

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 14 2019
SC Court of Appeals

Appeal from Chester County
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

RECORD ON APPEAL

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

B. Michael Brackett
Respondent Counsel
Moses & Brackett, PC
133 Brookspring Road
Columbia, SC 29223

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STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert M. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

August 01, 2016

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

The Honorable Sue Carpenter, Clerk of Court
Sixth Judicial Circuit
P.O. Drawer 580
Chester, SC 29706

Attention Civil Division, Re: the above case numbers

Dear Mrs. Carpenter:

Enclosed for filing is a Rule 59(a) Motion with attachments
as part of the Motion. The \$25.00 filing fee is attached,
and also the motion cover sheet.

The motion was served on the opposing parties by mail last
Thursday, July 28, 2016. The motion is being filed with the
clerk within 5 days as is required by Rule 5(d), SCRCP.

Please file the attached motion, along with the following:

- (1) Copy of the Notice of Bar under SC § 15-67-20
- (2) Copy of the Reba Hinson Land Plat, CAB D slide 174 page 3B
- (3) Copy of the land sales agreement between Mell Woods and Mrs. Hinson
- (4) Copy of the Affidavit of Mell Woods dated April 21, 2016, concerning
Elaine H. Hensley and Robert Breakfield.

Sincerely,

Mell Woods

Copy to: B. Michael Brackett at his address of Record.

Start Bates numbers → 1

FILED

2016 AUG -5 A B 55

CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA

COUNTY OF

Chester

Robert Breakfield

Plaintiff,

vs.

Mell Woods

Defendant.

IN THE COURT OF COMMON PLEAS

6th JUDICIAL CIRCUIT

CASE NO.

2015-CP-12-00179

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>B.M. CHALBRACKET</u>		Defendant: <u>Mell Woods</u>	
Address: <u>Box 100261</u>		Address: <u>P.O. Box 2603</u>	
Phone: <u>COLA</u> Fax: <u>SC 29202</u>		Phone: <u>LANCASTER, SC 29721</u>	
E-mail: _____ Other: _____		E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)			
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Rule 59(e)</u>		Court Reporter Needed: ☒ YES ☐ NO	
Estimated Time Needed: <u>40 mins</u>		SECTION II: Motion/Order Type	
☒ Written motion attached		☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of <u>[Signature]</u>		Date submitted: <u>AUG 01, 2016</u>	
Plaintiff ☐ Defendant ☒		SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ <u>25.00</u>		☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support		☐ Domestic Abuse or Abuse and Neglect	
☐ Indigent Status		☐ State Agency v. Indigent Party	
☐ Sexually Violent Predator Act		☐ Post-Conviction Relief	
☐ Motion for Stay in Bankruptcy		☐ Motion for Publication	
☐ Motion for Execution (Rule 69, SCRPC)		☐ Proposed order submitted at request of the court; or,	
reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____	
☐ Other: _____		JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	
☐ Other: _____		Date: _____, 20__	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____, 20__	
☐ MOTION FEE COLLECTED: \$ _____		☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

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

Respondents,

vs.

Mell Woods,

Appellant.

FILED

CLERK OF COURT
CHESTER CO S.C.
2016 AUG -5 A 10:45

NOTICE OF BAR UNDER SC STATUTE § 15-67-20

1. Mell Woods, appellant above named, and defendant below, comes now and exercises the right granted by the South Carolina Legislature and codified as § 15-67-20 which reads as follows:
"The plaintiff in actions for recovery of real property or the recovery of the possession of ~~the possession~~ of real property is limited to one action for recovery."

STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

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

Respondents,

vs.

Mell Woods,

Appellant.

AFFIDAVIT

In order to protect the Record, Mell Woods, appellant
above, comes now and presents the following affidavit allowed
under S.C. Statute § 18-7-180.

18-7-180

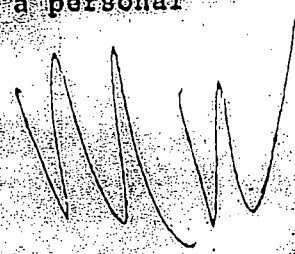
-5-

State of South Carolina
County of Chester

After being first deposed, Mell Woods, affiant herein, makes the following statements based upon the personal knowledge of affiant,

1. Elaine H. Hensley, a listed party above has died, and was already dead when the above case was first filed;
2. Robert H. Breakfield, one of the parties above, already knew of Mrs. Hensley's death when the case was filed, and represented to the court that Mrs. Hensley was alive instead of dead;
3. Attached to this affidavit, is certified copy of the Deed of Distribution filed in the Chester County Real Estate Records, which shows that Robert H. Breakfield was a witness to the Deed of Distribution concerning Mrs. Hensley's property, and for this reason did know that he filed suit for a dead person after her estate had been closed out, and a personal representative no longer existed;

FURTHER, affiant saith not.

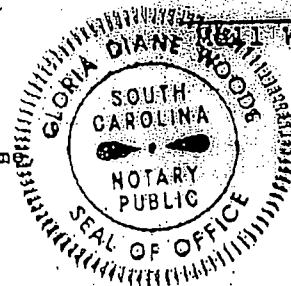


Sworn to, and subscribed before me

This 21 day of April, 2016.

Gloria Diane Woods

Gloria Diane Woods Notary public for South Carolina, Comm. Expires 01/08/2018



~~2~~ - 6 -

STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
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Hinson, Jerry Hinson, Kathy
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Personal Representative of the
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William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

NOTICE OF BAR UNDER SC STATUTE § 15-67-20

1. Mell Woods, appellant above named, and defendant below, comes now and exercises the right granted by the South Carolina Legislature and codified as § 15-67-20 which reads as follows:
"The plaintiff in actions for recovery of real property or the recovery of the possession of the possession of real property is limited to one action for recovery."

2. An eviction case is one for recovery and possession of real property, Stewart-Jones Co. v. Hankins, 155 S.C. 234, 152 S.E. 430 (1930). The statute 15-67-20 was formerly § 10-2402 in the 1952 Code; and in the second Stewart-Jones case it was the ruling of the Honorable J.K. Henry, right here in the Chester County Courthouse on August 31, 1928, that the filing of three evictions against Mrs. Hankins, and the failure to pay costs was enough for the circuit court to confirm title to the real estate in the name of Mrs. Hankins, and to no one else.

3. SC Statute § 15-67-20 has been a South Carolina law for 272 years, being enacted in 1744 by the colonials. The statute has had different numbers but always had the same wording with the exception that prior to 1988 TWO ATTEMPTS at eviction were allowed, and since 11/25/1988, only one.

4. In the present case against Mell Woods, THREE attempts at eviction have been made. In Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201 (1912), the Court took the time to explain why the "two strikes and your out" statute was enacted. Under the English Common Law an unlimited number of land suits for possession of a parcel of land could be brought, and the English judges would employ fictions (meaning Richard Roe) to justify the fiction that the suit had never been brought before. SC Statute §15-67-20, and the former ones, worded the same, (before 1988) are meant to defeat the English practice of endless land suits.

5. Defendant Mell Woods, brought up the more than one eviction case issue in the answer filed in the magistrate court, but the judge failed to rule on the point. In addition a Rule 59(e) motion was filed about the point after the magistrate judge issued his Ruling. The Rule 59(e) motion was not specifically addressed either, so defendant and appellant has done all that it can to preserve the issue for appeal.

6. A non-suit, or discontinuance, voluntary, or not voluntary, started the clock ticking for another stipulation built into § 15-7-20 prior to 1988, which was that the second suit had to be brought within TWO years of the first discontinuance, or any other further suits concerning the same land were barred, and title to the land in question was established against the plaintiff's bringing the action to start with, in other words bring the first one, and then the other one within two years, or be forever barred from bringing another one, and neither suit had to be litigated to a finish, a simple discontinuance would do to start the two years. Dyson v. Leek, 5 Strob. (36 S.C.L.) 141; Binda v. Benbow, 11 Rich. (45 S.C.L.) 24., today, however, the two years has been eliminated and starting in 1988, once an eviction is started it must be kept alive and not allowed to languish because a second action is not allowed anymore, there is no "dismissal without prejudice" because the South Carolina Legislature has kept the same law on books for at least 272 years with one minor change: there is no second chance.

7. S.C. Code Anno. § 10-2402 used to read:

"The plaintiff in all actions for recovery of real property or the possession thereof is hereby limited to two actions for the same and no more. And before any second such action shall be brought the costs of the first action shall be first paid."

And there was a time limitation that went with it:

§ 10-125: "A second action for the recovery of real property shall be brought within two years from the rendition of the verdict or judgment in the first action or from the granting of a nonsuit or discontinuance therein."

Today, the same reads:

§ 15-67-20: "The plaintiff in actions for recovery of real property or of the possession of real property is limited to one action for recovery."

8. The Rule in South Carolina about reaffirmance of existing statutes is well stated in the case of State v. Patterson, 220 S.C. 269, 66 S.E.2d 875 (1951) where it was held that:

"It is a general rule of law that where a statute is repealed and all, or some, of its provisions are at same time re-enacted, the re-enactment is considered a reaffirmance of the old law, and a neutralization of repeal, so that the provisions of the repealed act which are thus re-enacted continue in force without interruption, and all rights and liabilities incurred thereunder are preserved and may be enforced." 25 R.C.L. 934; and then they cited Brown v. Brown, 213 N.C. 347, 196 S.E. 333, as follows:

"Likewise, where the terms used in a statute have acquired a settled meaning through judicial interpretation, and the same terms are used in a subsequent statute upon the same subject matter, they are to be understood in the same sense unless by qualifying or explanatory addition

the contrary intent of the Legislature is made clear. Such a construction becomes part of the law, as it is presumed that the Legislature in passing the law knew what the judicial construction was which had been given to the words of the prior reenactment." 25 R.C.L., 992.

9. In the case of Logan v. Jones, 155 S.C. 258, 152 S.E. 518 (1930) it was held that § 15-67-20 as it existed in 1930, is a statute of repose and that a maximum of two actions for recovery of land could be brought since a defendant under the statute has a right at some point to be relieved of continued attacks on his title by the same person, or those claiming under the same person, and if the plaintiff's claim from a common source, the maximum number of actions in 1930 was two. Walsh v. Evans, 112 S.C., 131, 99 S.E. 546; Water Power Co. v. Land Co., 47 S.C., 117, 25 S.E. 48; Mitchum v. Shaw, 98 S.C., 175, 82 S.E. 401; Water Power CO. v. Land Co., 42 S.C., 488, 20 S.E. 378; Love v. Turner, 84 S.C., 178, 65 S.E. 1043.

10. In Richardson v. Riley, 67 S.C. 53, 45 S.E. 104 (1903) a circuit court was reversed because it allowed another action filed later than two years after the first filing to be tried after a formal bar was pled, the Court held:

"It is useless to go further in this case, so far as the grounds of appeal are concerned. If the second action was barred, as we have just held, under our statute, no proceedings in that action were of any avail. The Circuit Judge was in error, and his judgment must be reversed."

11. Mell Woods, defendant below, and appellant herein incorporates by reference and republishes each of stated grounds for appeal, and points out that *Elaine H. Hensley* is a dead person and a party to these proceedings. This was brought up in the answer since Robert H. Breakfield, listed Mrs. Hensley as a party, and then swore to the truth of paper listing Mrs. Hensley as a live person. Mrs. Hensley does not have a personal representative, and her estate has been closed out.

Respectfully submitted,

This 01 day of June, 2016.

/s/ Mell Woods
Mell Woods

P.O. Box 2603
Lancaster, SC 29721

Certificate of Service

I hereby certify that I have served B. Michael Brackett with a true copy of the within and foregoing document [six pages] by handing the copy to him at the Chester County Courthouse.

This 01 day of June, 2016

/s/ Mell Woods
Mell Woods

State of South Carolina

Chester County

In the Magistrate Court
Rossville District

Number: 2014CV1210400037

Robert H. Breakfield, for
himself and others listed
as "Applicant"

v.

Mell Woods,

Respondent.

Notice of Appeal

Mell Woods hereby appeals the final order entered in the
above case, and dated March 27, 2015. This appeal is to the
Circuit Court, Chester County South Carolina, Sixth Judicial
Circuit.

Grounds for Appeal:

1. This case involves title to land, and therefore a
magistrate court is without jurisdiction to have heard the
case, SC Statute § 22-3-20 (2), error is assigned on this
point.

2. Defendant Mell Woods raised the defense of questionable title in the answer, SC Statute § 22-3-1110, and filed the written undertaking and the maximum cost bond, (\$100.00) required by SC Statute § 22-3-1120; SC Statute § 22-3-1130 requires that the action be discontinued upon the filing of the cost bond and undertaking, instead the magistrate carried on with the action, error is assigned on these points.

3. The magistrate refused to allow defendant to cross-examine Robert Breakfield, the person who brought these proceedings against defendant. Mr. Breakfield was present at the hearing and defendant has a right to cross-examine Mr. Breakfield, upon not being allowed to cross-examine witness Breakfield, defendant objected on the Record, error is assigned on this point.

4. *Reasons that these proceedings involve land:*
Defendant Mell Woods is trying to pay a mortgage on the land in question. The mortgage is between Mell Woods, and Mrs. Reba Hinson. Robert Breakfield is the personal representative for Mrs. Hinson. Mr. Breakfield has gone to court and obtained a Ruling that Mrs. Hinson held only a "life" estate, where in fact Mrs. Hinson does have a fee simple estate. This probate matter is still being litigated in the probate court.

(4. continues) However, even if in the end, Mrs. Hinson has only a "life" estate, defendant does have the right to have the mortgage contract specifically performed and is entitled to a deed from the circuit court, or from Mr. Breakfield himself, this came up in the hearing in the magistrate court, but after stating that "the Hinsons' will not take the money" defendant was cut-off from further explanation by the magistrate judge -- here is the explanation:

South Carolina Supreme Court, Eller v. Motley, 99 S.C. 20, 82 S.E. 992

(1914) "If William Motley went into possession of the land as a purchaser with a contract to pay a specified sum for a specified amount he would be entitled to a decree for specific performance upon his fully carrying out the terms and conditions of the contract entered into, and would not have been required to have paid the price agreed upon in the lifetime of David Motley. He did not have to pay the purchase price and retain possession ten years after such payment to acquire title. If he purchased the land, went into possession of the same, put valuable improvements thereon, and carried out his contract as to payments, as soon as he fully performed all of his promises and agreements as contracted for between the parties as to the purchase, he would be entitled to a deed. And upon full performance on his part of the terms and conditions of the contract, whether the vendor was alive or dead, he would be entitled to a deed from the heirs at law of the vendor, or the Courts, upon proper showing, would declare him the owner of the land and require a deed to be made. There can be no question that the purchaser of the land upon the payment to the vendor, or his heirs, of the purchase price agreed upon between the parties at the time of contract of sale or any balance due of the purchase price would be entitled to receive a deed; and it can not be maintained that a failure to pay the whole to vendor in his lifetime will defeat the right of purchaser to retain possession. The payment of balance to vendor's heirs will be sufficient, even though they be minors. His Honor was in error in the particulars complained of in exception seven, and this exception is sustained."

Judgment reversed and new trial granted.

defendant assigns error on the fact that the magistrate failed to rule that these proceedings involve title to land.

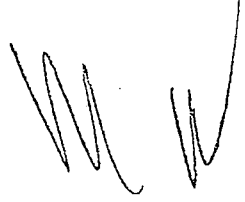
5. In addition, defendant continues to plead:

South Carolina Statute § 15-67-20:

A plaintiff is limited to one, AND ONLY ONE action for "recovery" of real property. SC § 15-67-20 is a statute of repose, or statute of limitation in regard to land suits. A defendant under South Carolina law is not required to have to continually defend attacks on a land title. A plaintiff only gets ONE chance and in this case an "Application" for a "Notice to Quit Premises" is a new case and is not allowed under South Carolina law, and is in fact a guise to try and defeat defendant's common law right to a jury trial.

Defendant assigns error on the failure of the magistrate to dismiss these proceedings pursuant SC § 15-67-20.

This 15 day of April, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721



Certificate of Service:

State of South Carolina

In the Magistrate Court

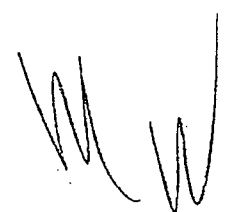
Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the moving parties with a copy of the within and foregoing *NOTICE OF APPEAL* by placing copies of the same in the U.S. Mail postage prepaid addressed to the counsel of Record for the parties, to wit:

Moses, Koon and Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

4-15-15



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-5-

2015 CV 121000117

State of South Carolina

In the Magistrate Court
Rossville District

Chester County

Number: 2014CV1210400037

Robert H. Breakfield, for
himself and others
listed as "Applicant"

v.

Mell Woods,

Respondent.

FILED
12015 MAY 19 A 10:16
CLERK OF COURT
CHESTER CO S.C.

Amended Notice of Appeal, Amendment No. 1:

Mell Woods continues to appeal the final order entered in the above case, the following nine paragraphs as additional grounds for appeal continue the first Notice of Appeal filed on April 15, 2015, grounds 1-5, the first five grounds are hereby incorporated by reference, and the next ground is number 6. Mell Woods received the order being appealed from on April 14, 2015.

Additional Grounds for Appeal:

6. The magistrate court never did specifically rule on SC Statute § 15-67-100 Right to jury trial unchanged where the statute applies to any action to recover possession of real estate; defendant Mell Woods assigns error on the fact that the magistrate had the hearing without a jury.

7. The magistrate court never ruled on SC Statute § 15-67-20. A defendant under South Carolina Law is not required to have to continually defend attacks on a land title. The present proceeding is a THIRD attempt by these same plaintiffs and is outlawed by § 15-67-20, defendant assigns error because the magistrate court did not comply SC § 15-67-20.

8. SC Statute § 15-67-610 does not apply in this case; § 15-67-610 is designed to deal with *squatters* and does not apply where a possessor is on land with recorded documents which show the possessor to be in fact a mortgagee in possession with equitable rights to stay in possession. There has not been a court order, save the one from this magistrate court, which denies the right of defendant to retain possession of his land, based on all of the Rule 59(e) SCRCF motions filed in the present proceeding, and the Record, South Carolina Case and Statutory law error occurred when the magistrate court ruled the defendant to be a squatter.

9. Reference is made to the magistrate court Order, page 2, where the Order recites that "The Court prepared a detailed accounting for the Defendant, who inspected and signed it accepting the accounting as complete and accurate." Defendant Mell Woods signed the piece of paper under protest and under duress by the court itself; the paper was handed back and forth to the court several times with the defendant stating if signed, defendant would be doing so under protest. Finally out of fear of the court, the paper was signed, but the signing was not the voluntary act of the defendant. The Record of the hearing will back up defendant's statement, but more importantly, this exchange with the Court shows the tone and tenor of the entire "hearing." Error is assigned on the conduct of the court.

10. Reference is made to the \$7,565.00 in "bond money" that is being "retained" by the court, pg. 13 of the Court Order; in addition, for the record defendant Mell Woods states that out of fear of magistrate Judge Zamore, defendant has been sending \$200.00 a month to the magistrate court for several years, with the grand total now nearing \$10,000.00, ten thousand dollars, which the magistrate court is still keeping. Error is assigned on the fact that the magistrate court "retains" funds belonging to the defendant.

11. The Chester County Magistrate Court has never had jurisdiction of any of the cases brought by the plaintiffs because all of the cases involve *title to land*, and a South Carolina magistrate court simply does not have jurisdiction to hear a land case, SC Statute § 22-3-20 (2); each time a case is brought against defendant Mell Woods, defendant complies with the law and files the written undertaking required by SC Statute 22-3-1110, and posts \$100.00 cash bonds, guaranteed by the U.S. Postal Service, (\$100.00 money orders), expecting the cases to be discontinued as required by SC Statute § 22-3-1130, the cases are never discontinued, the bond money is converted to other uses, and defendant is coerced into signing a "detailed accounting" to imply that he agrees to all that is being done to him - when defendant does not agree.

Error is assigned on the fact that the magistrate judge has failed to comply with SC Sections 22-3-20 (2), 22-3-1110, 22-3-1120, and 22-3-1130.

12. In the magistrate proceeding defendant Mell Woods had already appealed the entire matter herein prior to any hearing by serving a Notice of Appeal as soon as defendant found out that the magistrate court had scheduled a non jury hearing on the within matter. Grounds for appeal are that Defendant Mell Woods is entitled to a jury hearing in a land case and that failure to immediately appeal is a waiver of a jury under Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985), error is assigned because the magistrate court proceeded in this case after the serving of the Notice of Appeal.

13. On page 13 of the magistrate court order is the purported instruction by the magistrate court that the plaintiffs are "permitted" to remove improvements from the land in question after June 01, 2015, and that such removal shall be pursuant to "South Carolina Law" although no law is cited, and that defendant "shall have no recourse" as long as whatever they do is in "accordance with South Carolina Law" although no specific laws or law is cited; these instructions are repugnant to common sense and the magistrate might as well instruct plaintiffs to shoot and kill the defendant so that the case will be over; it is so far past the jurisdiction of a magistrate court to attempt to rule that a party "shall have no recourse" that these instructions should be stricken from the Order by the magistrate court itself, and defendant assigns error on the improper wording of the Court Order.

-5-

14. Reference is made to the magistrate Court Order of March 27, 2015, page 09 where it is opined that:

"However, the mere claim that there is a cloud upon to the realty subject to this Action is insufficient grounds upon which to find that this Court has no subject matter jurisdiction."

Also on page 10 of the court order it is ruled that:

"The Defendant may not raise the defense of questionable title to defeat this Court's subject matter jurisdiction in the current Notice to Quit Action or as a valid defense against it."

(14. continues)

Reference is made to the Courts's Order of March 27, 2015 and to Eller v. Motley, 99 S.C. 20, 82 S.E. 992 (1914), a case which defendant Mell Woods already had printed and ready to show to the court during the hearing before being cut-off by the court after stating that "the Hinsons' will not take the money." Since the court recited admitting into evidence

the Uniform Commercial Code sealed contract and agreement to pay Reba P. Hinson, or her heirs, the full amount of the monies agreed upon in the contract, and the right of possession granted in the contract by Mrs. Hinson, page 08 of the Court's Order, it is incredulous that the court would rule that defendant Mell Woods is a TRESPASSER? - and is even more incredulous considering the fact that the agreement described on page 08 has been on file for years in the South Carolina Secretary of State Office for everyone to see.

South Carolina Supreme Court, Eller v. Motley, 99 S.C. 20, 82 S.E. 992 (1914). "If William Motley went into possession of the land as a purchaser with a contract to pay a specified sum for a specified amount he would be entitled to a decree for specific performance upon his fully carrying out the terms and conditions of the contract entered into, and would not have been required to have paid the price agreed upon in the lifetime of David Motley. He did not have to pay the purchase price and retain possession ten years after such payment to acquire title. If he purchased the land, went into possession of the same, put valuable improvements thereon, and carried out his contract as to payments, as soon as he fully performed all of his promises and agreements as contracted for between the parties as to the purchase, he would be entitled to a deed. And upon full performance on his part of the terms and conditions of the contract, whether the vendor was alive or dead, he would be entitled to a deed from the heirs at law of the vendor, or the Courts, upon proper showing, would declare him the owner of the land and require a deed to be made. There can be no question that the purchaser of the land upon the payment to the vendor, or his heirs, of the purchase price agreed upon between the parties at the time of contract of sale or any balance due of the purchase price would be entitled to receive a deed; and it can not be maintained that a failure to pay the whole to vendor in his lifetime will defeat the right of purchaser to retain possession. The payment of balance to vendor's heirs will be sufficient, even though they be minors. His Honor was in error in the particulars complained of in exception seven, and this exception is sustained."

Judgment reversed and new trial granted.

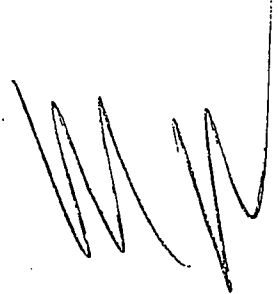
 27-

(14. continues)

Under Eller v. Motley, 99 S.C. 20, 82 S.E. 992 (1914), defendant Mell Woods has a complete and full right to finish paying the heirs of Mrs. Hinson for the small piece of land in question, and then receive a deed to the land in question. Eller is a case in which the right of a purchaser to complete payment of partially executed sales contract to the heirs of a seller even where the seller is a life tenant is recognized in South Carolina with specific performance of land contracts being required even after the death of a life tenant. This state of facts is a far cry from being a trespasser. The Hinsons are actually the ones who are wrongfully interfering with the peaceful possession of defendant Mell Woods' land. **ERROR IS ASSIGNED** on the fact that over objection the magistrate proceeded to rule on a title to land case.

FILED
12015 MAY 19 A 10:16
CLERK OF COURT
CHESTER CO S.C.

This 14 day of May, 2015.


Mell Woods

P.O. Box 2603
Lancaster, SC 29721

Certificate of Service:

State of South Carolina

In the Magistrate Court

Rossville District

Assigned Case Number 2014CV1210400037

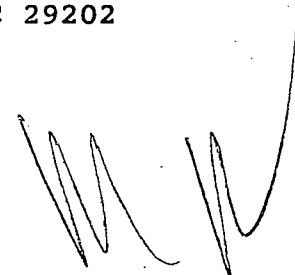
FILED
12015 MAY 19 A 10:16
CLERK OF COURT
CHESTER CO S.C.

Mell Woods, hereby certifies that he has served the moving parties with a copy of the within and foregoing **NOTICE OF APPEAL** [Amendment 1 dated May 14, 2015] by placing copies of the same in the U.S. Mail postage prepaid addressed to the counsel of Record for the parties, to wit:

Moses and Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

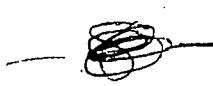
And Magistrate Judge also.

This 14 day of May, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

 -9-

2-15CP120129

Chester County Clerk of Circuit Court
CIVIL FILINGS
P.O. Box 580
Chester SC 29706

Please file with the other papers in this case.

There is plenty of blank space left on each page left
for file stamping.

Thanks.

FILED

1 2015 MAY 19 A 10:16

CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA
County of Chester

In The Magistrate Court

2014 CV 12 104 00037

Robert H. Breakfield,

Plaintiff,

v.

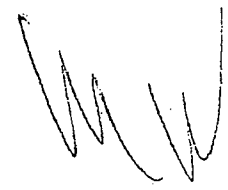
Mell Woods.

Defendant.

RESTATED NOTICE OF APPEAL

After the Magistrate Court Order denying defendant's Rule 59(e) Motions, Defendant Mell Woods, comes now and restates and republishes the Notice of Appeal first filed in this case and incorporates by reference the first Notice of Appeal as the new Notice of Appeal within 10 days of receiving the court order.

This 11 day of August, 2015.



Mell Woods

P. O. Box 2603
Lancaster, SC 29721

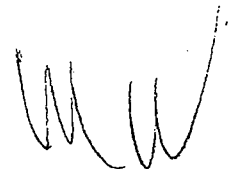
CERTIFICATE OF SERVICE

The within and foregoing RESTATED NOTICE OF APPEAL has been served on the opposing party by placing a copy of the Notice of Appeal in the U.S. Mail with sufficient postage addressed to:

B. Michael Brackett
C/O Moses & Brackett
P.O. Box 100261
Columbia, SC 29202

And also to Yale Zamore, Chester County Jail, via Sheriff service.

This 11 day of August, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA
County of Chester

In The Magistrate Court

2014 CV 12 104 00037

Robert H. Breakfield,

Plaintiff,

v.

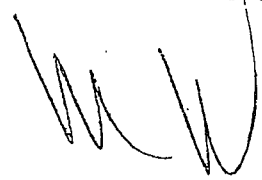
Mell Woods.

Defendant.

APPLICATION FOR CHANGE OF VENUE, AND TWO DAYS NOTICE TO
ADVERSE PARTY, South Carolina Statute § 22-3-920:

Defendant Mell Woods comes now and makes application for
the one-time change of venue allowed by SC § 22-3-920.

Grounds for the change of venue are stated in the attached
affidavit; in addition this case has been materially
changed by the fact that there is a partition action among
the parties for the possession of the same land; defendant
has applied to be a defendant in the partition action,
defendant learned of the pending partition action one month
ago.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-/-



STATE OF SOUTH CAROLINA
County of Chester

In The Magistrate Court

2014 CV 12 104 00037

Robert H. Breakfield,

Plaintiff,

v.

Mell Woods.

Defendant.

State of South Carolina, Chester County:

AFFIDAVIT

First being duly sworn, affiant Mell Woods deposes and states the following facts on oath:

- (1) Bad feelings have existed for some time between affiant and Magistrate Yale Zamore;
- (2) Yale Zamore refuses to do the things he is required by statute to do, but instead will only do what the plaintiff attorney B. Michael Brackett tells Judge Zamore to do;
- (3) Over the last four years Magistrate Yale Zamore, through intimidation, has extracted nearly ten thousand dollars from affiant and affiant recently sent Judge Zamore a demand letter demanding the return of the nearly \$10,000.00 in cash;

(4) Each day affiant lives in fear that Judge Zamore will extract revenge because affiant demanded the return of affiant's monies which do not belong to Judge Zamore;

(5) For the last four years B. Michael Brackett and Judge Zamore have been trying to evict affiant from land which affiant owns, first Brackett called affiant a "tenant" which did not work fast enough, so then Brackett and Zamore started calling affiant a "trespasser" which is the now current label even though affiant is present on the land under a duly recorded mortgage from the former possessor of the land in question;

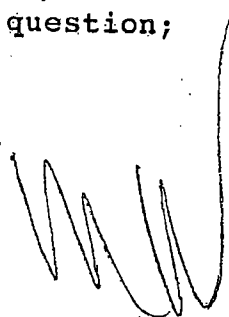
(6) On August 04, 2015, affiant received the latest court order from Judge Zamore about the current state of affairs, in the order on page two is the following statement by Zamore: *"and given the Defendant's apparent penchant for appealing any and all rulings and Orders adverse to his position,"* affiant swears that Judge Zamore does not want anything appealed and in fact will take out revenge on any party who does appeal, example it has been fours months since affiant timely appealed Zamore's last ruling, and Judge Zamore has yet to send the required return to the circuit court;

(7) Affiant filed an answer, and a \$100.00 cost bond when responding to the "notice to quit" filed in this case, and a demand for a jury trial, all of which were ignored by Judge Zamore, while Zamore continued to extract \$200.00 per month, every month out of affiant;

(8) It does not do any good whatsoever to cite South Carolina case law and Statutes to Judge Zamore, Judge Zamore does not care to read, and has never gone by the law in this case;

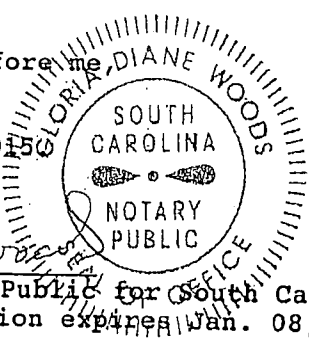
(9) On May 08, 2015 affiant completed ten years adverse possession of the land in question;

AFFIANT HAS NOTHING FURTHER TO SAY.


Mell Woods

Sworn to and subscribed before me

This 04 day of August, 2015


Gloria Diane Woods
Gloria Diane Woods, Notary Public for South Carolina
Commission expires Jan. 08, 2018.

State of South Carolina

Chester County

In the Magistrate Court
Rossville District

Number: 2014CV1210400037
other numbers used:
2011CV1210400002,
2011CV1210100148

Robert H. Breakfield, for
himself and others listed
as "Applicant"

v.

Mell Woods,

Respondent.

Notice of Appeal

Mell Woods continues to appeal the final order entered in the above case, and dated March 27, 2015. This appeal is to the Circuit Court, Chester County South Carolina, Sixth Judicial Circuit, the Magistrate Court has issued an additional Order, dated August 24, 2015, and received by respondent on September 04, 2015, which Order denied respondent's pending Rule 12(b)(8), SCRCP Motion, and also a statutory [South Carolina § 22-3-920] motion for a change of venue.

p9.1 of 5

GROUNDS FOR APPEAL

Respondent restates, republishes, and incorporates by reference the Original Grounds 1-5, dated April 15, 2015, from the Notice of Appeal dated April 15, and adds two additional grounds: the denial of the 12(b)(8) Motion and the denial of the statutory change of venue; these two additional actions by the magistrate court are extremely prejudicial to respondent, and respondent assigns error on these two additional actions.

The one-time change of venue allowed by SC § 22-3-920 is not discretionary with a magistrate court, especially in view of the discovery of another action pending between the same parties concerning the same subject matter, Rule 12(b)(8), SCRCP.

Respectfully submitted,

this 02 day of September, 2015.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

P9.2 of 5

State of South Carolina

Chester County

In the Magistrate Court
Rossville District

Number: 2014CV1210400037
other numbers used:
2011CV1210400002,
2011CV1210100148

Robert H. Breakfield, for
himself and others listed
as "Applicant"

v.

Mell Woods,

Appellant.

Amended Notice of Appeal

Mell Woods continues to appeal the final order entered in the above case, and dated March 27, 2015. This appeal is to the Circuit Court, Chester County South Carolina, Sixth Judicial Circuit, the Magistrate Court has issued an additional Order, dated August 24, 2015, and received by appellant on ~~September 04, 2015~~, [September 02, 2015] which Order denied defendant's pending Rule 12(b)(8), SCRC Motion, and also a statutory [South Carolina § 22-3-920] motion for a change of venue.

GROUNDS FOR APPEAL

Appellant restates, republishes, and incorporates by reference the Original Grounds 1-5, dated April 15, 2015, from the Notice of Appeal dated April 15, and adds four additional grounds: the denial of the 12(b)(8) Motion, the denial of the statutory change of venue, and the striking of the two described pleadings; the four additional actions by the magistrate court are extremely prejudicial to appellant, and appellant assigns error on these four additional actions. The one-time change of venue allowed by SC § 22-3-920 is not discretionary with a magistrate court, especially in view of the discovery of another action pending between the same parties concerning the same subject matter, Rule 12(b)(8), SCRPC.

Respectfully submitted,

this 23 day of September, 2015.

COPY

Mell Woods

P.O. Box 2603
 Lancaster, SC 29721

State of South Carolina
Chester County

In the Court of Common Pleas
Sixth Judicial Circuit

Number 2015-CP-12-00179

Magistrate Court Number:
2014CV1210400037

Robert H. Breakfield, for
himself and others listed
as "Applicant"

v.

Mell Woods,

Appellant.

Refiling of Appeal

The above-styled case was dismissed without prejudice on May 01, 2015 by the circuit court for the reason that there was a Rule 59(e) Motion pending in the magistrate court at the time. Each time the magistrate court ruled on any of the motions, appellant filed amended Notices of Appeal and timely served the Notices on respondents, with the result being that the appeal from magistrate court is now pending in the circuit court.

