claim.
4. The full evidentiary hearing was not docketed on the court's calendar nor was the Plaintiff McKnight able to procure a transcript of the testimony and exhibits presented at the hearing. Present at this proceeding was the counsel for Eugene Gathers, McKnight and his counsel. Anna Michelle Porcher was not present.
5. The decision of the South Carolina Court Appeals that McKnight's counterclaim of the right to exercise the right of first refusal was denied and the motion to join Porcher as a

64)

necessary party was also denied. The order dated December 29, 2014 by Judge J. C. Nicholson was the result of that hearing.

4. The order also confirms title in real property, that is the subject of the McKnight Complaint, in Eugene Gathers and specifically excepting the three parcels that are the subject of this action.

### **RES JUDICATA**

5. Defendant Porcher's counsel correctly cites Plum Creek Dev. Co. v. City of Conway, 334 S. C. 30, 512 S.E. 2d 106 (1999) and Rogers v. Kunja Knitting Mills, U.S.A., 336, S.C. 537, 520 S.E. 2d 817 (Ct. of App. 1999) as representative of the doctrine of *res judicata* in South Carolina.

6. The requirement that the current matter that was arose out of the same transaction or occurrence that was the subject of a prior action between the same parties. (Emphasis added)

7. The prior action from which Judge Nicholson's order derived does not indicate the Michelle Porcher was a party to that action.

8. Although the proceeding was one couched as one to foreclose on the note it is, by its language, also an action quieting title and partition of real property. The order describes the property to exclude the parcels that are now claimed by Porcher and it also confirms title in a specific portion of the original parcel in Eugene Gathers. (Exhibit Two)

9. The present action therefore is not between the same parties nor the same parcel of land in that both were not litigants nor their claims litigated in the prior proceeding therefor Defendant Porcher's defense of *res judicata* fails to meet the requirements of both Plum Creek and Rogers because this litigation is between different parties and different parcels of land.

### **COLLATERAL ESTOPPEL**

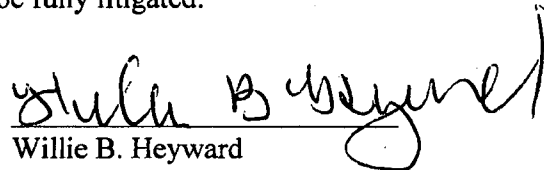
11. For the same reasons as those stated above, Porcher's claim that the present action is barred by the equitable doctrine of collateral estoppel also fails because she was not a party to the prior proceeding and the real property that is the subject of this action was specifically excluded from the litigation.

12. Porcher's attempted to become a party to the quiet title litigation but by her then counsel's stipulation she was deemed not a party then and has not been a party to any of these proceedings.

### CONCLUSION

For the reasons set forth above, the Plaintiff asks that Defendant Procher's Motion to Dismiss be denied or the reasons set forth above and this matter proceed to a full adjudication on its merits asks that the facts claimed in this matter be fully litigated.

Dated: August 24, 2016



Willie B. Heyward  
Heirs Property Law Firm, LLC.  
27 Gamecock Ave, Ste. 200  
Charleston, SC 29407  
(843) 225-8754  
Attorney for Plaintiff, Ernest McKnight

**PLAINTIFF'S EXHIBIT ONE**

3K M. 4696341

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

**MORTGAGE OF REAL ESTATE**

**TO ALL WHOM THESE PRESENTS MAY CONCERN: JOHN WRIGHT, ANNA MICHELLE PORCHER, AND HAROLD L. WRIGHT, IN THE STATE AFORESAID -- SEND GREETING:**

WHEREAS the said John Wright, Anna Michelle Porcher and Harold L. Wright (hereinafter also styled the mortgagor(s) in and by their certain Note or obligation bearing even date herewith, stand firmly held and bound unto Ernest McKnight (hereinafter also styled the mortgagee(s) in the sum of SIX THOUSAND ONE HUNDRED EIGHTY SEVEN AND 52/100 (\$6,187.52) DOLLARS, as evidenced by and according to the terms and conditions of a Promissory Note of even date herewith, as in and by the said Note and Condition(s) thereof, reference being thereunto had, will more fully appear.

NOW, KNOW ALL MEN, that the said John Wright, Anna Michelle Porcher and Harold L. Wright in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the said Note, which with all its provisions is hereby made a part hereof; and also in consideration of Three Dollars to the said mortgagor in hand well and truly paid, by the said mortgagee, at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Ernest McKnight the following described real property, to-wit:

ALL that lot, piece, or parcel of land situate lying and being on U.S. Highway 17 in the Rantowles Area of Charleston County containing 9.5 acres as shown on a plat by George D. Sample entitled "Plat of Lands of Ned Wright Estate" dated June 8, 1981 and recorded in Plat Book AU page 9 RMC, Charleston County. Said lot having such size, shape, dimensions, buttings, and boundings as will appear by reference to said plat and said plat is made a part in parcel of this description by reference hereto.

Being the same property conveyed to Ned Wright herein by deed of Margaret Singleton et al dated 9 day of JAN 1908 in book N-27 at page 19 in the RMC Office of Charleston County. The said Ned Wright died in the 1950's and the mortgagors are certain of his heirs.

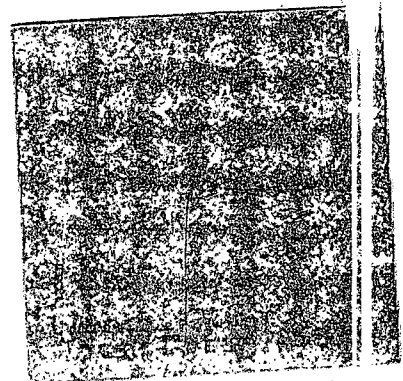
TMS #245-00-00-026

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 said Premises unto the said Mortgagee, its heirs, successors and assigns forever.

And Mortgagor do(es) hereby bind Mortgagor's heirs, successors, executors and administrators, to procure or execute any further necessary assurances of title to the said premises, the title to which is unencumbered, and also to warrant and forever defend all and singular the said Premises

*Address of MORTGAGEE:*  
763 SEAMAN LN  
Johns Is/942, S.C. 29445  
-1-



unto the said mortgagee, mortgagee's heirs, successors, and assigns, from and against Mortgagor and Mortgagor's heirs, successors, executors and administrators and all persons lawfully claiming, or to claim the same or any part thereof.

AND IT IS AGREED, by and between the parties hereto, that the said mortgagor, mortgagor's heirs, successors, executors or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss or damage by fire, for the benefit of the said mortgagee, for an amount not less than the value of the buildings in such company as shall be approved by the said mortgagee, and shall deliver the policy to the said mortgagee, and in default thereof, the said mortgagee, mortgagee's heirs, successors, or assigns, may effect such instance and reimburse themselves under this mortgage for the expense thereof, with interest thereon, from the date of this payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said mortgagee, mortgagee's heirs, successors, or assigns shall be entitled to receive from the aggregate of the insurance monies to be paid, a sum equal to the amount of the debt secured by this mortgage.

AND IT IS AGREED, by and between the parties, that if the said mortgagor, mortgagor's heirs, successors, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then the said mortgagee, mortgagee's heirs, successors, or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this mortgage for the sums so paid, with interest thereon, from the dates of such payments.

AND IT IS AGREED, by and between the parties, that upon any default being made in the payment of the interest on the said Note, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this mortgage, that then the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due, at the option of the said mortgagee, mortgagee's heirs, successors or assigns, although the period for the payment of the said debt may not then have expired.

AND IT IS AGREED, that if the holder of the Note secured hereby is compelled to pay any taxes upon the debt represented by said note, or by this mortgage, then, and in that event, unless the said taxes are paid by some party other than the said holder, that then the entire amount of the debt secured, or intended to be secured, shall forthwith become due at the option of the said mortgagee, mortgagee's heirs, successors, or assign, although the period for its payment may not then have expired.

AND IT IS AGREED, by and between the said parties, that, should legal proceedings be instituted for the collection of the debt secured hereby, then and in that event, the said mortgagee, mortgagee's heirs, successors, or assigns, shall have the right to have a Receiver appointed of the rents and profits of the above described premises, with power to forthwith lease out the said premises anew if he should so elect, who after deducting all charges and expenses attending such proceedings, and the execution of the said trust as Receiver, shall apply the residue of the said rents and profits towards the payment of the debts secured hereby.

AND IT IS FURTHER AGREED, by and between the parties, that should legal proceedings be instituted for the foreclosure of this mortgage, or for any purpose involving this

mortgage, or should the debt hereby secured be placed in the hands of an attorney at law for collection, by suit or otherwise, that all costs and expenses incurred by the mortgagee, mortgagee's heirs, successors, or assigns, including a reasonable counsel fee (of not less than ten percent of the amount involved), shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED, ALWAYS, and it is the true intent and meaning of the parties to these Presents, that when the said mortgagor, mortgagor's heirs, successors, executors or administrators shall pay, or cause to be paid unto the said mortgagee, mortgagee's certain attorneys, heirs, successors or assigns, the said debt, with the interest thereon, if any shall be due, and also all sums of money paid by the said mortgagee, mortgagee's heirs, successors or assigns, according to the conditions and agreements of the said note, and of this mortgage and shall perform all the obligations according to the true intent and meaning of the said note and mortgage, and the conditions thereunder written, then this Deed of Bargain and Sale shall cease, determine and be void, otherwise it shall remain in full force and virtue.

AND IT IS LASTLY AGREED, by and between the said parties, that the said mortgagor is to hold and enjoy the same premises until default of payment shall be made.

Witness mortgagor's hand and seal this 25<sup>th</sup> day of September in the year of our Lord two thousand three and in the two hundred and twenty-seventh year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

[Signature]  
Kendall A. Hiller  
[Signature]  
Kendall A. Hiller  
[Signature]  
[Signature]  
Kendall A. Hiller

[Signature]  
John Wright

[Signature]  
Anna Michelle Porcher

[Signature]  
Harold L. Wright

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3K M 469PG344

I, [Signature], do hereby certify that John Wright, Anna Michelle Porcher and Harold L. Wright personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 25<sup>th</sup> day of September, 2003.