1 of 2

The circuit court order dismissing the appeal on May 01, 2015, was appealed to the Court of Appeals. The Court of Appeals ruled that the court order appealed from was not a final order and dismissed the appeal on the ground that the circuit court order of May 01, 2015 is an interlocutory order.

The Court of Appeals issued the Remittitur about the matter on February 22, 2016, and appellant Mell Woods comes now, and within 10 days of the date of the remittitur and restates, republishes, and incorporates by reference all of the grounds for appeal stated each of the notices of appeal from the magistrate court.

Respectfully submitted,

This 29 day of February, 2016.


Mell Woods

P.O. Box 2603
Lancaster, SC 29721

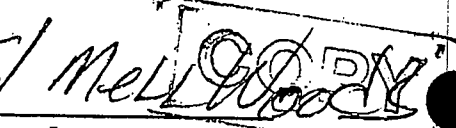
CERTIFICATE OF SERVICE, Case # 2015-CP-12-00179:

Mell Woods hereby certifies that he has served all parties with a copy of the within and foregoing two page document [Refiling of Appeal] by placing copies of the same in the U.S. Mail postage prepaid addressed to:

Moses & Brackett
c/o B. Michael Brackett P.O. Box 100261
Columbia, SC 100261

- And to the Magistrate Judge also -

P.O. Box 2603
Lancaster, SC 29721


Mell Woods

20F2

2-29-2016

STATE OF SOUTH CAROLINA,)
COUNTY OF CHESTER)
MELL WOODS)
Plaintiff(s))
vs.)
YALE ZAMORE)
Defendant(s).)

IN THE COURT OF COMMON PLEAS

Sixth JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE

FILE NO: 2015 CP 1200 368

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn

says that (s)he served the Complaint and Summons # 2015 CP 1200 368, and also in this action
Revised Notice of Appeal # 2014 CV 12 104 00037
(Describe document(s) served)

on YALE ZAMORE, by delivery to
(Name of party served)

☐ Error: Reference source not found personally;
(Name of party served)

☐ the of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

☐ the of
(Name of person served) (Title) (Name of corporate party served)

and leaving with ☐ (him) ☐ (her) a copy at

(Street address)
in Chester CHESTER County, South Carolina,
(City or Town) County

on 8-12-15 at 12:15 pm o'clock

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

☐ Unable to locate and serve the above process on the defendant after diligent efforts to do so.
The process is returned unexecuted.

Sworn to and Subscribed before me

this 12 day of August, 2015.

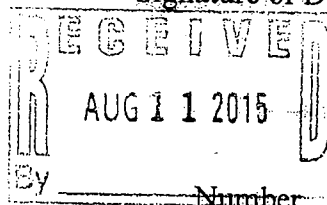
[Signature]
Notary Public for South Carolina

My Commission expires 1 FEB 2015

Entered in the Sheriff's Service Book on

Book

Page



May 24, 2016

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

The Honorable Sue Carpenter
Circuit Court Sixth Judicial Circuit

Attention of Doug Atkinson, Civil Clerk
P.O. Box 580
Chester, SC 29706

2016 MAY 24 2:59

FILED

CLERK OF COURT
SIXTH JUDICIAL CIRCUIT
SC

Re: case #'s 2015-CP-12-00179 (Magistrate Appeal)
and 2015-CP-12-00368 (Mandamus to Require Yale
Zamore to file the required statutory return)

Dear Mrs. Carpenter, and Mr. Atkinson:

I have been trying for nearly a year to get Yale Zamore to file the required return of the proceedings in magistrate court with the circuit court. Now, that June 01, 2016, has been set as a hearing date, just last week Judge Zamore filed some more papers with the court which he calls a return. I was notified by Mr. Atkinson by letter on May 18, 2016 of the return, and received the letter on May 21, 2016.

I went to the courthouse, yesterday, Monday, May 23, 2016, to look at the papers filed by Mr. Zamore, and was informed by Mr. Atkinson that all of the files concerning the above cases were already in the Judge's Office, and were unavailable to be inspected by anyone this week because the Judge was out of town on court business. Since next Monday is a holiday, I doubt I will be able to see the return before the hearing day. This is hardly fair, since I had to file a mandamus case just to get Judge Zamore to do what he is legally required to do, which is to just file the return within 30 days instead of one year. And I seriously doubt the return is complete or accurate, and I need to study the return before court.

Because of the above defects which I have pointed out, I would appreciate it if the above cases could be scheduled for another day.

Sincerely,

Mell Woods

Copies To: Yale Zamore, B. Michael Brackett, and
the Honorable Brian Gibbons, Chief Administrative Judge, Sixth
Judicial Circuit.

*Motion for
continuance
DENIED.
5/27/16 for record.*

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 10 2018

SC Court of Appeals

Appeal from Chester County
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

RETURN to Re-Filed Motion to Dismiss, SCACR 240(e)

1. The South Carolina Court of Appeals has already Ruled the Respondent Motion to Dismiss to dismiss the above appeal. The Court's Ruling was filed on March 22, 2018 and the same Order authorized the resumption of this appeal.

2. The respondent attorney, Mr. B. Michael Brackett has now filed what looks like TWO Motions to Reconsider, although *all of the words* in the two motions appear to be the same. This response is meant as a Return to each of the motions.

3. Mr. Brackett is now complaining that the SCRPC 59(e) Motion filed in this case, was served past the 10 days allowed and Mr. Brackett hopes this fabrication will defeat the jurisdiction of the Court of Appeals.

4. Mr. Brackett's latest fabrication is simply not true. There has been a good bit of bad faith on the part of Mr. Brackett which affects this case, and the bad faith has been going on since the start. First of all, Brackett, and Breakfield, both licensed attorneys listed *Elaine H. Hensley*, a deceased person, as one of the plaintiffs below, although Mrs. Hensley had already died at the time, and her Estate had been closed out. Mr. Breakfield witnessed and drew the Deed of Distribution for Mrs. Hensley's probate case, and then knowing full well that she had died several months earlier, and that her estate had closed, and that Mrs. Hensley no longer had a personal representative, Brackett and Breakfield made their own rules and listed Mrs. Hensley as one of the plaintiffs against defendant below and now appellant, Mell Woods. An attorney's authority to act for a client ends at the client's death. Carver v. Morrow, 213 S.C. 199, 48 S.E.2d 814 (1948).

5. Rule 11(a) SCRCP, requires that a party or lawyer first read every pleading before signing the pleading. And that the signature itself constitutes a certificate that the lawyer read the pleading. Mr. Brackett's original Motion to Dismiss filed on September 30, 2016 actually has the true statement about the date of service of the Rule 59(e) Motion which Brackett continues to complain about despite the fact that Brackett CERTIFIED to the Court of Appeals the true date of the service of the 59(e) Motion which is "July 28, 2016" according to his timeline shown on pages 3, and 4 of his motion; then the timeline goes on to state that the trial court denied the Rule 59(e) motion on August 31, 2016, with the Notice of Appeal being served on September 09, 2016.

Here is the Timeline [bottom of pg. 3, and top of 4]:

ejection to the county sheriff to eject the Appellant from the subject premises. (Exhibit 1).

Appellant appealed the March 27, 2015 Order to Circuit Court. The subsequent chronology was:

June 1, 2016	Appeal hearing;
July 7, 2016	Circuit Court Order Affirming Magistrate's Court (Exhibit 2);
July 12, 2016	July 7 Order served on Appellant by email and by U.S. mail;
July 18, 2016	date Appellant claimed to have received written notice of the July 7 Order;

July 28, 2016

Page 3 of 9
Appellant served a Rule 59(e) motion for reconsideration (Exhibit 3);

August 16, 2016

Respondent served a Return to the Rule 59(e) motion, raising the issue of the timeliness of the Rule 59(e) motion (Exhibit 4);

August 31, 2016

Circuit court Order denying Appellant's Rule 59(e) motion (Exhibit 5);

September 9, 2016

Appellant served Notice of Appeal to Court of Appeals. It is this appeal that is the subject of this motion to dismiss appeal. (As of the date of this motion, the undersigned has not received a Notice of Appeal from the Appellant. The undersigned learned of the appeal from the Chester County Clerk of Court and from this Court's letters to the Appellant dated September 28, 2016).

6. Mr. Brackett's true and unequivocal statement about WHEN the Rule 59(e) Motion was actually served is not an accident or Freudian Slip on the part of Mr. Brackett -- he did tell the truth to cover himself against any charge of not being candid with a tribunal.

7. But after telling the truth about the true date of the service of the Rule 59(e) motion [July 28, 2016] Mr. Brackett starts on a long and winding discussion about the U.S. Postal Service in order to imply that the Rule 59(e) motion must have been deposited in the mail late because he has a tracking record from a post office which shows that the mailer was first scanned at Jacksonville, Florida, Zip 32099. Mr. Brackett seems to imply that someone would drive to Jacksonville, Florida just to deposit mail at 32099. Such is just not what happened and such speculation shows the extreme lengths Mr. Brackett will use to cloud issues. No one can mail anything at 32099 in Jacksonville, Florida because the place is a bulk sorting facility, or "mail factory" if you will, for all mail from south Georgia, and a lot from North Florida, and you do not buy stamps there, and you cannot enter the place unless you are a postal employee.

8. Brackett's speculations, his citations to northern california federal district courts and even citations to the "world-wide web" just do not count because there is real, South Carolina Court of Appeals precedent to cover the exact same fact situation concerning the U.S. Mail service of a Rule 59(e) motion. In 1995, in the case of Green v Green, 320 S.C. 347, 465 S.E.2d 130, Judges CURETON, GOOLSBY, and HEARN, ruled as follows:

[320 S.C. 350] I. The Wife's Appeal

On appeal, the wife argues the trial court erred in failing to dismiss the husband's Rule 59(e) motion where the evidence indicates it was untimely filed. We disagree.

The husband acknowledged he received the March 25, 1994 order on April 2, 1994. The envelope in which he mailed his pro se Rule 59(e) motion was postmarked April 14, 1994, more than ten days after he acknowledged receipt of the order. The motion itself was dated April 12, 1994. In response to the wife's argument that his motion should be dismissed, the husband proffered testimony that he knew the significance of the ten day time limitation and adhered to it by mailing the motion on the tenth day after he received the order. In response to the judge's question regarding the disparity in the dates, the husband's attorney theorized either the envelope was incorrectly postmarked or the husband misstated the date on which he received the order. The judge accepted this explanation and entertained the motion. We find no error in this decision.

A motion to alter or amend a final judgment brought pursuant to Rule 59(e), SCRPC, must be served within ten days of receipt of written notice of entry of the order. Rule 5(b)(1), SCRPC, provides that "service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint." Mailing ordinarily occurs when a document is deposited with the U.S. Postal Service properly addressed with sufficient postage affixed. Southbridge Prop., Inc. v. Jones, 292 S.C. 198, 355 S.E.2d 535 (1987). Any designated mail depository box, whether in a building or along a mail route, constitutes a depository authorized for the receipt and delivery of mail. Rosen v. United States, 245 U.S. 467, 38 S.Ct. 148, 62 L.Ed. 406 (1918). Although the postmark date on an envelope is compelling evidence in cases where timely service through the mail is at issue, we are unaware of any authority, and the wife cites none, indicating the postmark date is dispositive. See William B. Johnson, Annot., Proof of Mailing by Evidence of Business or Office Custom, 45 A.L.R. 4th 476 (1986). Such would assume the infallibility of the U.S. Postal Service, an illogical assumption given the volume of letters and packages constantly being processed and the number of human hands any one envelope [320 S.C. 351] may pass through. We find no abuse of discretion in the trial court's finding that the motion was timely served by mail. Cf. Beckham v. Durant, 300 S.C. 329, 332, 387 S.E.2d 701, 703 (Ct.App.1989) (failure to make proof of service does not affect the validity of service).

9. Appellant and defendant below Mell Woods, has done all that can be done to comply with the Rules of Civil Procedure and the Appeals Court Rules. So far as WHEN the Rule 59(e) mailer to Mr. Brackett was deposited in the U.S. Mail, there should be no question, the Certificate of Service speaks for itself. As to the tracking number; post office tracking numbers are not accurate there are lots of times that the tracking information is changed while the package is enroute and lots of times not scanned at all until delivery.

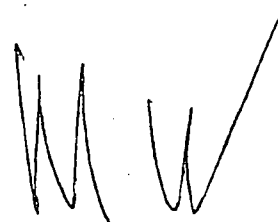
10. Mr. Brackett has *no personal knowledge* as to when the the mailer was deposited in the U.S. Mail — but appellant does know because appellant went to the post office and personally deposited the envelope.

11. Mr. Brackett wants to imply that U.S. Postal workers make no mistakes. Nothing could be more untrue. In the 1950's and 1960's postmen were very honest. And today they are for the largest part still fine folks. But some postal workers are criminals. Today's postal system does have problems with workers who lie, cheat, steal and delay mail. As an exhibit appellant attaches three articles from the last two years where postal workers have been sent to prison for stealing and delaying mail. And three reports is only a small fraction. Mail theft is common all over the country.

12. Mr. Brackett did get his service copy of the pleading and the pleading was timely deposited. Appellant has no control over how the post office delivers mail.

WHEREFORE, appellant respectfully asks that this appeal be allowed to proceed.

This 07 day of April, 2018.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

RECEIVED

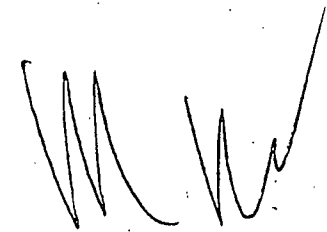
APR 10 2018

SC Court of Appeals

CERTIFICATE OF SERVICE

Mell Woods hereby certifies that the within and foregoing RETURN TO MOTION has been deposited in the U.S. Mail properly addressed to Mr. B. Michael Brackett at his current address, with proper postage affixed.

This 07 day of April, 2018.



Mell Woods

- 7 -

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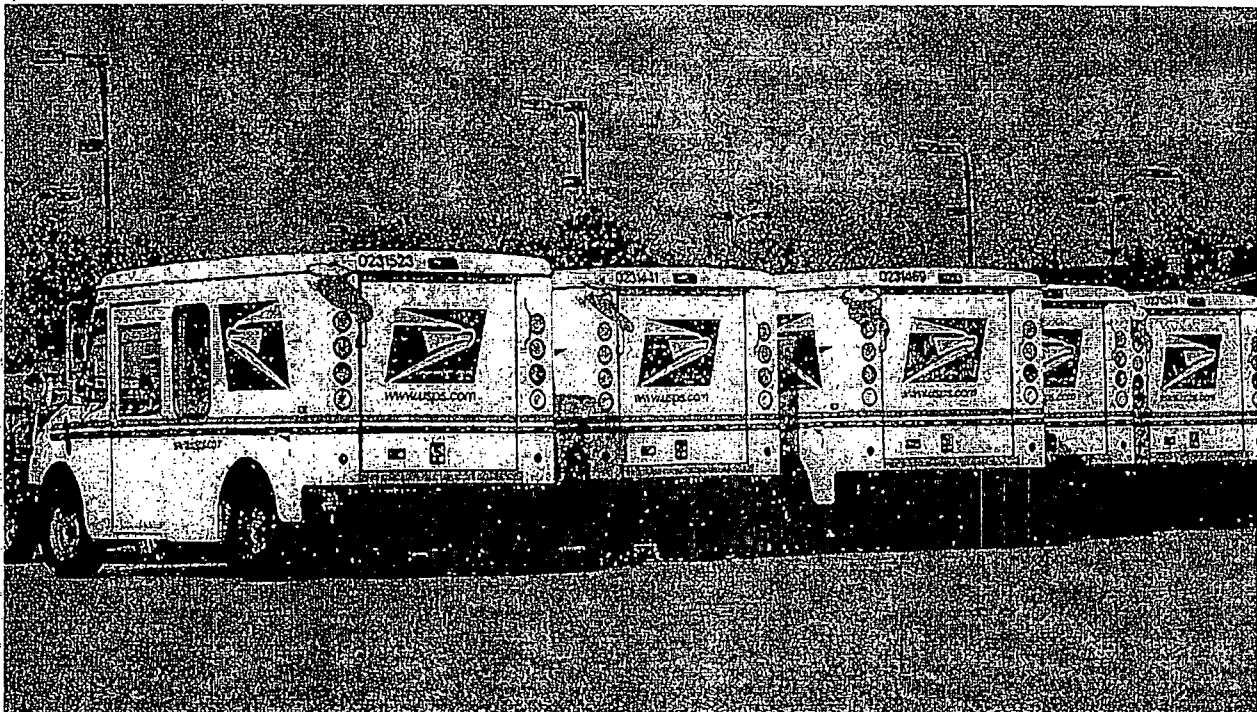
48,000 pieces of mail found at postal worker's home

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Tuesday, August 30, 2016

PLACENTIA, Calif. -- Nearly three dozen people are under arrest or indictment across Southern California following a federal sweep targeting crimes against the U.S. Postal Service and its customers.

Exhibit

Most of those charged are actually postal workers.

The charges include mail theft, stealing packages containing items such as cellphones, prescription drugs and video games and embezzling.

In one case, a postal carrier was allegedly hoarding mail at her home - about 48,000 pieces of mail that were supposed to be delivered to customers in Placentia.

In another case, a former president of the local Mail Handlers Union who worked in Moreno Valley was charged with conspiracy and possession of stolen mail after he was found to possess at least 166 stolen mobile phones that he had been offering for exchange online.

"Mail theft across Southern California has increased recently, which is significant since this type of crime tends to be a precursor to other crimes like identity theft and drug offenses," said U.S. Attorney Eileen M. Decker. "As a result, we are stepping up enforcement activities, including dealing aggressively with corruption within the Postal Service."

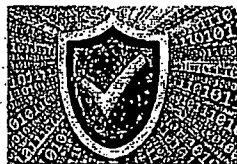
The suspects are from cities across Southern California, including Carson, Long Beach, West Covina, Lake Elsinore, Rancho Cucamonga, Diamond Bar and Compton.

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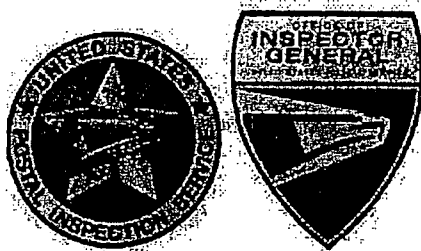
Postal News Daily Recap

USPS Network Consolidation Phase 2

~~USPS 2016 Pay Dates and Leave Year~~

Florida postal worker guilty of stealing over \$2 million in Social Security checks

Posted on January 12, 2017 by postal



Jury Finds Army Veteran Guilty Of Theft Of Nearly \$300,000 And
Making A False Statement

Tampa, Florida — United States Attorney A. Lee Bentley, III
announces that a federal jury today found Stacy Darnell Mitchell
(48, Tampa) guilty of theft of government property and theft of
mail. He faces a maximum penalty of 15 years in federal prison. His
sentencing date has not yet been set. Mitchell was indicted on March
1, 2016.

According to evidence presented at trial, Mitchell was a mail

handler who had worked for more than 15 years at the Processing and Distribution Center (PDC) in St. Petersburg, which processes mail

for all of Pinellas County. From January to October 2012, Mitchell stole Social Security benefit checks totaling over \$2 million from that facility. More than 3,000 checks were taken from the PDC in 2012, all of which were destined for disabled or retired beneficiaries living in Pinellas County. Mitchell went on to sell the checks to an accomplice in Tampa, who in turn sold the checks to a network of individuals to be cashed at various convenience stores and check cashing businesses in Florida and elsewhere. Four of Mitchell's accomplices have been convicted of federal charges related to the same theft scheme.

This case was investigated by the United States Postal Service - Office of Inspector General, the Social Security Administration - Office of Inspector General, the United States Department of Treasury - Office of Inspector General, and the United States Postal Inspection Service, as well as various local enforcement agencies. It is being prosecuted by Assistant United States Attorney Patrick Scruggs

TAMPA, Fla. (AP) - A former Tampa Bay area postal employee faces up to 15 years in federal prison for stealing more than \$2 million in Social Security checks.

A U.S. Attorney's Office news release says jurors found 48-year-old Stacy Darnell Mitchell guilty Wednesday of theft of government property and theft of mail. His sentencing date hasn't been set.

Mitchell was a mail handler for more than 15 years at the processing and distribution center in St. Petersburg. Authorities say Mitchell stole more than 3,000 Social Security benefit checks from the facility from January to October 2012. The checks were sold and cashed at various convenience stores and check cashing businesses.

Four of Mitchell's accomplices have been convicted of federal charges related to the same theft scheme.

Postal Employee Indicted For Theft Of More Than \$2 Million In Social

Federal Disability Retirement -
Postal & Federal Employees FERS/CSRS Medical Retirement.
Disability Law federaldisabilitylawyer.com

Former U.S. Postal Service Employee from Socorro Pleads Guilty to Federal Misdemeanor Embezzlement Charge

By Rick Owens on March 27, 2018 • No Comment

ALBUQUERQUE — 3/26/18 — Adrienne D. Marquez, 42, of Socorro, N.M., pled guilty today in federal court in Albuquerque, N.M., to a misdemeanor charge of theft of government property.

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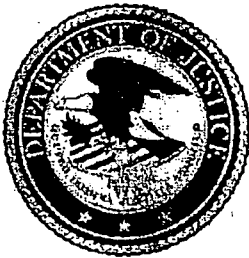
people.com

Marquez was charged in a misdemeanor information filed on Jan. 23, 2018, with theft of government funds from Jan. 1, 2017 through July 12, 2017,

in Socorro County, N.M. According to the information, Marquez intentionally stole money from the United States in an amount less than \$1,000 by writing herself U.S. Postal Service money orders and not paying the U.S. Postal Service for them.

During today's proceedings, Marquez pled guilty to the misdemeanor information without the benefit of a plea agreement. At sentencing, Marquez faces a maximum penalty of one year in federal prison and a fine up to \$100,000. A sentencing hearing has yet to be scheduled.

This case was investigated by the U.S. Postal Service, Office of Inspector General and is being prosecuted by Assistant U.S. Attorney Paul Mysliwiec.



Former U.S. Postal Service Employee from Socorro
Pleads Guilty to Federal Misdemeanor Embezzlement

Charge added by Rick Owens on March 27, 2018

[View all posts by Rick Owens →](#)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

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APR 10 2018

SC Court of Appeals

Cover letter:

Dear Sir or Madam:

Enclosed is an original, plus six copies of the return
of the appellant in the above case. (Return to Motion
to Dismiss)

One Copy is UN bound.

Please file the documents CASE # 2016-002016.

Thanks.

The South Carolina Court of Appeals

Robert H. Breakfield, as attorney-in-fact for John D. Hinson, John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson, Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford as Personal Representative of the Estate of Linda Stanford, William L. Hinson, Elaine H. Hensley, and William C. Hinson, Jr., Respondents,

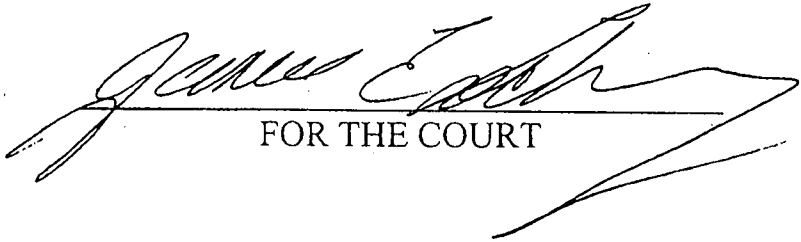
v.

Mell Woods, Appellant.

Appellate Case No. 2016-002016

ORDER

Respondents' motion for reconsideration and motion to dismiss are denied. Nothing in this order prevents the parties from arguing issues relating to timeliness in their briefs along with the merits of the case.


FOR THE COURT

Columbia, South Carolina

cc:
Mell Woods
B. Michael Brackett, Esquire

FILED
May 3, 2018

The South Carolina Court of Appeals

Robert H. Breakfield, as attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson, Darrell W. Hinson, Lois
Hinson, Tina Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford, William
L. Hinson, Elaine H. Hensley, and William C. Hinson,
Jr., Respondents,

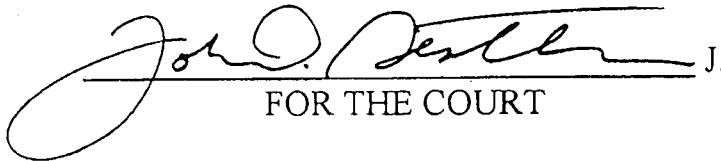
v.

Mell Woods, Appellant.

Appellate Case No. 2016-002016

ORDER

Respondents have filed a motion to dismiss, contending Appellant failed to timely serve the notice of appeal pursuant to *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 776 S.E.2d 575 (Ct. App. 2015). On November 9, 2016, the Supreme Court of South Carolina granted certiorari in *Wells Fargo*. Accordingly, this appeal will be held in abeyance pending the Supreme Court's final disposition of *Wells Fargo* and the motion to dismiss will be acted on at that time.

 J.
FOR THE COURT

Columbia, South Carolina

cc:

FILED
December 9, 2016

Mell Woods
B. Michael Brackett, Esquire

The South Carolina Court of Appeals

Robert H. Breakfield, as attorney-in-fact for John D. Hinson, John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson, Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford as Personal Representative of the Estate of Linda Stanford, William L. Hinson, Elaine H. Hensley, and William C. Hinson, Jr., Respondents,

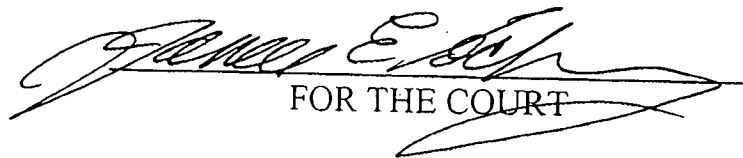
v.

Mell Woods, Appellant.

Appellate Case No. 2016-002016

ORDER

After careful consideration, the motion to dismiss is denied. *See Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, Op. No. 27773 (S.C. Sup. Ct. filed Feb. 28, 2018) (Shearouse Adv. Sh. No. 9 at 100) ("[W]e hold an email sent from the court, an attorney of record, or a party that provides written notice of entry of an order or judgment triggers the time for serving a notice of appeal for purposes of Rule 203(b)(1), SCACR. For the reasons stated, our holding shall be applied prospectively . . ."). This court also declines to dismiss this appeal as a sanction. This appeal shall no longer be held in abeyance.


FOR THE COURT

Columbia, South Carolina

cc:
Mell Woods
B. Michael Brackett, Esquire

FILED

March 26, 2018

58
52

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 23 2019

Appeal from Chester County

SC Court of Appeals

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

Rule 240(f) Reply to the Return of Respondent

1. Mr. Brackett, the respondent attorney, in his return to the Motion to Dismiss, seems to want everyone to believe that the inclusion of Elaine H. Hensley in the present appeal was a "mistake" or oversight, and even though the "mistake" was sworn to in a judicial proceeding by an officer of the court, meaning a licensed South Carolina attorney; Mr. Brackett seems to think that false swearing just does not count.

2. Mr. Brackett has been knowing about the "mistake" of including a dead person in a court proceeding since day one, because Brackett, the respondent attorney had an ulterior motive for keeping Mrs. Hensley within the lawsuit - that motive is that he did not want drop or add parties because he feared losing the advantage of *res judicata* which he mistakenly thought had attached in the present litigation.

3. Brackett and Breakfield, also a licensed attorney, want to win so badly, that the two will go to any length to get the job done. This includes the commission of perjury. Perjury used to be saved and held back and was for use only on "common people" who ran afoul of the law. One hardly ever heard of a lawyer being charged with perjury. Perhaps this has recently changed with the conviction of James Harrison for perjury and other crimes. But even Jim Harrison does not seem to understand that perjury is a felony because there was a photograph of Harrison and his trial counsel published in the Post and Courier Newspaper showing Harrison and Reggie Lloyd laughing and smirking about the charges.

4. B. Michael Brackett used perjury against appellant Mell Woods, so that appellant was denied a jury trial. There was to be a jury trial to start with, but then Brackett labeled appellant Mell Woods, a "trespasser" on the land in question, and then went to a magistrate judge and talked the magistrate judge into summarily evicting appellant from land which appellant lawfully occupied for more than ten years under a written mortgage from the former possessor of the land in question. Appellant was never a trespasser and did raise the issue of paramount title at every opportunity. Where the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action, it is the duty of the court to submit to a jury the issue of title as raised by the pleadings. William H. Van Every, Jr. v. Chinquapin Hollow, Inc., 265 S.C. 474, 219 S.E.2d 909 (1975).

5. The Supreme Court of South Carolina ruled in 1979: "The forgery of a signature on a court document is a fraud upon the court; we cannot conceive of any justification for such conduct." In the Matter of Jack Francis McGuinn, Respondent., 272 S.C. 366, 252 S.E.2d 122 (1979). The signing of someone's name to a document, as an "attorney in fact" where the document is to be filed in court, and represented to the court as legitimate, when the "attorney in fact" had no authority to sign is no different than what Mr. McGuinn did.

6. In addition, the problem of attorneys lying in court proceeding is much more defined since the Ray Chewning case from 2003. Appellant Mell Woods has been cheated out of the right to a jury trial by the lying attorneys Brackett and Breakfield. As the Supreme Court ruled in Chewning, attorney perjury is extrinsic fraud and there is no statute of limitations where a party seeks to set aside extrinsic fraud.

"Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs." Chewning v. Ford Motor Company, 354 S.C. 72, 579 S.E.2d 605. (2003)

CONCLUSION:

Elaine H. Hensley does not need to be just "dropped" from the masthead of this appeal. The actions of her attorneys, Brackett and Breakfield are both illegal and negligent. Mrs. Hensley's estate needs to be replaced as a party, so that all possible parties are before the trial court at one time, and appellant Mell Woods needs to be afforded a jury trial.

Respectfully submitted,

This 18 day of January, 2019.


Mell Woods

P.O. Box 2603
Lancaster, SC 29721

-4-

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF CHESTER

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Application for Notice to Quit Premises

Applicant,

v.

Mell Woods,

Respondent-Trespasser.

1. This verified application is filed pursuant to S.C. Code Ann. § 15-67-610 seeking the issuance and service of a Notice to Quit Premises requiring the above-captioned respondent-trespasser to vacate and relinquish possession to the Plaintiff(s) of the real property known as 1537 Hinton Road, Great Falls, SC, located in Chester County. The undersigned deponent is the personal representative of the estate of Reba Hinson and the attorney-in-fact for the above-named owners of the subject property.
2. Plaintiffs were remaindermen to the life estate held by Reba Hinson in and to certain real property on Fishing Creek Lake in Chester County, including the lot identified and known as 1537 Hinton Road, Great Falls, SC.
3. The property at 1537 Hinton Road was part of larger tract owned by Reba Hinson's spouse, Levie Hoyt Hinson, containing 97 acres, more or less, that is identified as Chester County TMS# 158-0-0-003.

4. The Last Will and Testament of Levie Hoyt Hinson dated April 21, 1977 and probated in the Chester County Probate Court, devised to his spouse Reba Hinson a life estate in all real property owned by Levie Hoyt Hinson with the remainder interest to pass to their bodily heirs upon the termination of the life estate.
5. By Order of the Chester County Probate Court dated October 15, 2007, it was determined that the above-named persons are the bodily heirs to whom title to the real estate passed upon the death of Reba Hinson on January 3, 2007. A copy of said Order is attached hereto and incorporated herein as **Exhibit A**.
6. During her life estate Reba Hinson leased the lot at 1537 Hinton Road to the Respondent-Trespasser. The terms of the lease agreement are not clear, except that Mr. Woods was to pay rent to Reba Hinson. Mr. Woods was and is the owner of the improvement/residence located on the lot now owned by the Applicants.
7. When Reba Hinson died, her life estate terminated by operation of law, and the lease agreement with Mr. Woods immediately terminated by operation of law.
8. The remaindermen successors to the property immediately became the fee owners of the property, including the lot at 1537 Hinton Road.
9. Since the death of Reba Hinson, Mr. Woods has denied that he is a tenant and has affirmatively alleged that he holds fee title to the lot at 1537 Hinton Road. In his verified Answer filed in this Court in 2011CV1210100148 he alleged: "there is no landlord-tenant relationship between Defendant and the purported landlords [Second Defense- Count I]... Mrs. Hinson held a fee estate, and full ownership estate, not a 'Life Estate' as stated [Third Defense]... It is not true that the will in question [Levie Hinson last will] created a 'Life

- Estate' [Third Defense] . . . as stated earlier, Mrs. Hinson had full ownership of all of the property formerly owned by her husband, Mr. Levie Hoyt Hinson, the agreement defendant [Mr. Woods] had with Mrs. Hinson was a type of land contract, and when fulfilled, defendant will be the owner of the land where the building sits [Third Defense] . . ."
10. Mr. Woods has heretofore participated in various legal proceedings in which he claimed fee ownership of 1537 Hinton Road. He attempted to insert himself into the administration of Reba Hinson's probate estate in an effort to cause a certain last will to be probated in lieu of other last wills. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit B**. The Court of Appeals' unpublished opinion is attached as **Exhibit C**.
 11. Applicants herein commenced an eviction action to have Mr. Woods ejected from the property. Mr. Woods claimed that he was not a tenant and that the magistrate court therefore had no jurisdiction over the proceeding. Selected portions of his Answer in the eviction case are set out in paragraph 9 above. The appeal in the eviction case involved pretrial procedural matters and not substantive findings and conclusions.
 12. Most notably, Mr. Woods commenced an action to have Levie Hinson's last will construed, alleging therein that Levie Hinson's last will devised fee ownership to Reba Hinson (not a life estate) and that Reba Hinson had conveyed, or contracted to convey, fee title to 1537 Hinton Road to Mr. Woods. He alternatively claimed title by adverse possession. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit D**. The Court of Appeals' unpublished opinion is attached as **Exhibit E**.

13. Having admitted under oath that his possession of the property at issue since the death of Reba Hinson was as the alleged owner and not as a tenant, and having failed in his attempts to prove ownership of the fee as evidenced by the aforementioned court orders, and having refused to vacate the property at the demand of the Applicants, Mr. Woods is now a trespasser. His present possession of the land known as 1537 Hinton Road is without title, and is without the consent of the Applicant-owners.
14. Applicants admit that Mr. Woods is the owner of the improvement on the property at issue, and Applicants make no claim to the improvement, unless Mr. Woods fails or refuses to remove the improvement within the time the court determines to be reasonable.
15. Applicant is informed and believes that he is entitled to the relief provided in and by S.C. Code Ann. § 15-67-610, namely to have the magistrate serve a notice on the Respondent to quit the premises.

November 13, 2014



B. Michael Brackett
Moses & Brackett, PC
P.O. Box 100261
Columbia, Sc 29202
803.461.2312
Attorney for Applicant

Verification

Personally appeared before me Robert H. Breakfield, Esquire, who being first duly sworn on oath, says that he, in his capacity as attorney-in-fact, is the Applicant in the foregoing action and has read the allegations in the foregoing Application, and the same are true of his own knowledge, except those matters stated on information and belief, and as to those matters he believes them to be true.


Robert H. Breakfield, Esquire

Sworn to before me this 13th day
of November, 2014.



Notary for South Carolina

My Commission Expires: 1/16/2019

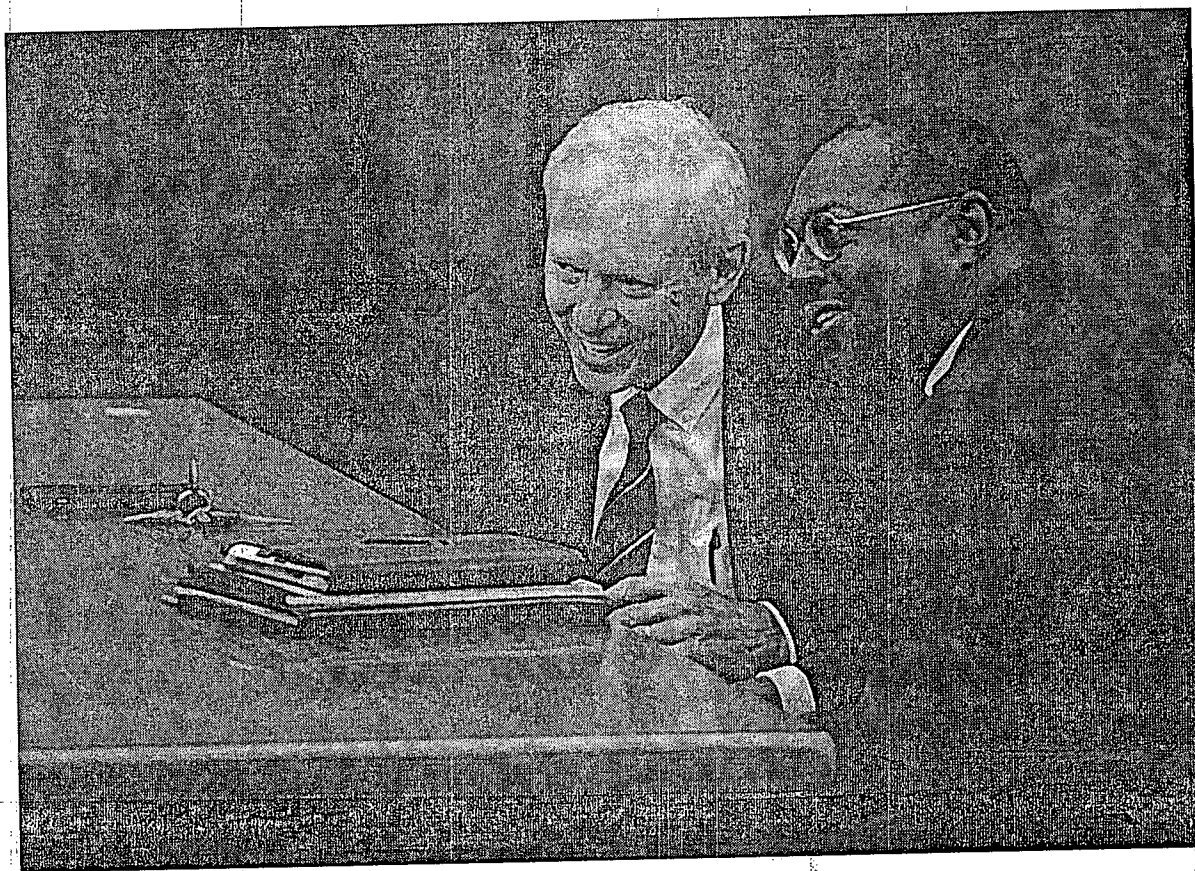
-9-

https://www.postandcourier.com/politics/ex-sc-lawmaker-found-guilty-sentenced-to-prison-in-statehouse/article_01df3bf6-d924-11e8-92df-1fc13c4f253b.html

Ex-SC lawmaker found guilty, sentenced to prison in Statehouse probe

By Andrew Brown abrown@postandcourier.com

Oct 26, 2018



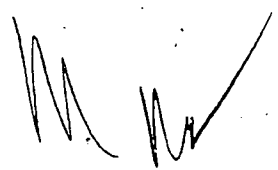
Former Rep. Jim Harrison and his attorney, Reggie Lloyd John A. Carlos II./Special to The Post and Courier
John A. Carlos II

CERTIFICATE OF SERVICE

Appeals Case # 2016-002016

I hereby certify that I have served the within and foregoing
Reply by depositing a copy of the same in the U.S. Mail, postage
prepaid addressed to Mr. B. Michael Brackett at his current
address of record.

This 18 day of January, 2019.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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JAN 23 2019
SC Court of Appeals

-18-

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JAN 23 2019

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To: SOUTH CAROLINA COURT OF APPEALS PO BOX 11629 COLUMBIA SC 29211-1629	
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 20 2016

SC Court of Appeals

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
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Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

Rule 240(e), SCACR RETURN to Motion

1. In the motion to dismiss filed by the respondent attorney B. Michael Brackett, it is alleged that Appellant Mell Woods filed a Rule 59(e) motion for reconsideration late which Mr. Brackett hopes will deprive the Court of Appeals of any jurisdiction to hear this appeal. The assertion by Mr. Brackett is simply not true, based on several reasons. The first reason is that appellant served the Rule 59(e) motion on July 28, 2016, after receiving written notice of the motion on July 18, 2016, which is well within the 10 day time frame allowed for Rule 59(e) motions.

2. In addition, although Mr. Brackett complained to the circuit court Judge about the Rule 59(e) motion being untimely, the Judge did not believe him because the circuit court Judge did not rule about whether the Rule 59(e) motion was timely, or not timely, in the court's order denying appellant's Rule 59(e) motion. At this point, the respondents had the option of filing their own Rule 59(e) SCRCF motion to address the non-ruling from the court about the purported time issue. The respondents did not do so and are now trying to get the Court of Appeals to rule on something the trial court did not feel was worth ruling on. The trial court did not address the time issue, and respondents failed to raise the issue in a post-trial motion. According the following authorities any issue about the time matter is not properly before the Court of Appeals:

Noisette v. Ismail, 304 S.C. 56, 403 S.E. 2d 122, 124 (1991)
(case held where a trial court does not explicitly rule on an argument raised, and the aggrieved party makes no Rule 59(e), SCRCF, motion to obtain a ruling, the appellate court may not

address the issue); Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005) (Floyd held that where a trial judge makes a general ruling on an issue, but does not address the specific argument raised by an aggrieved party, and that aggrieved party fails to raise the issue in a Rule 59(e) motion, the appellate court cannot consider the argument on appeal).

3. The 2008CP00475 E-mail issue: Mr. Brackett is trying claim that he notified appellant of the entry of the court order in question by E-Mail on July 12, 2016, thus starting the 10 day time clock ticking. Nothing could be more untruthful. Not only did the trial judge not believe Brackett since the court did not include the E-Mail issue in the Order denying appellant's Rule 59(e) motion, Brackett apparently did not believe the issue legitimate at the time, because Brackett failed to re-assert the issue to the court, or obtain a timely ruling from the trial court concerning his purported "service" of the court order.

4. How did the 2008CP00475@g-mail.com E-Mail come into existence? Why would someone use 2008CP00475, which is a Chester County civil case number as a personal E-Mail? There is only one answer: Brian Gibbons, the circuit judge ordered appellant to come up with an E-MAIL for Case Number 2008CP1200475, a partition case in which appellant has applied to be a party, and the Court wanted an E-MAIL address for that case, the 2008CP1200475, and the Order of the Court which is attached as page 9 of this reply does not mention having to furnish an E-Mail address for any other case, and certainly not this case.

5. Appellant Mell Woods shows by the affidavit attached hereto and numbered as page 10-11 of this reply, that the only written notice of the court order in question was from the clerk of the Chester County Court, which was received on July 18, 2016; the Court Order was in a brown mailer with the mailing address hand-addressed. There was no copy of the E-Mail that Brackett claims he sent to the clerk of court. The first time appellant Mell Woods ever saw the E-Mail was when it showed up marked as "Exhibit A" in Brackett's response to appellant's Rule 59(e) SCRCF motion. Appellant Mell Woods does not inspect the 2008CP00475@g-mail.com E-Mail on a daily basis, simply because there is nothing going on in the partition case right now and appellant does not use the E-mail for any other purpose; the E-mail has not been checked for several months, the month of May was probably the last time.

6. As to the purported issue about "when" the Rule 59(e) SCRCF motion was served by U.S. Mail on Mr. Brackett; it would seem that the certificate of service itself would suffice, but since compliance with the Rules does not suit Mr. Brackett, appellant Mell Woods shows by the additional affidavit attached as page 12-13 of this reply as to exactly where and when the motion was served. B. Michael Brackett has no personal knowledge of the mailing of the Rule 59(e) motion and anything he has to say about it is pure speculation.



7. If Mr. Brackett had wanted to be decent about the E-Mail business he could have at least sent the E-Mail to appellant via regular U.S. Mail, and then it would have been obvious that Brackett was up to something. But no, Brackett laid low and then used the E-Mail in his response to appellant's Rule 59(e) motion. Brackett has no business using a court-ordered E-Mail from a case in which Brackett has not made an appearance to try and "bush-whack" someone out of his day in court in another, entirely different case.

8. ADVERSE POSSESSION: Mr. Brackett is labeling appellant's appeal from magistrate court and from circuit court as "meritless." This is not true either. The respondents are trying to claim that this case has already been decided in the un-reported case number 2014-UP-010. Contrary to what Mr. Brackett is now telling the Court of Appeals, the Court of Appeals did not Rule that appellant could not claim adverse possession. But only that appellant could not "tack" to make the required 10 years, since the Ruling of the Court of Appeals two years, and eleven months ago, there has been a material change: appellant has completed the required ten years, on his own and without the need to tack to the title of anyone else. The date of completion of appellant's ten years of adverse possession was May 08, 2015, and during those ten years appellant Mell Woods was in continuous, hostile, open, actual, notorious, and exclusive possession under color of title to the land in question, for the FULL ten years, and in addition the property was fenced during the entire ten years.

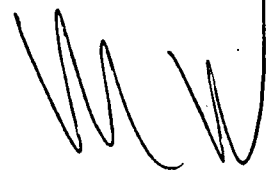
9. Due the passage of time, the prescription issue is now ripe for adjudication; an affidavit describing the method of the ten years prescription in relation to the land in question is attached to this reply as page 14-15.

10. Mr. Brackett also complains about appellant representing himself; Mr. Brackett's complaint should be ignored because all persons in South Carolina have the statutory right to represent themselves, Washington v. Washington, 308 S.C. 549, 419 S.E.2d 779 (1992), and South Carolina Statute § 40-5-80; also appellant has a first amendment right to petition the government, including the judicial branch.

11. As to the sanctions part, if anyone should be sanctioned it should be Brackett for lying to the circuit court judge, and now lying to the South Carolina Court of Appeals, in regards to Elaine H. Hensley, a dead person that Mr. Brackett placed in the masthead of this lawsuit, a person who is still there even after the fact of her death was reported to Mr. Brackett, although Mr. Brackett already knew that Mrs. Hensley was dead when he filed the lawsuit. This matter alone defeats res judicata because the parties are not the same as in former lawsuits.

Respectfully submitted,

This 15 day of October, 2016.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

CERTIFICATE OF SERVICE ON NEXT PAGE

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Robert H. Hinson, William Calvin Hinson,
Jr., Charles Jerry Hinson, Elaine H.
Hensley, and Linda K. Stanford and
William Levy Hinson,

Plaintiffs,

vs.

Lois H. Griffin, Christine G. Jones as
Trustee of the Lois H. Griffin Living Trust,
J. C. Hinson, Kathy Huffstickle, John
Daniel Hinson and Darrell Wayne Hinson,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2008-CP-12-00475

ADMINISTRATIVE ORDER

FILED
2016 FEB 25 A 11:30
CLERK OF COURT
CHESTER CO S.C.

The case was to come before the court pursuant to Mell Woods' Motion to Intervene. The petitioner filed a Motion to Continue on the day prior to the hearing. The petitioner has not provided the court with a phone number or an email address. The rules require attorneys to provide a valid phone number and an email address as well as a valid address. The intervener is representing himself but is still subject to the rules and is likewise required to provide the same contact information.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the intervener shall provide to the Clerk of Court his current and valid phone number, email address and current physical address as well as keep the court current on such information. The intervener's failure to provide this information can result in the dismissal of his petition.

February 23, 2016

Brian M. Gibbons

Circuit Admin Judge
Circuit Court

-9-

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Mell Woods, affiant herein, after being first properly
deposed, states upon oath, and upon personal knowledge, the
following facts to wit:

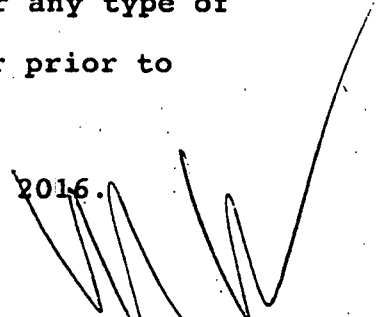
- 10 -

(a) concerning the written receipt of the twenty-six page Court Order in this case filed-stamped by the Clerk of the Chester Court of Common pleas on July 11, 2016; I, Mell Woods received the Court Order in the U.S. Mail on July 18, 2016; at no other time was I informed by anyone that the Court Order existed; July 18, 2016 was the first day I ever saw the Court Order in question;

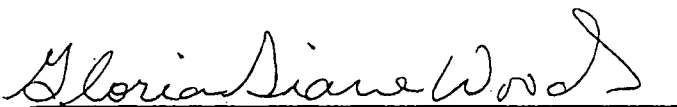
(b) I also never received any E-Mails, telephone calls, letters, FAX, or text message(s) or any type of communication about the Court Order prior to July 18, 2016;

Affidavit made this the 10th day of October, 2016.

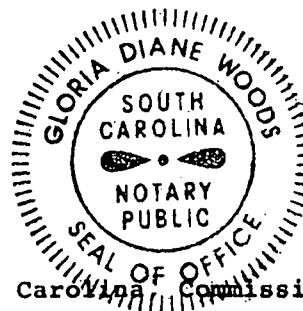
Further, affiant saith not.


Mell Woods, affiant

Sworn to, and subscribed before me,
October 10, 2016,



Gloria Diane Woods, Notary Public for South Carolina, Commission Expires January 08, 2018.



-11-

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

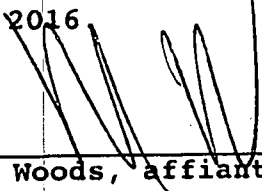
Mell Woods, affiant herein, after being first properly
deposed, states upon oath, and upon personal knowledge, the
following facts to wit:

-12-

- (a) On July 28, 2016, I, Mell Woods served Mr. B. Michael Brackett with a true copy of the Rule 59(e) SCRPC motion filed in Case Number 2015CP1200179, by placing the copy in the U.S. Mail, with sufficient postage, and addressed to Mr. B. Michael Brackett at his address of Record, in Columbia, South Carolina;
- (b) the served motion was in a flat rate legal size post office mailer, with Mr. Brackett's address on the outside of the envelope; the envelope in question was placed in the U.S. Post Office at Pooler, Georgia on the night of Thursday July 28, 2016, at about 09:00 p.m.

Affidavit made this the 10th day of October, 2016

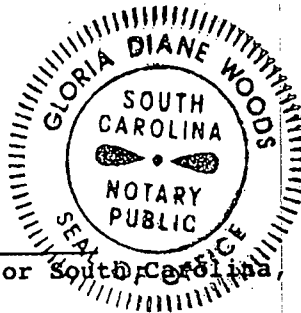
Further, affiant saith not.


Mell Woods, affiant

Sworn to, and subscribed before me,
October 10, 2016,



Gloria Diane Woods, Notary Public for South Carolina, Commission Expires January 08, 2018.



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Mell Woods, affiant herein, after being first properly
deposed, states upon oath, and upon personal knowledge, the
following facts to wit:

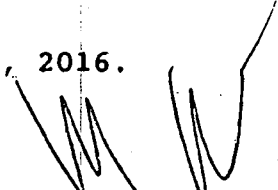
-14-

(a) concerning the land at issue in this lawsuit;

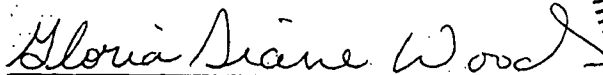
I, Mell Woods, did possess the land in question, starting on May 07, 2005 when I was placed in possession of the land by Mrs. Reba Hinson, the occupant of the land during year 2005, and was in continuous possession of the land through at least May 08, 2015; the land in question is the same land described in the land contract between Mrs. Reba Hinson, and Mell Woods, dated May 07, 2005, and the land contract is in the Record of this case; (a hand-drawn map of the land is in the Record also) I, Mell Woods stayed on the land for ten years, and did not hide the fact that I did occupy the land in question for ten years; the possession was often hostile as some of the Hinson heirs would come by and offer to physically assault me for occupying the land; I would always tell the Hinson heirs that they could not scare me off of land that I had purchased, and that the land was my land and not theirs and they could not trespass on the land or use the fishing dock and float attached to the land or cross-over the land or cut wood off of the land; and whenever the Hinson heirs would tear down portions of the fencing containing the land, I would repair the fencing within two to three days; all of this went on for the ten years that I occupied the land;

Affidavit made this the 10th day of October, 2016.

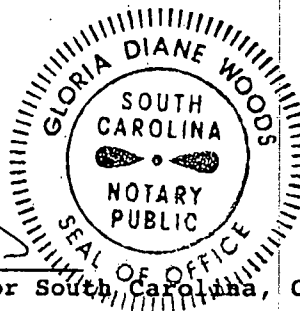
Further, affiant saith not.


Mell Woods, affiant

Sworn to, and subscribed before me,
October 10, 2016,



Gloria Diane Woods, Notary Public for South Carolina, Commission Expires January 08, 2018.



STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

FILED
2016 AUG -5 A 10:45
CLERK OF COURT
CHESTER CO S.C.

APPELLANT'S RULE 59(e) MOTION:

1. Certification under Rule 11(a) SCRCP

Appellant certifies that the required consultation would
serve no useful purpose, but the opposing party has been
notified of this motion in writing.

2. Pursuant to Rule 59(e), SCRCP, appellant Mell Woods moves that this Court reconsider its July 07, 2016 Order because the same was drafted by B. Michael Brackett, the respondent counsel, and contains factually inaccurate statements inserted in the Order by B. Michael Brackett. In addition, Mr. Brackett failed to mention the allegations of perjury and the evidence of perjury presented to the Court, over objection, concerning Elaine H. Hensley, a party to this case who was already dead at the time this case was filed. Appellant Mell Woods first received written notice of the entry of the Order on July 18, 2016.

3. This is a land case concerning land in Chester County, South Carolina. The respondents, or at least the alive ones, call themselves "remaindermen" of the estate of Levie Hinson. The litigation for this case and the others has lasted several years, and during year 2016, appellant Mell Woods completed the full ten years of adverse possession against everyone concerning the land in question, and without the need to tack to the possession of anyone else. The adverse possession details are in the Record, with the specific dates of the beginning and the continuance of the adverse possession for 10 years; appellant would appreciate a Ruling from the Court about the adverse possession issue.

4. In addition, and over the objection of the respondent counsel, B. Michael Brackett, appellant filed his Notice of Bar under SC Statute § 15-67-20, and cited several cases which stand for the proposition that once two suits, (and now only one) have been filed attacking someone's title and possession, there can be no more suits. South Carolina Statute § 15-67-20 has been the law for 272 years, being enacted during colonial times, and the statute and the cases construing the statute mean exactly what they do say, that: "the law is so written" and so what if the statute number has been changed, the law is still the same.

5. A copy of the NOTICE OF BAR UNDER SC STATUTE § 15-67-20, which was presented to the Court during the Appeal from Magistrate phase, is attached for ready reference;

also attached is a copy of Mrs. Hinson's plat, recorded in Plat CAB D slide 174, page 3B, a certified copy of which was presented in Court, is made a part of this motion;

AND, a copy of the land sales contract between Mrs. Hinson and Mell Woods, which is the same as the one presented in Court is attached also.

-3- ~~PH~~

6. Lastly is a copy of the affidavit, the original of which was presented to the court, which shows that Robert H. Breakfield lied to the Court.

Robert H. Breakfield is a licensed South Carolina Attorney and knows better than to present dead people to the Court. An attorney's authority to act for his client ends at the client's death. Carver v. Morrow, 213 S.C. 199, 48 S.E.2d 814 (1948). In this instance, the affidavit shows that Mr. Breakfield already knew of the death Mrs. Elaine Hensley well before the present suit was filed. Since Breakfield swore to a paper in connection with the filing of the present suit, the same constitutes perjury, and is in fact a fraud upon the Court. Appellant Mell Woods requests that the Court Rule on Breakfield's false statement used to obtain the jurisdiction of the Magistrate Court, while at the same time obtaining the desired results using false pretenses.

Respectfully submitted,

This 28 day of July, 2016.

P.O. Box 2603
Lancaster, SC 29721

Mell Woods

CERTIFICATE OF SERVICE

I hereby certify that I have served B. Michael Brackett with a true copy of the within and foregoing MOTION by placing a copy of the same in the U.S. Mail with sufficient postage and properly addressed to Mr. Brackett on the 28 day of July, 2016.

Mell Woods

FILED
2016 AUG -5 A M 45
CLERK OF COURT
CHESTER CO S.C.

August 15, 2015

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

The Honorable Milton Hamilton
Special Referee
Chester Court of Common Pleas
C/O Hamilton Delleney Grier & Cotten, LLC
P.O. Drawer 808
Chester, South Carolina 29706

Re: Hinson Partition case, Number 2008-CP-12-00475

Dear Judge Hamilton:

Enclosed is a pleading under Rule 24(a)(2) SCRCp, Motion to Intervene in the above case. The motion was served on August 10, 2015, and filed at the courthouse yesterday. The motion explains itself.

I am still looking for someone to represent me in this matter, preferably a Citadel Graduate, but it is hard to find Citadel Graduates who are licensed attorneys this far north. I stand ready to furnish the Court any additional information which is needed.

Thanking you,

Mell Woods

Copies of this letter sent to the following counsel of Record, at the Address of Record for each:

Bruce M. Poore, attorney at law
J. Steedley Bogan, attorney at law
Ned Gregory, II attorney at law
Daniel D. D'Agostino, attorney at law

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

Robert H. Hinson, William
Calvin Hinson, Jr.,
Charles Jerry Hinson,
Elaine H. Hensley, and
Linda K. Stanford and
William Levy Hinson,

Plaintiffs,

Civil Action, Number:
2008-CP-12-00475

vs.

Lois H. Griffin, Christine
G. Jones as Trustee of the
Lois H. Griffin Living
Trust, J.C. Hinson, Kathy
Huffstickle, John Daniel
Hinson and Darrell Wayne
Hinson,

[Mell Woods, applicant
for intervention]

Defendants.

Motion pursuant to Rule 24(a)(2) SCRPC:

Mell Woods, as an applicant to intervene in the above styled action, comes now and shows to the Honorable Special Referee the following grounds for intervention.

1. The above action is for the partition of real estate.
2. Mell Woods is the legal owner of part of the real estate in suit.

3. Mell Woods has not been included in the pending partition case, and applicant claims an interest relating to the property in question and is so situated [meaning not being a party] that the disposition of the action without Mell Woods being included will impede both the applicant's interests, as well as the interests of the present parties.

4. This application is timely; applicant discovered the pending partition action only about a month ago; this case has been concealed from public view because of the way it is shown in the public data base provided by the South Carolina Supreme Court; the case is listed in a non-standard way which does not match the filed pleadings, one example, the Case Number in the data base is not hyphenated as one would expect. Any deviation will cause the computer to return "no results." In any event, the last entry in the case file is a note to Mr. Bruce Poore, an attorney for one of the parties, from the clerk of court wanting to know the status of the partition case, dated June 11, 2013, over two years ago, with the note to date not having been responded to. So, applicant is surely as timely as anyone else in the case.

5. There is an on-point South Carolina case about Rule 24, SCRCP. South Carolina requires a four point test to determine if an application for intervention should be granted, Berkeley Electric v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712, (1990);

4 Parts:

- (1) establish timely application;
- (2) assert an interest relating to the property which is the subject of the action;
- (3) demonstrate that applicant is in a position such that without intervention, disposition of the action may impair applicant's ability to protect that interest;
- (4) demonstrate applicant's interest is inadequately represented by other parties.

6. Berkeley Electric also cited Spring Construction Co., Inc. v. Harris, 614 F.2d 374 (4th Cir. 1980), being timely was discussed in Spring Construction Co.; "Mere passage of time is but one factor to be considered in light of all the circumstances." and that, "the proper approach is to disregard non-prejudicial technical defects."

7. Will the present parties protect the interests of Mell Woods, the applicant for intervention? The answer is, no, simply because the existing parties have interests adverse to applicant's interests.

8. The disposition of the pending partition action without the addition of applicant will impede the final settlement of the land dispute between all of the parties for the simple reason that Mell Woods has a good and valid and legal claim to part of the land in question, and if any less than all of the parties are before the court at the disposition of the case, then the case will probably have to be filed again.

9. Applicant moves to be added as a party in the pending partition action.

Respectfully submitted,

this ____ day of August, 2015.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

CHESTER COUNTY SOUTH CAROLINA
COURT OF COMMON PLEAS

Civil Case Number: 2008-CP-12-00475

CERTIFICATE OF SERVICE:

Mell Woods has examined the case file for the above case.

Appearances have been filed by the following persons:

Bruce M. Poore, attorney at law

J. Steedley Bogan, attorney at law

Ned Gregory, II, attorney at law

Daniel D. D'Agostino, attorney at law

I hereby certify that I have served the foregoing four persons by mailing to each a copy of the within and foregoing Motion to Intervene by placing copies of the motion in the U.S. Mail, addressed to each person at the address of record listed on the pleadings, with sufficient first class mail postage.

This ____ day of August, 2015.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

**STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER**

**Robert H. Hinson, William
Calvin Hinson, Jr.,
Charles Jerry Hinson,
Elaine H. Hensley, and
Linda K. Stanford and
William Levy Hinson,**

Plaintiffs,

**Civil Action, Number:
2008-CP-12-00475**

vs.

**Lois H. Griffin, Christine
G. Jones as Trustee of the
Lois H. Griffin Living
Trust, J.C. Hinson, Kathy
Huffstickle, John Daniel
Hinson and Darrell Wayne
Hinson,**

**[Mell Woods, applicant
for intervention]**

Defendants.

Objection that the applicant's MOTION TO INTERVENE

and Motion pursuant to Rule 24(a)(2) SCRPC

**is scheduled for hearing on Wednesday, February 10, 2016,
in front of a regular circuit court judge, instead of
the Special Referee which the case has been assigned to:**

**1. Applicant for Intervention, Mell Woods moved on
August 10, 2015, that applicant be allowed to intervene in
the above-styled case in order that the interests of
applicant be protected.**

2. The motion in question was addressed to and delivered to the Honorable Milton Hamilton, the special referee assigned to the above-styled case.

3. Judge Hamilton is still conducting a review of the case and the pending motion; applicant is sure that Judge Hamilton will make a proper ruling when all of the facts are in; in the meantime, applicant for intervention, Mell Woods, objects to this matter being heard by any other judge.

4. All of this is simply a clerical error on the part of the clerk of court; a letter from Judge Hamilton and Court Order from Judge Hamilton are attached which clearly show that Judge Hamilton is the special referee assigned to the case under Rule 53(b), and Rule 53(c) SCRPC.

5. Applicant would have communicated with the Court earlier, but the notice by the clerk's office was not addressed correctly, said notice had a Rock Hill zip code attached to the notice card instead of the proper one for Lancaster, SC which delayed the notice until last Thursday, February 04, 2016. A copy of the notice card is attached for ready reference.

6. Applicant Mell Woods has filed this objection in order to protect the Record.

This ____ day of February, 2016.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

August 01, 2016

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

The Honorable Sue Carpenter, Clerk of Court
Sixth Judicial Circuit
P.O. Drawer 580
Chester, SC 29706

Attention Civil Division, Re: the above case numbers

Dear Mrs. Carpenter:

Enclosed for filing is a Rule 59(e) Motion with attachments
as part of the Motion. The \$25.00 filing fee is attached,
and also the motion cover sheet.

The motion was served on the opposing parties by mail last
Thursday, July 28, 2016. The motion is being filed with the
clerk within 5 days as is required by Rule 5(d), SCRCP.

Please file the attached motion, along with the following:

- (1) Copy of the Notice of Bar under SC § 15-67-20
- (2) Copy of the Reba Hinson Land Plat, CAB D slide 174 page 3B
- (3) Copy of the land sales agreement between Mell Woods and Mrs. Hinson
- (4) Copy of the Affidavit of Mell Woods dated April 21, 2016, concerning
Elaine H. Hensley and Robert Breakfield.

Sincerely,

Mell Woods

Copy to: B. Michael Brackett at his address of Record.

FILED

2016 AUG -5 A B 55

CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA

COUNTY OF

Chester

Robert Breakfield

Plaintiff,

vs.

Mell Woods

Defendant.

IN THE COURT OF COMMON PLEAS
6th JUDICIAL CIRCUIT

CASE NO.

2015-CP-12-00179

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>B. M. Michael Brackett</u> Bar No. <u>SC 29222</u> Address: <u>Box 100261</u> Phone: <u>COLA</u> Fax: <u>SC 29222</u> E-mail: <u>Other:</u>		Defendant: <u>Mell Woods</u> Bar No. <u>SC 29721</u> Address: <u>P.O. Box 2603</u> Phone: <u>LANCASTER, SC 29721</u> E-mail: <u>Other:</u>	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Rule 59(e)</u> Estimated Time Needed: <u>40 mins</u> Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of <u>Michael Brackett</u> Plaintiff ☒ Defendant ☐		Date submitted: <u>AUG 01, 2016</u>	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <u>Other:</u>			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date: _____, 20__	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____, 20__ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

CLERK OF COURT
CHESTER CO. S.C.

FILED

2016 AUG -5 A B 50/6

STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

FILED

2016 AUG -5 A 10 45

CLERK OF COURT
CHESTER CO S.C.

NOTICE OF BAR UNDER SC STATUTE § 15-67-20

1. Mell Woods, appellant above named, and defendant below, comes now and exercises the right granted by the South Carolina Legislature and codified as § 15-67-20 which reads as follows: "The plaintiff in actions for recovery of real property or the recovery of the possession of ~~the possession~~ of real property is limited to one action for recovery."

2. An eviction case is one for recovery and possession of real property, Stewart-Jones Co. v. Hankins, 155 S.C. 234, 152 S.E. 430 (1930). The statute 15-67-20 was formerly § 10-2402 in the 1952 Code; and in the second Stewart-Jones case it was the ruling of the Honorable J.K. Henry, right here in the Chester County Courthouse on August 31, 1928, that the filing of three evictions against Mrs. Hankins, and the failure to pay costs was enough for the circuit court to confirm title to the real estate in the name of Mrs. Hankins, and to no one else.

3. SC Statute § 15-67-20 has been a South Carolina law for 272 years, being enacted in 1744 by the colonials. The statute has had different numbers but always had the same wording with the exception that prior to 1988 TWO ATTEMPTS at eviction were allowed, and since 11/25/1988, only one.

4. In the present case against Mell Woods, THREE attempts at eviction have been made. In Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201 (1912), the Court took the time to explain why the "two strikes and your out" statute was enacted. Under the English Common Law an unlimited number of land suits for possession of a parcel of land could be brought, and the English judges would employ fictions (meaning Richard Roe) to justify the fiction that the suit had never been brought before. SC Statute §15-67-20, and the former ones, worded the same, (before 1988) are meant to defeat the English practice of endless land suits.

-2-

5. Defendant Mell Woods, brought up the more than one eviction case issue in the answer filed in the magistrate court, but the judge failed to rule on the point. In addition a Rule 59(e) motion was filed about the point after the magistrate judge issued his Ruling. The Rule 59(e) motion was not specifically addressed either, so defendant and appellant has done all that it can to preserve the issue for appeal.

6. A non-suit, or discontinuance, voluntary, or not voluntary, started the clock ticking for another stipulation built into § 15-[6]7-20 prior to 1988, which was that the second suit had to be brought within TWO years of the first discontinuance, or any other further suits concerning the same land were barred, and title to the land in question was established against the plaintiff's bringing the action to start with, in other words bring the first one, and then the other one within two years, or be forever barred from bringing another one, and neither suit had to be litigated to a finish, a simple discontinuance would do to start the two years. Dyson v. Leek, 5 Strob. (36 S.C.L.) 141; Binda v. Benbow, 11 Rich. (45 S.C.L.) 24., today, however, the two years has been eliminated and starting in 1988, once an eviction is started it must be kept alive and not allowed to languish because a second action is not allowed anymore, there is no "dismissal without prejudice" because the South Carolina Legislature has kept the same law on books for at least 272 years with one minor change: there is no second chance.

-3-

7. S.C. Code Anno. § 10-2402 used to read:

"The plaintiff in all actions for recovery of real property or the possession thereof is hereby limited to two actions for the same and no more. And before any second such action shall be brought the costs of the first action shall be first paid."

And there was a time limitation that went with it:

§ 10-125: "A second action for the recovery of real property shall be brought within two years from the rendition of the verdict or judgment in the first action or from the granting of a nonsuit or discontinuance therein."

Today, the same reads:

§ 15-67-20: "The plaintiff in actions for recovery of real property or of the possession of real property is limited to one action for recovery."

8. The Rule in South Carolina about reaffirmance of existing statutes is well stated in the case of State v. Patterson, 220 S.C. 269, 66 S.E.2d 875 (1951) where it was held that:

"It is a general rule of law that where a statute is repealed and all, or some, of its provisions are at [the] same time re-enacted, the re-enactment is considered a reaffirmance of the old law, and a neutralization of repeal, so that the provisions of the repealed act which are thus re-enacted continue in force without interruption, and all rights and liabilities incurred thereunder are preserved and may be enforced." 25 R.C.L. 934; and then they cited Brown v. Brown, 213 N.C. 347, 196 S.E. 333, as follows:

"Likewise, where the terms used in a statute have acquired a settled meaning through judicial interpretation, and the same terms are used in a subsequent statute upon the same subject matter, they are to be understood in the same sense unless by qualifying or explanatory addition

4-

the contrary intent of the Legislature is made clear. Such a construction becomes part of the law, as it is presumed that the Legislature in passing the law knew what the judicial construction was which had been given to the words of the prior reenactment." 25 R.C.L., 992.