[Signature]  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Comm. Expires: 3-22-07

BARRY I. BAKER  
ATTORNEY AT LAW  
0 CARRIAGE LANE, BLDG H  
P.O. BOX 51265  
CHARLESTON, SC 29417-1265

OK M 469PG345

10.00  
C

FILED

M469-341

2003 SEP 29 PM 4:28

CHARLES LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

**PLAINTIFF'S EXHIBIT TWO**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Eugene Gathers, )  
Plaintiff, )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-00250

ORDER

FILED  
2014 DEC 30 PM 04:24  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED  
2015 JAN -6 PM 1:57  
JULIE J. ARMSTRONG  
CLERK OF COURT

The trial of the above captioned matter was held on November 14, 2014. Present were counsel for Plaintiff, Jonathan S. Altman, counsel for Defendant Ernest McKnight, Willie B. Heyward, and Defendant Ernest McKnight (hereinafter "Defendant McKnight"). From the testimony and evidence, I find and conclude as follows:

**Findings of Fact and Conclusions of Law**

- 
1. The Lis Pendens, Summons, and Complaint were filed on January 12, 2010.
  2. Defendant McKnight filed an Answer and Counterclaim asserting claims for Adverse Possession, Foreclosure of Mortgage, and Reimbursement of Taxes on March 18, 2010.
  3. A Consent Order dismissing Defendant McKnight's counterclaim for Adverse Possession and preserving Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes was filed on August 2, 2010.
  4. An Order granting Plaintiff's Motion for Summary Judgment as to all Defendants except Defendant McKnight was issued on April 21, 2011. This Order quieted title to the subject property and preserved Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes as the sole pending claims in this action.
  5. The real property (hereinafter the "property") which is the subject of this action is situated in Charleston County, South Carolina, more particularly described as follows:

6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

6. Plaintiff acquired the property by deed of conveyance from John Wright dated August 3, 2010 and recorded in the RMC Office for Charleston County on August 6, 2010 in Deed Book 0137, at Page 112.

7. On September 25, 2003, Plaintiff's predecessor in title, John Wright, and Anna Michelle Porcher, and Harold L. Wright executed a Note to Defendant McKnight in the amount of Six Thousand One Hundred Eighty-Seven Dollars and 52/100 Cents (\$6,187.52). Said Note was secured by a Mortgage on the 9.5 acres shown on a plat by George D. Sample entitled "Plat of Lands of Ned Wright Estate dated June 8, 1981 and recorded in Plat Book AU, Page 9, RMC Office for Charleston County." Plaintiff's property comprises seventy-three percent (73%) of the original 9.5 acre tract secured by the mortgage held by Defendant McKnight.

gcm  
8. At the trial of this case, the parties stipulated that the full balance of the Note remained outstanding. This Note was to bear interest at the rate of eight percent (8%) per annum. The parties further agreed that the total amount due under said Note as of the date of trial was Eleven Thousand Six Hundred Thirty-Two Dollars and 54/100 Cents (\$11,632.54). Seventy-three percent (73%) of this sum is Eight Thousand Four Hundred Ninety-One Dollars and 76/100 cents (\$8,491.76) which represents the amount due to Defendant McKnight from Plaintiff under the Note.

9. In addition to his counterclaim for Foreclosure of Mortgage, Defendant McKnight sought reimbursement for payment of real property taxes as to parcel number 245-00-00-026. Said parcel comprises the entire 9.5 acres referenced herein.

10. At the trial, Defendant McKnight produced two (2) checks in the respective amounts of One Thousand Eight Hundred Fifty-Five Dollars and 93/100 Cents (\$1,855.93) and One Thousand Five Hundred Ninety-Seven Dollars and 54/100 Cents (\$1,597.54) which Defendant

McKnight maintained represented payment of real property taxes for tax years 2008 and 2009. Said amounts were consistent with the property tax records for Charleston County for parcel number 245-00-00-026. Plaintiff's counsel stipulated that said checks represented the payment of real property taxes for this parcel. These two (2) payments total Three Thousand Four Hundred Fifty-Three Dollars and 47/100 Cents (\$3,453.47). Plaintiff is responsible for seventy-three percent (73%) of this sum or Two Thousand Five Hundred Twenty-One Dollars and 04/100 Cents (\$2,521.04).

11. The parties further stipulated that Defendant McKnight also attempted to pay real property taxes for tax year 2013 in the amount of \$1,633.47. Plaintiff's counsel is holding said sum in trust as said payment had previously been made by Plaintiff. Plaintiff stipulated that said sum would be reimbursed to Defendant McKnight.

IT IS THEREFORE ORDERED THAT the property described herein, as set forth in the lis pendens is vested in the name of Eugene Gathers; and

IT IS FURTHER ORDERED THAT the following sums are due to Defendant McKnight from Plaintiff under his counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes:

- a. \$8,491.76 due under the Note;
- b. \$2,521.04 for reimbursement of taxes; and
- c. \$1,633.47 for tax year 2013.

Total: \$12,646.27

Upon payment of this sum, either to Defendant McKnight or to the Clerk of Court, if Defendant McKnight refuses to accept said payment, Defendant McKnight's Mortgage shall be satisfied of record as to Plaintiff's parcel.

IT IS FURTHER ORDERED THAT the title to the property, more particularly described below, is hereby quieted in the name of Eugene Gathers who is the owner of one hundred percent (100%) undivided interest in fee simple with all rights, title, and interest therein:

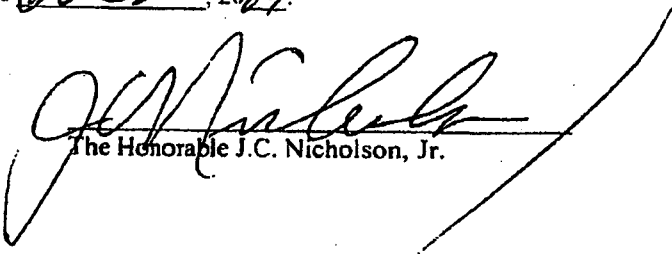
6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

IT IS FURTHER ORDERED THAT Plaintiff's interest in the subject property shall be to the exclusion of any other party claiming any right, title, or interest therein.

IT IS SO ORDERED this 27 day of DEC., 2014

  
The Honorable J.C. Nicholson, Jr.

## Heirs' Property Law Firm, LLC

---

27 Gamecock Avenue Suite 200 Charleston, SC 29407  
Phone 843.225.8754/843.568.4676 Fax 843.225.8765

August 25, 2016

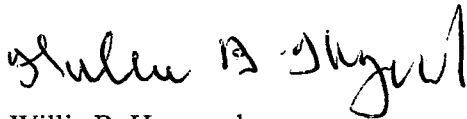
Clerk of Court/Court of Common Pleas  
Charleston County  
100 Broad Street, Suite 106  
Charleston, SC 29401

**Re: Ernest McKnight vs. Anna Porcher et al**  
**Case No.: 2016-CP-10-3504**

Dear Sir/Madam:

Enclosed please find the original and one (1) copy of the **Plaintiff's Return to the Defendant's Motion to Dismiss** in the above-referenced matter.

By copy of this letter I am serving Jonathan Altman, Attorney for the Defendant, Anna Michelle Porcher, with a copy of the **Plaintiff's Return to the Defendant's Motion to Dismiss**.



Willie B. Heyward  
Attorney for Plaintiff

Enclosure

Attorney Jonathan Altman  
Defner Altman & Wilborn, LLC  
575 King Street, Suite B  
Charleston, SC 29403

867

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

Ernest McKnight, )

Plaintiff, )

v. )

**DEFENDANT EUGENE D. GATHERS'**  
**MOTION TO DISMISS PLAINTIFF'S COMPLAINT**  
**PURSUANT TO SCRCP RULE 12(b)(5) & 12(b)(6)**

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
Members Civil Relief Act of 2003, )  
Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

FILED  
2016 AUG 25 PM 12:05  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Defendant Eugene D. Gathers (hereinafter "Defendant Gathers") moves for the dismissal of Plaintiff's Complaint herein pursuant to Rule 12 (b)(5) and 12 (b)(6), SCRCF in that, for reasons including those set forth below, Plaintiff has failed to state facts sufficient to constitute a cause of action in accordance with South Carolina Rules of Civil Procedure. The basis for Defendant Gathers' motion includes the following:

A. Res Judicata. The matters at issue were the subject of the two (2) following prior cases between the parties: 1) Eugene Gathers v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, et al., Case No. 2010-CP-10-00250 (hereinafter "Case #1") and 2) Ernest McKnight v. Eugene D. Gathers, Estate of Ned Wright, Estate of Hattie Gasden, Anna Michelle Porcher, Edward Wright, Estate of Samuel Wright, James Wright, Estate of Earline Wright Maxwell, Ida Wright, Estate Wilminia Wright, Henry Wright, Jr., Estate of Henry Wright, Estate of Ernestine Wright, Estate of Samuel Wright, Edward Wright, Estate of James Wright, Estate of Oscar Wright, Martha Wright, Estate of Leroy Wright, Estate of Edward Wright, Estate of Harold Wright, Estate of Charles Wright, Jr., Estate of Hattie Wright Gaston a/k/a Hattie Wright Gadsden, Estate of Earline Wright, Estate of Annie Wright, Walter Nathaniel Porcher, III, Keisha Kenyatta Porcher, et al., Case No.: 2015-CP-10-04071 (hereinafter "Case #2"). A trial in Case #1 was held on November 14, 2014 and resulted in the issuance of an Order by the Honorable J.C. Nicholson, Jr. dated December 29, 2014, a

copy of which is attached hereto as Exhibit A. An Order dismissing Plaintiff's appeal from Judge Nicholson's Order in Case #1 is attached hereto as Exhibit B.

On July 21, 2015, Plaintiff filed a Complaint in Case #2 in which Plaintiff attempted to relitigate the matters that were the subject of Case #1. On January 21, 2016, Judge Nicholson issued an Order granting Defendant Eugene Gathers' Motion to Dismiss pursuant to the doctrine of *res judicata*. A copy of Judge Nicholson's Form 4 Order is attached hereto as Exhibit C.

It is well settled that *res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between the same parties, *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E. 2d 106 (1999); *Rogers v. Kunja Knitting Mills, U.S.A.*, 336 S.C. 537, 520 S.E. 2d 817 (Ct. of App. 1999). The facts alleged in this case are indistinguishable from the matters at issue in the prior two (2) cases. Under the doctrine of *res judicata*, Plaintiff's Complaint in this case must be dismissed.

B. *Collateral Estoppel*. When an issue of fact or law is litigated and determined by a valid and final judgment, the determination is conclusive and a subsequent action between the parties, whether on the same or different claim, *McKnaughton-McKay Elec. Co. of NC v. Andrich*, 324 S.C. 275, 482 S.E. 2d 564 (Ct. of App. 1996). Collateral Estoppel bars the re-litigation of issues that were litigated and necessary to the outcome of the prior lawsuits and mandates the dismissal of this action.

For the foregoing reasons, Defendant Gathers respectfully requests that this case be dismissed with prejudice and an Order be issued barring Plaintiff and Plaintiff's counsel from filing additional frivolous actions relative to the matters previously litigated.