9. In the case of Logan v. Jones, 155 S.C. 258, 152 S.E. 518 (1930) it was held that § 15-67-20 as it existed in 1930, is a statute of repose and that a maximum of two actions for recovery of land could be brought since a defendant under the statute has a right at some point to be relieved of continued attacks on his title by the same person, or those claiming under the same person, and if the plaintiff's claim from a common source, the maximum number of actions in 1930 was two. Walsh v. Evans, 112 S.C., 131, 99 S.E. 546; Water Power Co. v. Land Co., 47 S.C., 117, 25 S.E. 48; Mitchum v. Shaw, 98 S.C., 175, 82 S.E. 401; Water Power Co. v. Land Co., 42 S.C., 488, 20 S.E. 378; Love v. Turner, 84 S.C., 178, 65 S.E. 1043.

10. In Richardson v. Riley, 67 S.C. 53, 45 S.E. 104 (1903) a circuit court was reversed because it allowed another action filed later than two years after the first filing to be tried after a formal bar was pled, the Court held:

"It is useless to go further in this case, so far as the grounds of appeal are concerned. If the second action was barred, as we have just held, under our statute, no proceedings in that action were of any avail. The Circuit Judge was in error, and his judgment must be reversed."

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11. Mell Woods, defendant below, and appellant herein incorporates by reference and republishes each of stated grounds for appeal, and points out that Elaine H. Hensley is a dead person and a party to these proceedings. This was brought up in the answer since Robert H. Breakfield, listed Mrs. Hensley as a party, and then swore to the truth of paper listing Mrs. Hensley as a live person. Mrs. Hensley does not have a personal representative, and her estate has been closed out.

Respectfully submitted,

This 01 day of June, 2016.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

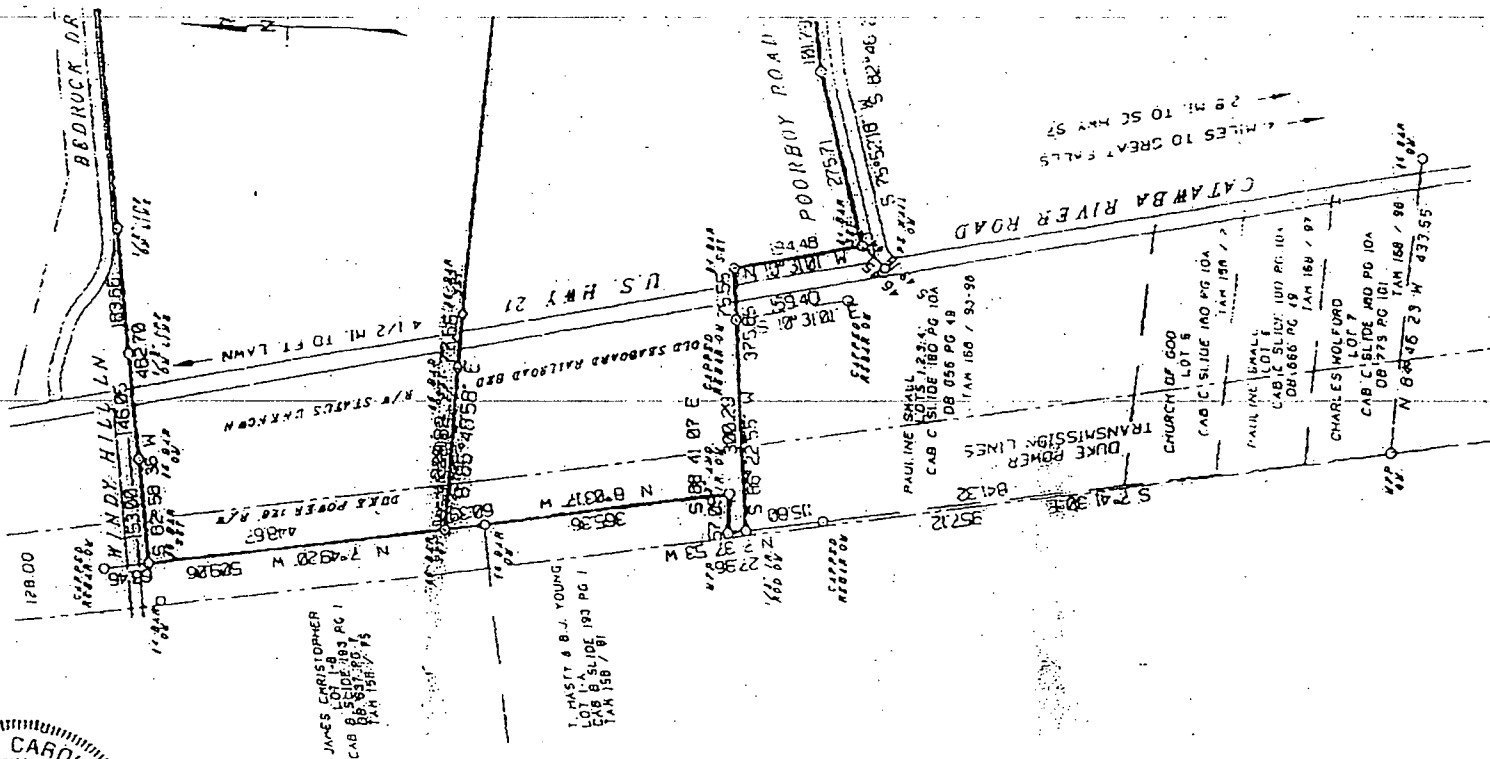
Certificate of Service

I hereby certify that I have served B. Michael Brackett with a true copy of the within and foregoing document [six pages] by handing the copy to him at the Chester County Courthouse.

This 01 day of June, 2016

Mell Woods

TO THE BEST OF MY KNOWLEDGE, THE SURVEY HEREIN
 HEREON WAS MADE IN ACCORDANCE WITH THE MINIMUM
 STANDARDS FOR THE PRACTICE OF LAND SURVEYING
 IN SOUTH CAROLINA, AND MEETS THE REQUIREMENTS FOR A
 "CLASS A" SURVEY AS SET FORTH BY THE



STATE OF SOUTH CAROLINA
 COUNTY OF CHESTER
 PLAT OF SURVEY FOR

REBA P. HINSON

LOCATED ABOUT 4 1/2 MILES SOUTH OF SC HWY 9 AT FT. LAWN ON BOTH SIDES OF U.S. HWY 21
 BEING A PORTION OF THE REBA HINSON LANDS SHOWN AS TRACTS NO. 7 & 8 OF PG. "B" PAGE 106.
 BEING ALL OF TRACT 7 AND A PORTION OF TRACT 8 OF SAID PLAT.

		JACK SMITH SURVEYING		©2002js
800 FOREST DR. 13427 PS		(803) 283-2646		LANCASTER, SOUTH CAROLINA
DRAWN BY PS	SCALE 1" = 240'	TAX MAP P/O 158 / 3	FILE HNSNREBA	DATE 3 MAY 2002

MARY DAVID TIBBY

OLIVIA WILKIE
1496.72
N 82°54'13" E
74.48
N 81°22'58" E

TRACT 3
32.857 AC.

1752.88
S 65°48'58" E

TRACT 2
32.857 AC.

161.14
N 86°33'59" W
253.47
N 77°31'33" W
72.82
N 70°40'52" W
137.89
N 62°23'30" W
445.05
N 53°42'34" W

REBA MINSON
REMAINDER TRACT 0 PB '8' PG 106

WINTON ROAD

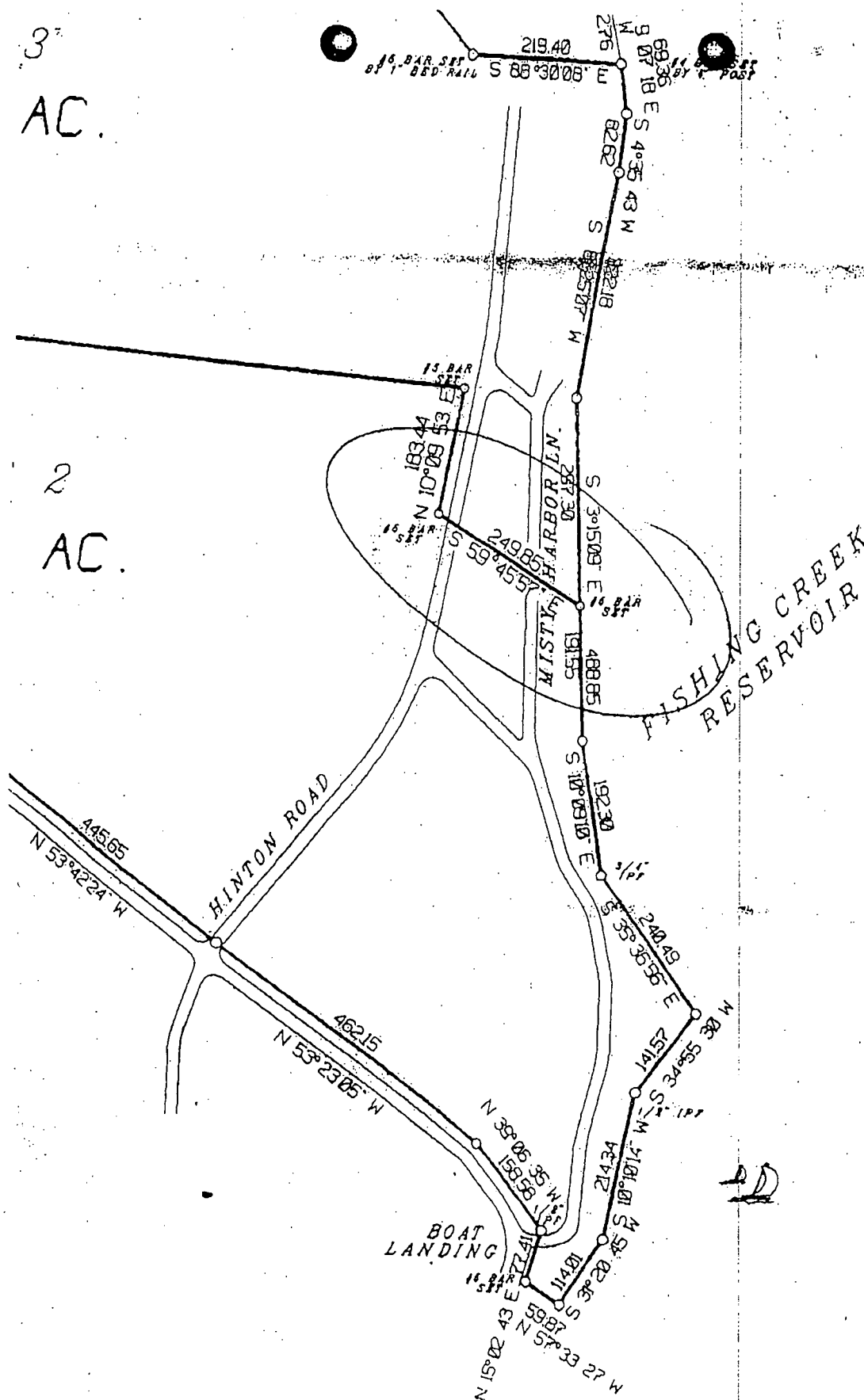
BOAT
LANDING

FISHING CREEK
RESERVOIR

AC.

2.

AC.



CHESTER COUNTY, SOUTH CAROLINA

Date: May 07, 2005# 2005

LAND SALES AGREEMENT between REBA P. HINSON and MELL WOODS

Total amount of Contract	\$28,530.00
Credit for prior payment (minus)	3,804.00
due May 06#, 2011 extra payment for land	19,020.00
\$5.00 consideration for this new contract	5.00

\$24,731.00
Remains

To date Mell Woods has paid in \$3,804.00 ground rent on the property described in this contract. He (Mell Woods) bought the building sitting on my land from Bobby Gardner. Mell Woods can move the building if he wants to. The rent contract was \$951.90 per year. The rental contract for the ten years is now modified; credit against the contract price, in the amount of \$3,804.00 is allowed, and it is now agreed that Mell Woods is buying the land where building is, instead of renting the land. (1537 Hinton Road)

PROMISES BY MELL WOODS

Mell Woods owes Reba P. Hinson the following money:
\$951.00 times ten = \$9,510.00, plus double the amount paid in \$19,020.00,
as a final payment, total of \$28,535.00 for the land. Mell Woods can
move the building off if he wants to. Mell Woods has 90 days after
May 06, 2011 to finish paying the \$28,535.00 to either Reba P. Hinson
her heirs, or assigns. If the total amount is not paid within
90 days all unpaid amounts will start earning 8% per year interest,
after August 06, 2011.

DESCRIPTION OF LAND.

The land sold today is shown on the plat of Phillip G. Smith, a registered surveyor, and dated May 13, 2002 -- reference is made to the Smith plat which shows lands of Reba P. Hinson;

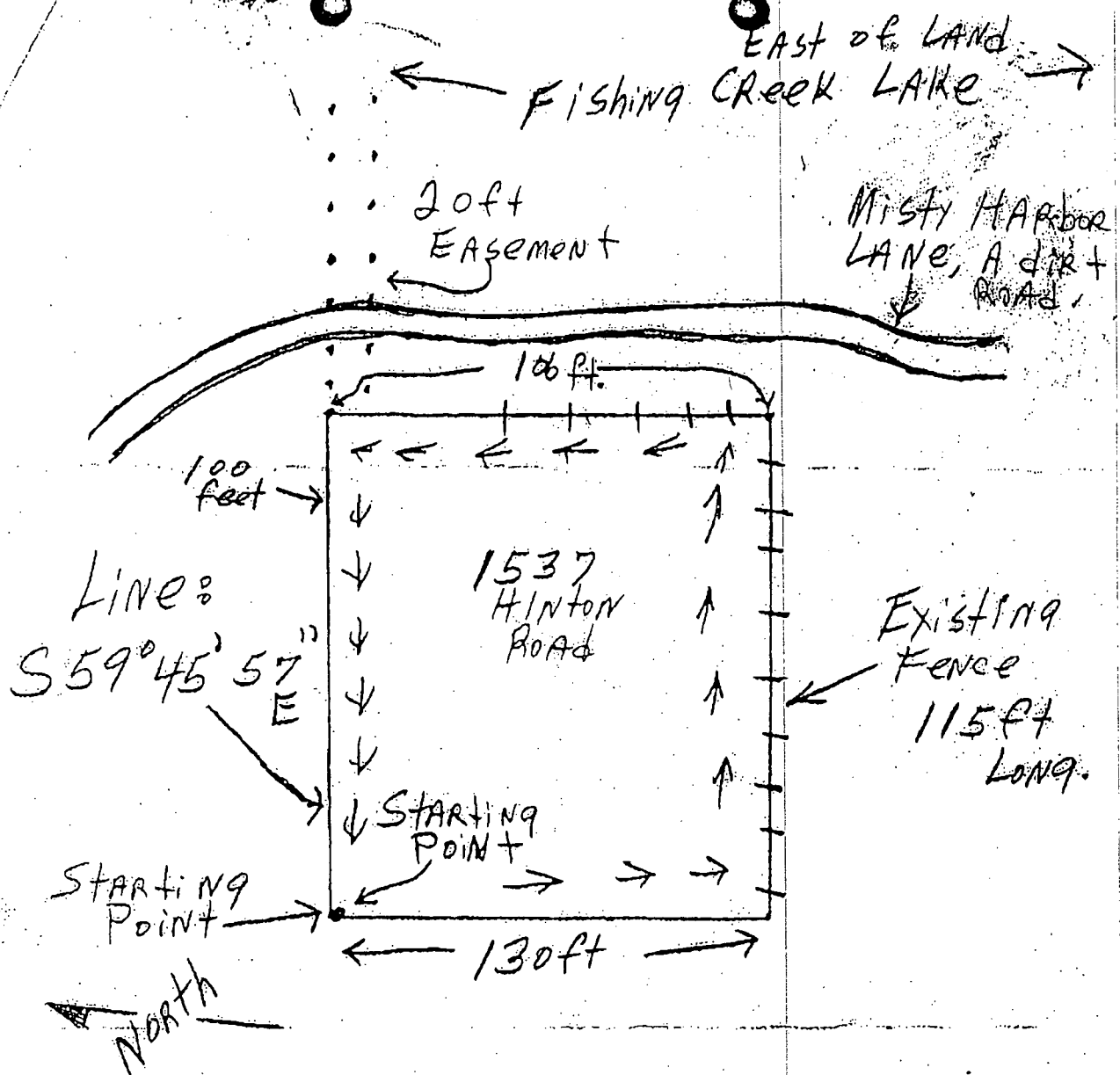
Starting at the dividing line between Tract #2, and Tract #3 at the junction of the line S 59° 45' 57" E and the EAST side of Hinton Road, then turning South for appx 130 feet alongside the East side of Hinton Road to an existing wood fence, then turn east toward Fishing Creek Lake, and go down the existing wood fence appx 115 feet, then turn North along the other existing wood fence and go appx ~~106~~ 106 feet until intersecting with the dividing LINE S 59° 45' 57" E on the plat of Phillip Smith, and Jack Smith Surveying Company, and last go WEST back toward Hinton Road by going along the S 59° 45' 57" E line for appx 100 feet to arrive at the starting place.

All of the described land is coming out of Tract #2 as shown on the May 13, 2002 plat of Phillip Smith. In addition Mell Woods, and assigns, is granted a 20ft. easement to Fishing Creek Lake along the South Side of the extension of line S 59° 45' 57" E. SEE THE ATTACHED DRAWING ON PAGE TWO of this contract for illustration purposes; if there is any variation between the drawing and the above word description, then the words control over the drawing.

Mell Woods is to get the above lot surveyed at his own expense. Mell Woods is hereby put in possession of the described lands as a buyer, and debtor. Mell Woods is no longer a tenant of Reba P. Hinson. The description from the plat, and attached drawing is everything needed for this agreement to sell the land. Mell woods can move the building if he wants to. It is the further condition of this agreement that once the sum promised is paid-in, Mell Woods, or assigns, is the fee-simple owner of the described property without restriction. Any of the eight % interest which may accrue after Aug. 06, 2011 will be due in a lump sum the following Jan 15, 15, any interest not paid on time will incur a one time late fee of fifty dollars. Accrued interest may be collected by court action, with the limitation of four hundred dollars attorney fee per collection. This contract is a sealed instrument. This contract can be assigned to others by either party, or assigns. Mell Woods will have a deed and plat prepared. Reba P. Hinson will sign, and then keep the deed until the money promised has been paid-in.

Reba P. Hinson
SELLER

Mell Woods
BUYER



ALL LAND comes out of TRACT #2, PHILLIP G. SMITH PLAT. TOTAL LAND AREA, LESS THAN ONE HALF ACRE. NOT TO SCALE.

STATE OF SOUTH CAROLINA
CHESTER COUNTY

COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

AFFIDAVIT

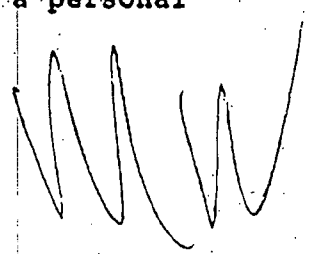
In order to protect the Record, Mell Woods, appellant
above, comes now and presents the following affidavit allowed
under S.C. Statute § 18-7-180:

State of South Carolina
County of Chester

After being first deposed, Mell Woods, affiant herein, makes the following statements based upon the personal knowledge of affiant,

1. Elaine H. Hensley, a listed party above has died, and was already dead when the above case was first filed;
2. Robert H. Breakfield, one of the parties above, already knew of Mrs. Hensley's death when the case was filed, and represented to the court that Mrs. Hensley was alive instead of dead;
3. Attached to this affidavit, is certified copy of the Deed of Distribution filed in the Chester County Real Estate Records, which shows that Robert H. Breakfield was a witness to the Deed of Distribution concerning Mrs. Hensley's property, and for this reason did know that he filed suit for a dead person after her estate had been closed out, and a personal representative no longer existed;

FURTHER, affiant saith not.



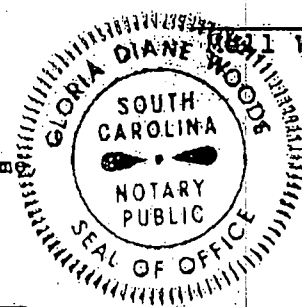
Mell Woods, affiant

Sworn to, and subscribed before me

This 21 day of April, 2016.



Gloria Diane Woods Notary public for South Carolina, Comm. Expires 01/08/2018



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STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MATTER OF:
ETTA ELAINE HENSLEY
(Decedent)

IN THE PROBATE COURT
DEED OF DISTRIBUTION
(Real Property Only)
NOT A WARRANTY DEED

CASE NUMBER: 2013ES1200318

County where property is located: If not above County

The undersigned states as follows:

Decedent died on NOVEMBER 10, 2013 and probate of the Estate is being administered in the Probate Court for
CHESTER County, South Carolina in File # 2013ES1200318

We was/were appointed Personal Representative(s) on DECEMBER 9, 2013

Decedent owned real property described as follows:

Tax Map Number: 202-10-15-27

Street/Property Address: 6 CHURCH STREET, GREAT FALLS, SC 29055

Legal Description: AN UNDIVIDED 1/2 INTEREST IN THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND WITH ANY AND ALL IMPROVEMENTS THEREON SITUATE, LYING AND BEING IN THE TOWN OF GREAT FALLS, CHESTER COUNTY, SOUTH CAROLINA AT 6 CHURCH STREET, AND SHOWN AND DESIGNATED AS LOT NO. 10, SECTION 5, ON THE CERTAIN PLAT OF VILLAGE NO. 1 OF REBULIC COTTON MILLS DATED DECEMBER 31, 1948 AND RECORDED IN PLAT BOOK 6, AT PAGE 49 AND HAS SUCH COURSES AND DISTANCES, METES AND BOUNDS AS SHOWN ON SAID PLAT WHICH SAID PLAT IS INCORPORATED HEREIN BY REFERENCE. THIS IS THE IDENTICAL REAL ESTATE CONVEYED TO W. HENSLEY & BRENDA J. HENSLEY BY DEED RECORDED IN DB 518, PAGE 188; BRENDA J. HENSLEY CONVEYED HER 1/2 INTEREST TO MORRIS W. HENSLEY BY DEED RECORDED JANUARY 31, 1990 IN DB 679, PAGE 171; MORRIS W. HENSLEY THEN CONVEYED AN UNDIVIDED 1/2 INTEREST TO BONNIE L. HENSLEY BY DEED RECORDED IN DB 682, PAGE 319; BONNIE L. HENSLEY CONVEYED HER 1/2 INTEREST TO MORRIS W. HENSLEY BY DEED RECORDED MAY 23, 1994 IN DB 668, PAGE 285. ALL REFERENCES BEING MADE TO THE OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY, SC.

DERIVATION: REFERENCE IS ALSO MADE TO THAT CERTAIN DEED FROM MORRIS W. HENSLEY TO ELAINE H. HENSLEY CONVEYING A 1/2 INTEREST BY DEED DATED FEBRUARY 19, 1999 AND RECORDED FEBRUARY 25, 1999 IN DB 752, PAGE 292 IN THE OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY, SC.

CHESTER COUNTY TAX ASSessor
DATE 2-17-14
TAX MAP NO. 202-10-15-27

I hereby certify that the within Deed
has been this 17 day of
February A.D. 2014
recorded in Book J of Deeds.
Donald G. Wade
AUDITOR, CHESTER COUNTY

FORM 8400ES (1/2014)
62-3-907, 62-3-908

Page 1 of 2

True and correct copy of original paper
On file in this office.
Sue K. Carpenter
Clerk of Court
Chester County, SC
Date 4-15-16

03/15/2016

Instrument
201400080616

Volume Page
1095 24

This transfer is made pursuant to:

- ☐ Decedent's Will
- ☒ Intestacy Statute: SCPC 62-2-103
- ☐ Private Family Agreement: SCPC 62-3-912
- ☐ Disclaimer by: _____
- ☐ Probate Court Order issued on _____
- ☐ Other: _____

02/15/2016

Instrument
201400020614

Value Paid
1095 25

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/does hereby release all of (Personal Representative(s)'s) right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: MORRIS WILLIAM HENSLEY
Address: 6 CHURCH STREET
GREAT FALLS SC 29056

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

☐ An additional sheet is attached for names of additional beneficiaries (check, if applicable)

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 4th day of FEBRUARY, 2014.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Patricia S. Davis

Print Name: PATRICIA S. DAVIS

Witness: Kelly S. Sumwalt

Print Name: KELLY S. SUMWALT

Estate of: ETTA ELAINE HENSLEY

Signature of Personal

Representative: Morris William Hensley

Print Name: MORRIS WILLIAM HENSLEY

If applicable,
Signature of Co-Personal
Representative: _____

Print Name: _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF CHESTER

I, ROBERT H. BREAKFIELD, Notary Public, a notary for the State of South Carolina do hereby certify that MORRIS WILLIAM HENSLEY, as Personal Representative(s) of the Estate of ETTA ELAINE HENSLEY, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 4 day of FEBRUARY, 2014.

Robert H. Breakfield (SEAL)
(Signature of Notary Public)
ROBERT H. BREAKFIELD
(Print name of Notary Public)
Notary Public for State of SOUTH CAROLINA
My Commission Expires: 9/25/2017

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE PROBATE COURT

APPLICATION FOR SETTLEMENT

IN THE MATTER OF ETTA ELAINE HENSLEY

LOUIS H. RODDEY
JUDGE OF PROBATE

CASE NUMBER: 2013ES1200318

2014 AUG 15 P 1:45
The undersigned as the Personal Representative(s) has/have collected and managed the assets of the estate; has/have paid all lawful claims against the estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to estate of decedent.

The Personal Representative(s) has/have filed:

- ☒ Proof of Publication.
- ☒ an Inventory.
- ☒ a Proposal for Distribution.
- ☒ a Final Accounting.
- ☐ all required returns (including final income tax return, fiduciary income tax return, estate tax return); If not, please explain.

The time period for submission of claims has expired.

I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Co. may deem applicable and proper.

I request that the Court: (check all that apply)

- ☒ A. Consider and approve the Personal Representative's Final Accounting and the Proposal for Distribution.
- ☐ B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for Distribution (Form #401PC).
- ☒ C. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
- ☐ D. (Other:)

Notice of Right to Demand Hearing and copies of the Final Accounting, the Proposal for Distribution, and this Application have been/are being sent to all interested persons as required by law.

Executed this 15 day of August, 2014.

ORN to before me this 15 day of
August, 2014

Jerry B. Jones
Notary Public for South Carolina

Commission Expires: May 9, 2016

Signature: Morris William Hensley

Name: MORRIS WILLIAM HENSLEY

Address: 6 CHURCH STREET

GREAT FALLS, SC 29055

Telephone (O):

(H): 803 374-1038

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

A TRUE COPY
Louis H. Roddey
JUDGE OF PROBATE
CHESTER COUNTY, S.C.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 20 2016

SC Court of Appeals

Appeal from Chester County
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, Jerry Hinson, Kathy
Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
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vs.

Mell Woods,

Appellant.

CERTIFICATE OF SERVICE

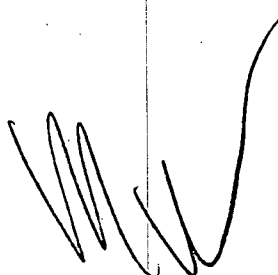
Mell Woods, appellant below, and appellant herein hereby
Certifies that B. Michael Brackett, the attorney of Record for
the above listed Respondents was served on October 15, 2016,
with a copy of the within and foregoing Reply to Motion to Dismiss
by placing the documents in the U.S. Mail, with
First Class postage affixed and addressed as follows:

Moses & Brackett, PC
attention of B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

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Certificate of Service, page 2.

This 15 day of October, 2016.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

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William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

2016
October 17, 2016

To: Court of Appeals of South Carolina

Re: 2016-002016

Dear Sir, or Madam:

Enclosed is a response to the Motion to Dismiss the Appeal
filed in the above case.

Please file this response with the other papers in the
case.

Mr. Brackett was served with a copy of this filing over the
weekend, or on Saturday, October, 15 to be exact.

Thanks. Mell Woods

RECEIVED

OCT 20 2016

SC Court of Appeals

October 04, 2018

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

RECEIVED
OCT 09 2018
SC Court of Appeals

Mrs. Sue K. Carpenter
Clerk of Court Chester County Court of Common Pleas
P.O. Drawer 580
Chester, SC 29706

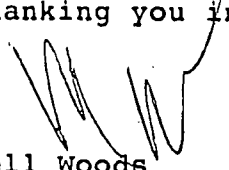
Re: Breakfield V. Woods Case Number 2015 CP 12 00179,
and also Court of Appeals Number: 2016-002016

Dear Mrs. Carpenter:

The above civil case is now pending in the South Carolina Court of Appeals. I am writing to you about some of the items (pleadings) which were filed into the above case, but which are missing from the Public Index of the case on the Supreme Court's website. The reason the items are missing is that it appears that the missing items were never scanned. One of the items is the Return of the Magistrate, which was rather lengthy, but only one or two pages are shown on the Public Index. There are also other missing items. It is my job to get up an accurate Record of the case. But also, the staff at the Court of Appeals may need to refer to the Record maintained by the Clerk of Court.

Could you please review the Public Index and scan-in the missing documents.

Thanking you in advance,


Mell Woods

Copies:

Clerk's Office Court of Appeals of South Carolina

B. Michael Brackett, Respondent Attorney, at his
current address of Record.

RECORD ON APPEAL - Sixty pages are reserved for
missing Magistrate Transcript, pages 120-180:

120	131	142
121	132	143
122	133	144
123	134	145
124	135	146
125	136	147
126	137	148
127	138	149
128	139	150
129	140	151
130	141	

Reserved for

missing Magistrate Transcript, pages 120-180:

152

163

173

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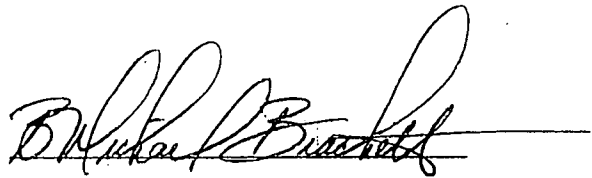
172

Pursuant to Rule 209, SCACR, Respondent designates the following for inclusion in the

Record on Appeal:

- ✓1. Court of Appeals Unpublished Opinion No. 2013-UP-0257.
- ✓2. Court of Appeals Unpublished Opinion No. 2013-UP-0256.
- ✓3. Court of Appeals Unpublished Opinion No. 2014-UP-010.
- ✓4. Court of Appeals Unpublished Opinion No. 2014-UP-0158.
- ✓5. Court of Appeals Unpublished Opinion No. 2014-UP-076.
- ✓6. Respondent's Application for Notice to Quit Premises dated November 13, 2014.
- ✓7. Appellant's Response to Application dated December 10, 2014.
- ✓8. Magistrate's Court's Final Order and Judgment dated March 27, 2015.
- ✓9. Magistrate's Writ of Ejectment dated June 9, 2016.
- ✓10. Circuit Court Order Affirming Magistrate's Court's Final Order dated July 7, 2016.
- ✓11. USPS Tracking Report (Exhibit C to Exhibit 4 to Motion to Dismiss Appeal).
- ✓12. Mailing label on Appellant's envelope to Respondent's attorney (Exhibit B to Exhibit 4 to Motion to Dismiss Appeal).
- ✓13. Paris Cherry affidavit (Exhibit D to Exhibit 4 to Motion to Dismiss Appeal).

September 18, 2018.



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

In the Matter of the Estate of Reba P. Hinson,
Mell Woods, Appellant,
v.
Robert H. Breakfield, as Personal Representative of the Estate of Reba
P. Hinson, Respondent.

Appellate Case No. 2011-191876
Unpublished Opinion No. 2013-UP-257

STATE OF SOUTH CAROLINA In The Court of Appeals

Submitted May 1, 2013
Filed June 19, 2013

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.

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

AFFIRMED

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of Columbia, for
Respondent.

PER CURIAM: Mell Woods appeals (1) the circuit court's order granting
summary judgment in favor of Robert H. Breakfield on Woods's nuisance
claim

Page 2

and (2) the circuit court's denial of Woods's motion to amend his
complaint to add a party. We affirm pursuant to Rule 220(b), SCACR,
and the following authorities:

1. As to whether the circuit court properly granted Breakfield's motion
for summary judgment:² S. Glass & Plastics Co., Inc. v. Kemper, 399
S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012) ("When reviewing
the grant of a summary judgment motion, this court applies the same
standard that governs the trial court under Rule 56(c), SCRCP; summary
judgment is proper when there is no genuine issue as to any material
fact and the moving party is entitled to judgment as a matter of
law."); Hancock v. Mid-S. Mgmt. Co., Inc., 381 S.C. 326, 330, 673
S.E.2d 801, 803 (2009) (holding when the underlying action is proved
with a preponderance of the evidence, "the non-moving party is only
required to submit a mere scintilla of evidence in order to withstand a
motion for summary judgment"); Kemper, 399 S.C. at 490, 732 S.E.2d at
209 ("In determining whether a genuine issue of fact exists, the
evidence and all reasonable inferences drawn from it must be viewed in
the light most favorable to the nonmoving party."); Nelson v. Piggly
Wiggly Cent., Inc., 390 S.C. 382, 389, 701 S.E.2d 776, 779 (Ct. App.
2010) ("As Rule 56(e), SCRCP, states, a party 'may not rest upon the

mere allegations or denials of his pleading[s]."); *id.* at 388, 701 S.E.2d at 779 ("A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.").

2. As to whether the circuit court properly denied Woods's motion to add a party: Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."); *Ex parte Morris*, 367 S.C. 56, 65, 624 S.E.2d 649, 653-54 (2006) (finding the plaintiff "only [appealed] the issue of whether an evidentiary hearing was required, not her dismissal from the case"; therefore, the unappealed ruling was the law of the case and required affirmance).

AFFIRMED.

Page 3

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

Notes:

1. We decide this case without oral argument pursuant to Rule 215, SCACR.

2. Woods did not challenge the circuit court's determination that Breakfield is entitled to judgment as a matter of law.

Mell Woods, Appellant,
v.
Robert H. Breakfield, as Personal Representative
of the Estate of Reba P. Hinson, Respondent.

Appellate Case No. 2011-201066
Unpublished Opinion No. 2013-UP-256

STATE OF SOUTH CAROLINA In The Court of Appeals

Submitted May 1, 2013
Filed June 19, 2013

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.

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

AFFIRMED

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of Columbia, for
Respondent.