August 17, 2016



Jonathan S. Altman, Esq.  
DERFNER & ALTMAN, LLC  
575 King Street, Suite B  
Charleston, SC 29403

*Attorney for Defendant Eugene D. Gathers*

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-00250

Eugene Gathers, )  
Plaintiff, )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )

Defendants. )

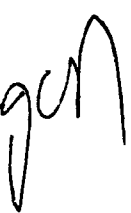
ORDER

FILED  
2014 DEC 30 PM 02:24  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED  
2015 JAN -6 PM 1:57  
JULIE J. ARMSTRONG  
CLERK OF COURT

The trial of the above captioned matter was held on November 14, 2014. Present were counsel for Plaintiff, Jonathan S. Altman, counsel for Defendant Ernest McKnight, Willie B. Heyward, and Defendant Ernest McKnight (hereinafter "Defendant McKnight"). From the testimony and evidence, I find and conclude as follows:

**Findings of Fact and Conclusions of Law**

- 
1. The Lis Pendens, Summons, and Complaint were filed on January 12, 2010.
  2. Defendant McKnight filed an Answer and Counterclaim asserting claims for Adverse Possession, Foreclosure of Mortgage, and Reimbursement of Taxes on March 18, 2010.
  3. A Consent Order dismissing Defendant McKnight's counterclaim for Adverse Possession and preserving Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes was filed on August 2, 2010.
  4. An Order granting Plaintiff's Motion for Summary Judgment as to all Defendants except Defendant McKnight was issued on April 21, 2011. This Order quieted title to the subject property and preserved Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes as the sole pending claims in this action.
  5. The real property (hereinafter the "property") which is the subject of this action is situated in Charleston County, South Carolina, more particularly described as follows:

6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

6. Plaintiff acquired the property by deed of conveyance from John Wright dated August 3, 2010 and recorded in the RMC Office for Charleston County on August 6, 2010 in Deed Book 0137, at Page 112.

7. On September 25, 2003, Plaintiff's predecessor in title, John Wright, and Anna Michelle Porcher, and Harold L. Wright executed a Note to Defendant McKnight in the amount of Six Thousand One Hundred Eighty-Seven Dollars and 52/100 Cents (\$6,187.52). Said Note was secured by a Mortgage on the 9.5 acres shown on a plat by George D. Sample entitled "Plat of Lands of Ned Wright Estate dated June 8, 1981 and recorded in Plat Book AU, Page 9, RMC Office for Charleston County." Plaintiff's property comprises seventy-three percent (73%) of the original 9.5 acre tract secured by the mortgage held by Defendant McKnight.

gem  
8. At the trial of this case, the parties stipulated that the full balance of the Note remained outstanding. This Note was to bear interest at the rate of eight percent (8%) per annum. The parties further agreed that the total amount due under said Note as of the date of trial was Eleven Thousand Six Hundred Thirty-Two Dollars and 54/100 Cents (\$11,632.54). Seventy-three percent (73%) of this sum is Eight Thousand Four Hundred Ninety-One Dollars and 76/100 cents (\$8,491.76) which represents the amount due to Defendant McKnight from Plaintiff under the Note.

9. In addition to his counterclaim for Foreclosure of Mortgage, Defendant McKnight sought reimbursement for payment of real property taxes as to parcel number 245-00-00-026. Said parcel comprises the entire 9.5 acres referenced herein.

10. At the trial, Defendant McKnight produced two (2) checks in the respective amounts of One Thousand Eight Hundred Fifty-Five Dollars and 93/100 Cents (\$1,855.93) and One Thousand Five Hundred Ninety-Seven Dollars and 54/100 Cents (\$1,597.54) which Defendant

McKnight maintained represented payment of real property taxes for tax years 2008 and 2009. Said amounts were consistent with the property tax records for Charleston County for parcel number 245-00-00-026. Plaintiff's counsel stipulated that said checks represented the payment of real property taxes for this parcel. These two (2) payments total Three Thousand Four Hundred Fifty-Three Dollars and 47/100 Cents (\$3,453.47). Plaintiff is responsible for seventy-three percent (73%) of this sum or Two Thousand Five Hundred Twenty-One Dollars and 04/100 Cents (\$2,521.04).

11. The parties further stipulated that Defendant McKnight also attempted to pay real property taxes for tax year 2013 in the amount of \$1,633.47. Plaintiff's counsel is holding said sum in trust as said payment had previously been made by Plaintiff. Plaintiff stipulated that said sum would be reimbursed to Defendant McKnight.

IT IS THEREFORE ORDERED THAT the property described herein, as set forth in the lis pendens is vested in the name of Eugene Gathers; and

IT IS FURTHER ORDERED THAT the following sums are due to Defendant McKnight from Plaintiff under his counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes:

- a. \$8,491.76 due under the Note;
- b. \$2,521.04 for reimbursement of taxes; and
- c. \$1,633.47 for tax year 2013.

Total: \$12,646.27

Upon payment of this sum, either to Defendant McKnight or to the Clerk of Court, if Defendant McKnight refuses to accept said payment, Defendant McKnight's Mortgage shall be satisfied of record as to Plaintiff's parcel.

IT IS FURTHER ORDERED THAT the title to the property, more particularly described below, is hereby quieted in the name of Eugene Gathers who is the owner of one hundred percent (100%) undivided interest in fee simple with all rights, title, and interest therein:

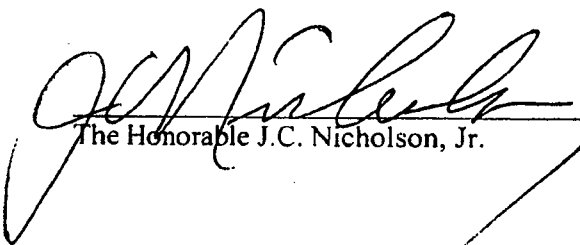
6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

IT IS FURTHER ORDERED THAT Plaintiff's interest in the subject property shall be to the exclusion of any other party claiming any right, title, or interest therein.

IT IS SO ORDERED this 29 day of DEC., 2024.

  
The Honorable J.C. Nicholson, Jr.

# **EXHIBIT B**

# The South Carolina Court of Appeals

Eugene Gathers, Respondent,

v.

Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, along with John Doe or Mary Roe, fictitious names to designate minors, infants, person of unsound mind, under disability or incompetent. Person in prison, persons in the military service within meaning of Title 50, United States Code, commonly referred to as The Soldiers and Sailors Civil Service Act of 1940, if any, and Richard Roe and Sarah Roe, fictitious names to designate the unknown heirs, devisees, distributees, issue, executors, administrators, successors or assigns of Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, and Henry Wright, Jr., also all other unknown person claiming any right, title, estate of lien upon the real estate which is the subject of this action, Defendants,

of whom Ernest McKnight is the Appellant.

Appellate Case No. 2015-000471

The Honorable J. C. Nicholson, Jr.  
Charleston County  
Trial Court Case No. 2010cp1000250

FILED  
2015 MAR 26 PM 12:02  
JULIE J. ARMSTRONG  
CLERK OF COURT

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ORDER

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The notice of appeal in this case was not timely served pursuant to Rule 203(b)(1), SCACR. The notice of appeal was served one day late. The Court cannot extend the time for serving the notice of appeal. Rule 263(b), SCACR. Accordingly, the appeal is dismissed.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

**FILED**

3-6-15 AS

cc:

Willie Bruce Heyward, Esquire  
Jonathan Scott Altman, Esquire

# **EXHIBIT C**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-4071

Ernest McKnight

Eugene D. Gathers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Defendant's Motion to Dismiss filed on August 28, 2015 and was argued before this Court on November 12, 2015. Upon review, Defendant's Motion is granted pursuant to the doctrine of *res judicata*.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                                     | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                                                                                              |                                          | \$                                                       |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117  
Judge Code

1/21/16  
Date

95)

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

Ernest McKnight, )  
Plaintiff, )  
v. )

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
Members Civil Relief Act of 2003, )  
Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

**ANSWER OF DEFENDANT  
EUGENE D. GATHERS**

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Defendant Eugene D. Gathers (hereinafter "Defendant Gathers"), answering the Complaint of Plaintiff Ernest McKnight (hereinafter "Plaintiff") and reserving his right to assert affirmative defenses and counterclaims upon the Court's hearing of Defendant Gathers' Motion to Dismiss filed herewith, respectfully states as follows:

1. Defendant Gathers denies each and every allegation of the Complaint not specifically admitted herein.
2. Defendant Gathers admits the allegations of paragraphs 1 and 2.
3. Paragraph 3 sets forth a legal conclusion to which no response is required. In the event that a response is required, said allegations are denied.
4. Paragraphs 4, 5, and 6 require no response from Defendant Gathers. In the event that a response is required, said allegations are denied.
5. Paragraphs 7 and 8 set forth legal conclusions to which no responses are required. In the event that responses are required, said allegations are denied.
6. With regard to the allegations of paragraph 9, Defendant Gathers admits matters of public record. All other allegations contained therein are denied.
7. Paragraph 10 requires no response from Defendant Gathers. In the event that a response is required, said allegations are denied.
8. Defendant Gathers denies the allegations of paragraph 11 and makes specific reference to the Honorable J.C. Nicholson, Jr.'s Order of December 29, 2014 awarding Plaintiff the sum of \$12,646.27 relative to a purported mortgage. Upon information and belief, this sum has been

paid to Plaintiff by Defendant Gathers through the Charleston County Clerk of Court in accordance with said Order.

9. With regard to the allegations of paragraph 12, Defendant Gathers admits matters of public record. All other allegations contained therein are denied.

10. Defendant Gathers admits the allegations of paragraph 13.

11. Defendant Gathers denies the allegations of paragraph 14.

12. Defendant Gathers admits so much of paragraph 15 that alleges that Defendant Gathers was substituted for Plaintiff John Wright in the action originally captioned John Wright v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, Case No. 2010-CP-10-00250. Defendant Gathers denies the remaining allegations of paragraph 15 and makes specific reference to Judge Nicholson's Order for its specific terms and import.

13. Defendant Gathers admits the allegations of paragraph 16 in so much that they are consistent with prior filings. All remaining allegations of paragraph 16 are denied.

14. Paragraph 17 sets forth a legal conclusion to which no response is required. Defendant Gathers refers Plaintiff to the orders issued in the prior cases for their specific terms and import. In the event that a response is required, said allegations are denied.

15. Defendant Gathers denies the allegations of paragraph 18.

16. Defendant Gathers is without specific information as to the allegations of paragraphs 19, 20, 21, and 22 and, therefore, denies the same.

17. Upon information and belief, Defendant Gathers admits the allegations of paragraph 23.

18. Defendant Gathers denies the allegations of paragraph 24 and notes that Plaintiff's Complaint contains two paragraphs designated as number 24.

19. With regard to paragraph 25, Defendant Gathers admits matters of public record with regard to filings made in the prior related actions. Defendant Gathers denies all allegations inconsistent therewith.

20. Defendant Gathers denies the allegations of paragraph 26.

21. Defendant Gathers is without information or belief as to the allegations of paragraphs 27 and 28 and, therefore, denies the same.

WHEREFORE, having fully answered the Complaint, Defendant Gathers respectfully requests that:

- A) This case be dismissed pursuant to Rule 12(b)(5) and 12(b)(6) of the South Carolina Rules of Civil Procedure;
- B) That an Order be issued that Plaintiff's filing of this action constitutes a violation of South Carolina's Frivolous Civil Proceedings Act (S.C. Code Ann. § 15-36-10, et seq.);
- C) That Defendant Gathers be awarded attorneys' fees and costs pursuant to the South Carolina Frivolous Civil Proceedings Act; and
- D) That an Order be issued barring Plaintiff and Plaintiff's counsel from filing additional frivolous actions relative to matters previously litigated.

August 23 2016



Jonathan S. Altman, Esq.  
DERFNER & ALTMAN, LLC  
575 King Street, Suite B  
Charleston, SC 29403

*Attorney for Defendant Eugene D. Gathers*

# D · & · A

DERFNER  
& ALTMAN

August 23, 2016

Charleston County Clerk of Court  
100 Broad Street  
Charleston, SC 29401

RE: Ernest McKnight v. Anna Michelle Porcher, et al.  
Case No.: 2016-CP-10-03504

Dear Madam Clerk:

Please find enclosed an original and one copy of the following relative to the above referenced case:

1. Defendant Eugene Gathers' Answer;
2. Motion Cover Sheet;
3. Defendant Eugene D. Gathers' Motion to Dismiss; and
4. My firm's check in the amount of \$25.00 relative to the filing fee for said motion.

Please file the originals and return clocked-in copies to me in the enclosed self-addressed stamped envelope. Please contact me if you have any questions regarding the above.

Yours Very Truly,

DERFNER & ALTMAN, LLC



Jonathan S. Altman

JSA/rs

Enclosures

ARMAND DERFNER | SAMUEL H. ALTMAN | JONATHAN S. ALTMAN

843.723.9804 (PHONE) | 843.723.7446 (FAX) | 575 KING STREET | SUITE B | CHARLESTON, S.C. 29403 | WWW.DERFNERALTMAN.COM

100

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

Ernest McKnight, )  
Plaintiff, )  
v. )

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
Members Civil Relief Act of 2003, )  
Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

**DEFENDANT ANNA MICHELLE PORCHER'S  
MOTION TO DISMISS PLAINTIFF'S COMPLAINT  
PURSUANT TO SCRPC RULE 12(b)(5) & 12(b)(6)**

FILED  
2016 JUL 21 PM 3:50  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Defendant Anna Michelle Porcher (hereinafter "Defendant Porcher") moves for the dismissal of Plaintiff's Complaint herein pursuant to Rule 12 (b)(5) and 12 (b)(6), SCRPC in that, for reasons including those set forth below, Plaintiff has failed to state facts sufficient to constitute a cause of action in accordance with South Carolina Rules of Civil Procedure. The basis for Defendant Porcher's motion includes the following:

A. Res Judicata. The matters at issue were the subject of the two (2) following prior cases between the parties: 1) Eugene Gathers v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, et al., Case No. 2010-CP-10-00250 (hereinafter "Case #1") and 2) Ernest McKnight v. Eugene D. Gathers, Estate of Ned Wright, Estate of Hattie Gasden, Anna Michelle Porcher, Edward Wright, Estate of Samuel Wright, James Wright, Estate of Earline Wright Maxwell, Ida Wright, Estate Wilminia Wright, Henry Wright, Jr., Estate of Henry Wright, Estate of Ernestine Wright, Estate of Samuel Wright, Edward Wright, Estate of James Wright, Estate of Oscar Wright, Martha Wright, Estate of Leroy Wright, Estate of Edward Wright, Estate of Harold Wright, Estate of Charles Wright, Jr., Estate of Hattie Wright Gaston a/k/a Hattie Wright Gadsden, Estate of Earline Wright, Estate of Annie Wright, Walter Nathaniel Porcher, III, Keisha Kenyatta Porcher, et al., Case No.: 2015-CP-10-04071 (hereinafter "Case #2"). A trial in Case #1 was held on November 14, 2014 and resulted in the issuance of an Order by the Honorable J.C. Nicholson, Jr. dated December 29, 2014, a

copy of which is attached hereto as Exhibit A. An Order dismissing Plaintiff's appeal from Judge Nicholson's Order in Case #1 is attached hereto as Exhibit B.

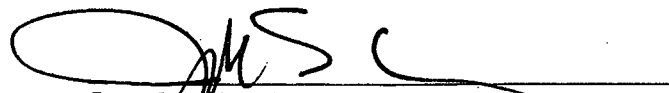
On July 21, 2015, Plaintiff filed a Complaint in Case #2 in which Plaintiff attempted to relitigate the matters that were the subject of Case #1. On January 21, 2016, Judge Nicholson issued an Order granting Defendant Eugene Gathers' Motion to Dismiss pursuant to the doctrine of *res judicata*. A copy of Judge Nicholson's Form 4 Order is attached hereto as Exhibit C.

It is well settled that *res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between the same parties, Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E. 2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 537, 520 S.E. 2d 817 (Ct. of App. 1999). The facts alleged in this case are indistinguishable from the matters at issue in the prior two (2) cases. Under the doctrine of *res judicata*, Plaintiff's Complaint in this case must be dismissed.

B. Collateral Estoppel. When an issue of fact or law is litigated and determined by a valid and final judgment, the determination is conclusive and a subsequent action between the parties, whether on the same or different claim, McKnaughton-McKay Elec. Co. of NC v. Andrich, 324 S.C. 275, 482 S.E. 2d 564 (Ct. of App. 1996). Collateral Estoppel bars the relitigation of issues that were litigated and necessary to the outcome of the prior lawsuits and mandates the dismissal of this action.

For the foregoing reasons, Defendant Porcher respectfully requests that this case be dismissed with prejudice and an Order be issued barring Plaintiff and Plaintiff's counsel from filing additional frivolous actions relative to the matters previously litigated.

July 21, 2016

A handwritten signature in black ink, appearing to read 'JSA', is written over a horizontal line.

Jonathan S. Altman, Esq.  
DERPNER & ALTMAN, LLC  
575 King Street, Suite B  
Charleston, SC 29403

*Attorney for Defendant Anna Michelle Porcher*

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-00250

Eugene Gathers, )  
Plaintiff, )  
vs. )

Ned Wright, Hattie Wright Gaston, )  
Annie M. Wright, Edward Wright, )  
Samuel Wright, James Wright, )  
Earline Wright Maxwell, Wilmenia )  
Wright, Henry Wright, Oscar Wright, )  
Leroy Wright, Harold Wright, )  
Charles Wright, Samuel Wright, Jr., )  
Ernestine Wright, Henry Wright, Jr., )  
Ernest McKnight, along with John )  
Doe or Mary Roe, fictitious names to )  
designate minors, infants, persons of )  
unsound mind, under disability or )  
incompetent, persons in prison, )  
persons in the military service within )  
meaning of Title 50, United States )  
Code, commonly referred to as The )  
Soldiers and Sailors Civil Service Act )  
of 1940, if any, and Richard Roe and )  
Sarah Roe, fictitious names to )  
designate the unknown heirs, )  
devisees, distributees, issue, )  
executors, administrators, successors )  
or assigns of Ned Wright, Hattie )  
Wright Gaston, Annie M. Wright, )  
Edward Wright, Samuel Wright, )  
James Wright, Earline Wright, )  
Wilmenia Wright, Henry Wright, )  
Oscar Wright, Leroy Wright, Harold )  
Wright, Charles Wright, Samuel )  
Wright, Jr., Ernestine Wright, and )  
Henry Wright, Jr., also all other )  
unknown persons claiming any right, )  
title, estate or lien upon the real estate )  
which is the subject of this action, )  
Defendants. )

ORDER

FILED  
2014 DEC 30 PM 02:24  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED  
2015 JAN -6 PM 1:57  
JULIE J. ARMSTRONG  
CLERK OF COURT

The trial of the above captioned matter was held on November 14, 2014. Present were counsel for Plaintiff, Jonathan S. Altman, counsel for Defendant Ernest McKnight, Willie B. Heyward, and Defendant Ernest McKnight (hereinafter "Defendant McKnight"). From the testimony and evidence, I find and conclude as follows:

**Findings of Fact and Conclusions of Law**

- 
1. The Lis Pendens, Summons, and Complaint were filed on January 12, 2010.
  2. Defendant McKnight filed an Answer and Counterclaim asserting claims for Adverse Possession, Foreclosure of Mortgage, and Reimbursement of Taxes on March 18, 2010.
  3. A Consent Order dismissing Defendant McKnight's counterclaim for Adverse Possession and preserving Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes was filed on August 2, 2010.
  4. An Order granting Plaintiff's Motion for Summary Judgment as to all Defendants except Defendant McKnight was issued on April 21, 2011. This Order quieted title to the subject property and preserved Defendant McKnight's counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes as the sole pending claims in this action.
  5. The real property (hereinafter the "property") which is the subject of this action is situated in Charleston County, South Carolina, more particularly described as follows:

6.94 Acres on the southside of U.S. Hwy 17 in the Rantowles area of Paul's Parish, Charleston County, S.C., and designated as per "Plat of lands of Ned Wright..." by George D. Sample, P.E. and L.S., depicting 9.5 Acres dated June 8, 1981, and recorded in Plat Book AU, Page 9, RMC Office for Charleston County.

SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

6. Plaintiff acquired the property by deed of conveyance from John Wright dated August 3, 2010 and recorded in the RMC Office for Charleston County on August 6, 2010 in Deed Book 0137, at Page 112.

7. On September 25, 2003, Plaintiff's predecessor in title, John Wright, and Anna Michelle Porcher, and Harold L. Wright executed a Note to Defendant McKnight in the amount of Six Thousand One Hundred Eighty-Seven Dollars and 52/100 Cents (\$6,187.52). Said Note was secured by a Mortgage on the 9.5 acres shown on a plat by George D. Sample entitled "Plat of Lands of Ned Wright Estate dated June 8, 1981 and recorded in Plat Book AU, Page 9, RMC Office for Charleston County." Plaintiff's property comprises seventy-three percent (73%) of the original 9.5 acre tract secured by the mortgage held by Defendant McKnight.

gm  
8. At the trial of this case, the parties stipulated that the full balance of the Note remained outstanding. This Note was to bear interest at the rate of eight percent (8%) per annum. The parties further agreed that the total amount due under said Note as of the date of trial was Eleven Thousand Six Hundred Thirty-Two Dollars and 54/100 Cents (\$11,632.54). Seventy-three percent (73%) of this sum is Eight Thousand Four Hundred Ninety-One Dollars and 76/100 cents (\$8,491.76) which represents the amount due to Defendant McKnight from Plaintiff under the Note.