PER CURIAM: Mell Woods appeals the circuit court's order affirming the probate court's denial of Woods's motion to remove the personal representative, Robert H. Breakfield, for cause. Woods argues the circuit court erred in (1) proceeding with the appeal without the entire record from the probate court as

Page 2

required by section 62-1-308(b) of the South Carolina Code, (2) failing to remove Breakfield because he lied under oath, and (3) failing to issue to Woods subpoenas upon his request. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in proceeding without the entire probate court record: McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (stating a complainant must show error and prejudice to be entitled to relief for a procedural violation); Cox v. Cox, 290 S.C. 245, 248, 349 S.E.2d 92, 93-94 (Ct. App. 1986) ("The burden is on [the appellant] to demonstrate the trial court committed reversible error."); *id.* at 248, 349 S.E.2d at 94 (finding appellant was not entitled to relief when he produced no evidence showing the trial court's findings were incorrect or the alleged error prejudiced him); *id.* ("This [c]ourt will not reward a party's recalcitrant and obstructionist conduct at trial by overturning the decree for technical noncompliance with [a rule of civil procedure].").

2. As to the remaining issues: Cowburn v. Leventis, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised

[to] and ruled upon by the trial [court]."); *id.* ("When a trial court makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.").

AFFIRMED.¹

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

Notes:

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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

Mell Woods, Appellant,

v.

John D. Hinson; Christine Jones; John C. Hinson;
William L. Hinson; Lois Hinson; Robert Breakfield, as
Personal representative of the Estate of Reba P. Hinson;
Elaine H. Hensley; Robert H. Hinson; George Stanford,
as Personal Representative of the Estate; Linda H.
Stanford; William C. Hinson, Jr.; Darrell W. Hinson; and
Mary Roe and John Doe, fictitious names used to
designate all other parties, whose names are unknown,
and any and all other persons claiming any right, title,
estate interest or lien upon the real estate described in the
complaint, Respondents.

Appellate Case No. 2012-212330

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2014-UP-010
Submitted November 1, 2013 – Filed January 8, 2014

AFFIRMED

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of
Columbia, for Respondents.

PER CURIAM: Mell Woods appeals the circuit court's order granting summary judgment in favor of Respondents. Woods argues the circuit court erred in: (1) granting summary judgment when issues of material fact remained; (2) denying his right to a jury trial in violation of section 15-67-100 of the South Carolina Code (2005); (3) finding Reba Hinson acquired a life estate under Levie Hinson's will; and (4) finding Reba Hinson, as a life tenant, could not claim adverse possession against the remaindermen to the life estate. We affirm.¹

1. As to issue one and issue three, the circuit court did not err in granting summary judgment because Woods failed to create a genuine issue as to any material fact. See *S. Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012) ("When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."). First, no evidence supports Woods's argument that the circuit court applied an improper standard in granting summary judgment. The circuit court's order does not specifically state the standard it applied in granting summary judgment. The circuit court apparently treated the issues presented as questions of law, which was proper because the interpretation of a will is a question of law to be decided by the court. See 96 C.J.S. *Wills* § 901 (2011) ("Generally, the interpretation or construction of a will, or so much thereof as is applicable to the case under consideration, is a question of law for the court and not one of fact for the jury" (footnotes omitted)). Moreover, although Levie Hinson's will was ambiguous, any ambiguity in the will was a patent ambiguity; therefore, the circuit court properly resolved the issue as a matter of law. *Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 526, 709 S.E.2d 85, 95 (Ct. App. 2011) (stating "[a] patent ambiguity is one that arises upon the words of a will, deed, or contract"); 96 C.J.S. *Wills* § 901 ("When a patent ambiguity exists in a will, a court must resolve such ambiguity as a matter of law."); see also *United Nat. Ins. Co.*, 392 S.C. at 526, 709 S.E.2d at 95-96 (recognizing, in the context of an insurance policy, the

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

interpretation of a policy with a patent ambiguity is for the court). Furthermore, Woods's conclusory allegations of title to the property in question are insufficient to withstand summary judgment. *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 389, 701 S.E.2d 776, 779 (Ct. App. 2010) ("As Rule 56(e), SCRCP, states, a party 'may not rest upon the mere allegations or denials of his pleading[s].'" (citation omitted)); see also *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994) ("A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.").

Additionally, the circuit court properly determined Reba Hinson acquired a life estate under Levie Hinson's will. "The cardinal rule in the construction of any will is to determine the intent of the testator as gleaned from the written instrument itself; technical rules or interpretation are subservient to that principle." *Wise v. Poston*, 281 S.C. 574, 577, 316 S.E.2d 412, 414 (Ct. App. 1984). Here, Levie Hinson's will states: "I will, devise and bequeath unto my beloved wife, [Reba Hinson,] all my real estate, *in fee simple, as long as she lives then to our bodily heirs forever.*" (emphasis added).

[W]hen a gift is made in one clause of a will in clear and unequivocal terms, the quality or quantity of the estate given should not be cut down or qualified by words of doubtful import found in a subsequent clause. To have that effect, the subsequent words should be at least as clear in expressing that intention as the words in which the interest is given.

Wates v. Fairfield Forest Prods. Co., 210 S.C. 319, 322, 42 S.E.2d 529, 530 (1947) (emphasis added).

Although Levie Hinson's will uses the term "fee simple," the will also includes words of limitation indicating Reba Hinson is entitled to the property "as long as she lives." The words of limitation are not of doubtful import; rather, they are as clear as the term "fee simple" and demonstrate Levie Hinson's intent to create a life estate. See *Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005) (stating no special language is required to create a life estate, rather courts will look to the intention of the creator of the estate); *Epting v. Mayer*, 283 S.C. 517, 519, 323 S.E.2d 797, 798 (Ct. App. 1984) ("If the intention of the testator is to be given effect, as it must be, courts must be permitted . . . to disregard words of absolute gift and to declare the estate created to be a limited estate where a clear

intention to that effect appears."). Moreover, if we interpreted this will as vesting Reba Hinson with a fee simple interest in the property, it would require us to ignore the provision of the will, which provided for a remainder in the parties' heirs. See *Blackmon*, 366 S.C. at 250, 621 S.E.2d at 44 (stating "a construction which gives meaning to all should be preferred over one which renders some provisions meaningless"). Therefore, because Reba Hinson inherited a life estate under Levie Hinson's will, any interest Woods acquired in the property from Reba Hinson extinguished when Reba Hinson died because "a life tenant can convey no more than his life estate." *Poston*, 281 S.C. at 579, 316 S.E.2d at 415. Accordingly, the circuit court did not err in granting summary judgment because Woods failed to show any genuine issue of material fact.

2. As to whether the circuit court violated section 15-67-100 in denying Woods a jury trial, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised and ruled upon by the [circuit court]."); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e)[,SCRCP,] to present to the court an issue the party could have raised prior to judgment but did not.").

3. As to whether the circuit court erred in finding Reba Hinson, as a life tenant, could not claim adverse possession against the remaindermen to the life estate, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009) ("The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time."); *id.* at 15, 681 S.E.2d at 14 ("A person claiming adverse possession must have personally held the property for ten years, and tacking is allowed only between ancestor and heir." (emphasis added)); *Phipps v. Hardwick*, 273 S.C. 17, 25, 253 S.E.2d 506, 510 (1979) ("[A]dverse possession . . . cannot run against remaindermen until the death of the life tenant.").

AFFIRMED.

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

Mell Woods, Appellant,

v.

John D. Hinson, Christine E. Jones, John C. Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Charles J. Hinson, William L. Hinson,
Elaine H. Hensley, William C. Hinson, Jr., John Does, (1-5),
Jane Does, (12), Respondents.

Appellate Case No. 2012-212429
Unpublished Opinion No. 2014-UP-158

STATE OF SOUTH CAROLINA In The Court of Appeals

Submitted February 1, 2014
Filed April 2, 2014

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.

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

AFFIRMED

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of Columbia, for
Respondents.

Page 2

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 490, 732
S.E.2d 205, 208-09 (Ct. App. 2012) ("When reviewing the grant of a
summary judgment motion, this court applies the same standard that
governs the trial court under Rule 56(c), SCRCP; summary judgment is
proper when there is no genuine issue as to any material fact and the
moving party is entitled to judgment as a matter of law."); Hancock v.
Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)
(holding when the underlying action is proved by a preponderance of the
evidence, "the non-moving party is only required to submit a mere
scintilla of evidence in order to withstand a motion for summary
judgment"); S. Glass & Plastics Co., 399 S.C. at 490, 732 S.E.2d at 209
("In determining whether a genuine issue of fact exists, the evidence
and all reasonable inferences drawn from it must be viewed in the light
most favorable to the nonmoving party."); Nelson v. Piggly Wiggly
Cent., Inc., 390 S.C. 382, 389, 701 S.E.2d 776, 779 (Ct. App. 2010)
("As Rule 56(e), SCRCP, states, a party may not rest upon the mere
allegations or denials of his pleading[s]." (alteration in original)
(internal quotation marks omitted)); Shupe v. Settle, 315 S.C. 510,
516-17, 445 S.E.2d 651, 655 (Ct. App. 1994) ("A conclusory statement as
to the ultimate issue in a case is not sufficient to create a genuine
issue of fact for purposes of resisting summary judgment."); Kase v.
Ebert, 392 S.C. 57, 61, 707 S.E.2d 456, 458 (Ct. App. 2011) ("To

survive a summary judgment motion by the defendant in a lawsuit, . . . the plaintiff must offer some evidence that a genuine issue of material fact exists for each element of the claim at issue except for those elements that are either uncontested or agreed to by stipulation.").

AFFIRMED.¹

WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.

Notes:

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**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**

Robert H. Breakfield, as attorney-in-fact, Respondent,

v.

Mell Woods, Appellant.

Appellate Case No. 2012-212318

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2014-UP-076
Submitted January 1, 2014 – Filed February 26, 2014

AFFIRMED

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of
Columbia, for Respondent.

PER CURIAM: Mell Woods appeals the circuit court's order, which affirmed the magistrate's court. Woods argues (1) the magistrate's court erred in proceeding with the summary ejectment action when Woods pled the defense of questionable title; (2) the rule to show cause notice provisions of sections 27-37-20 and 27-37-40 of the South Carolina Code (2007) are unconstitutional because they do

not provide a tenant thirty days to file an answer; and (3) it is unconstitutional to have two classes of litigants in South Carolina — landlords and tenants. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the magistrate's court erred in proceeding with the ejectment action when Woods pled the defense of questionable title: *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 475, 10 S.E.2d 3, 5-6 (1940) ("[A] tenant cannot oust the magistrate of jurisdiction in [summary ejectment proceedings] . . . by the assertion of a superior title in himself . . ."); *id.* at 475-76, 10 S.E.2d at 6 ("Otherwise any tenant, by merely denying the landlord's title or by asserting superior title in himself or in another, could oust the magistrate of jurisdiction and frustrate the plain and salutary object of the statute.").
2. As to whether the rule to show cause notice provisions of sections 27-37-20 and 27-37-40 are unconstitutional because they do not provide a tenant thirty days to file an answer: *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001) ("[An appellate court] has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid."); *In re Justin B.*, 405 S.C. 391, 395, 747 S.E.2d 774, 776 (2013) ("A statute will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt."); *id.* ("The party challenging the statute's constitutionality bears the burden of proof.").
3. As to whether it is unconstitutional to have two classes of litigants in South Carolina — landlords and tenants: *A & I, Inc. v. Gore*, 366 S.C. 233, 242, 621 S.E.2d 383, 387 (Ct. App. 2005) ("Issues not raised to or ruled upon by the lower court are not preserved for appellate review.").

AFFIRMED.¹

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MAGISTRATE'S COURT

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Application for Notice to Quit Premises

Applicant,

v.

Mell Woods,

Respondent-Trespasser.

-
1. This verified application is filed pursuant to S.C. Code Ann. § 15-67-610 seeking the issuance and service of a Notice to Quit Premises requiring the above-captioned respondent-trespasser to vacate and relinquish possession to the Plaintiff(s) of the real property known as 1537 Hinton Road, Great Falls, SC, located in Chester County. The undersigned deponent is the personal representative of the estate of Reba Hinson and the attorney-in-fact for the above-named owners of the subject property.
 2. Plaintiffs were remaindermen to the life estate held by Reba Hinson in and to certain real property on Fishing Creek Lake in Chester County, including the lot identified and known as 1537 Hinton Road, Great Falls, SC.
 3. The property at 1537 Hinton Road was part of larger tract owned by Reba Hinson's spouse, Levie Hoyt Hinson, containing 97 acres, more or less, that is identified as Chester County TMS# 158-0-0-003.

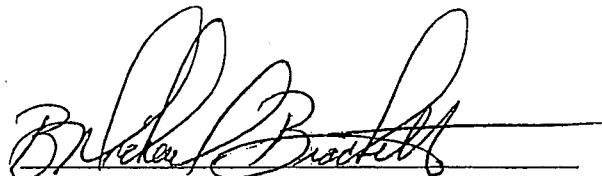
4. The Last Will and Testament of Levie Hoyt Hinson dated April 21, 1977 and probated in the Chester County Probate Court, devised to his spouse Reba Hinson a life estate in all real property owned by Levie Hoyt Hinson with the remainder interest to pass to their bodily heirs upon the termination of the life estate.
5. By Order of the Chester County Probate Court dated October 15, 2007, it was determined that the above-named persons are the bodily heirs to whom title to the real estate passed upon the death of Reba Hinson on January 3, 2007. A copy of said Order is attached hereto and incorporated herein as **Exhibit A**.
6. During her life estate Reba Hinson leased the lot at 1537 Hinton Road to the Respondent-Trespasser. The terms of the lease agreement are not clear, except that Mr. Woods was to pay rent to Reba Hinson. Mr. Woods was and is the owner of the improvement/residence located on the lot now owned by the Applicants.
7. When Reba Hinson died, her life estate terminated by operation of law, and the lease agreement with Mr. Woods immediately terminated by operation of law.
8. The remaindermen successors to the property immediately became the fee owners of the property, including the lot at 1537 Hinton Road.
9. Since the death of Reba Hinson, Mr. Woods has denied that he is a tenant and has affirmatively alleged that he holds fee title to the lot at 1537 Hinton Road. In his verified Answer filed in this Court in 2011CV1210100148 he alleged: "there is no landlord-tenant relationship between Defendant and the purported landlords [Second Defense- Count I]. . . Mrs. Hinson held a fee estate, and full ownership estate, not a 'Life Estate' as stated [Third Defense] . . . It is not true that the will in question [Levie Hinson last will] created a 'Life

Estate' [Third Defense] . . . as stated earlier, Mrs. Hinson had full ownership of all of the property formerly owned by her husband, Mr. Levie Hoyt Hinson, the agreement defendant [Mr. Woods] had with Mrs. Hinson was a type of land contract, and when fulfilled, defendant will be the owner of the land where the building sits [Third Defense] . . ."

10. Mr. Woods has heretofore participated in various legal proceedings in which he claimed fee ownership of 1537 Hinton Road. He attempted to insert himself into the administration of Reba Hinson's probate estate in an effort to cause a certain last will to be probated in lieu of other last wills. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit B**. The Court of Appeals' unpublished opinion is attached as **Exhibit C**.
11. Applicants herein commenced an eviction action to have Mr. Woods ejected from the property. Mr. Woods claimed that he was not a tenant and that the magistrate court therefore had no jurisdiction over the proceeding. Selected portions of his Answer in the eviction case are set out in paragraph 9 above. The appeal in the eviction case involved pretrial procedural matters and not substantive findings and conclusions.
12. Most notably, Mr. Woods commenced an action to have Levie Hinson's last will construed, alleging therein that Levie Hinson's last will devised fee ownership to Reba Hinson (not a life estate) and that Reba Hinson had conveyed, or contracted to convey, fee title to 1537 Hinton Road to Mr. Woods. He alternatively claimed title by adverse possession. He was not successful. The Circuit Court Order that was affirmed on appeal to the Court of Appeals, certiorari denied by the Supreme Court, is attached as **Exhibit D**. The Court of Appeals' unpublished opinion is attached as **Exhibit E**.

13. Having admitted under oath that his possession of the property at issue since the death of Reba Hinson was as the alleged owner and not as a tenant, and having failed in his attempts to prove ownership of the fee as evidenced by the aforementioned court orders, and having refused to vacate the property at the demand of the Applicants, Mr. Woods is now a trespasser. His present possession of the land known as 1537 Hinton Road is without title, and is without the consent of the Applicant-owners.
14. Applicants admit that Mr. Woods is the owner of the improvement on the property at issue, and Applicants make no claim to the improvement, unless Mr. Woods fails or refuses to remove the improvement within the time the court determines to be reasonable.
15. Applicant is informed and believes that he is entitled to the relief provided in and by S.C. Code Ann. § 15-67-610, namely to have the magistrate serve a notice on the Respondent to quit the premises.

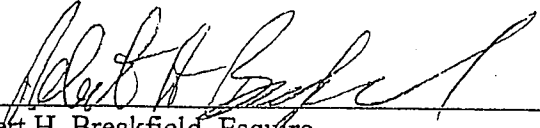
November 13, 2014



B. Michael Brackett
Moses & Brackett, PC
P.O. Box 100261
Columbia, Sc 29202
803.461.2312
Attorney for Applicant

Verification

_____ Personally appeared before me Robert H. Breakfield, Esquire, who being first duly sworn on oath, says that he, in his capacity as attorney-in-fact, is the Applicant in the foregoing action and has read the allegations in the foregoing Application, and the same are true of his own knowledge, except those matters stated on information and belief, and as to those matters he believes them to be true.



Robert H. Breakfield, Esquire

Sworn to before me this BK day
of November, 2014.



Notary for South Carolina.

My Commission Expires: 1/16/2019

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Kathy H. Huffstickle,

In the Matter of: Levie Hoyt Hinson,

Petitioner.

vs.

Lois H. Griffin,

Respondent.

IN THE PROBATE COURT
SIXTH CIRCUIT COURT

Case No. 1986-BS-12-18

ORDER

PROBATE COURT
CHESTER COUNTY S.C.

2007 OCT 30 A 11:54

LOIS H. RODDEY
JUDGE OF PROBATE

PROBATE COURT
CHESTER COUNTY S.C.

2007 OCT 16 A 9:14

LOIS H. RODDEY
JUDGE OF PROBATE

This matter came before the Court on August 9, 2007, for a hearing on the Petition of Kathy H. Huffstickle dated May 23, 2007, seeking to set aside an amended real estate conveyance filed by the Probate Court on March 8, 2007. It appears that Levie Hoyt Hinson died on August 1, 1986, leaving a Last Will and Testament. Item I of Levie Hoyt Hinson's Will reads as follows:

"I will, devise and bequeath unto my beloved wife, Reba P. Hinson all of my personal property of every kind and description including cash money. At her death, the remainder if any, to our beloved children. Name: William C. Hinson deceased his heirs, Lois H. Griffin, John C. Hinson, and Kathy H. Huffstickle, share and share alike."

Item II of the Will reads as follows:

"I will, devise and bequeath unto my beloved wife, Reba P. Hinson all my real estate, in fee simple, as long as she lives then to our bodily heirs forever."

Item II of the Will appears to leave a Life Estate to Reba P. Hinson in all of Levie Hoyt Hinson's real estate then to the bodily heirs forever. The issue in this case turns upon a determination of the intention of Levie Hoyt Hinson in using the language "bodily heirs". It was the contention of the Petitioner that the deceased intended to leave to his bodily heirs the property in question and that Lois H. Griffin was not his bodily heir. It was the contention of Lois H. Griffin that Kathy H. Huffstickle was not a bodily heir of

A TRUE COPY

Lois H. Roddey
JUDGE OF PROBATE
CHESTER COUNTY, S.C.



the parents and that she did not inherit any real estate. It was an alternate contention of Kathy H. Huffstickle that she was the only joint child of Levie Hoyt Hinson and Reba P. Hinson so she is the only bodily heir.

It appears that Levie Hoyt Hinson fathered William C. Hinson and John C. Hinson prior to his marriage to Reba P. Hinson. It appears that Reba P. Hinson gave birth to Lois H. Griffin prior to her marriage to Levie Hoyt Hinson. There was conflicting testimony as to whether or not Kathy H. Huffstickle was the child of Levie Hoyt Hinson and Reba P. Hinson. The defense presented witnesses that Kathy H. Huffstickle was actually a child of the sister of Reba P. Hinson. Kathy H. Huffstickle stated that to her knowledge she was the child of Levie Hoyt Hinson and Reba P. Hinson. A birth certificate was introduced into evidence showing Reba P. Hinson and Levie Hoyt Hinson as the parents of Kathy H. Huffstickle.

Item I of the Will lists each of the children of Levie Hoyt Hinson and Reba P. Hinson. I find that Levie Hoyt Hinson intended to leave the real estate to all of the children listed in Item I and used the term bodily heirs in Item II of the Will interchangeably with the children in Item I of the Will. I further find that he intended to include Kathy H. Huffstickle and Lois H. Griffin as children and bodily heirs.

IT IS SO THEREFORE ORDERED

- A. That the amended real estate conveyance of March 8, 2007, is affirmed,
- B. That the real property consisting of 92 acres referred to in the Petition as tax map no 158-0-0-3 is hereby declared to be owned, as tenants in common, by the bodily heirs of Levie Hoyt Hinson,
- C. That the bodily heirs of Levie Hoyt Hinson are hereby declared to be John C. Hinson, Lois H. Griffin, Kathy H. Huffstickle, and the heirs of William C. Hinson, and
- D. That the heirs of William C. Hinson are William Levy Hinson, John Daniel Hinson, Charles Jerry Hinson, Robert Harold Hinson, William

Calvin Hinson, Etta Elaine Hinson, Linda Kay Hinson, and Darrell Wayne
Hinson.

AND IT SO ORDERED,

October 15th 2007
Chester, South Carolina

Lois H. Roddey
Lois H. Roddey
Chester County Probate Judge

State of South Carolina

Chester County

In the Magistrate Court
Rossville District

Number: 2014CV1210400037

Robert H. Breakfield, for
himself and others listed
as "Applicant"

v.

Mell Woods,

Respondent.

Jury Trial Demanded

Response to the "Application to Quit Premises"

VERIFIED Answer of Respondent is as follows:

1. Paragraph one of the verified application contains lies; Breakfield, the deponent, is NOT the attorney-in-fact for all the "applicants" listed in the caption of this case -- at least one of the applicants has died and Robert Breakfield is not the attorney-in-fact for all of the applicants and in particular one of the dead ones; this is just another example of how Robert

Breakfield commits the crime of perjury on a daily basis and is the same Robert Breakfield who is not worthy of belief by anyone.

2. Paragraph two of the "Application" is not true.
3. Paragraph three of the "Application" is not true.
4. Paragraph four of the "Application" is not true.
5. Paragraph five of the "Application" is false -- the court order referred to was obtained by artifice, lies and perjury.
6. Paragraph six of the "Application" is only partially true, number six leaves out the part that respondent is actually the fee-simple owner of the land in question.
7. Paragraph seven of the "Application" is not true.
8. Paragraph eight of the "Application" is not true.
9. Paragraph nine is only partially true -- the pleader leaves

Pg 2

out the material part that respondent is actually the fee-simple owner of the land in question.

10. Paragraph ten is only partially true -- the court orders referred to were wrongfully decided.
11. Paragraph eleven is not responded to.
12. Paragraph twelve is not true -- the court orders referred to are incorrectly decided because the court orders are based on perjury supplied by an officer of the court.
13. Paragraph thirteen of the "Application" is not true.
14. Paragraph fourteen is not responded to.
15. Paragraph fifteen of the "Application" is not true.

Pg 3

South Carolina Statute § 15-67-20:

A plaintiff is limited to one, AND ONLY ONE action for "recovery" of real property. SC § 15-67-20 is a statute of repose, or statute of limitation in regard to land suits. A defendant under South Carolina law is not required to have to continually defend attacks on a land title. A plaintiff only gets ONE chance and in this case an "Application" for a "Notice to Quit Premises" is a new case and is not allowed under South Carolina law, and is in fact a guise to try and defeat defendant's common law right to a jury trial.

South Carolina Statute § 22-3-1130:

A South Carolina magistrate does not have jurisdiction of, and cannot hear a proceeding where the title to real estate is involved and the defending party posts the required \$100.00 cost bond and undertaking under SC § 22-3-1120; the defending party in this case, MELL WOODS, hereby swears under oath that the title to the real estate involved herein is contested and will be further contested by use of

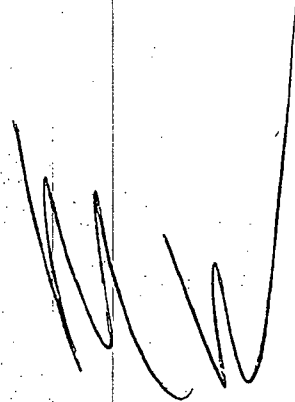
P94

adverse possession, prescription, the English Common Law,
and other South Carolina Statutes which involve title to
land, and in addition the defending party, Mell Woods,
hereby pleads the
defense of questionable title; all claims to the land in
question asserted by the moving
parties are false and have been obtained by perjury and
extrinsic fraud upon South Carolina Courts.

The required cost bond and undertaking is attached;
wherefore, the defending party, Mell Woods, asks that
this action be dismissed.

Respectfully submitted,

this 10 day of December, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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2014CV12104000 37
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

COUNTY OF Chester

IN THE MAGISTRATE'S COURT

Robert Breakfield

PLAINTIFF(S)

VS.

BOND UNDERTAKING
AND ORDER

Mehl Woods

DEFENDANT(S)

Mehl Woods

plaintiff/defendant (circle one) desires to give an undertaking

for the purpose of:

In order to comply with SC § 22-3-1120,
defendant will at all times render himself
amendable to the process of the court and
abide by any judgment; in addition if the
plaintiff should decide to continue on in
circuit court, defendant will admit service
if plaintiff will serve its papers on the
Magistrate Judge.

as provided by Section 22-3-1120 Code of Laws (1976), in the amount of \$ 100.00

We, the undersigned sureties, do hereby obligate ourselves, jointly and severally as follows:

Name

U.S. Postal Service

Name

Mehl Woods

Business Address

WASH.,
D.C.

Business Address

P.O. Box 2603
LANCASTER, SC

Amount

\$ 100.00

Amount

\$ 100.00 29721

M.O. # 22147897050

207

I declare under penalty of perjury that the foregoing is true and correct.

U.S. Postal Service
M.O.# 22147897050

Will Woods

(Signature of Surety)

(Signature of Surety)

ORDER

The above undertaking by surety(ies) is hereby approved by this court.

Dated: _____

MAGISTRATE

 UNITED STATES POSTAL SERVICE®		POSTAL MONEY ORDER	
Serial Number	Year Month Day	Post Office	U.S. Dollars and Cents
22147897050			47.00
Amount		ONE HUNDRED DOLLARS & NO CENTS	
Pay to	CITY		
Address	from Will Woods		
	Address PO Box 2603		
	Lancaster SC 29721		
Memo			
© 2008 United States Postal Service. All Rights Reserved.		SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS	
1:00000080021		221478970501	

VERIFICATION BY DEFENDING PARTY MELL WOODS:

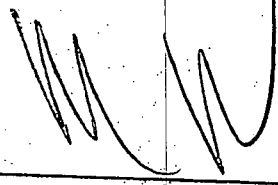
State of South Carolina

In the Magistrate Court

Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, first being duly sworn, and as affiant herein, hereby states upon his oath that affiant has examined the within and foregoing pleading entitled *Response to the Application to Quit Premises*, and UPON HIS OWN PERSONAL KNOWLEDGE, swears that all statements and allegations in the *Response* are correct, and the truth.

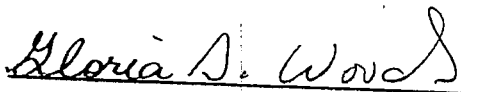


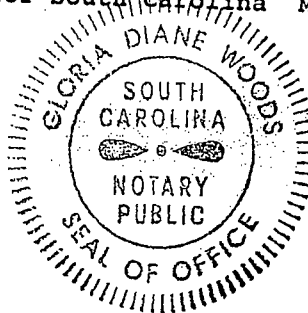
Mell Woods

Sworn to, and subscribed before me,

This 10 day of December, 2014.

Gloria D. Woods Notary Public for South Carolina My Comm. Expires 01/08/2018


Gloria D. Woods



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Certificate of Service:

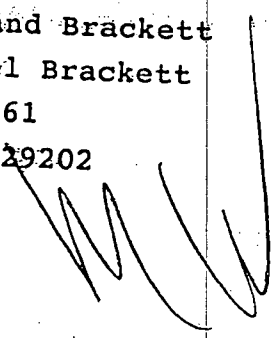
State of South Carolina

In the Magistrate Court
Rossville District

Assigned Case Number 2014CV1210400037

Mell Woods, hereby certifies that he has served the moving parties with a copy of the within and foregoing pleading and supporting documents by placing copies of the same in the U.S. Mail addressed to the counsel of Record for the parties, to wit:

Moses, Koon and Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

P 9 9

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

Robert H. Breakfield,)
as attorney-in-fact, for)
John D. Hinson, John C.)
Hinson, Kathy Huffstickle,)
Robert H. Hinson,)
Darrell W. Hinson,)
Christina Jones as Trustee)
of the Lois Griffin Trust,)
George Stanford as Personal)
Representative of the)
Estate of Linda Stanford,)
William L. Hinson,)
and William C. Hinson, Jr.,)

Plaintiffs,)

-vs-)

Mell Woods,)

Defendant.)

IN THE MAGISTRATES COURT

2014CV1210400037 and

2014CV1210400002

formerly 2011CV1210100148

RECEIVED
2015 MAR 27 PM 3 51

CHESTER COUNTY
MAGISTRATE OFFICE
CHESTER, SC 29706

Certified to be a True and
Correct Copy of Original

Chester County Magistrate

Date March 27, 2015

FINAL ORDER AND JUDGMENT

The above-captioned matters were initially filed by the Plaintiffs upon the Defendant and have been consolidated for judicial economy. The case under 2011CV1210100148 was an eviction Action filed in Chester, subsequently transferred to the Rossville District Magistrate Court, Great Falls and re-numbered 2011CV1210400002. It came before me for a pre-trial hearing on May 12, 2011 following which the Court issued an interim Order covering some preliminary matters. The Defendant appealed the interim Order which appeal was heard by the Chester County Court of Common Pleas and ultimately, the Court of Appeals. The Supreme Court denied Certiorari. A related matter serving as the foundation of the position taken by the Plaintiffs was

93 #1

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

Robert H. Breakfield,
as attorney-in-fact, for
John D. Hinson, John C.
Hinson, Kathy Huffstickle,
Robert H. Hinson,
Darrell W. Hinson,
Christina Jones as Trustee
of the Lois Griffin Trust,
George Stanford as Personal
Representative of the
Estate of Linda Stanford,
William L. Hinson,
and William C. Hinson, Jr.,

Plaintiffs,

-vs-

Mell Woods,

Defendant.

IN THE MAGISTRATES COURT

2014CV1210400037 and

2014CV1210400002

formerly 2011CV1210100148

RECEIVED
2015 MAR 27 PM 3 51

CHESTER COUNTY
MAGISTRATE OFFICE
CHESTER, SC 29706

Certified to be a True and
Correct Copy of Original

Chester Co. Magistrate

Date March 27, 2015

FINAL ORDER AND JUDGMENT

The above-captioned matters were initially filed by the Plaintiffs upon the Defendant and have been consolidated for judicial economy. The case under 2011CV1210100148 was an eviction Action filed in Chester, subsequently transferred to the Rossville District Magistrate Court, Great Falls and re-numbered 2011CV1210400002. It came before me for a pre-trial hearing on May 12, 2011 following which the Court issued an interim Order covering some preliminary matters. The Defendant appealed the interim Order which appeal was heard by the Chester County Court of Common Pleas and ultimately, the Court of Appeals. The Supreme Court denied Certiorari. A related matter serving as the foundation of the position taken by the Plaintiffs was

resolved by the Chester County Probate Court, which issued its Order and which in turn served as the foundation for a related case filed in the Chester County Court of Common Pleas by the Defendant in the instant case. The Court of Common Pleas issued its Order in that matter and the Defendant appealed. The Court of Appeals issued its Order and the Supreme Court denied Certiorari. The proceedings in this Court were suspended pending the final resolution of these related matters as the Defendant asserted title to the real estate was in question. Following these events, the Plaintiffs filed a new Action with this Court wherein they alleged the Defendant is a trespasser and should be ejected from the property upon that basis.

With the issues before the Court now ripe and clarified for adjudication, the above-captioned matters came before me for a hearing on January 30, 2015. The Plaintiffs were represented by B. Michael Brackett, Esquire. The Defendant represented himself. Pursuant to this Court's interim Order, the Defendant was required to pay bond to the Court in the amount of \$200.00 per month commencing June, 2011, with an initial payment of \$100.00 covering May, 2011, the hearing having taken place toward the middle of that month. The Defendant complied, making regular and timely payments of Bond. As of January 30, 2015, the Defendant had paid a total of \$8,900.00. The Court prepared a detailed accounting for the Defendant, who inspected and signed it accepting the accounting as complete and accurate. Copies were furnished to him and to counsel for the Plaintiffs. The Defendant has since made the required payments for February and March,

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2015 such that at the time this Order was issued, the grand total held by the Court as bond is \$9,300.00., well in excess of the Court's Jurisdictional Limit of \$7,500.00 plus costs.

The second preliminary matter was the election of the Plaintiffs as to which Action they wanted to pursue. The Plaintiffs chose to go forward upon their second filed Action, the one wherein and whereby they allege the Defendant is a trespasser and should be ejected from the property in question. They chose not to go forward upon the prior Action for eviction.

The third preliminary matter taken was amendment of the case caption due to changes among the Plaintiffs. These amendments were made in the caption of this Order. The interest previously held by Plaintiff Lois Hinson, a/k/a Lois Griffin, was conveyed to Tina Jones, a/k/a Christina Jones as Trustee of the Lois Griffin Trust. The interest previously held by Plaintiff Elaine Hensley was conveyed to Plaintiff Robert H. Hinson.

The next preliminary matter was the Defendant's Motion for a Jury Trial in the current Notice to Quit Action. He objected to the proceedings going forward as a bench trial citing Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985) so as to avoid waiving his rights. The Defendant has not in fact waived whatever right he may have had to a jury trial as no ruling had been made by the Court as to that issue up to that point. The Court heard the parties concerning this matter, notes that the issue was timely raised by the Defendant, and considers the Defendant protected on the Record. Jury trials are in fact widely

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available in this State for all sorts of cases. However, that right is not absolute and therefore does not apply in every instance. The right to jury trial is available to both sides in eviction matters as it is provided for by Statute. Were this matter going forward as originally filed, the Defendant would have been entitled to a jury trial. However, there is no statutory right to jury trial for an Action to eject a trespasser, which is the current situation. The Magistrate Court Rules make no such provision either. Although the Court has wide discretion in situations wherein a jury trial might prove helpful, the Defendant failed to demonstrate a need for one in the interests of justice or as an aid to the Court for resolution of this case. No valid reason having been presented by the Defendant for a jury trial, the Defendant having failed to demonstrate entitlement to one, the prayer for jury trial was and remains denied.