9. In addition to his counterclaim for Foreclosure of Mortgage, Defendant McKnight sought reimbursement for payment of real property taxes as to parcel number 245-00-00-026. Said parcel comprises the entire 9.5 acres referenced herein.

10. At the trial, Defendant McKnight produced two (2) checks in the respective amounts of One Thousand Eight Hundred Fifty-Five Dollars and 93/100 Cents (\$1,855.93) and One Thousand Five Hundred Ninety-Seven Dollars and 54/100 Cents (\$1,597.54) which Defendant

McKnight maintained represented payment of real property taxes for tax years 2008 and 2009. Said amounts were consistent with the property tax records for Charleston County for parcel number 245-00-00-026. Plaintiff's counsel stipulated that said checks represented the payment of real property taxes for this parcel. These two (2) payments total Three Thousand Four Hundred Fifty-Three Dollars and 47/100 Cents (\$3,453.47). Plaintiff is responsible for seventy-three percent (73%) of this sum or Two Thousand Five Hundred Twenty-One Dollars and 04/100 Cents (\$2,521.04).

11. The parties further stipulated that Defendant McKnight also attempted to pay real property taxes for tax year 2013 in the amount of \$1,633.47. Plaintiff's counsel is holding said sum in trust as said payment had previously been made by Plaintiff. Plaintiff stipulated that said sum would be reimbursed to Defendant McKnight.

IT IS THEREFORE ORDERED THAT the property described herein, as set forth in the lis pendens is vested in the name of Eugene Gathers; and

IT IS FURTHER ORDERED THAT the following sums are due to Defendant McKnight from Plaintiff under his counterclaims for Foreclosure of Mortgage and Reimbursement of Taxes:

- a. \$8,491.76 due under the Note;
- b. \$2,521.04 for reimbursement of taxes; and
- c. \$1,633.47 for tax year 2013.

Total: \$12,646.27

Upon payment of this sum, either to Defendant McKnight or to the Clerk of Court, if Defendant McKnight refuses to accept said payment, Defendant McKnight's Mortgage shall be satisfied of record as to Plaintiff's parcel.

IT IS FURTHER ORDERED THAT the title to the property, more particularly described below, is hereby quieted in the name of Eugene Gathers who is the owner of one hundred percent (100%) undivided interest in fee simple with all rights, title, and interest therein:

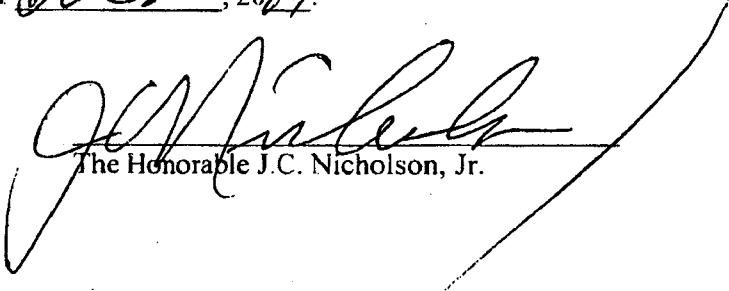
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SAVING AND EXCEPTING Lot 1 (.88 ac), Lot 2 (7ac), and Lot 3 (1.0 ac) all in the Northwest Moeity of said Tract previously conveyed.

Portion of TMS No. 245-00-00-026

IT IS FURTHER ORDERED THAT Plaintiff's interest in the subject property shall be to the exclusion of any other party claiming any right, title, or interest therein.

IT IS SO ORDERED this 29 day of DEC., 2024

  
The Honorable J.C. Nicholson, Jr.

## **EXHIBIT B**

# The South Carolina Court of Appeals

Eugene Gathers, Respondent,

v.

Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, along with John Doe or Mary Roe, fictitious names to designate minors, infants, person of unsound mind, under disability or incompetent. Person in prison, persons in the military service within meaning of Title 50, United States Code, commonly referred to as The Soldiers and Sailors Civil Service Act of 1940, if any, and Richard Roe and Sarah Roe, fictitious names to designate the unknown heirs, devisees, distributees, issue, executors, administrators, successors or assigns of Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, and Henry Wright, Jr., also all other unknown person claiming any right, title, estate of lien upon the real estate which is the subject of this action, Defendants,

of whom Ernest McKnight is the Appellant.

Appellate Case No. 2015-000471

The Honorable J. C. Nicholson, Jr.  
Charleston County  
Trial Court Case No. 2010cp1000250

FILED  
2015 MAR 26 PM 12:02  
JULIE J. ARMSTRONG  
CLERK OF COURT

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ORDER

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The notice of appeal in this case was not timely served pursuant to Rule 203(b)(1), SCACR. The notice of appeal was served one day late. The Court cannot extend the time for serving the notice of appeal. Rule 263(b), SCACR. Accordingly, the appeal is dismissed.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

**FILED**

3-6-15 AS

cc:

Willie Bruce Heyward, Esquire  
Jonathan Scott Altman, Esquire

# EXHIBIT C

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-4071

Ernest McKnight

Eugene D. Gathers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Defendant's Motion to Dismiss filed on August 28, 2015 and was argued before this Court on November 12, 2015. Upon review, Defendant's Motion is granted pursuant to the doctrine of *res judicata*.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                                     | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                                                                                              |                                          | \$                                                       |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117  
Judge Code

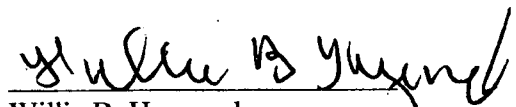
1/21/16  
Date

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | IN THE COURT OF COMMON PLEAS                                                                                         |
| COUNTY OF CHARLESTON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | NINTH JUDICIAL CIRCUIT                                                                                               |
| ERNEST MCKNIGHT<br>Plaintiff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | CASE NO: 2016-CP-10-03504                                                                                            |
| vs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                      |
| <p>ANNA MICHELLE PORCHER, EUGENE D, GATHERS, ESTATE OF NED WRIGHT, ESTATE OF HATTIE GASDEN, EDWARD WRIGHT, ESTATE OF SAMUEL WRIGHT, JAMES WRIGHT, ESTATE OF EARLINE WRIGHT MAXWELL, IDA WRIGHT, ESTATE OF WILEMINIA WRIGHT, HENRYWRIGHT, JR. ESTATE OF HENRYWRIGHT, ESTATE OF ERNESTINE WRIGHT, ESTATE OF SAMUEL WRIGHT, EDWARD WRIGHT, ESTATE OF JAMES WRIGHT, ESTATE OF OSCAR WRIGHT, MARTHA WRIGHT, ESTATE OF LEROY WRIGHT, ESTATE OF EDWARD WRIGHT, ESTATE OF HAROLD WRIGHT. ESTATE OF CHARLES WRIGHT, JR., ESTATE OF HATTIE WRIGHT GASTON, a/k/a, HATTIE WRIGHT GADSDEN,, ESTATE OF EARLINE WRIGHT, ESTATE OF ANNIE WRIGHT; WALTER NATHANIEL PORCHER, III., KEISHA KENYATTA PROCHER, and JOHN DOE and MARY ROE, fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as The Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and fictitious names representing unknown heirs, devisees, distributes, or personal representatives of any deceased persons.</p> <p>Defendants</p> | <p><b>MOTION TO RECONSIDER</b></p> <p>2017 FEB -9 PM 1:54<br/>JULIE J. ARMSTRONG<br/>CLERK OF COURT</p> <p>FILED</p> |

116)

TO THE PARTIES ABOVE NAMED; THE PLAINTIFF, ERNEST MCKNIGHT, YOU  
WILL PLEASE TAKE NOTICE that the undersigned attorney will move before this Honorable  
Court for reconsideration of an Order by the Honorable Kristi L. Harrington, dated January 19,  
2017 and filed January 23, 2017, pursuant to Rule 59(e), of the South Carolina Code of Civil  
Procedure.

I SO MOVE.

  
Willie B. Heyward  
Heirs Property Law Firm, LLC.  
27 Gamecock Ave, Ste. 200  
Charleston, SC 29407  
(843) 225-8754  
Attorney for Plaintiff, Ernest McKnight

February 9, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

Ernest McKnight, )  
Plaintiff, )  
v. )

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
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Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

**MEMORANDUM IN OPPOSITION OF  
PLAINTIFF'S MOTION TO RECONSIDER**

FILED  
2017 OCT 10 AM 10:34  
JULE J. ARMSTRONG  
CLERK OF COURT

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

### **Procedural Background**

On January 19, 2017, the Honorable Kristi L. Harrington granted Defendants' motions dismissing the above referenced case with prejudice and prohibiting Plaintiff from filing any future actions involving matters previously litigated. This order was filed on January 23, 2017. On February 9, 2017, Plaintiff filed a Motion to Reconsider. Plaintiff did not provide a copy of this motion to the judge within ten (10) days after the filing of the order as required by Rule 59(g). The record reflects that Plaintiff failed to satisfy the ten (10) day service requirement set forth in Rule 59(e).

### **Legal Standard**

The record reflects that Plaintiff failed to timely file his motion to reconsider in accordance with Rules 59(e) and 59 (g). Notwithstanding these deficiencies, Plaintiff's motion sets forth no basis for the reconsideration of the at-issue order. Rule 59(e) allows a party to seek an alteration or amendment of a previous order of the Court in three (3) situations: 1) to accommodate an intervening change in controlling law; 2) to account for new evidence not available at trial; or 3) to correct clear error of law or prevent manifest injustice. Mayfield v. National Association for Stock Car Auto Racing, 674 F.3d 369, 378 (4<sup>th</sup> Cir. 2012). It is the moving party's burden to establish one of these three (3) grounds in order to obtain relief under Rule 59 (e), Loren Data Corp. v. GXS Inc., 501 F. App'x 275, 285 (4<sup>th</sup> Cir. 2012).

The remedy afforded by Rule 59 (e), "*is an extraordinary remedy that should be applied sparingly.*" Mayfield, 674 F.3d at 378. Thus, Rule 59 (e) motions may not be used to re-litigate

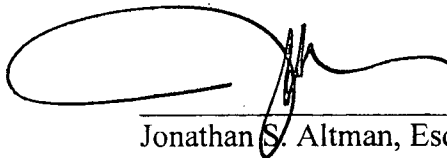
old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 (2008). Moreover, a parties' mere disagreement with the Court's interpretation of the law is not an appropriate ground for a Rule 59 (e) motion. *PCS Nitrogen, Inc. v. Ross Development Corp.*, 126 F. Supp. 3d 611, 639 (D.S.C. 2015).

### ANALYSIS

Plaintiff makes no effort to explain under which, if any, of the three (3) reasons for granting a Rule 59 (e) motion he proceeds. As Plaintiff has not met his burden to establish a right to Rule 59(e) relief, Defendants respectfully submit that Plaintiff's motion be denied.

Respectfully submitted,

October 10, 2017



Jonathan S. Altman, Esq.  
Derfner & Altman, LLC  
575 King Street, Suite B  
Charleston, SC 29403

*Attorney for Defendants Anna Porcher and  
Eugene D. Gathers*

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
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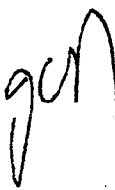
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gcm  
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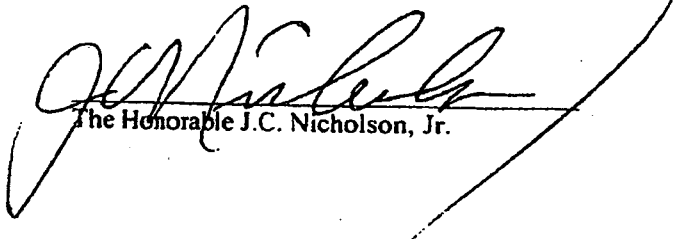
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Portion of TMS No. 245-00-00-026

IT IS FURTHER ORDERED THAT Plaintiff's interest in the subject property shall be to the exclusion of any other party claiming any right, title, or interest therein.

IT IS SO ORDERED this 29 day of DEC., 2014.

  
The Honorable J.C. Nicholson, Jr.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Eugene Gathers, Respondent,

v.

Ned Wright, Hattie Wright Gaston, Annie M. Wright,  
Edward Wright, Samuel Wright, James Wright, Earline  
Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar  
Wright, Leroy Wright, Harold Wright, Charles Wright,  
Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr.,  
Ernest McKnight, along with John Doe or Mary Roe,  
fictitious names to designate minors, infants, person  
of unsound mind, under disability or incompetent,  
persons in prison, persons in the military service within  
meaning of Title 50, United States Code, commonly  
referred to as The Soldiers and Sailors Civil Service Act  
of 1940, if any, and Richard Roe and Sarah Roe,  
fictitious names to designate the unknown heirs,  
devisees, distributees, issue, executors, administrators,  
successors or assigns of Ned Wright, Hattie Wright  
Gaston, Annie M. Wright, Edward Wright, Samuel  
Wright, James Wright, Earline Wright, Wilmenia Wright,  
Henry Wright, Oscar Wright, Leroy Wright, Harold  
Wright, Charles Wright, Samuel Wright, Jr., Ernestine  
Wright, and Henry Wright, Jr., also all other unknown  
persons claiming any right, title, estate of lien upon the  
real estate which is the subject of this action, Defendants,

Of whom Ernest McKnight is the Appellant.

Appellate Case No. 2012-212101

---

Appeal From Charleston County  
J.C. Nicholson, Jr., Circuit Court Judge

---

Unpublished Opinion No. 2014-UP-124  
Heard October 16, 2013 – Filed March 19, 2014

---

**DISMISSED IN PART AND VACATED IN PART**

---

Willie B. Heyward, of Heirs' Property Law Center, LLC,  
of Charleston, for Appellant.

Jonathan S. Altman, of Derfner, Altman & Wilborn,  
LLC, of Charleston, for Respondent.

---

**PER CURIAM:** This appeal arises from a property dispute. On appeal, Ernest McKnight argues the trial court erred by: (1) refusing to address the specific elements of his equitable counterclaims; (2) granting fee simple title by way of summary judgment to Eugene Gathers; and (3) finding McKnight has no statutory right of first refusal. We dismiss in part and vacate in part.

1. We find McKnight has no right to challenge the trial court's summary judgment order. A consent order of dismissal was entered wherein the parties agreed to dismiss McKnight's adverse possession counterclaim against Gathers's action to quiet title. McKnight's remaining counterclaims for reimbursement of taxes and foreclosure of mortgage were expressly unaffected by the order. Gathers filed a summary judgment motion against all defendants in the lawsuit, except McKnight; thus, McKnight was not a named party to the motion. The order granting Gathers's motion did not affect McKnight's counterclaims, so McKnight is not precluded from litigating his claims to the property. Accordingly, we find McKnight was not aggrieved by the trial court's granting of fee simple title to Gathers or the trial court's failure to address McKnight's counterclaims. Therefore, we dismiss the portion of McKnight's appeal raising these issues. *See* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."); *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) ("The word 'aggrieved' refers to a substantial grievance, a

127)

denial of some personal or property right, or the imposition on a party of a burden or obligation."); *Burns v. Gardner*, 328 S.C. 608, 617-18, 493 S.E.2d 356, 361 (Ct. App. 1997) (dismissing the portion of an appeal involving an issue raised in which the appellants were not aggrieved parties and thus could not pursue the issue on appeal).

2. Because McKnight was not a party to the summary judgment proceeding and did not file a motion to intervene, we find his Rule 59(e), SCRCP, motion was not properly before the trial court. In *Narruhn v. Alea London Limited*, 404 S.C. 337, 341-42, 745 S.E.2d 90, 92 (2013), our supreme court determined an insurer's Rule 60(b), SCRCP, motion was not properly before the circuit court because the insurer was not a party to the order from which it sought relief. Even though *Narruhn* involves a Rule 60(b) motion and this case involves a Rule 59(e) motion, we find *Narruhn* analogous to the facts in this case. Therefore, we vacate the portion of the trial court's Rule 59(e) order finding McKnight has no statutory right of first refusal.<sup>1</sup>

**DISMISSED IN PART AND VACATED IN PART.**

**FEW, C.J., and PIEPER and KONDUROS, JJ., concur.**

---

<sup>1</sup> In his appellate brief, McKnight requests leave from this court to file a Rule 60(b), SCRCP, motion with the trial court. Because McKnight was not a party to the summary judgment motion, we deny McKnight's request. See Rule 60(b), SCRCP ("During the pendency of an appeal, leave to make [a Rule 60(b)] motion must be obtained from the appellate court."); *Narruhn*, 404 S.C. at 341-42, 745 S.E.2d at 92 (finding an insurer's Rule 60(b), SCRCP, motion was not properly before the circuit court because the insurer was not a party to the order from which it sought relief).

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Ernest McKnight,

Plaintiff,

v.

Anna Michelle Porcher, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-10-03504

MOTION AND ORDER INFORMATION

FORM AND COVER SHEET

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                     |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------|--|
| Attorney for Defendant Anna Michelle Porcher:<br>Jonathan S. Altman<br>Derfner & Altman, LLC<br>575 King Street, Suite B<br>Charleston, SC 29403                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | SC BAR # 65400<br>Phone: (843) 723-9804<br>Fax: (843) 723-7446<br>E-Mail: jaltman@derfneraltman.com |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete <b>SECTIONS I and III</b> )<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete <b>SECTIONS II and III</b> )<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete <b>SECTIONS II and III</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                     |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                     |  |
| Nature of Motion: Motion to Dismiss<br>Estimated Time Needed: 15 minutes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO        |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                     |  |
| <input type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                     |  |
| Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | Date submitted                                                                                      |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                     |  |
| <input checked="" type="checkbox"/> <b>PAID – AMOUNT: \$25.00</b><br><input type="checkbox"/> <b>EXEMPT:</b> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br>(check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input checked="" type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter:<br><input type="checkbox"/> Other: |  |                                                                                                     |  |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                     |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | JUDGE _____<br>CODE: _____ Date: _____                                                              |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                                                                                                     |  |
| Collected by: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | Date Filed: _____                                                                                   |  |

☐ MOTION FEE COLLECTED: \_\_\_\_\_  
☐ CONTESTED – AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
2016-CP-10-03504

Ernest McKnight, )  
Plaintiff, )  
v. )

Anna Michelle Porcher, Eugene D. )  
Gathers, Estate of Ned Wright, )  
Estate of Hattie Gasden, Edward )  
Wright, Estate of Samuel Wright, )  
James Wright, Estate of Earline )  
Wright Maxwell, Ida Wright, Estate )  
of Wileminia Wright, Henry Wright, )  
Jr., Estate of Henry Wright, Estate of )  
Ernestine Wright, Estate of Samuel )  
Wright, Edward Wright, Estate of )  
James Wright, Estate of Oscar )  
Wright, Martha Wright, Estate of )  
Leroy Wright, Estate of Edward )  
Wright, Estate of Harold Wright, )  
Estate of Charles Wright, Jr., Estate )  
Of Hattie Wright Gaston a/k/a )  
Hattie Wright Gadsden, Estate of )  
Earline Wright, Estate of Annie )  
Wright, Walter Nathaniel Porcher, )  
III, Keisha Kenyatta Porcher, and )  
John Doe and Mary Roe, fictitious )  
Names representing unknown )  
minors, incompetents, persons in the )  
military service within the meaning )  
of Title 50, United States Code, )  
commonly referred to as The Service )  
Members Civil Relief Act of 2003, )  
Persons imprisoned, and persons )  
under any other legal disability and )  
fictitious names representing )  
unknown heirs, devisees, distributes, )

ORDER

FILED  
2017 JAN 23 PM 3:01  
CLERK OF COURT

or personal representatives of any )  
deceased persons, )  
 )  
Defendants. )  
\_\_\_\_\_ )

This matter came before the Court on Defendants Anna Michelle Porcher (hereinafter "Porcher") and Eugene D. Gathers' (hereinafter "Gathers") (hereinafter collectively referred to as "Defendants") Motions to Dismiss. In addition to said motions, a Memorandum in Support was filed by Defendants.

The matters at issue in this case have been the subject of two (2) prior actions involving the litigants. The first of these cases was filed on January 12, 2010 when John Wright, Gathers' predecessor in title, filed a suit to quiet title in the case captioned Eugene Gathers v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, et al., Case No. 2010-CP-10-00250 (hereinafter "Case #1"). The real property which was the subject of Case #1 is also the real property which is the subject of the current case. In Case #1, McKnight, the Plaintiff in the present action, filed an Answer and Counterclaim and asserted claims for adverse possession, foreclosure of mortgage, and reimbursement of taxes. McKnight's claim for adverse possession was dismissed by Consent Order. McKnight's counterclaims for foreclosure of mortgage and reimbursement of taxes were preserved. On November 14, 2014, the case was tried before the Honorable J.C. Nicholson, Jr. On December 29, 2014, Judge Nicholson issued an order quieting the title to the property in

the name of Gathers and found that Gathers owed McKnight the sum of \$12,646.27. McKnight appealed Judge Nicholson's Order. His appeal was subsequently dismissed.