The Plaintiff presented exhibits for evidence asking the Court to take them by Judicial Notice. All were accepted and entered as such. Plaintiff's 1 is a True Copy of an Order issued by the Chester County Probate Court Case No. 1986-ES-12-188, Kathy H. Huffstickle, In the Matter of Levie Hoyt Hinson, Petitioner, v. Lois H. Griffin, Respondent (2007) which affirmed an amended real estate conveyance of March 8, 2007 and declared that the real property consisting of 92 acres on tax map number 158-0-0-3 is owned as tenants in common by the bodily heirs of Levie Hoyt Hinson. It further declared that the bodily heirs of Levie Hoyt Hinson are John C. Hinson, Lois H. Griffin, Kathy H. Huffstickle, and the heirs of William C. Hinson. It also

declared the heirs of William C. Hinson are Charles Jerry Hinson, Robert Harold Hinson, William Calvin Hinson, Etta Elaine Hinson, Linda Kay Hinson, and Darrell Wayne Hinson. Plaintiff's 1 was accepted as evidence as it is proper to take Judicial Notice of relevant Court Orders of a Court of competent jurisdiction.

Plaintiff's 2 is a True Copy of a Complaint filed by the current Defendant in the Chester County Court of Common Pleas under Case No, 2011-CP-12-00323, captioned Mell Woods, Plaintiff v. John D. Hinson, Christine Jones, John C. Hinson, Kathy Huffstickle, Charles J. Hinson, m William L. Hinson, Lois Hinson, Robert Breakfield, as Personal Representative of the Estate of Reba P. Hinson, Elaine H. Hensley, Robert H. Hinson, George Stanford, as Personal Representative of the Estate of Linda H. Stanford, m William C. Hinson, Jr., Darrell W. Hinson, MARY ROE, and JOHN doe, fictitious names used to designate all other parties whose names are unknown, AND ANY and ALL OTHER PERSONS claiming any right, title, estate, interest, or lien upon the real estate described in this Complaint. Attached to the foregoing and part of the exhibit is an Action for Trespass to Try Title, bearing the same case number and caption which contains 3 photocopies of a plat. Inasmuch as this exhibit is on file with the Clerk of Court of Chester County directed to the Chester County Court of Common Pleas and is relevant to the within Action, it is proper to accept it by Judicial Notice and was received in evidence.

Plaintiff's No. 14 is a True Copy of the same plat attached by the within Defendant in Plaintiff's 2, and is a complete plat

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containing some material cut off by the copier the within Defendant had attached in his Complaint. As this is a document on file with the Clerk of Court and is relevant to this matter, it is proper to accept it by Judicial Notice, the Plaintiff herein having labeled it Exhibit 14. It was received as such.

Plaintiff's 3 is a True Copy of the Answer and Counterclaim filed by the Defendants in the same case, No. 2011-CP-12-0323 and bearing the same case caption, offered as evidence by Judicial Notice. Attached thereto is a copy of the Last Will and Testament of Levie Hoyt Hinson and a copy of what has already been accepted herein as Plaintiff's 1. As this document is on file with the Clerk of Court and is relevant to the within Action, it is proper to accept it by Judicial Notice and was received as such.

Plaintiff's 4 is a True Copy of the Circuit Court Order in Case No. 2011-CP-12-0323 bearing the same caption, dated December 29, 2011, wherein and whereby the Defendants' Motion for Summary Judgment was granted and the Plaintiff's Complaint was dismissed. This is an authenticated copy of an Order issued by a Court of competent jurisdiction and is relevant to the within Action. It is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 5 is a copy of the Order issued by the South Carolina Court of Appeals bearing the same caption and recorded as Appellate Case No. 2012-212330, Unpublished Opinion N. 2014-UP-010 (2014). As this is an official Order of the South Carolina Court of Appeals, it

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is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 6 is a copy of the Order issued by the South Carolina Supreme Court bearing the same case caption, bearing Appellate Case No. 2014-000660 (2014) denying Certiorari. As this is an official Order of the Supreme Court it is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 7 is a copy of the original Rule to Vacate issued by Chester County Magistrate Court with the Plaintiff's attached Complaint for Possession of Real Property/Application for Ejectment in Case No. 2011CV1210100148, above-captioned, with attachments thereto. As this is already on file with this Court and it is relevant to the within Action, it is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 8 is a copy of the Defendant's Answer with attachments in Case No. 2011CV1210100148, which is already on file with this Court, is relevant to the within Action. It is proper to accept it by Judicial Notice and the exhibit was received into evidence.

Plaintiff's 9 is the interim Order of the Court in the original Action renumbered 2011CV1210400002, which Order was issued by this Court. It is proper to take by Judicial Notice the Court's own prior Orders. This one is relevant to the issues in the within Action and the exhibit was accordingly received into evidence.

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Plaintiff's 10 is a True Copy of an Order of the Court of Common Pleas, for Case No. 2011-CP-12-0291, bearing the caption: Robert H. Breakfield, as attorney-in-fact v. Mell Woods and called Order Affirming Magistrate Order, dated January 12, 2012. It is proper to accept it by Judicial Notice as it is relevant to the issues herein and the exhibit was received into evidence.

Plaintiff's 11 is an Opinion from the South Carolina Court of Appeals upholding Plaintiff's 10, Robert H. Breakfield, as attorney-in-fact, Respondent v. Mell Woods, Appellant, Unpublished Opinion No. 2014-UP-076 (2014).

Plaintiff's 12 is an Order of the Supreme Court of South Carolina denying certiorari in Plaintiff's 11.

Plaintiff's 13 is a listing of the owners with percentages owned regarding the property in question.

During the course of the hearing, the Defendant presented several exhibits to the Court which were received as evidence.

Defendant's 1, accepted by the Court as evidence, is a UCC Filing Statement listing the Defendant as debtor and Reba Hinson as secured party of: "Manufactured home existing at #10 North Adams Road; this same lot is also known as 1537 Hinton Road, Great Falls, South Carolina 29055, along with Real Estate described a in #14 of this UCC filing." The exhibit consists of 5 pages and includes a hand drawn map and a land sales agreement between Reba P Hinson and Mell Woods.

Defendant's 2, accepted by the Court as evidence, is a true copy of a Notice of Lis Pendens and Action for Trespass to Try Title and

an Amendment of Lis Pendens Notice filed by the Defendant against the Plaintiffs in this matter together with attachments.

Defendant's 3, accepted by the Court as evidence, is a true copy of a letter dated June 27, 2007 to Cheste County Probate Court Judge Lois Roddey seeking copies of records in connection with regard to the Estate of Reba Hinson.

The Defendant raises the defense of questionable title in Defense Exhibit 1, which includes a land sales agreement dated May 7, 2005 between himself and Reba Hinson, deceased, and by his testimony. This defense, if it could be established, would deprive this Court of subject matter jurisdiction given that the rights to real estate must be determined by the Court of Common Pleas and may not be determined in Magistrate Court. Such a situation would require dismissal of the original Action for Eviction and would require dismissal of this Action for ejectment of a trespasser (Notice to Quit). However, the mere claim that there is a cloud upon the title to the realty subject to this Action is insufficient grounds upon which to find that this Court has no subject matter jurisdiction. The Defendant had already instituted suit concerning this very issue in the Court of Common Pleas under Civil Action No. 2011-CP-12-0323, and the Court, The Honorable Brooks P. Goldsmith, presiding, granted Summary Judgment to the Defendants in that case, who are Plaintiffs in this one. Judge Goldsmith found, "Plaintiff claims ownership by virtue of a 20-year presumption of a grant through Reba Hinson. This claim must fail, as a life tenant (Reba Hinson) cannot claim adverse possession against

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remaindermen." Mell Woods v. John D. Hinson, et al, December 29, 2011 (Plaintiff's 4). Mr. Woods appealed this Order, which was upheld by the South Carolina Court of Appeals, Mell Woods v. John D. Hinson, et al, Ct. Appeals Unpublished Opinion 2014-UP-010 (2014), Plaintiff's 5, a copy of which is attached hereto and incorporated herein by reference. The Supreme Court denied Certiorari in Appellate Case No. 2014-000660 on July 24, 2014 (Plaintiff's 6). Accordingly, the Defendant in the current matter before this Court lost this issue and is estopped from asserting it here pursuant to the doctrine of res judicata and this is also the law of the case. The Court further notes that the Defendant had a right to jury trial in the matter he took to the Court of Common Pleas but did not have one because he lost on Summary Judgment, such that there is no good faith reason to believe his rights were or are being violated by denying a jury trial and conducting a bench proceeding. It should be noted that the facts are not really disputed. This case turns upon the Law.

I find this Court devoid of power to over-rule the Court of Common Pleas, the Court of Appeals, and the Supreme Court, and rather that this Court must accept the rulings from the higher Courts as final. The Defendant may not raise the defense of questionable title to defeat this Court's subject matter jurisdiction in the current Notice to Quit Action or as a valid defense against it.

The Defendant shows every sign of being both intelligent and articulate such that there is no reason to question his mental competence. Quite to the contrary, he has demonstrated considerable

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skill in reading, research, and comprehension. In Court he was attentive and focused. He demonstrated good command of his information and the position he took. His writing and reasoning skills are impressive given that he is not a lawyer. During the proceedings as he presented his case he attempted to collaterally attack the orders and rulings of the higher courts in this case concerning ownership of the real estate and he attempted to impugn the integrity of Plaintiff's counsel personally. This clearly impermissible effort was cut off by the Court. Given the overwhelming evidence in this matter I find that the Defendant's position has no merit and that he has failed to raise a single scintilla of competent evidence or any type of admissible colorable reason supporting it. The Plaintiff has proven the Defendant a trespasser who should be ejected from the property in question and I so find.

Notwithstanding the foregoing, however, the Defendant has been on the property for a very extended period of time such that it is appropriate, in the interests of justice, to provide the Defendant a reasonable amount of time to terminate his occupation of the premises and leave, the Court having some reasonable discretion. Accordingly, I find it reasonable to order the Defendant to vacate the premises no later than the close of business April 15, 2015, after which time, if the Defendant remains, a Writ of Ejectment will issue from the Court. I further find given the limit that can be awarded in potential damages by this Court is \$7,500.00 plus filing fees, which in this case is \$65.00, \$7,565.00 should be retained by the Court at present

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but all other monies should be refunded to the Defendant. \$9,300.00 having been collected from the Defendant, he should receive a refund in the amount of \$1,735.00. The obligation to make any further payments should be terminated pending further Order of the Court. It is uncontroverted that the Defendant owns a mobile home together with improvements to it currently located on the property and that the Defendant lives there and has lived there for an extended time. The Plaintiffs not only desire that he leave their property but also desire that he remove the mobile home with improvements from their land. I find that the Plaintiffs have the right to so require. Because this task may reasonably require more time than the Court allotted for the Defendant to vacate the property, it is appropriate to allow some additional time to remove the mobile home plus improvements. Therefore, I find it reasonable to require that the mobile home plus improvements be removed from the property of the Plaintiffs by the close of business Monday, June 1, 2015 following which, if it remains on their property they shall be permitted to take action have it removed themselves. Now, therefore, it is

ORDERED:

1. That the Defendant shall vacate the premises in question no later than the close of business, April 15, 2015 and further, that should he remain on site after that date, a Writ of Ejectment shall issue from this Court.

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2. That the Defendant shall not be obligated to make any further payments to this Court for Bond and that all sums collected from him in excess of \$7,565.00 shall be refunded to him.

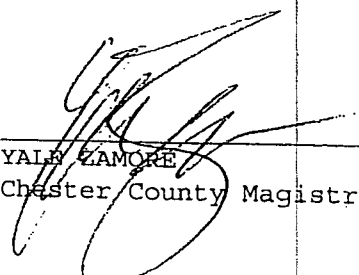
3. That the sum of \$7,565.00 already collected as bond from the Defendant as Bond shall be retained by the Court pending further Order of the Court.

4. That the Defendant shall remove his mobile home and improvements thereto no later than the close of business, Monday, June 1, 2015 and, should he fail to comply, the Plaintiffs shall be permitted to have it removed pursuant to the provisions of South Carolina Law for such a purpose and the Defendant shall have no recourse against them for doing so provided that they shall have acted in accordance with South Carolina Law.

AND IT IS SO ORDERED.

Great Falls, South Carolina

March 27, 2015


YALE ZAMORE
Chester County Magistrate

93. #13

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

2014CV1210400037
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Robert H. Brakefield, et. al.
PO Box 100261
Columbia, SC 29202

PLAINTIFF(S)

Vs

Mell Woods
1537 Hinton Road
Great Falls, SC 29055

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court rendered on the 1st day of June, 2016, you are hereby Ordered to proceed to the premises located at **1537 Hinton Road
Great Falls, SC 29055.**

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have **twenty four (24) hours to voluntarily vacate** the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises.** Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

June 1, 2016

Rossy Magistrate

being duly sworn state that:

- ☐ I personally served a copy of this Writ on _____, an occupant of the rental unit
- ☐ On _____ 20____, at _____ the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise.
- ☐ On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- ☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- ☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- ☐ Informed by Plaintiff that case is settled.

Date: _____, 20____

Sheriff/Deputy Sheriff/Constable

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

Robert H. Breakfield, Esquire as)
attorney-in-fact for John D. Hinson)
John C. Hinson, Jerry Hinson,)
Kathy Huffstickle, Robert H. Hinson)
Darrell W. Hinson, Lois Hinson,)
Tina Jones, George Stanford as)
as Personal Representative of the)
Estate of Linda Stanford, William)
L. Hinson, Elaine H. Hensley, and)
William C. Hinson, Jr.,)

Respondents,)

vs.)

Mell Woods,)

Appellant.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

C.A.: 2015-CP-12-0179

2014CV121040003

FILED

AUG 31 10 3 15

CLERK OF COURT
CHESTER CO S.C.

ORDER DENYING APPELLANT'S
MOTION TO RECONSIDER,
ALTER OR AMEND

RECEIVED

SEP 23 2016

SC Court of Appeals

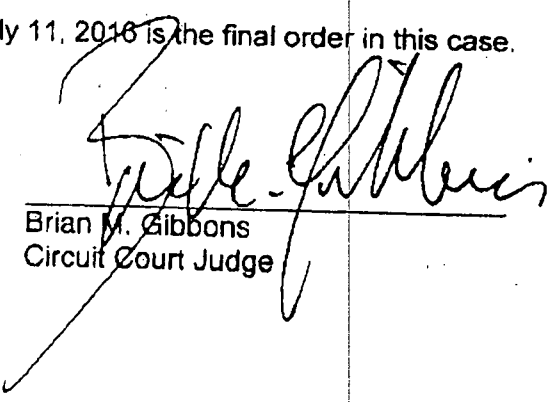
After having thoughtfully considered Appellant's motion to reconsider, alter or amend, and after reviewing the Court's notes and considering the applicable statutory law, case law and evidence presented, I respectfully deny Appellant's motion. Pursuant to Rule 59(f) of the SCRPC, I also find that oral argument is not necessary. Both parties have provided the Court with enough material to make this ruling without the necessity of another hearing.

The Court's order entered on July 11, 2016 is the final order in this case.

AND IT IS SO ORDERED.

Chester, SC

August 31, 2016


Brian M. Gibbons
Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
On Appeal from Magistrate's Court
(2014CV1210400037)
2015-CP-12- 0179

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Order Affirming Magistrate's Court
Final Order and Judgment

Applicant, Respondent on Appeal,

v.

Mell Woods,

Appellant-Trespasser.

FILED

CLERK OF COURT
CHESTER CO S.C.
2016 JUL 11 A 11:54

This is an appeal from Magistrate's Court in a summary trespasser ejectment proceeding. The appeal was heard on June 1, 2016. Present were the Appellant, appearing pro se, and Respondent Robert Breakfield in his capacity as attorney-in-fact, and his attorney Mike Brackett. It was determined in case no. 2015-CP-12-0368, a related case, that the Magistrate's Court's Return for this appeal satisfied the requirements of the common law and applicable statutes.

The first matter considered was the Appellant's letter to the undersigned, dated May 28, 2016 and received May 31, 2016, calling attention to the fact that Appellant had been a client of the law firm where I worked before I became a circuit court judge, generally the period 2000 to 2005. However, Appellant admitted that he never saw me at the firm and that I had not personally represented him or provided legal advice to him. Appellant expressed on the record that his letter



was not a formal motion for recusal. The court is unsure how the situation described by Appellant would be a problem with respect to Appellant. If anyone might be concerned about the presiding judge having been in a law firm that in the past represented the Appellant, it would be the Respondent. The Respondent had no objection to going forward with the appeal hearing.

Davis v. Parkview Apartments, 762 S.E.2d 535 (S.C. 2014) addresses this issue.

Pursuant to Canon 3(E)(1) of the Judicial Code of Conduct, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...." Canon 3(E)(1), Rule 501, SCACR. The judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge "knows" that he or a member of his family (spouse, parent, or child) has more than a de minimus economic interest in the litigation and the litigation will "substantially affect[]" that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a de minimus interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. Canon 3(E)(1)(a)-(d). (emphasis added.)

Appellate courts "accord great weight to the trial judge's assurance of his own impartiality." *Id.* It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality. Lyvers v. Lyvers, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct.App.1984) (citation omitted).

I have not met and do not know the Appellant. I have never worked on this case, and based on Appellant's showing, my former law firm did not work on this case at the time I worked there ten years ago. Appellant offered no evidence at the appeal hearing of the existence of judicial prejudice or bias or that I have personal knowledge of evidentiary facts in dispute. Further, Appellant's letter indicated that his communication with my former law firm included asking

questions about the Hinson family and what was going to happen if Mrs. Reba Hinson died. Those questions and/or issues were answered with finality by the South Carolina Court of Appeals, primarily in unpublished opinion no. 2014-UP-010 filed January 8, 2014, approximately 10 months before the trespass case herein was commenced. The appeal herein cannot affect the outcome of Appellant's prior cases and appeals. Accordingly, if Appellant's letter is merely a suggestion for recusal, for the reasons stated I decline the suggestion. Further, if Appellant's letter is deemed to be a formal motion for recusal, which Appellant expressly said is not the case, the motion is nevertheless denied.

Although Appellant filed a motion for continuance of the appeal hearing, the motion was waived when Appellant represented to the court that he was ready to proceed with the hearing and actually participated in the hearing without objection and without the court having acted on the motion. 17 C.J.S. Continuances § 14 (1999). Well into the appeal arguments, Appellant first raised his motion for continuance and asked if the continuance would be granted. It was then too late; the hearing was underway, the motion had been waived, and the Court formally denied the motion. The appeal arguments continued.

From the record, the following history is noted: following a hearing on January 30, 2015, the Chester County Magistrate's Court issued an Order dated and filed March 27, 2015, finding Appellant to be a trespasser and announcing the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Appellant from the subject premises. On April 15, 2015, Appellant herein, pro se, filed and served a Notice of Appeal to the circuit court (assigned the above-captioned case number). On April 24, 2015, Appellant, pro se, served a Rule 59(e), SCRCP, motion for



reconsideration¹ with respect to the March 27, 2015 Final Order and Judgment. Pursuant to Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014) the appeal was dismissed without prejudice by Order dated May 1, 2015. Appellant then appealed the May 1, 2015 Order to the Court of Appeals. By Order dated June 25, 2015, the Court of Appeals dismissed Appellant's appeal because the order being appealed was not a final order. Appellant then filed a Petition for Rehearing. It was also denied. Appellant petitioned the South Carolina Supreme Court for a Writ of Certiorari. It was denied. While the appeal was pending, the Magistrate Court issued an Order denying Appellant's motion(s) for reconsideration.

What is Now Before the Court

1. The Magistrate's Court's March 27, 2015 Final Order and Judgment was appealed by Appellant's Notice of Appeal / Grounds of Appeal dated and served April 15, 2015.
2. On May 14, 2015 Appellant served an Amended Notice of Appeal setting out another nine grounds for appeal.
3. Additionally, while Appellant's appeal from the May 1, 2015 Order was being decided by the Court of Appeals and Supreme Court, the Magistrate's Court issued an Order dated July 15, 2015 denying Appellant's motion(s) for reconsideration. This was permitted because the pending appeal to the Circuit Court and to the Court of Appeals did not deprive the Magistrate's Court of jurisdiction to consider and rule upon the motion for reconsideration. See Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 119 (2d ed.2002), citing Hudson v. Hudson, 349 S.E.2d 341 (S.C. 1986). Appellant filed and served his "Restated Notice

¹ Appellant actually filed and served four separate motions for reconsideration containing a total of 13 grounds or matters Appellant wanted reconsidered.

of Appeal" dated August 11, 2015, thereby consolidating his first appeal from the Magistrate's Court's March 27, 2015 Order and his appeal from the July 15, 2015 Order.

4. On or about August 4, 2015, Appellant filed and served, in the magistrate's court trespass case that is the subject of this appeal, an "Application for Change of Venue, and Two Days Notice to Adverse Party" and a Rule 12(b)(8) Motion to Dismiss. The application for change of venue was made pursuant to S.C. Code Ann. § 22-3-920 on the ground that Magistrate Judge Zamore was biased against him. By Order dated August 24, 2015, Appellant's motions were denied by the Magistrate's Court.

5. Appellant filed and served a Notice of Appeal on September 2, 2015, appealing from the Magistrate's Court's August 24, 2015 Order that denied Appellant's Rule 12(b)(8) motion and the motion for change of venue. The September 2, 2015 Notice of Appeal incorporates the original five grounds of appeal set out in Appellant's April 15, 2015 Notice of Appeal and purports to add two additional grounds related to the August 24, 2015 Order, specifically that it was error to deny Appellant's Rule 12(b)(8) motion and to deny Appellant's motion for change of venue. Appellant thereafter, on September 23, 2015, filed an Amended Notice of Appeal, amending the September 2, 2015 Notice of Appeal, to also appeal the August 24, 2015 Order on the grounds that it was error to strike the Appellant's Rule 12(b)(8) motion and to strike Appellant's motion for change of venue.

6. By Order dated February 10, 2016, the South Carolina Supreme Court denied Appellant's Petition for Writ of Certiorari. The Remittitur was issued February 22, 2016.

7. On or about February 29, 2016, Appellant filed and served his "Refiling of Appeal" in which he "restates, republishes, and incorporates by reference all of the grounds for appeal stated each [sic] of the notices of appeal from the magistrate court."

Accordingly, there are six Notices of Appeal filed subsequent to the March 27, 2015 Final Order and Judgment:

- April 15, 2015 Notice of Appeal/Grounds for Appeal to Circuit Court - this Notice includes five grounds for the appeal;
- May 14, 2015 Amended Notice of Appeal purporting to add nine new grounds for appeal to the April 15, 2015 Notice of Appeal;
- August 11, 2015 Restated Notice of Appeal - this Restated Notice of Appeal relates to the Order denying Appellant's Rule 59(e) Motion for Reconsideration, but it does not include any new grounds for the appeal in addition to those stated in the April 15, 2015 Notice of Appeal;
- September 2, 2015 Notice of Appeal and Grounds for Appeal - this appeal is from the Magistrate's Court's August 24, 2015 Order that denied Appellant's Rule 12(b)(8) motion and motion for change of venue. The one ground for the appeal is that "the one-time change of venue allowed by SC § 22-3-920 is not discretionary with a magistrate court, especially in view of the discovery of another action pending between the same parties concerning the same subject matter, Rule 12 (b)(8), SCRCF."
- September 23, 2015 Amended Notice of Appeal assigning error the magistrate's court's striking of the two motions.
- February 29, 2016 "Refiling of Appeal" - this "restates, republishes, and incorporates by reference all of the grounds for appeal stated each [sic] of the notices of appeal from the magistrate court."

Consequently, there are 18 grounds of appeal alleged by Appellant stemming from the Magistrate's Court's orders in the above-captioned trespass case: five (5) are set out in the April 15, 2015 Notice of Appeal and Grounds for Appeal, nine (9) are set out in the May 14, 2015 Amended Notice of Appeal, two are set out in the September 2, 2015 Notice of Appeal and Grounds for Appeal, and two are set out in the September 23, 2015 Amended Notice of Appeal. The issues on appeal are:

1. The case involves title to land and pursuant to S. C. Code Ann. § 22-3-20(2) the Magistrate's Court did not have subject matter jurisdiction to entertain the action.
2. The trespass case involved a defense of questionable title and that upon posting bond, the trespass case should have been discontinued until the matter of title was resolved, citing § 22-3-1110, 1120, and 1130.
3. Appellant assigns error because he was not allowed to cross examine Robert Breakfield at the trespass hearing.
4. Another issue on appeal raising "reasons that these proceedings involve land." It is merely another statement of the Appellant's assertion that the trespass case involved title to land, in particular because Appellant was arguing that Reba Hinson owned the fee simple estate in the land, and not only a life estate, or alternatively, that even if Reba Hinson owned only a life estate, the remaindermen to the life estate could nevertheless be compelled to deliver a deed to Appellant if he paid the purchase price. "Defendant [Appellant] assigns error on the fact that the magistrate failed to rule that these proceedings involve title to land."
5. The Magistrates' Court erred in failing to dismiss this action pursuant to S.C. Code Ann. § 15-67-20, on the ground that Respondents are limited to only one action to recover the subject property.

6. The summary trespass hearing was held without a jury.
7. Another claim of error on the Magistrate's Court's not having dismissed the trespass ejectment case pursuant to § 15-67-20.
8. The Magistrate's Court erred in its conclusion that Appellant is a trespasser within the terms of § 15-67-610.
9. Appellant complains about having been asked by the Court to execute an accounting for the monies Appellant paid into court pursuant to the Court's June 2011 Order.
10. Appellant charges error based on the fact that the Magistrate Court is retaining money paid into the Court by Appellant since June 2011.
11. Appellant again assigns error on the Magistrate's Court's failure to comply with § 22-3-20, 22-3-1110, 22-3-1120 and 22-3-1130, by discontinuing the trespass case until his "questionable title" claim is resolved.
12. Appellant charges error on the Magistrate's Court's proceeding to the January 30, 2015 hearing after the Appellant had served a Notice of Appeal.
13. Appellant assigns error on the Magistrate's Court's inclusion in the Final Order and Judgment language that if the Appellant does not remove the structure on the land by the deadline set by the court, the Respondents, as the owners of the land, may remove the structure and Appellant shall have no recourse against Respondents so long as Respondents act in accordance with the law.
14. Appellant complains that the Magistrate's Court failed to consider the case of Eller v. Motley, 82 S.E.992 (S.C. 1914) and that the cited case requires that the court order the remaindermen to Reba Hinson's life estate to give a deed to Appellant.

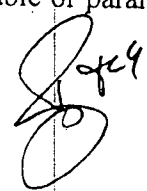
15, 16, 17 and 18. Appellant assigns error on the failure of the Magistrate's Court to grant Appellant's Motion for Change of Venue, and related Rule 12(b)(8) motion to dismiss, and for ordering that the two motions be stricken.

Scope of Review

Appellate review by the circuit court of an appeal from magistrate's court encompasses all the papers in the case including testimony in the lower court. The circuit court may affirm or reverse the judgment of the magistrate's court in whole or in part for errors of law or fact. See generally Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 26-27 (2d ed.2002). In this case, Respondent filed and served a full Respondent's Brief. Appellant did not file and serve a brief, although he filed at the hearing a memorandum of law on his issue on appeal no. 5, having to do with the operation of S.C. Code Ann. § 15-67-20. Appellant's presentation was almost exclusively oral.

Rulings on Issues on Appeal

Appellant continues to claim, assert and allege that he holds some form of title or interest in the real property at issue, the property being occupied by Appellant as a trespasser as found by the Magistrate's Court, by virtue of an agreement between Appellant and Reba Hinson. That subject has already been decided adversely to Appellant by the Court of Appeals in its unpublished opinion no. 2014-UP-010. Whatever interest, if any, Appellant may have received from Reba Hinson terminated upon her death in 2007 because Reba Hinson owned only a life estate. The Magistrate's Court was correct in so finding. Consequently, issues on appeal nos. 1, 2, 4 and 11, in which Appellant claims that the trespass case involved a defense of questionable or paramount title are



without merit. This is not a case that attacks Appellant's title because it was judicially determined prior to the trespass proceeding that Appellant has no title.

With respect to issue on appeal no. 3, Appellant complains the he was not allowed to cross examine Mr. Breakfield at the trespass proceeding. The record reveals that Respondent (Breakfield) was required to make a prima facie showing of ownership of the property and that Appellant (Woods) was in possession without consent or permission. Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905). Respondent put into evidence the paper record of the past legal proceedings between the parties, including the case brought by Appellant in which he alleged and argued that he had a claim to title acquired from Reba Hinson who had acquired her title from her late husband's last will, a case that resulted in summary judgment in favor of Respondent's principals (2014-UP-010). Breakfield testified about the undivided interests held by his principals and that the Appellant did not have permission of any of the tenants in common to be on the subject property. Appellant asked "do I get to examine witnesses?" The court responded "this is a summary proceeding, you can not go through formal examinations." Appellant: "All right, well I mean he just had Mr. Breakfield testifying." The Court: "Well you're going to testify and you're not going to be questioned by anyone but me."

Respondent proceeded to testify/explain his case. During his case, Appellant again asked about being allowed to examine Breakfield.. The Court again would not allow that and would not allow Respondent's attorney to examine Appellant. Appellant represented to the court that Breakfield "has information that will be helpful to the court to decide." The Court asked what information Breakfield had that would be helpful to the court [in the pending case], thereby inviting a proffer of the evidence. Appellant answered "about that court order that they're basically - - -." The court immediately stated that the back story of the probate court order that determined which

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last will would be admitted to probate in the Reba Hinson estate was not relevant. Those matters related to the administration of the Reba Hinson probate estate had already been decided adversely to the Appellant by the South Carolina Court of Appeals in unpublished opinion no. 2013-UP-0256.

This issue is not preserved for appellate review because a sufficient proffer was not made by Appellant. Rule 103(b), SCRE, provides that

- (a) **Effect of Erroneous Ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
- (1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
- (2) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

To preserve the issue for appeal when a trial court excludes evidence, the party seeking its admission must show both error and prejudice. An appellate court need not address an issue regarding the exclusion of evidence where the proponent failed to make a proffer of the evidence that the witness would have given had he been allowed to testify. Greenville Memorial Auditorium v. Martin, 391 S.E.2d 546 (S.C. 1990); Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc., 450 S.E.2d 41 (S.C. 1994). The proffer must establish the relevance of the excluded evidence. State v. Hall, 439 S.E.2d 278 (S.C. 1994). The purpose of a proffer is to adequately develop the record in order to allow the appellate court a chance to determine whether the appellant was prejudiced by the trial court's refusal to admit the evidence. Love v. Gamble, 448 S.E.2d 876 (S.C. App. 1994). A proffer that is confusing or incomplete will not provide grounds for the appellate court to find prejudice. When considering whether a proffer is sufficient to demonstrate error and prejudice "whatever doesn't make any difference, doesn't matter." Miles v. Miles, 397 S.E.2d 790 (S.C. App. 1990). Here, the Appellant made no effective proffer and cannot show error/relevance or prejudice, thereby

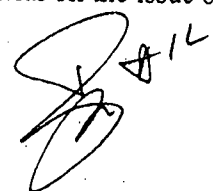
not preserving the issue for appeal.

With respect to issue on appeal no. 6, Appellant claims error in being denied a jury trial. The Magistrate's Court addressed this issue in its March 27, 2015 Final Order and Judgment. The purpose of S. C. Code Ann. § 15-67-610 is to give the real owner of land an "expeditious method of ejecting trespassers." "Richland Drug Co. v. Moorman", 71 S.C. 236, 50 S.E. 792 (1905). A jury trial is not provided for in proceedings under § 15-67-610 precisely because it is a proceeding for an expeditious "summary ejectment." See the heading for Title 15, Chapter 67, Article 7; Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905); Lynch v. Ball, 79 S.C. 243, 60 S.E. 691 (1908); Cotton v. Johnson, 71 S.C. 413, 51 S.E. 245 (1905). Neither § 15-67-610 nor § 15-67-620 mentions a right to a jury trial.² Additionally, § 15-67-620 provides that the Respondent (the person who is sought to be ejected from the premises) must appear before the magistrate and satisfy "him" [the magistrate], not a jury, of the bona fides of Respondent's possession.

The procedures to be utilized at a summary trespasser ejectment hearing are:

- The Plaintiff/Applicant "must bring himself within the statute by at least making before the magistrate prima facie showing that he is the owner of the premises and that defendant is a trespasser. "Richland Drug Co. v. Moorman, supra. Plaintiff must make such proof as should satisfy **the magistrate** that the case is one falling within the statute. Id.
- Once the plaintiff has made his showing of ownership and that the defendant is in possession without consent, the defendant, to avoid summary ejectment, must do two things: (a) satisfy **the magistrate** that Defendant "has a bona fide color of claim to the possession of such

² In Appellant's separate action for trespass to try title/quiet title (see South Carolina Court of Appeals unpublished opinion no. 2014-UP-010), he would have been entitled to a jury trial on the issue of his claim to paramount title had the action not been decided adversely to him on summary judgment. Therefore, he has not been denied the right to a jury trial on the issue of title.



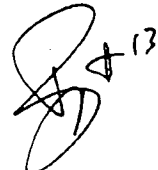
premises" and (b) "enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate." S.C. Code Ann. § 15-67-620.

- If the Respondent satisfies **the magistrate** that Respondent has a colorable claim of rightful possession, the summary proceeding should be dismissed, and the Plaintiff is left to the ordinary remedy for recovery of possession of the land. Richland Drug Co. v. Moorman, supra. (emphasis added.)

The Magistrate's Court was right that the law does not provide for jury trials in summary proceedings for ejectment of trespassers.

In his issue on appeal no 8, appellant claims that he does not fit the definition of a trespasser as that term is used in § 15-67-610. Appellant argues that the statute applies only to "squatters" and not to someone, like him, who purports to have a document giving him the right to possess the property. Appellant's "document" was rendered ineffective to give him any claim to possession or ownership by the Court of Appeals as explained above. An adult trespasser is a person whose presence is neither invited nor suffered. Estate of Adair v. L-J, Inc., 641 S.E.2d 63 (S.C. App. 2007). Trespass is defined as "any intentional invasion of the plaintiff's interest in the exclusive possession of his property." Hedgepath v. Am. Tel. & Tel. Co., 559 S.E.2d 327, 337 (S.C. App. 2001). The magistrate rightly found Appellant to be a trespasser.