On July 21, 2015, McKnight filed a Complaint in Ernest McKnight v. Eugene D. Gathers, Estate of Ned Wright, Estate of Hattie Gasden, Anna Michelle Porcher, Edward Wright, Estate of Samuel Wright, James Wright, Estate of Earline Wright Maxwell, Ida Wright, Estate Wilminia Wright, Henry Wright, Jr., Estate of Henry Wright, Estate of Ernestine Wright, Estate of Samuel Wright, Edward Wright, Estate of James Wright, Estate of Oscar Wright, Martha Wright, Estate of Leroy Wright, Estate of Edward Wright, Estate of Harold Wright, Estate of Charles Wright, Jr., Estate of Hattie Wright Gaston a/k/a Hattie Wright Gadsden, Estate of Earline Wright, Estate of Annie Wright, Walter Nathaniel Porcher, III, Keisha Kenyatta Porcher, et al., Case No.: 2015-CP-10-04071 (hereinafter "Case #2"). In Case #2, McKnight sought to re-litigate the issues determined in Case #1 and sought the following relief in his prayer:

- A. *That the deed conveying a portion of the subject property to Eugene Gathers pursuant to the prior quiet title action entitled "John Wright v. Ned Wright, et al., Case No. 2010-CP-10-00250", be set aside because of the fraudulent assertions of the Defendant Eugene Gathers;*
- B. *That the Court determine the lawful heirs of the deceased title-holder Ned Wright and their respective interest in the subject property;*
- C. *That Plaintiff be awarded attorney fees and costs for the prosecution of this action;*
- D. *That the Plaintiff has suffered damages as a result of the fraudulent actions of the Defendant, Eugene Gathers, to include divestment of his interest in the*

*subject property, lost of the value of betterements and the lost of his statutory right of first refusal; and*

*E. And for any other relief that the Court may deem just and proper.*

On January 21, 2016, Judge Nicholson issued an Order dismissing Case #2 and cited the doctrine of *res judicata*.

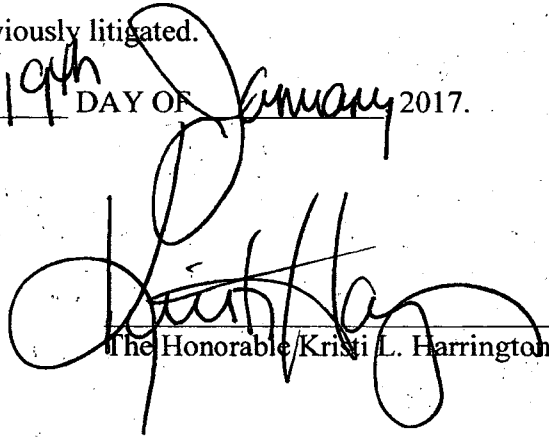
On July 7, 2016, McKnight filed the Complaint in the present case (hereinafter "Case #3"). McKnight's claims in Case #3 arise out of the same occurrences that were the subjects of Case #1 and Case #2 and involve the identical parties. McKnight's prayer for relief in Case #3 is identical to his prayer in Case #2:

- A. That the deed conveying a portion of the subject property to Eugene Gathers pursuant to the prior quiet title action entitled "John Wright v. Ned Wright, et al., Case No. 2010-CP-10-00250", be set aside because of the fraudulent assertions of the Defendant Eugene Gathers;*
- B. That the Court determine the lawful heirs of the deceased title-holder Ned Wright and their respective interest in the subject property;*
- C. That Plaintiff be awarded attorney fees and costs for the prosecution of this action;*
- D. That the Plaintiff has suffered damages as a result of the fraudulent actions of the Defendant, Eugene Gathers, to include divestment of his interest in the subject property, lost of the value of betterements and the lost of his statutory right of first refusal; and*
- E. And for any other relief that the Court may deem just and proper.*

McKnight's latest action is barred by the doctrine of *res judicata*. See Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E. 2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 537, 520 S.E. 2d 817 (Ct. of App. 1999). When an issue of fact or law is litigated and determined by a valid and final judgment, the determination is conclusive and a subsequent action between the parties, whether on the same or different claim is barred under the doctrine of collateral estoppel. See McKnaughton-McKay Elec. Co. of NC v. Andrich, 324 S.C. 275, 482 S.E. 2d 564 (Ct. of App. 1996). McKnight is prohibited from re-litigating these issues and any attempt to do so is not only frivolous, but unduly burdensome, to the parties and the Court.

For the foregoing reasons, Defendants' motions to dismiss are hereby granted. This case is hereby dismissed with prejudice and McKnight is prohibited from filing any future actions involving matters previously litigated.

IT IS SO ORDERED THIS 19th DAY OF January 2017.

  
The Honorable Kristi L. Harrington

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-10-3504

Ernest McKnight

Anna Michelle Porcher, Eugene Gathers, et al.

PLAINTIFF(S)

2017 JAN -9 PM12:01

DEFENDANT(S)

Submitted by:

JULIE J. ARMSTRONG  
CLERK OF COURT

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendant Anna Porcher's Motion to Dismiss is granted. Defendant Eugene Gathers's Motion to Dismiss is granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
|                                              |                                          | \$                                                          |
|                                              |                                          | \$                                                          |
|                                              |                                          | \$                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

136)

Circuit Court Judge

2151  
Judge Code

1/5/2017  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class, or  
placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or  
to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON  
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

(137)

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-10-3504

Ernest McKnight

Anna Michelle Porcher, Eugene Gathers, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendant Anna Porcher's Motion to Dismiss is granted. Defendant Eugene Gathers's Motion to Dismiss is granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.  
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2151

Judge Code

1/5/2017

Date

1

2 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
3 COUNTY OF BERKELEY ) CASE NO. 2016-CP-10-3504

4

5 EARNEST MCKNIGHT, )  
6 Plaintiff, ) Transcript of Record  
7 vs. )  
8 ANNA MICHELLE PORCHER, ) Date: January 5, 2017  
9 Defendant. )

10 \* \* \* \* \*

11

12

B E F O R E:

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The Honorable Kristi Harrington

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21 \* \* \* \* \*

22

23 Denise J. Lauder, RPR

24 Ninth Judicial Circuit

25

## A P P E A R A N C E S

REPRESENTING THE DEFENDANT:

JONATHAN ALTMAN, ESQUIRE  
575 King Street, Suite B  
Charleston, SC 29403

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| Proceedings.....            | 4  |
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INDEX OF EXHIBITS

(No exhibits were offered or  
marked for identification.)

1 (The following proceedings were had  
2 January 5, 2017, Berkeley County Common Pleas  
3 Court, 12:49 p.m.)

4 MR. ALTMAN: Thank you, Your Honor.  
5 John Altman here on behalf of two defendants, Anna  
6 Michelle Porcher and Eugene Gathers, who are both  
7 defendants in this case. Prior to setting forth my  
8 argument --

9 THE COURT: Where is Mr. Heyward? I  
10 don't want to start without him.

11 MR. ALTMAN: I don't want to start  
12 without Mr. Heyward either. I do have a notice of  
13 hearing. I know he would get notice from the  
14 clerk's office. I've had some issues with  
15 Mr. Heyward not appearing for hearings before.

16 THE COURT: All right. I'm going to  
17 give -- because traffic has been a nightmare, I'm  
18 going to give -- because you're asking me to  
19 dismiss these cases, correct?

20 MR. ALTMAN: Correct.

21 THE COURT: I will give him a few more  
22 minutes.

23 MR. ALTMAN: Absolutely.

24 And I do have a notice of hearing that  
25 I personally directed --

1 THE COURT: I understand.

2 MR. ALTMAN: -- that we can include in  
3 the record. However much time you'd like to  
4 give --

5 THE COURT: You're asking me for  
6 extreme remedy.

7 (A recess transpired.)

8 MR. ALTMAN: My clients are Defendants  
9 Anna Michelle Porcher and Eugene Gathers. I had  
10 previously forwarded plaintiff's counsel, Willie  
11 Heyward, notice of today's hearing reflecting the  
12 courtroom and the time and the date. And I'm happy  
13 to hand that up and include that notice in the  
14 record as Mr. Heyward is not present today.

15 In addition, I had provided the Court a  
16 memorandum in support of the defendants' motion.  
17 That memorandum was e-mailed to Mr. Heyward  
18 yesterday.

19 These parties have a lengthy history;  
20 this is the third case in which they've been  
21 parties in the last seven years. The original case  
22 was actually brought by Mr. Gathers' predecessor  
23 entitled his father, John Wright. It's a 2010 case  
24 that's referenced in the memorandum.

25 Mr. McKnight was named as a defendant

1 in that case. That case was a suit to quiet title  
2 involving some property on James Island. Mr.  
3 McKnight was named as a defendant in that case  
4 because he held a mortgage of about \$7,000 on that  
5 property.

6 He had lent the family some money many,  
7 many years ago to address some delinquent property  
8 taxes, so he was named by virtue of that. In  
9 response, Mr. McKnight, by and through Mr. Heyward,  
10 filed an answer and counterclaim in that action  
11 seeking to foreclose his mortgage, asking for  
12 reimbursement of the monies that he had paid for  
13 the taxes, but also claiming ownership of the  
14 property at issue and asserted a claim for adverse  
15 possession.

16 The defendants moved to dismiss that  
17 counter-claim relative to adverse possession since  
18 he was claimed to be a creditor and owner at the  
19 same time. That claim was dismissed.

20 The suit to quiet title was handled  
21 accordingly with title being vested in Mr. Gathers,  
22 leaving the only remaining issue the amount due and  
23 owing to Mr. McKnight on his mortgage.

24 That case was tried before Judge  
25 Nicholson and a copy of Judge Nicholson's order is

1 include in the memorandum in which Judge Nicholson  
2 determined that Mr. Gathers owed a certain amount  
3 of money, about \$12,000, to Mr. McKnight; and that  
4 resolved that case in full.

5 Mr. McKnight refused to accept the  
6 \$12,000 in payment to satisfy his mortgage. Judge  
7 Nicholson issued a supplemental order allowing  
8 Mr. McKnight -- allowing Mr. Gathers to pay that  
9 money to the clerk. And a copy of the check paying  
10 that sum to the clerk is included with the  
11 memorandum.

12 Today he has never -- Mr. McKnight has  
13 never retrieved that money from the clerk's office,  
14 rather he filed an appeal from that -- from the  
15 2010 case and Judge Nicholson's order, which was  
16 subsequently dismissed.

17 In response to that dismissal,  
18 Mr. McKnight filed a duplicative action, and that's  
19 a 2015 case that is included with your memorandum.

20 In that case, he reasserted the same  
21 allegations that he had raised in his answer and  
22 counterclaim, but also alleged that Judge Nicholson  
23 -- that there was fraud before the Court in that  
24 2010 trial.

25 A year ago -- almost a year ago to the

1 day, January 21st, Judge Nicholson issued an order  
2 dismissing Mr. McKnight's complaint in that case,  
3 the second action between the parties, on the  
4 grounds of res judicata. The same issues that are  
5 -- underlie the current motion.

6 And I have included the second  
7 complaint, or the complaint that Mr. McKnight filed  
8 in the second action because he asked for the  
9 identical word-for-word relief that he asked for in  
10 the present action.