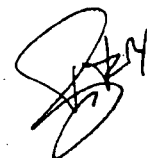
Issues on appeal 9 and 10 relate to the Magistrate's Court's requirement that Appellant sign an accounting to confirm his payment and the court's retention of monies being paid for rent /bond. This issue is not preserved for review because the Appellant does not claim that the accounting was inaccurate in any way. His only complaint is that the Magistrate Court was pushy in insisting that it be signed. In June, 2011, in an order on preliminary matters in the tenant eviction proceeding, Appellant was ordered to pay a fair rent into the court pending the outcome of the proceeding, to also

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be held as bond. If Appellant did not prevail in his defense, the money would be paid over to the Respondents, as owners of the property, for Appellant's occupancy of property he does not own. Appellant has continued to make the ordered payments, and the magistrate court continues to receive and hold the funds. Based on the March 27, 2015 Final Order and Judgment, the funds being paid into and retained by the magistrate court will be paid over to Respondents when Appellant's appeal is concluded. At the appeal hearing, Magistrate Zamore delivered to the circuit court the funds that had theretofore been paid into the magistrate's court. Respondent moved that the funds be held by the circuit court clerk of court pending future order of the court. Appellant did not object. Accordingly, there is no error with regard to the accounting or the holding of the money by the court that requires a reversal of the Final Order and Judgment.

Issue on appeal no. 12 asserts error on proceeding with the summary trespass hearing notwithstanding that a notice of appeal had been filed previously. Appellant's argument is that once he learned that the Magistrate's Court would hold a non-jury summary ejectment proceeding, he filed a Notice of Appeal on January 21, 2015 that should have stopped the summary ejectment proceeding. At that time, there had been no hearing in the trespass matter, and no order or judgment had been issued from which to appeal. Appellant's stated ground of appeal was that in his Answer he demanded a jury trial in this proceeding, and in the Magistrate Summons the Court indicated that the proceeding will be a "bench trial." Appellant argued that the Magistrate Summons was an Order denying him a mode to trial to which he has a right, thereby making the "order" immediately appealable. Appellant misreads the law.

First, the Summons is not a final judgment or order. Additionally, if the Summons operates as an order in this instance, it is not the type of order that is immediately appealable. "An order denying a jury trial is not immediately appealable unless it deprives the party of a mode of trial to



which he is entitled as a matter of right.” Jean Hoefer Toal, Shahin Vafai & Robert A Muckenfuss, Appellate Practice in South Carolina 95 (2d ed.2002), (emphasis added.)

Appellant was not entitled to jury trial herein as a matter of right for two reasons: (1) as addressed hereinabove, the governing statute, § 15-67-610, does not provide for a jury trial in this proceeding. This is a proceeding for an expeditious “summary ejectment.” See the heading for Title 15, Chapter 67, Article 7; Richland Drug Co. v. Moorman, *supra*; Lynch v. Ball, *supra*; Cotton v. Johnson, 71 S.C. 413, 51 S.E. 245 (1905). Neither § 15-67-610 nor § 15-67-620 mentions a right to a jury trial.³ Additionally, § 15-67-620 provides that the Appellant, as the person who is sought to be ejected from the premises, must appear before the magistrate and satisfy “him” [the magistrate], not a jury, of the bona fides of Appellant’s possession.

(2) Appellant argued in his notice of appeal that the subject before the magistrate court in this proceeding is the “issue of paramount title” to the land in question, and that the nature of the “issue” entitles him to a jury trial. As addressed hereinabove, Appellant had already litigated his claim to title to the land at issue and had lost that battle. What was before the Magistrate’s Court in January, 2015 was the issue of Appellant’s right, if any, to possession of the land separate and apart from his already failed claim to title.

When an order is not immediately appealable, the service and filing of a notice of appeal does not transfer jurisdiction to the appellate court, nor does it stay further proceedings in the lower court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 149. (2d ed.2002). The Magistrate Court continued to have jurisdiction over this matter notwithstanding

³ As addressed above, in Appellant’s separate action for trespass to try title, he would have been entitled to a jury trial on the issue of his claim to paramount title had the action not been decided adversely to him on summary judgment. Therefore, he has not been denied the right to a jury trial.

Appellant's erroneous notice of appeal. The Magistrate's Court did not err in proceeding with the hearing.

In his issue on appeal 13, Appellant complains that the Magistrate's Court's Judgment Order provides that he may have no recourse against the Respondent's principals for the removal of the Appellant's structure. This is brought about by the unusual situation of the Respondents' owning the land, with the Appellant owning the mobile home, and additions built onto the mobile home. Respondents have consistently acknowledged that Appellant is entitled to take his mobile home and improvements, but he must do so within a reasonable time. The content of the Order on this subject is not objectionable because it merely states the obvious. Respondent may not claim damages for Respondents' ultimate removal of the structure, if such becomes necessary, and if Respondents do what the law requires.

In his issue on appeal no. 14, Appellant complains that the Magistrate's Court failed to consider the case of Eller v. Motley, 82 S.E.992 (S.C. 1914) and that the cited case requires that the court order the remaindermen to Reba Hinson's life estate to give a deed to Appellant. Appellant interprets the Eller opinion to say that if a vendee (Appellant) enters into an installment land sale agreement with a vendor who holds only a life estate (Reba Hinson), and if payments are made to the vendor prior to her death, and if the vendor dies before the contract is fully performed then the vendee has the right to finish out the sales contract by paying to the remaindermen whatever is owed on the sales contract and the remaindermen can be ordered in specific performance to give the vendee a deed. That is not the law, and that is not what Eller says. The portion of the case quoted in Appellant's issue on appeal 14 addresses the question of a vendor who has fee simple title who dies before the full purchase price under the sales contract is paid. It confirms that the "heirs at law of the vendor" (not remaindermen to a life estate) can be compelled to carry out the contract that the

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vendee had with the deceased vendor. It has been established, as addressed above, that Appellant has had no title or interest in the real property since Reba Hinson's death.

Issues on appeal 15, 16, 17 and 18. Appellant assigns error on the failure of the Magistrate's Court to grant Appellant's Motion for Change of Venue, and related Rule 12(b)(8) motion to dismiss, and for ordering that the two motions be stricken. On their face, the motions are without merit. A Rule 12(b)(8), SCRCP motion to dismiss (another action is pending between the same parties for the same claim) is waived if not included in a pre-answer motion or in a responsive pleading. Appellant did not include the objection in a responsive pleading or in a pre-responsive pleading motion. The motion was made not only after trial, and after entry of a final order and judgment but also after an appeal had been taken. It was untimely and waived.

The motion to change venue was made pursuant to S.C. Code Ann. § 22-3-920. Just as with the motion to dismiss, this motion is wholly without merit. The statute reads:

Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days' notice that he intends to apply for a change of venue or (b) the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate's district in the same county. One such transfer only shall be allowed each party in any case.

The motion was made too late and was supported by an affidavit that was based on Appellant's complaint that Judge Zamore was not giving credence to Appellant's claim of ownership to the subject property. The statute obviously envisions that the motion be made before trial because it must be based on the good faith belief that he cannot get a fair trial. The trial had taken place, and the case had been appealed before the motion to change venue was made. See the S. C. Courts

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website, Trial Courts, Magistrate's Courts, Summary Court Judges Benchbook , Section D.1

(Change of Venue), which reads:

S.C. Code Ann. § 22-3-920 provides that either party in a civil case, or the prosecutor or the accused in a criminal case, may apply for a change of venue. In civil cases, the party seeking the change of venue must give the adverse party at least two (2) days notice of his/her intent to seek a change of venue prior to applying for such, unless the affidavit shows that the necessary facts were not discovered until it was too late to give such notice. In criminal cases the request for a change of venue should be made prior to trial, unless in view of all the circumstances the person requesting the change did not have a reasonable opportunity to make such a request previously. Op. Att'y Gen. No. 1733, dated 1963-64.

In either a civil or criminal case, the person requesting the change of venue must file with the magistrate an affidavit stating that the individual does not believe he/she can receive a fair trial. The affidavit must also state the grounds supporting the belief of the requesting party. If the affidavit sets forth grounds for a belief that the party cannot obtain a fair trial, then the grant of a change of venue is mandatory. (emphasis added).

Based on the forward-looking language of the statute, a tardy motion for change of venue cannot be made after trial as a substitute for an appeal.

Issues on appeal nos. 5 and 7 each assert error to the Magistrate's Court in not dismissing the trespass case pursuant to § 15-67-20. Section 15-67-20 reads: "The plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to one action for recovery."

The record shows that in 2010 a property management company on behalf of the Reba Hinson remaindermen and who were then the owners of the real property at issue brought an action in Magistrate's Court to have Mr. Woods, then alleged to be a tenant, removed from the property.

The Magistrate entered an Order dated June 14, 2010 that read:

Dismissed Without Prejudice on June 14, 2010. There was no clear ownership of the property or clear right to collect or receive rent. Reba Hinson had a life estate in the property, which, on her death, was inherited by her children or their heirs. As to the Counterclaim filed by the defendant, there is no Counterclaim in an

Eviction and the \$160,000 is over the jurisdiction of this Court. Therefore: the Order and Rule to Show Cause, the Application for Ejectment and the Counterclaim are **Dismissed without Prejudice**.
(Emphasis added.)

In March, 2011, Breakfield, as attorney-in-fact for the Reba Hinson remaindermen, commenced an action in the magistrate's court to have Mr. Woods, alleged to be a hold-over tenant, removed from the property. As initially filed, it was also a tenant eviction proceeding. The Magistrate's Court's Order on Motions, deciding various pre-trial matters, was issued on June 2, 2011. Appellant appealed that Order to the Circuit Court, and to the Court of Appeals, eventually resulting in unpublished opinion no. 2014-UP-076 filed February 26, 2014. Appellant's petition for certiorari to the Supreme Court was dismissed by Order dated June 27, 2014. Appellant's Motion to Reinstate Appeal was denied by Order dated September 24, 2014.

On June 22, 2011, Appellant herein filed an action in the Circuit Court against the Reba Hinson remaindermen alleging that Appellant had acquired fee simple title to the real property at issue from Reba Hinson who, in turn, had received fee simple title from her late husband by and through his last will. Appellant labeled his action as trespass to try title. Respondent labeled it an action to quiet title or to construe the last will of Levie Hinson. The Circuit Court granted summary judgment in favor of the Reba Hinson remaindermen. Appellant appealed the summary judgment Order, which was eventually affirmed by the Court of Appeals in its unpublished opinion no. 2014-UP-010. More time passed while Appellant unsuccessfully petitioned the Supreme Court for a writ of certiorari. Consequently, by his own legal action, Appellant established that he held no title or interest in the property and that he was therefore a trespasser.

In November, 2014, on the basis of unpublished opinion no. 2014-UP-010, Breakfield, as attorney-in-fact for the Reba Hinson remaindermen, commenced a summary ejectment of trespasser

proceeding based on Appellant's claim of being an owner and not a tenant. At the first merits hearing held in Magistrate's Court, the Respondent elected to proceed with the summary trespass remedy in lieu of the tenant eviction remedy because of Appellant's claims of ownership and the fact that the issue of his alleged ownership had by then been judicially decided adversely to him in unpublished opinion no. 2014-UP-010. This was effectively an amendment of the pleadings to allege alternate causes of action, one for trespass if Appellant claimed title and one for eviction of tenant if Appellant claimed to be a tenant. Although the Magistrate Court assigned another case no. to the trespass action, it was in effect the addition of a new and alternate cause of action allowing the decision to pursue one and not the other at the hearing. This was consistent with the rules governing magistrate court proceedings: the rules are to be construed to secure the just, speedy and inexpensive determination of every civil case, Rule 1, South Carolina Rules of Magistrates Court; the court shall be lenient in the allowance of changes or amendments to pleadings, Rule 14, South Carolina Rules of Magistrates Court; trials are to be conducted in an informal manner, Rule 13, South Carolina Rules of Magistrates Court. In magistrate's court, substantial justice cannot be sacrificed on the alter of technical procedure. As of November, 2014, Respondent's principals (the Hinson remaindermen) had not received an adjudication from a court with respect to requiring Appellant to vacate the property.

On January 30, 2015 the Magistrate's Court held the trespass hearing that is the subject of this appeal; Respondent Breakfield elected to proceed on the trespass case and not on the eviction of tenant case. The resulting Final Order and Judgment dated March 27, 2015 (the order being appealed herein) was the first dispositive order or judgment in any proceeding for the recovery of the subject real property.

Appellant argues that this history runs afoul of S.C. Code Ann. § 15-67-20 in that Respondent (and his principals) have commenced more than one action to recover the property and that the Magistrate's Court erred in not dismissing the trespass case. Relying on Carr v. Mouzon, 76 S.E. 201 (S.C. 1912), Appellant argues that the Hinson remaindermen's actions to evict Appellant as a tenant, and/or to eject Appellant as a trespasser, were all actions for recovery of the land at issue and that the § 15-67-20 limitation of one action to recover the property or its possession applies without regard to the disposition of the prior actions. According to Appellant, when the first tenant eviction case resulted in an order of dismissal without prejudice, Respondent's principals were then foreclosed from any other action to establish their ownership and to recover the property. And, when Respondent elected to pursue the summary trespass remedy and to forgo the tenant eviction remedy, that was an additional action in violation of § 15-67-20. The Court disagrees.

The statute in Carr,⁴ a predecessor version to § 15-67-20, expressly provided that a second action was permitted within two years of the verdict, judgment, non-suit or discontinuance in the first action. Appellant argues that according to Carr a nonsuit or discontinuance for any reason counts as an action to recover real property for the purpose of applying the limitation in § 15-67-20. However, the statute construed in Carr is not the statute now in effect. Section 15-67-20 no longer permits more than one action and no longer contains the non-suit and discontinuance provision found in earlier versions of the statute. Obviously, the non-suit and discontinuance provision operated only in the two-action exception to res judicata found in earlier versions of § 15-67-20.

Appellant cites Stewart-Jones Co. v. Hankins, 152 S.E. 430 (S.C. 1930) in which three eviction actions against the Defendant, and the failure to pay costs of the first action, required a dismissal of the third action. However, Stewart-Jones is factually distinguishable from the case now

⁴ Subdivision 2 of section 98 of the Code of Procedure.

before the court in significant respects. It was decided on the content of Section 317, Code of Civil Procedure (1922), now amended and codified as S.C. Code Ann. § 15-67-20. Section 317 then provided:

"The plaintiff in all actions for recovery of real property, or the recovery of the possession thereof, is hereby limited to two actions for the same, and no more: Provided, that the costs of the first action be first paid, and the second action be brought within two years from the rendition of the verdict or judgment in the first action, or from the granting of a non-suit or discontinuance therein."

The opinion in Stewart-Jones rested on the defense that the action on appeal "was commenced by the plaintiff without the payment of the costs in the said former action, which was a condition precedent to its right to bring this action." Id. at 437. The expressly stated basis for the opinion (the payment of costs in the former action) was removed from the statute in 1988, now § 15-67-20, when the provision for a second action subject to the payment of costs in the former action was removed from the statute.

Further distinguishing the opinion is the fact that the Defendant in Stewart-Jones had a deed to the property, as did the Plaintiff, and that each persistently claimed title. Herein, by the time the tenant eviction case had become a trespass case, it had been definitively established by the Court of Appeals, confirmed by denial of certiorari by the Supreme Court, that Appellant never had a deed and has no valid, enforceable claim to title whether by adverse possession or by acquisition from Reba Hinson. Nevertheless, Appellant argues that he is entitled to a deed or a declaration of title notwithstanding that the courts have determined that he has not held title in any possible form since Reba Hinson's death in 2006. That would be a truly unconscionable result.

The underlying policies of the 1922 statute and the post-1988 revised statute guide the court in determining the operation of § 15-67-20 in this case. There are no reported cases addressing the application of the post-1988 § 15-67-20. The pre-1988 two-action limitation was considered in Ladd

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v. DuPre, 147 S.E.2d 253 (S.C. 1966). In that case P1 brought an action against D1 for possession of land. It resulted in a final judgment awarding possession and damages to P1. D1 then instituted an action against P1 to regain possession of the land, arguing that S.C. Code Ann. § 10-2402 (1962) permitted a second action to determine possession. P1, who was the plaintiff in the first action and the defendant in the second action, pled res judicata and argued that the final judgment in the first action was a bar to the second action. The circuit court dismissed the complaint in the second action claiming that res judicata operated as a bar to the second action. The Supreme Court construed the statute thus: "The statute must be construed in the light of the common law rule, recognized in this State, which permitted a plaintiff to bring any number of actions for the recovery of the same real property." Citing Carr v. Mouzon, 76 S.E. 201 (S.C. 1912) the court in Ladd continued: "the courts refused to apply the general principles of res judicata to such actions . . . because title and right to possession of real property was regarded with special favor, and it was thought that such important rights should not be finally determined by one action." It follows that the two-action limitation was enacted to preserve the exception to res judicata but to limit the right of a person to two actions for the recovery of real estate and also to protect "a person in possession of, and claiming title to, real estate." (Emphasis added.) Such person has a right to be "relieved of continued attacks on his title." (Emphasis added.) The pre-1988 statute was construed to mean that "a party out of possession, who loses his first action, shall have a second action, but was never intended to modify the doctrine of res judicata otherwise." (Emphasis added). The policy of the former statute gleaned from the language of the Ladd v. DuPre opinion negates Appellant's arguments herein. In the eviction/ejectment proceeding Appellant was not legitimately claiming title to the land, and Respondent was not attacking Appellant's title, because the Court of Appeals had already decided the question of title. And, the Hinson remaindermen did not "lose" the first action because it did

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not proceed to a ruling or judgment. Dismissal of a case "without prejudice" means a plaintiff may reassert the complaint by curing defects that led to the dismissal, in contrast to a dismissal of a complaint "with prejudice" which is intended to bar relitigation of the same claim. Spence v. Spence, 628 S.E.2d 869 (S.C. 2006).

The change in policy effectuated by the 1988 amendment of the statute appears to be that by amending the statute to allow only one action, the common law res judicata doctrine is now codified with respect to actions to recover real property. Under modern law and procedure real property disputes are no longer viewed as needing a special exception to res judicata. For the common law res judicata doctrine, and/or its equivalent statutory limitation in § 15-67-20 to apply, Appellant must show that: (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication (final judgment) of the issue by a court of competent jurisdiction. Catawba Indian Nation v. State, 756 S.E.2d 900 (S.C. 2014). A "final judgment" for purposes of res judicata must finally dispose of some matter which under substantive law to be applied and procedural law of forum can be, and has been, finally disposed of. McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich, 482 S.E.2d 564 (S.C.App. 1997).

Nothing was decided or disposed of by court action in the first tenant eviction proceeding. It was dismissed without prejudice. The second tenant eviction proceeding was discontinued without proceeding to trial when the Respondent elected to proceed on the trespasser theory of the case. The summary ejectment of trespasser proceeding did go to a hearing and produced the trial court's only order, adjudication or judgment that finally disposed of the dispute between these parties. Accordingly, § 15-67-20 is not a bar to the trespass case.

Injunction

2015-CP-12-0368, a companion case to this appeal, has been dismissed by separate order, but only after transferring Appellant's cause of action for injunction to this case. On or about August 10, 2015, Appellant commenced case no. 2015-CP-12-0368 by filing a complaint alleging two causes of action. First, he sought a writ of mandamus to compel the Magistrate to file a Return of the magistrate's court proceedings in 2015-CP-12-0179 (the trespass case); and second, he sought an injunction to enjoin the Magistrate from issuing a warrant or writ of ejectment in the trespass case. In effect, Appellant seeks a preliminary injunction to enjoin a future action pending the outcome of his appeal. Respondent Breakfield, as attorney-in-fact for the Hinson remaindermen, moved to intervene and the motion was granted. Respondent Breakfield in his representative capacity opposes the cause of action for preliminary injunction.

A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief he will suffer irreparable harm, that he has a likelihood of success on the merits, and that there is no adequate remedy at law. Poynter Invs. Inc. v. Century Builders of Piedmont, Inc., 694 S.E.2d 15 (S.C. 2010).

This court denies the Appellant's request for a preliminary injunction. First, the action for injunction is untimely pursuant to the terms of S.C. Code Ann. § 15-67-640. Additionally, on the merits, Appellant has not satisfied the requirements for preliminary injunctive relief. Paragraph 10 of his complaint in case no. 2015-CP-12-0368, the cause of action for an injunction, alleges that "the aim of the magistrate action is to evict plaintiff [Appellant] from land that plaintiff Mell Woods acquired through ten years adverse possession." He does not allege another source for his purported title apart from adverse possession. Appellant further alleges that he therefore holds an ownership interest in the land and is entitled to participate in a separate partition action in which the Hinson

remaindermen are partitioning the land.

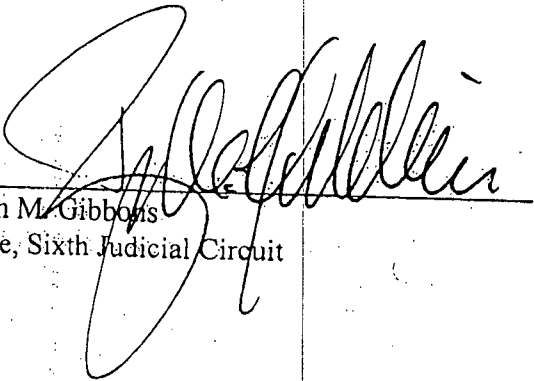
Appellant had an adequate remedy at law, and he sought it in his action to construe the Levie Hinson last will. That action resulted in Court of Appeals unpublished opinion no. 2014-UP-010 which expressly ruled that Appellant acquired no ownership by adverse possession. Appellant cannot show a likelihood of success on the merits of his appeal. His claim to right of possession of the real property at issue is based on either adverse possession, as alleged in case no. 2015-CP-12-0368, or having acquired title from Reba Hinson. The Court of Appeals' unpublished opinion no. 2014-UP-010 decided both of those claims adversely to the Appellant. Accordingly, Appellant is not entitled to injunctive relief, and his action/motion for such is denied. The magistrate is free to issue a warrant or writ of ejectment.

On the basis of the rulings hereinabove, it is the Order of this Court, sitting as an appellate court, that:

1. The Magistrate's Court's Final Order and Judgment dated March 27, 2015 is affirmed.
2. The Magistrate's Court's July 15, 2015 Order denying Appellant's Motions Reconsideration is affirmed.
3. The Magistrate's Court's August 24, 2015 Order denying Appellant's motion to change venue and motion to dismiss is affirmed.
4. Appellant's cause of action or motion for injunction to enjoin the magistrate from issuing a warrant or writ of ejectment is denied.

IT IS SO ORDERED.

July 7
2016


Brian M. Gibbons
Judge, Sixth Judicial Circuit

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DATE & TIME	STATUS OF ITEM	LOCATION
August 2, 2016, 11:50 pm	Delivered, PO Box	COLUMBIA, SC 29202
Your item has been delivered today and is available for pickup at the post office in Columbia, SC 29202.		
August 2, 2016, 11:48 pm	Arrived at Post Office	WEST COLUMBIA, SC 29172
August 2, 2016, 3:58 pm	Departed USPS Destination Facility	COLUMBIA, SC 29201
August 2, 2016, 12:47 pm	Arrived at USPS Facility	COLUMBIA, SC 29201
August 1, 2016, 9:20 pm	Arrived at USPS Facility	JACKSONVILLE, FL 32099
July 29, 2016	Pre-Shipment Info Sent to USPS	

Available Actions

Text Updates

Email Updates

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

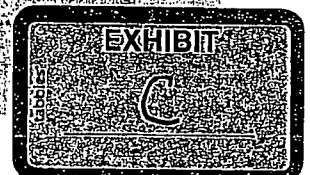
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SHIP TO: B. MICHAEL BRACKETT MOSES & BRACKETT, PC PO BOX 100261 COLUMBIA SC 29202-3261			
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Electronic Rate Approved #038555749			



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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

Affidavit of Paris N. Cherry

Personally appeared before me Paris N. Cherry, who being duly sworn, deposes and says that:

1. I am the manager of the USPS post office at 4117 Park Road, Charlotte, NC. The post office at 4117 Park Road, Charlotte, NC has been assigned the zip code 28209. I have worked for the United States Postal Service (USPS) for 17 years, and I am familiar with the Click-N-Ship service and tracking program.
2. Click-N-Ship is a service offered by the USPS which allows customers to create pre-paid shipping labels on standard printing paper. This covers the postage due and includes a delivery confirmation number to show the date and time of delivery or an attempted delivery. Minus the cost of postage, there is no fee for users to create labels for Priority Mail, Priority Mail Express, Global Priority Mail or Global Express Mail. After affixing the label, customers can ship the package by dropping it in a mail box, bringing it to a post office, giving it to their regular mail carrier, or requesting a special pickup
3. I have been asked to examine the four attached Click-N-Ship labels (Exhibits A to D) and to explain the steps in the process of mailing a package using these labels. I have also been asked to examine the attached tracking reports (Exhibits E to H) that correspond to the labels (Exhibits A to D).

The June 19, 2014 Labels

4. Exhibit A is a click-n-ship label addressed to the South Carolina Supreme Court bearing USPS tracking no. 9405 5036 9930 0319 7810 95. Exhibit B is a click-n-ship label addressed to B. Michael Brackett bearing USPS tracking no. 9405 9036 9930 0205 7170 52.
5. Exhibits A and B were printed on a non-USPS computer. When the Click-N-Ship label is printed, a digital payment is automatically made to the USPS as a part of the label printing procedure. Buying and printing a Click-N-Ship label is the equivalent of buying a postage stamp for a regular envelope. Merely printing and paying for a Click-N-Ship label does not signify that a package has been deposited or placed with the USPS for delivery. When a Click-N-Ship label is printed, digital notice is automatically given to the USPS. Exhibits A and B confirm on their face that they were purchased and printed on June 19, 2014.
6. Exhibit E is the USPS tracking report for the Exhibit A Click-N-Ship label addressed to the South Carolina Supreme Court. Exhibit F is the USPS tracking report for the Exhibit B Click-N-Ship label addressed to B. Michael Brackett. When a Click-N-Ship package is placed with the USPS for delivery, it is promptly scanned into the system for tracking purposes and is thereafter scanned at each step of the delivery process. Exhibit E shows that the package bearing the Exhibit A label was first accepted by the USPS and scanned into the tracking system at 7:06 pm on June 26, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at

8:21 pm on June 26, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on June 27, 2014. It arrived at the addressee's post office, zip code 29211, on June 28, 2014.

7. Exhibit F shows that the package bearing the Exhibit B label, addressed to B. Michael Brackett, was first accepted by the USPS and scanned into the tracking system at 7:03 pm on June 26, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at 8:18 pm on June 26, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on June 28, 2014. It arrived at the addressee's post office, zip code 29202, on June 28, 2014.

The June 23, 2014 Labels

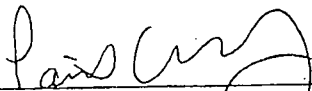
8. Exhibit C is a click-n-ship label addressed to the South Carolina Supreme Court bearing USPS tracking no. 9405 9036 9930 0207 7880 98. Exhibit D is a click-n-ship label addressed to B. Michael Brackett bearing USPS tracking no. 9405 9036 9930 0207 7970 83.
9. Exhibits C and D were printed on a non-USPS computer. When the Click-N-Ship label is printed, a digital payment is automatically made to the USPS as a part of the label printing procedure. Buying and printing a Click-N-Ship label is the equivalent of buying a postage stamp for a regular envelope. Merely printing and paying for a Click-N-Ship label does not signify that a package has been deposited or placed with the USPS for delivery. When a Click-N-Ship label is printed, digital notice is automatically given to

the USPS. Exhibits C and D confirm on their face that they were purchased and printed on June 23, 2014.

10. Exhibit G is the USPS tracking report for the Exhibit C Click-N-Ship label addressed to the South Carolina Supreme Court. Exhibit H is the USPS tracking report for the Exhibit D Click-N-Ship label addressed to B. Michael Brackett. When a Click-N-Ship package is placed with the USPS for delivery, it is promptly scanned into the system for tracking purposes and is thereafter scanned at each step of the delivery process. Exhibit G shows that the package bearing the Exhibit C label was first accepted by the USPS and scanned into the tracking system at 6:36 pm on July 1, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at 7:51 pm on July 1, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on July 2, 2014. It arrived at the addressee's post office, zip code 29211, on July 3, 2014.
11. Exhibit H shows that the package bearing the Exhibit D label, addressed to B. Michael Brackett, was first accepted by the USPS and scanned into the tracking system at 6:36 pm on July 1, 2014 at the 4117 Park Road, Charlotte, NC post office. It was next scanned at the Charlotte, NC sorting facility at 7:51 pm on July 1, 2014. It arrived in Columbia, SC and was scanned there, at the sorting facility, on July 2, 2014. It arrived at the addressee's post office, zip code 29202, on July 2, 2014.
12. Exhibits E, F, G and H, the USPS tracking reports, are USPS records made in the regular practice or business of USPS, at or near the time of the events reported therein, by a person or persons with knowledge, or from information transmitted by a person or persons with knowledge, that are made and kept in the course of USPS's regularly

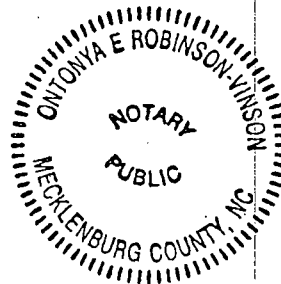
conducted business activity. It is a computer process created by scanning package bar codes at each step of the transportation and delivery process. According to the four tracking reports, all four packages mentioned above were mailed "priority mail 2-day" and were delivered to the addressees within two days of the initial scanning.

13. The drop box for packages in the 4117 Park Road, Charlotte, NC post office is emptied several times each day, and upon removal from the drop box, packages are then promptly scanned if they are being mailed using the USPS tracking and confirm program. Scanned and tracked packages are not "post-marked."
14. I do not know Mr. Mell Woods or Mr. Mike Brackett.

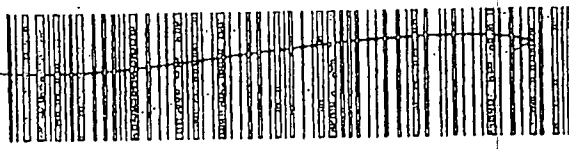

Paris N. Cherry, Manager
United States Postal Service

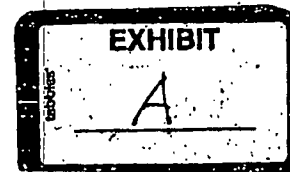
Sworn to before me this 22nd
day of July, 2014.

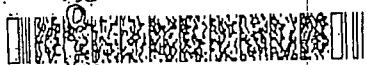
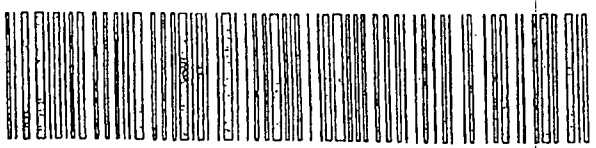

Notary Public for North Carolina
My Commission Expires: 4/18/17

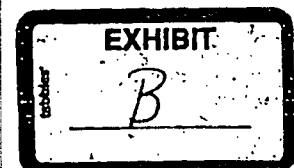


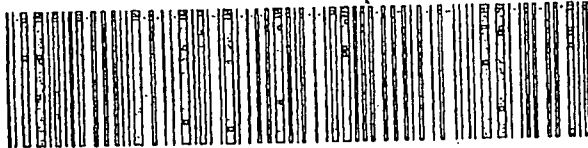
STATES
SERVICE

 UNITED STATES POSTAL SERVICE®		Click-N-Ship®	
P	usps.com 9405 5036 9930 0319 7810 95 0061 6012 0202 9211		
	\$5.16 US POSTAGE Regional Box B		
	06/19/14	Commercial Base Pricing Mailed from 28209 062S0000001307	
PRIORITY MAIL 2-DAY™			
MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603		Expected Delivery Date: 06/21/2014	
		0024	
		B099	
SHIP TO: SOUTH CAROLINA SUPREME COURT PO BOX 11330 COLUMBIA SC 29211-1330			
USPS TRACKING #			
			
9405 5036 9930 0319 7810 95			
Electronic Rate Approved #038555749			

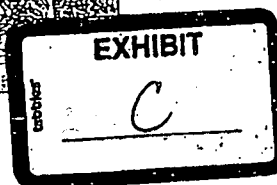


 UNITED STATES POSTAL SERVICE®		Click-N-Ship®	
P	usps.com 9405 9036 9930 0205 7170 52 0061 6008 0402 9202 \$6.16 US POSTAGE Regional Box B INSURED		
	06/19/14	Commercial Base Pricing Mailed from 28209 062S0000001308	
	PRIORITY MAIL 2-DAY™		
	MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603		
		Expected Delivery Date: 06/21/2014 0024	
B099			
SHIP TO: B. MICHAEL BRACKETT MOSES KOON & BRACKETT, PC PO BOX 100261 COLUMBIA SC 29202-3261			
USPS TRACKING # 			
9405 9036 9930 0205 7170 52			
Electronic Rate Approved #038555749			



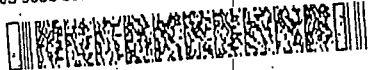
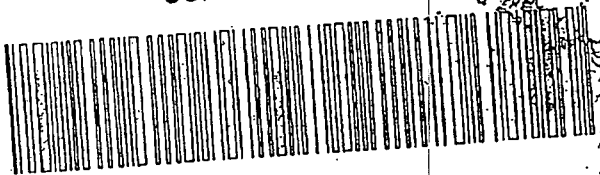
 UNITED STATES POSTAL SERVICE®		Click-N-Ship®	
P	usps.com	9405 9036 9930 0207 7880 98 0061 6010 1402 9211	
	\$6.16		
	US POSTAGE Regional Box 8 INSURED	Commercial Base Pricing Mailed from 28209 062S0000001301	
	06/23/14	0024	
PRIORITY MAIL 2-DAY™			
MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603		Expected Delivery Date: 06/25/2014 B099	
SHIP TO: SOUTH CAROLINA SUPREME COURT PO BOX 11330 COLUMBIA SC 29211-1330			
USPS TRACKING #			
			
9405 9036 9930 0207 7880 98			
Electronic Rate Approved #038555749			

262

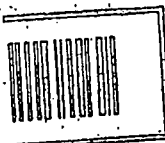


PRIORITY[®]

MAIL

 UNITED STATES POSTAL SERVICE		Click-N-Ship[®]	
P	usps.com	9405 9036 9930 0207 7970 83 0053 2006 1002 9202	
	\$5.32		
	US POSTAGE		
	Regional Box A INSURED		
06/23/14	Commercial Base Pricing	Mailed from 28209 062S0000001301	
PRIORITY MAIL 2-DAY[™]			
MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603		Expected Delivery Date: 06/25/2014	
		0024	
		B099	
SHIP TO: B. MICHAEL BRACKETT MOSES KOON & BRACKETT, PC PO BOX 100261 COLUMBIA SC 29202-3261			
USPS TRACKING #			
			
9405 9036 9930 0207 7970 83			
Electronic Rate Approved #038555749			

WHITE BOX A
AND INTERNATIONAL



RRB-A2, July 2013
ID: 10.9375 x 2.375
OD: 11.0625 x 2.5 x
ODCUT: 0.209062

10052

EXHIBIT

D

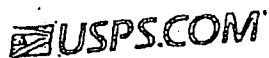
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Tracking Number: 9405503699300319781095

Expected Delivery Day: Monday, June 30, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™

Features:
\$50 Insurance Included

USPS Tracking™

DATE & TIME

June 28, 2014, 9:13 am

STATUS OF ITEM

Delivered

LOCATION

COLUMBIA, SC 29211

Your item was delivered at 9:13 am on June 28, 2014 in COLUMBIA, SC 29211.