11 It's the identical complaint, he's  
12 captioned it slightly differently, but it's the  
13 same case. He asked for the same thing in what is  
14 now the third case between the parties, the case  
15 that Judge Nicholson dismissed last January, by  
16 order.

17 This is -- this is a problem where  
18 you've got litigants relitigating the issues over  
19 and over and over again. These parties --  
20 Mr. Gathers lives in Illinois. This property has  
21 now been tied up for seven years because he's got a  
22 neighbor who wants to own it.

23 It's that simple: He wants his  
24 neighbor's property, and he won't let it go.  
25 Mr. Gathers has paid every cent that Mr. McKnight

1 is entitled to, and he won't let go of it.

2 At the last motion to dismiss, I asked  
3 Judge Nicholson for an order not only dismissing  
4 the complaints, but precluding Mr. McKnight from  
5 filing subsequent frivolous actions.

6 Unfortunately, Judge Nicholson, who dismissed the  
7 complaint, did by virtue of a Form 4 order saying,  
8 I dismiss it on the grounds of res judicata. He  
9 didn't restrict Mr. McKnight from filing another  
10 action:

11 He turned around and did the same thing  
12 again. And it's one thing for myself, as a lawyer,  
13 to have to come before the Court and make these  
14 arguments. It's incredibly frustrating to a  
15 nonlawyer to be subject to litigation over and over  
16 and over again in a foreign state, when all they're  
17 trying to do is essentially use the property they  
18 inherited from their father free and clear.

19 So the record before you is  
20 considerable. I probably have spoken too much in  
21 an abundance just to create a record in  
22 Mr. Heyward's absence, but it's time for this case  
23 and these parties to separate and it's time for  
24 this litigation to end.

25 My fear is that it won't; there will be

1 an appeal because that's the way this has gone.  
2 And that's all we can ask for today. And I will  
3 address that if need be. But I'm happy to provide  
4 you a proposed order; I can get it to you in  
5 several days.

6 THE COURT: Could you get that to me --  
7 I would prefer before the close of business today.  
8 Would you be able to do that?

9 MR. ALTMAN: My only issue, Your Honor,  
10 is I'm running in a leukemia marathon on Saturday  
11 and been a little busy. I'm leaving, literally,  
12 from this courtroom. I can have it to you by the  
13 end of the day on Monday if that's --

14 THE COURT: That is not my preference,  
15 but if that's the best that you can do --

16 MR. ALTMAN: Let me run back to the  
17 office. It would likely be similar to the order I  
18 submitted to Judge Nicholson.

19 THE COURT: Let's do it this way:  
20 E-mail Mr. Heyward, let him know that we had the  
21 hearing in his absence, attach your proposed order;  
22 make sure you copy my clerk, and I'll give you  
23 until close of business Tuesday. That will give  
24 him response time.

25 If for some reason he was in a car

1 wreck or -- whatever reason, he's not here. But  
2 then that way it'll give you time to get the order  
3 ready and him time to properly respond if he needs  
4 to. But, at this point, I am going to do a Form 4  
5 granting your motion to dismiss, formal order to  
6 follow.

7 MR. ALTMAN: That's perfect, Your  
8 Honor. I may be able to get it to you by noon on  
9 Monday.

10 THE COURT: I want you to contact --  
11 the only thing that I'm requiring you to do by  
12 close of business today is let Mr. Heyward know  
13 that I have ruled from the bench and the formal  
14 order will be to follow.

15 MR. ALTMAN: I will do that.

16 THE COURT: Thank you.

17 MR. ALTMAN: Thank you.

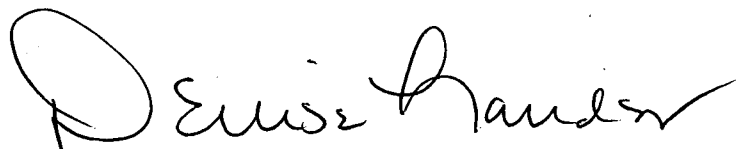
18 (These proceedings were concluded at  
19 1:06 p.m.)  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE OF REPORTER

2  
3 I, Carol Denise Lauder, Registered  
4 Professional Reporter and Notary Public for the  
5 State of South Carolina at Large, do hereby certify  
6 that the foregoing transcript is a true, accurate,  
7 and complete record.

8 I further certify that I am neither related  
9 to nor counsel for any party to the cause pending  
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my  
12 official seal this 1st day of September, 2018 at  
13 Charleston, Charleston County, South Carolina.  
14

15  
16   
17

18 Carol Denise Lauder  
19 Registered Professional  
20 Reporter, CP  
21 My Commission expires  
22 February 27, 2028  
23  
24  
25



## The South Carolina Court of Appeals

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April 04, 2014

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

### REMITTITUR

Re: Eugene Gathers v. Ned Wright  
Lower Court Case No. 2010CP1000250  
Appellate Case No. 2012-212101

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Willie Bruce Heyward, Esquire  
Jonathan Scott Altman, Esquire

151)

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Eugene Gathers, Respondent,

v.

Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, along with John Doe or Mary Roe, fictitious names to designate minors, infants, person of unsound mind, under disability or incompetent, persons in prison, persons in the military service within meaning of Title 50, United States Code, commonly referred to as The Soldiers and Sailors Civil Service Act of 1940, if any, and Richard Roe and Sarah Roe, fictitious names to designate the unknown heirs, devisees, distributees, issue, executors, administrators, successors or assigns of Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, and Henry Wright, Jr., also all other unknown persons claiming any right, title, estate of lien upon the real estate which is the subject of this action, Defendants,

Of whom Ernest McKnight is the Appellant.

Appellate Case No. 2012-212101

JULIE J. ARMSTRONG  
CLERK OF COURT

2014 APR - 7 PM 12: 36

FILED

Appeal From Charleston County  
J.C. Nicholson, Jr., Circuit Court Judge

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Unpublished Opinion No. 2014-UP-124  
Heard October 16, 2013 – Filed March 19, 2014

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**DISMISSED IN PART AND VACATED IN PART**

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Willie B. Heyward, of Heirs' Property Law Center, LLC,  
of Charleston, for Appellant.

Jonathan S. Altman, of Derfner, Altman & Wilborn,  
LLC, of Charleston, for Respondent.

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**PER CURIAM:** This appeal arises from a property dispute. On appeal, Ernest McKnight argues the trial court erred by: (1) refusing to address the specific elements of his equitable counterclaims; (2) granting fee simple title by way of summary judgment to Eugene Gathers; and (3) finding McKnight has no statutory right of first refusal. We dismiss in part and vacate in part.

1. We find McKnight has no right to challenge the trial court's summary judgment order. A consent order of dismissal was entered wherein the parties agreed to dismiss McKnight's adverse possession counterclaim against Gathers's action to quiet title. McKnight's remaining counterclaims for reimbursement of taxes and foreclosure of mortgage were expressly unaffected by the order. Gathers filed a summary judgment motion against all defendants in the lawsuit, except McKnight; thus, McKnight was not a named party to the motion. The order granting Gathers's motion did not affect McKnight's counterclaims, so McKnight is not precluded from litigating his claims to the property. Accordingly, we find McKnight was not aggrieved by the trial court's granting of fee simple title to Gathers or the trial court's failure to address McKnight's counterclaims. Therefore, we dismiss the portion of McKnight's appeal raising these issues. *See* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."); *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) ("The word 'aggrieved' refers to a substantial grievance, a

denial of some personal or property right, or the imposition on a party of a burden or obligation."); *Burns v. Gardner*, 328 S.C. 608, 617-18; 493 S.E.2d 356, 361 (Ct. App. 1997) (dismissing the portion of an appeal involving an issue raised in which the appellants were not aggrieved parties and thus could not pursue the issue on appeal).

2. Because McKnight was not a party to the summary judgment proceeding and did not file a motion to intervene, we find his Rule 59(e), SCRCP, motion was not properly before the trial court. In *Narruhn v. Alea London Limited*, 404 S.C. 337, 341-42, 745 S.E.2d 90, 92 (2013), our supreme court determined an insurer's Rule 60(b), SCRCP, motion was not properly before the circuit court because the insurer was not a party to the order from which it sought relief. Even though *Narruhn* involves a Rule 60(b) motion and this case involves a Rule 59(e) motion, we find *Narruhn* analogous to the facts in this case. Therefore, we vacate the portion of the trial court's Rule 59(e) order finding McKnight has no statutory right of first refusal.<sup>1</sup>

**DISMISSED IN PART AND VACATED IN PART.**

**FEW, C.J., and PIEPER and KONDUROS, JJ., concur.**

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<sup>1</sup> In his appellate brief, McKnight requests leave from this court to file a Rule 60(b), SCRCP, motion with the trial court. Because McKnight was not a party to the summary judgment motion, we deny McKnight's request. See Rule 60(b), SCRCP ("During the pendency of an appeal, leave to make [a Rule 60(b)] motion must be obtained from the appellate court."); *Narruhn*, 404 S.C. at 341-42, 745 S.E.2d at 92 (finding an insurer's Rule 60(b), SCRCP, motion was not properly before the circuit court because the insurer was not a party to the order from which it sought relief).

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM CHARLESTON COUNTY

Judge, Common Pleas  
Hon. Kristi L. Harrington

---

Case No.: 2016-CP-10-3504

---

Ernest McKnight, Appellant,

v.

Anna Michelle Porcher, Eugene D. Gathers, Estate of Ned Wright, Estate of Hattie Gasden, Edward Wright, Estate of Samuel Wright, James Wright, Estate, of Earline Wright Maxwell, Ida Wright, Estate of Wileminia Wright, , Henry Wright, Jr., Estate of Henry Wright, Estate of Ernestine Wright, Estate of Samuel Wright, Edward Wright, Estate of James Wright, Estate of Oscar Wright, Martha Wright, Estate of Leroy Wright, Estate of Edward Wright, Estate of Harold Wright, Estate of Charles Wright, Jr., Estate of Hattie Wright Gaston a/k/a Hattie Wright Gadsden, Estate of Earline Wright, Estate of Annie Wright, Walter Nathaniel Porcher, III, Keisha Kenyatta Porcher, and John Doe and Mary Roe, fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50, United States Code, commonly referred to as the Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and fictitious names representing unknown heirs, devisees, distributes, of personal representatives of any deceased persons, Respondents.

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CERTIFICATE OF COUNSEL

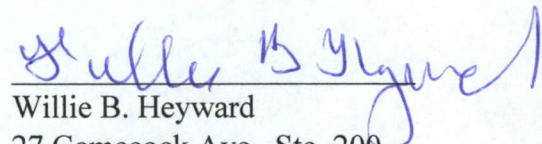
The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by the parties as of January 22, 2019 and not any other material under Rule 210, SCACR.

March 28, 2019

**RECEIVED**

APR 03 2019

SC Court of Appeals

  
Willie B. Heyward  
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Attorney for Appellant  
SC Bar No.11063