June 28, 2014, 9:10 am

Arrival at Post Office

COLUMBIA, SC 29202

June 28, 2014, 12:30 am

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

June 27, 2014, 11:41 am

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

June 26, 2014, 8:21 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

June 26, 2014, 7:06 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 19, 2014

Electronic Shipping Info
Received

Available Actions

Text Updates

Email Updates

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Tracking Number: 9405903699300205717052

Expected Delivery Day: Saturday, June 28, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™Features:
Insured

USPS Tracking™

Text Updates

Email Updates

DATE & TIME

June 28, 2014, 3:56 am

STATUS OF ITEM

Delivered

LOCATION

COLUMBIA, SC 29202

Your item was delivered at 3:56 am on June 28, 2014 in COLUMBIA, SC 29202.

June 28, 2014, 3:56 am

Arrival at Post Office

COLUMBIA, SC 29201

June 26, 2014, 8:18 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

June 26, 2014, 7:03 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 19, 2014

Electronic Shipping Info
Received

Track Another Package

What's your tracking (or receipt) number?

Track It

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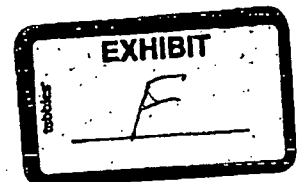
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Tracking Number: 9405903699300207788098

Expected Delivery Day: Thursday, July 3, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™

Features:
Insured

USPS Tracking™

DATE & TIME

STATUS OF ITEM

LOCATION

July 3, 2014, 8:34 am

Delivered

COLUMBIA, SC 29211

Your item was delivered at 8:34 am on July 3, 2014 in COLUMBIA, SC 29211.

July 3, 2014, 8:34 am

Arrival at Post Office

COLUMBIA, SC 29202

July 3, 2014, 3:46 am

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

July 2, 2014, 6:13 pm

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

July 1, 2014, 7:51 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

July 1, 2014, 6:36 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 23, 2014

Electronic Shipping Info
Received

Available Actions

Text Updates

Email Updates

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Tracking Number: 9405903699300207797083

Expected Delivery Day: Thursday, July 3, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™Features:
Insured

USPS Tracking™

Text Updates

Email Updates

DATE & TIME

July 2, 2014, 11:37 pm

STATUS OF ITEM

Delivered

LOCATION

COLUMBIA, SC 29202

Your item was delivered at 11:37 pm on July 2, 2014 in COLUMBIA, SC 29202.

July 2, 2014, 11:36 pm

Arrival at Post Office

WEST
COLUMBIA, SC 29172

July 2, 2014, 6:02 pm

Processed through USPS
Sort Facility

COLUMBIA, SC 29201

July 1, 2014, 7:51 pm

Processed at USPS Origin
Sort Facility

CHARLOTTE, NC 28214

July 1, 2014, 6:36 pm

Accepted at USPS Origin
Sort Facility

CHARLOTTE, NC 28209

June 23, 2014

Electronic Shipping Info
Received

Track Another Package

What's your tracking (or receipt) number?

Track It

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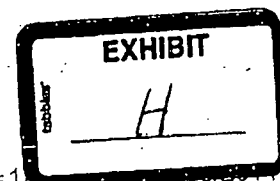
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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHESTER
4 2015-CP-12-00179
5 Robert H. Breakfield, et als.
6 vs.
7 Mell Woods
8
9 Chester, South Carolina
10 June 1, 2016
11 Before the Honorable Brian Gibbons
12

13 APPEARANCES
14 For the Plaintiffs: Michael Brackett
15 For the Defendant: Pro Se
16 Also Present: Mr. Yale Zamore
17
18 Reported by: Michael C. Watkins
19 Official Court Reporter
20
21
22
23
24
25

1 THE COURT: That brings us to Mr. Breakfield and Mr.
2 Woods and Mr. Zamore. All right. This is the matter -- it
3 is two different matters, the first is docket number
4 15-CP-12-179, the second is docket 15-CP-12-368, both
5 matters are before the Court today. As I understand one is
6 an appeal from magistrates court and there's another
7 corresponding lawsuit. The Court is somewhat familiar with
8 the record in this case. Gentleman, I know it's
9 voluminous, I know y'all have been involved with it for a
10 long time, and when I say gentlemen I'm talking to
11 everybody. This afternoon, however, in preparation for the
12 hearing I did receive a letter that has not been file
13 stamped yet but it is the first thing we have to deal with
14 before we deal with everything, and I believe -- where is
15 Mr. Brackett? Mr. Brackett, have you received a copy of
16 the letter I'm referring to?

17 MR. BRACKETT: I got it yesterday, yes, sir.

18 THE COURT: It's dated May 28th, I got my copy today
19 because I was in Lancaster yesterday holding court. And
20 Mr. Woods, I'm going to ask that you kind of summarize the
21 letter, the letter will be made an official part of the
22 record and you tell me what you're seeking for me to do.

23 MR. WOODS: All right, sir. Can I spell my name for
24 the court reporter?

25 THE COURT: Yes, sir.

1 MR. WOODS: It's Mell with two L's, M-e-l-l, Woods.
2 I'm not going to file a motion to recuse because, I mean,
3 it's just about an impossible thing to do in South
4 Carolina, all right? That's the first thing. But I have
5 been a client, or still expect to be a client of Mr.
6 Delaney's office and at one time you were a partner down
7 there, I believe, were you not?

8 THE COURT: Yes, sir.

9 MR. WOODS: Basically what it is, they send you all
10 over the state to go here and there and we've got plenty of
11 judges in South Carolina, I'm not trying to pick a fight, I
12 just feel like if we had an outside judge it would just be
13 different. And there was things in my file down there that
14 I feel was with attorney/client privilege, I just don't
15 want -- I know it's not going to come out here but I just
16 feel uncomfortable with this.

17 THE COURT: Well, you also mentioned Mr. Hamilton
18 being the special referee in the case. Have you brought up
19 anything to Mr. Hamilton about -- because he's Mr.
20 Delaney's law partner currently practicing with them, have
21 you brought up anything to Mr. Hamilton?

22 MR. WOODS: I have a motion to be added as a party to
23 the partition case but I have not discussed it with Mr.
24 Hamilton. Are you talking about with --

25 THE COURT: Yeah. Your letter to me I take it as -- I

1 understand you just said you're not filing a motion to
2 recuse, but your letter seems to ask me to recuse myself
3 and appoint somebody else, and that's fine, we can deal
4 with that as we talk about it, I just want to make sure the
5 record is clear because that's the way I took it. And my
6 question to you is, if you're asking me to recuse myself
7 subsequently it would appear you need to ask Mr. Hamilton
8 to recuse himself. If you haven't asked Mr. Hamilton to
9 recuse himself, well, it seems to me like -- you understand
10 the problem here.

11 MR. WOODS: I understand, but I've not been admitted
12 to the partition case yet.

13 THE COURT: Okay. So you're not part of that case.

14 MR. WOODS: I gave the motion to Mr. Hamilton.

15 THE COURT: Okay.

16 MR. WOODS: Do you understand? If he ever admits me
17 in there then we'll face that problem at that time.

18 THE COURT: Okay, got you.

19 MR. WOODS: But we have a problem -- I mean, I don't
20 know if it's a problem or not, but front and center here.

21 THE COURT: Yes sir. All right. Well, we'll deal
22 with that, that's the first thing we need to deal with.
23 All right. Well, Mr. Brackett, let me hear from you on
24 this matter. I understand you're going to tell me it's a
25 delay tactic and that's why he filed it.

1 MR. BRACKETT: Well, it is, that's one of the reasons
2 he did it. The partition case he refers to is a case filed
3 by the Hinson family to partition the property which
4 includes the property that we're here about today. Mr.
5 Woods has moved to intervene, and I'm not involved in that
6 case, Mr. Breakfield is not involved in that case, this is
7 strictly intra-Hinson family doing what families do when
8 they inherit land. So what Mr. Woods is doing is
9 attempting to intervene claiming that he has some interest
10 in the lot that we're about here today, when the South
11 Carolina Supreme Court has already told him he doesn't have
12 an interest in that lot. He is a stranger to that land as
13 far as the ownership is concerned and he has no basis to be
14 involved in that partition at all, and so --

15 THE COURT: So that's what's going on in the
16 partition.

17 MR. BRACKETT: Yes, sir.

18 THE COURT: What about his -- I mean, I read the
19 letter as an invitation -- maybe not a motion, but a letter
20 pointing out a perceived conflict of interest -- and, of
21 course, I will hear from you again, Mr. Woods -- a
22 perceived conflict of interest which on its face it does
23 make a prima facie case that there may be a conflict of
24 interest because I was a lawyer with that firm for 13
25 years, I've been on the bench since 2005, I know nothing

1 about this case, I think he even mentioned in there that I
2 never represented him. But yes, I was law partners with
3 Mr. Delaney during the time Mr. Delaney allegedly
4 represented him. Where does that leave us?

5 MR. BRACKETT: Well, I see no conflict at all. The
6 partition case was filed -- I forget the case number, I was
7 just looking to try to get the case number on it, but it
8 was filed in like 2009 or 2010, something like that, Ms.
9 Reba Hinson died in 2007, so the remainderman to the life
10 estate commenced the partition action. I don't know when
11 you left the firm or --

12 THE COURT: 2005.

13 MR. BRACKETT: So you were gone from the firm before
14 the partition case ever came up. I don't believe Mr. Woods
15 can argue today to this Court that he's going to intervene,
16 he's filed a motion, but I cannot imagine a set of
17 circumstances where under the facts as we now know them to
18 be he will be allowed to intervene. Right now he is a
19 movant who is not a party to that case, and it doesn't
20 matter who the judge is in that case right now.

21 THE COURT: Okay. What about me, though? What about
22 me being able to hear this? Should I recuse myself? And
23 if not -- if not, why not?

24 MR. BRACKETT: Because --

25 THE COURT: I ask that in all seriousness because the

1 record in this case is voluminous. I've read both of these
2 files, I've reviewed everything Mr. Woods has submitted, I
3 have reviewed everything y'all have submitted, I've read
4 the Court of Appeals decision, I've read the Supreme Court
5 decision. If I don't recuse myself -- and Mr. Woods, you
6 can address this -- is there going to be problems down the
7 road?

8 MR. BRACKETT: No, sir.

9 THE COURT: If I do recuse myself -- you see where I'm
10 going with this? Go ahead.

11 MR. BRACKETT: Well, if you do recuse yourself then
12 we've got to get it back on a roster and get some other
13 judge to hear it, they don't hold court in this county very
14 often. We've been fighting this battle with Mr. Woods
15 since 2010. He's been living on my client's property after
16 having been told numerous times by the courts that he has
17 no title, he has no right to be there, and I'm trying my
18 darndest to push this thing across the finish line, all
19 right?

20 THE COURT: Yes, sir.

21 MR. BRACKETT: I see absolutely no conflict in the
22 case.

23 THE COURT: Why?

24 MR. BRACKETT: Because his title has already been --
25 or his lack of title has already been determined, that is

1 not in dispute, he has no interest in the property.

2 Therefore --

3 THE COURT: What's left for me to do then?

4 MR. BRACKETT: With the partition, nothing. What you
5 can do is say there's no conflict because you have nothing
6 to do with that case, Mr. Hamilton has nothing to do with
7 this case, and he can deal with Mr. Hamilton and the
8 partition case later when he hears his motion to intervene
9 which really has nothing to do here. So I don't see any
10 problem, Your Honor, with you continuing to hear this thing
11 today.

12 THE COURT: The fact that he was a client of my law
13 partner's during -- which, in effect would make him a
14 client of mine during the time that he -- that I was
15 employed with that law firm.

16 MR. BRACKETT: My understanding is is --

17 THE COURT: Y'all would have the conflict.

18 MR. BRACKETT: My understanding is it's more than
19 that. It's not enough just that you were a partner in the
20 law firm, you never represented him, he can't say that you
21 ever came across information that would be relevant to this
22 case that might prejudice him in this case, and you
23 apparently say you've never represented him and you have no
24 recollection of having come across information back when
25 you were a partner with that law firm that would have any

1 impact on this case.

2 THE COURT: But even if I did, wouldn't the conflict
3 lie with your client, the potential conflict of interest?
4 If my firm previously represented Mr. Woods, which I don't
5 know if it did, wouldn't the person to move that I be
6 recused be you rather than Mr. Woods?

7 MR. BRACKETT: That's true, that's true. We'll waive
8 it.

9 THE COURT: Do y'all want me to recuse myself?

10 MR. BRACKETT: No.

11 THE COURT: Okay. Mr. Woods, coming back to you.

12 MR. WOODS: All right, sir. The only part I want to
13 make, I just think it would be fair because the public
14 expects whenever they go to a law firm that, you know, I
15 don't know how long it should last but they don't want --
16 whatever they tell their lawyer it doesn't need to be in
17 the courthouse, it's privileged and it is attorney/client
18 privileged, that's what I'm standing on. And it's -- he
19 always says the same thing, it's always the same thing.
20 And the thing about the title what he's saying is not true
21 either, but I don't want to get into the ugly part right
22 now.

23 THE COURT: Just on whether or not I should recuse
24 myself because that's the initial issue which I was just
25 put on notice of two hours ago.

1 MR. WOODS: I would appreciate it if you would.

2 THE COURT: Okay.

3 MR. WOODS: And I'm not trying to pick a judge, I
4 don't care who you get. If we could get one from out of
5 the circuit that doesn't know anything about what's going
6 on it would be great.

7 THE COURT: Well, you know, from a judicial economy
8 perspective I'm the Chief Administrative Judge, I'm over
9 everything that happens in Chester, Fairfield and Lancaster
10 Counties whether I like it or not for both criminal and
11 civil court. I've never met you, Mr. Woods, that I'm aware
12 of, I think you indicated in your letter that I never
13 represented you when I practiced law. I don't know what
14 capacity -- you don't have to discuss it here -- you
15 indicate in your letter that Mr. Delaney did not represent
16 you in anything having to do with these cases.

17 MR. WOODS: What I did, I put in the letter -- and I
18 did discuss the Hinson case when I was down there because I
19 was wondering what was going to happen when she did die,
20 this was during the period when she was still alive, it's
21 in the letter.

22 THE COURT: All right.

23 MR. WOODS: I think it's the third line in the second
24 paragraph.

25 THE COURT: All right. Well, do you agree with

1 them -- do you agree with the question I asked Mr. Brackett
2 that if there's any conflict that the request for recusal
3 would have to come from them, not you?

4 MR. WOODS: I don't necessarily agree with that
5 because I was a client there. I'm just asking on fair
6 attorney privilege grounds that something be done about it.
7 See, I do know that you're the administrative law judge and
8 the last time there was another judge on the case --

9 THE COURT: Judge Hall.

10 MR. WOODS: -- Judge Hall, so I thought that's who I
11 it was going to be. As far as being an administrative
12 judge I don't have a problem, but I mean, this is a problem
13 to me personally.

14 THE COURT: Okay. Anything further on the issue of
15 recusal?

16 MR. BRACKETT: No, Your Honor.

17 THE COURT: All right. Having considered the
18 arguments of both Mr. Woods and counsel for Mr. Breakfield
19 and others, I respectfully decline to recuse myself. There
20 is no conflict of interest. You know, while Mr. Woods may
21 have been represented at some time in the past by the law
22 firm which I was previously employed over 11 years ago, I
23 have no attorney/client relationship whatsoever with Mr.
24 Woods, and even if I did the conflict in this Court's
25 opinion would belong to the opposing parties, and in this

1 case the opposing parties waive the conflict, or the
2 appearance of a conflict and want me to hear the case, and
3 so I'm going to hear the case. I am the Chief
4 Administrative Judge, I'm over this circuit as far as -- I
5 don't want to "dump", in quotations marks, this case on a
6 visiting judge when they're not here as much as I am. Mr.
7 Woods, you are correct, we do travel all over the state,
8 but I don't think it would right to shuffle this to
9 somebody else who is not here on a daily basis, so I'm
10 going to exercise jurisdiction over this case and I'm going
11 to hear this case and so we will go from there. All right.
12 So gentlemen, what is the first thing we need to hear
13 today?

14 MR. ZAMORE: Judge, I would deeply appreciate it if
15 you would hear any matter involving the magistrate court
16 directly, that would be the complaint for mandamus and so
17 forth.

18 THE COURT: Okay. Are you okay with that, Mr. Woods,
19 going first?

20 MR. WOODS: I couldn't hear what he was saying, Judge.

21 THE COURT: He wants to go forward with the mandamus
22 case first.

23 MR. WOODS: Well, I guess we can do that if that's
24 what he wants to do.

25 THE COURT: What docket is that, Mr. Zamore?

1 MR. ZAMORE: 2015-CP-12-00368, Your Honor.

2 THE COURT: So this is -- all right. Who is the
3 moving party?

4 MR. WOODS: I am, Your Honor.

5 THE COURT: All right. Mr. Brackett?

6 MR. BRACKETT: I have a motion to intervene in that
7 case.

8 THE COURT: Okay. Motion to intervene, let me hear
9 you on that. And Mr. Woods, I'll hear you in response to
10 the motion to intervene.

11 MR. BRACKETT: Quick background, Your Honor. The
12 related case, 0179, was the magistrate court proceeding
13 where Mr. Woods was charged with being a trespasser and he
14 was found to be a trespasser and he took an appeal from
15 that case. Some months after the final order was entered
16 into magistrates court, Mr. Woods commenced case number
17 0368, he is the plaintiff in that case, Judge Zamore was
18 the only defendant in that case. The complaint set out two
19 causes of action, the first was seeking a mandamus. Mr.
20 Woods was alleging that Judge Zamore had not filed, was not
21 filing or had failed to file a return in the appeal case
22 and asking the Court basically to order him to file a
23 return. His second cause of action sought an injunction
24 against Judge Zamore to enjoin him from issuing a warrant
25 of ejectment in the trespass case, 0179. When I found out

1 he was asking for an injunction in that case without having
2 named my client as a party and without having given me
3 notice I moved to intervene for the purpose of contesting
4 the injunction. Because the appeal statute, 15-67-640 I
5 believe it is, the appeal statute on a trespass case says
6 the magistrate must not issue a warrant of ejectment for a
7 period of five days after the defendant has been found to
8 be a trespasser, and that during that five days the
9 defendant trespasser has the right to go to circuit court
10 to get an injunction to delay the issuance of a warrant,
11 and so Mr. Woods didn't do that. He didn't file for an
12 injunction within five days, he waited some months after
13 the case and then tried to do it secretly without me
14 knowing about it so that I could speak up, so I have moved
15 to intervene. The motion actually sets out the grounds, I
16 put everything in there.

17 THE COURT: Is it on a tab on that --

18 MR. BRACKETT: It's tab -- no, sir, it was not
19 included in that appeal notebook. The appeal notebook
20 relates only to the 0179.

21 THE COURT: But your motion to intervene was filed.

22 MR. BRACKETT: Yes, sir, it was filed on March the
23 23rd of 2016.

24 THE COURT: Okay.

25 MR. BRACKETT: And on the grounds that we have common

1 parties and that full relief cannot be granted in 0368
2 basically without my presence, because whether a warrant of
3 ejectment gets issued in the trespass case affects my
4 client's rights.

5 THE COURT: All right. Mr. Woods, in response to Mr.
6 Brackett's motion to intervene on this issue?

7 MR. WOODS: Okay. Your Honor, could we see the
8 motion? I mean, he said he didn't have it, can we see a
9 copy of it? It may be in the file.

10 MR. BRACKETT: I served it on you.

11 MR. WOODS: Pardon? I know you served it on me but I
12 would like to see either the original or the one you have.

13 THE COURT: Do you have an extra file stamped copy,
14 Mr. Brackett?

15 MR. BRACKETT: He can take a look at mine, Your Honor.

16 THE COURT: I have it in the file up here, Mr. Woods.
17 It's a motion to intervene and a motion for sanctions filed
18 March 23rd of 2016.

19 MR. BRACKETT: Can I stand here or do you want me
20 to --

21 THE COURT: Yes, sir, you're fine.

22 MR. BRACKETT: There's a problem with this motion,
23 Judge, I've got the proof of it right here.

24 THE COURT: Okay.

25 MR. WOODS: This is another one of his habits, he

1 doesn't mind doing this, he doesn't mind filing motions in
2 court concerning dead people who weren't represented by a
3 personal representative. There's a lady on this motion
4 here by the name of Elaine H. Hensley, right here, she's
5 dead, her estate has been closed out, and he's representing
6 to the Court that she's an active party that can be in this
7 court, that's not correct and it's not fair. I've got
8 here -- if I can bring it up -- I've got here a certified
9 copy from the clerk's office.

10 THE COURT: Of what?

11 MR. WOODS: Of a deed of distribution showing she's
12 dead. This has actually got something to do with both
13 cases. Can I show this? It has not been filed.

14 THE COURT: Well hang on, where did my clerk go?

15 MR. WOODS: I don't know.

16 THE COURT: Freddie, just stand in between us so you
17 can hand stuff to me.

18 MR. WOODS: This is an affidavit from me saying that
19 she's dead and here is the proof showing the deed of
20 distribution. And worse than that this fellow here, Mr.
21 Breakfield, signed the deed of distribution as a notary so
22 I feel like he knows the lady is dead and he's a party here
23 so he knows about it. Show him that.

24 THE COURT: All right. Yes, sir, anything else on the
25 motion to intervene?

1 MR. WOODS: Well, I don't feel like he ought to be
2 intervening on behalf of dead people who don't have a
3 personal representative in the case.

4 THE COURT: Thank you. Coming back to you.

5 MR. BRACKETT: Your Honor, Ms. Hinson -- well, Mr.
6 Woods has been found to be a stranger to the Hinson Estate,
7 he has no interest in that estate. Mr. Breakfield is both
8 the personal representative of the Hinson estate and he is
9 also the attorney, in fact, for the Hinson heirs, that is
10 the capacity in which he seeks to intervene. Elaine Hinson
11 is not seeking to intervene, Mr. Breakfield as attorney, in
12 fact, for the Hinson family is the party seeking to
13 intervene. So Elaine Hinson has nothing to do with this,
14 she is the --

15 THE COURT: All right. Mr. Zamore, you're a named
16 party in this action.

17 MR. ZAMORE: Yes, sir.

18 THE COURT: Do you have any objection to Mr. Brackett
19 intervening?

20 MR. ZAMORE: Your Honor, I take no position, just
21 leave it to the Court's discretion.

22 THE COURT: All right. Motion to intervene granted.
23 All right. Let me hear the relief you're seeking as the
24 movant in this case, Mr. Woods?

25 MR. WOODS: All I wanted to do was for Mr. Zamore, I

1 just wanted him to file his return which he -- the statute
2 says he's supposed to have 30 days to do so and after 100
3 days it didn't look like he was going to do it so I filed
4 this. I was trying to get him to do his job.

5 THE COURT: Has he filed --

6 MR. WOODS: He has finally filed some things but
7 they're not complete and they're not -- he just -- last
8 week he filed some.

9 THE COURT: All right. The last one that I have that
10 I am showing in this file is clocked April 15th, 2016, it's
11 called a corrected and supplemental magistrate's return on
12 appeal. Has something been filed since then, Mr. Zamore?

13 MR. ZAMORE: Yes, Your Honor. There is a second
14 supplemental return. Your Honor, may I address this? I
15 think I can clarify the situation.

16 THE COURT: I see it, I've got it right here, filed
17 May 17th, yes, sir.

18 MR. ZAMORE: Your Honor, this was the sequence of
19 events. After going through maneuverings we got to a final
20 hearing on the merits in my court and I conducted the
21 hearing. I took the matter under advisement and some month
22 and a half to two months later issued a detailed ruling and
23 judgment. Subsequently Mr. Woods filed a notice of appeal,
24 he in addition filed some post-trial motions. What
25 happened was the appeal got dismissed without prejudice so

1 that the post-trial motions, which were timely filed, could
2 be heard. They were subsequently heard and I denied them.
3 Mr. Woods after going through a full appellate process then
4 refiled his appeal at which time I did a return. Your
5 Honor, I did not feel obliged to do a return on a
6 nonexistent appeal and I could not know until that issue
7 was finally determined. My initial return was as
8 comprehensive as I felt I could make it at the time. I
9 subsequently detected when I reviewed my paperwork that the
10 original return contained a wrong date on the first page
11 which needed to be corrected. I also realized that my
12 return did not contain information with regard to the
13 post-trial motions. Obviously the return would not be
14 complete without addressing that and that was my second and
15 corrected return. I then out of an abundance of caution
16 further realized that the bulk of the information upon
17 which I acted was based upon documents that were presented
18 during the original hearing on the merits, documents which
19 were official documents which I took by judicial notice.
20 Out of an abundance of caution it suddenly hit me, Your
21 Honor, that if I take things under judicial notice the
22 reason for that as well as the objects themselves need to
23 be presented to the appellate court so the appellate court
24 can fully review the actions in the court below, that was
25 the reason for the second supplemental return, so that this

1 way the Court would have as full a record as possible. I
2 would also ask the Court to note that the original hearing
3 on the merits, there was a court reporter present paid for
4 by Breakfield and I enclosed with my original return a copy
5 of that transcript, and I do have in my file an original
6 certified copy which is pretty well identical except that
7 it's just one page at a time, I submitted to the Court the
8 copy which has four pages on each page, but they are
9 otherwise identical. I wanted the Court to have as much
10 information as the Court could work with. Your Honor, I
11 have not in over 30 years in this business ever seen or had
12 to do so detailed a return, if there is anything left out
13 now I have no idea what it could possibly be.

14 THE COURT: All right. Mr. Brackett, anything you
15 wish to add on this?

16 MR. BRACKETT: No, Your Honor.

17 THE COURT: All right. So what relief do you seek
18 then in this action, 15-CP-12-368? Because he's filed the
19 return, which is what the action at least was filed to get
20 him to do, and I find the return -- based upon my review of
21 it and reading it, I find the return is more than normally
22 what the Court gets from a magistrate and I find it's
23 sufficient under the statute and common laws of South
24 Carolina and I accept his return. So what else do you seek
25 in this action that you filed, Mr. Woods?

1 MR. WOODS: Well, I need to get him to file the
2 return, but I believe he just admitted he didn't file the
3 original transcript. He said he still had it, I believe
4 that's what he just said, and the statute says it's supposed
5 to be original papers and not copies, and the transcript --

6 THE COURT: Well, a magistrates court is not a court
7 of record. The only thing that needs to be filed in an
8 appeal from magistrates court is a return which he's done.
9 Having a printed record is just a bonus but it's not
10 required by the rules. So what else do you seek as far as
11 any affirmative relief in this action?

12 MR. WOODS: Well, I don't want anything to done to him
13 other than just file the return, that's all I was trying --

14 THE COURT: The return has been filed, okay? Yes,
15 sir, anything you seek since you intervened?

16 MR. BRACKETT: Well, that leaves only the second cause
17 of actions where he has moved -- he's asked for an
18 injunction to prevent the issuance of a warrant of
19 ejectment. I take the position on the face of it since
20 I've now been allowed to intervene --

21 THE COURT: Yes, sir.

22 MR. BRACKETT: On the face of it he has failed to meet
23 the time requirement of the statute. He was given five
24 days to seek an injunction from the circuit court, that's
25 five days from the date of the order, which is March 27th

1 of 2015. Case number 0368 wasn't filed until, I don't
2 know, August or September of 2015, way after the
3 permissible five days. So I believe -- I'll make an oral
4 motion right now for summary judgment on that, that his
5 request for that injunction is untimely, we don't even have
6 to get into the merits of it.

7 THE COURT: So the writ of mandamus is deemed
8 abandoned by the Court since Mr. Zamore filed his return,
9 which I have already reviewed and I find is appropriate
10 under the statute. So the only -- the affirmative relief
11 that Mr. Brackett mentions is you were seeking an
12 injunction. An injunction for what, Mr. Woods?

13 MR. WOODS: An injunction so that -- it involves this
14 other case. I don't really know how to respond to this all
15 at one time because -- what he's saying is not completely
16 true.

17 THE COURT: Well, the injunction you're seeking in the
18 368 case relates to the 179 case?

19 MR. WOODS: That's right.

20 THE COURT: Well, here is what we're going to do, I'm
21 closing 368 out, okay? My order today, I find that based
22 upon hearing arguments of Mr. Woods, Mr. Brackett and Mr.
23 Zamore in the underlying lawsuit of 15-CP-12-368, that
24 that -- that Judge Zamore complied with what he was
25 supposed to do by filing a return as anticipated in the

1 statute. In fact, I make a specific finding that he went
2 above and beyond what I've ever seen any other magistrate
3 do in filing a return to this Court to make this Court
4 fully aware of what his order was, how he reached his order
5 and why he reached his order. It is completely full with
6 facts supporting his findings as well as the law which
7 support his findings. Now, of course, you know -- so I
8 find the return is sufficient. Being that that was the
9 main issue in this lawsuit, in 368 -- 15-CP-12-368, then I
10 deem that this lawsuit is concluded, I deem and issue
11 judgment in favor of Judge Zamore on that action. That
12 case is done, okay, with finality.

13 MR. ZAMORE: Thank you, Your Honor.

14 THE COURT: Now, as it relates to 179, and I'm opening
15 up 179 now because I want to make sure I got it.

16 MR. ZAMORE: Your Honor, may I be heard very briefly?

17 THE COURT: On 179?

18 MR. ZAMORE: Yes, sir.

19 THE COURT: Okay.

20 MR. ZAMORE: Your Honor, with regard to Mr. Woods,
21 during the pendency of these matters in my court I had made
22 provisions that Mr. Woods pay \$200 a month for a bond. I
23 cut it off at the hearing that we did on the merits and
24 made certain that that was provided for in my order. The
25 hearing was conducted in January of 2015, the order was

1 issued by March of 2015.

2 THE COURT: Where was that money paid?

3 MR. ZAMORE: It was paid in to my magistrate's
4 account. And what I have here for His Honor's record is an
5 original final accounting for all of that money, my
6 magistrate's check in the amount of \$9,300, and also --

7 THE COURT: 9,000 how much?

8 MR. ZAMORE: \$9,300. I was concerned we were above
9 7,500, Your Honor, which is the limit of my jurisdiction.
10 In addition, during the course of the case Mr. Woods had
11 made a filing in which he enclosed a \$100 money order, this
12 is the original money order. This represents all of the
13 funds that Mr. Woods --

14 THE COURT: For a total of \$9,400.

15 MR. ZAMORE: \$9,400.

16 THE COURT: So \$9,300 with the accounting, plus a \$100
17 money order equals \$9,400 which is currently in the
18 magistrate account, this has been handed up to the Court.
19 Okay. Mr. Woods, do you dispute that is the total amount
20 that you have paid into the magistrates court as a
21 condition of this bond?

22 MR. WOODS: Your Honor, it's certainly within the
23 ballpark, I mean, it may be \$100 one way or the other, but
24 it's nothing material.

25 THE COURT: Okay. So the next question, what do y'all

1 want me to do with this money?

2 MR. BRACKETT: I move that those funds be held by the
3 Chester County Clerk of Court until this Court determines
4 where it goes.

5 THE COURT: That's what I will do. Any objection to
6 that, Mr. Woods?

7 MR. WOODS: I don't guess so, Judge. I mean, I feel
8 like it's my money but they've been keeping it all along.

9 THE COURT: It may very well be. I'm just going to
10 make sure -- I think it's appropriate with the long history
11 of all of this, let's leave it in a neutral's hand, so the
12 neutral is going to be Ms. Sue Carpenter who is the Chester
13 County Clerk of Court. So Mr. Atkinson, let the record
14 reflect that I'm handing this \$100 money order, plus this
15 \$9,300 from the Chester County Magistrate's Office to Mr.
16 Doug Atkinson. If you would give those funds to Ms.
17 Carpenter, have her put them in an account to hold pending
18 the outcome of this -- the final outcome or adjudication of
19 this matter. Okay. Mr. Brackett, are you keeping good
20 notes?

21 MR. BRACKETT: Yes, sir.

22 THE COURT: Because I'm going to have you prepare an
23 order for me on the 368 matter. Let's now move to 179.
24 This action in 179 is styled Robert Breakfield for himself
25 and others -- excuse, Robert Breakfield, Esquire as

1 attorney in fact for John D. Hinson and a list of names,
2 versus Mell Woods. All right. What are we here for,
3 gentleman? Let me hear from y'all first.

4 MR. BRACKETT: We're the respondents, Your Honor.
5 What's before the Court is Mr. Woods' appeal from
6 magistrates court.

7 THE COURT: Okay. This is the actual magistrates
8 appeal.

9 MR. BRACKETT: It is.

10 THE COURT: Got you. Okay. You are correct. All
11 right, thank you. Mr. Woods, you are the appellant from
12 magistrates court. I have read Judge Zamore's return. Of
13 course, you're very familiar with the law, you know, that
14 I'm an appellate court of record, this isn't a retrial of
15 the case. But I'll be glad to hear from you then as to
16 what errors of law you believe that Judge Zamore has made
17 and which supports the relief you seek.

18 MR. WOODS: Most of it was in the grounds for appeal
19 which is in the record.

20 THE COURT: Yes, sir.

21 MR. WOODS: Plus there were some Rule 59E motions
22 filed, which I've not seen those, that's one thing I was
23 commenting on earlier, I think Mr. Brackett has got copies
24 of it.

25 THE COURT: Okay. That's Rule 59E that you filed with

1 Judge Zamore?

2 MR. WOODS: That's right.

3 THE COURT: Okay. Judge Zamore in his return
4 indicated that all post-trial motions have been dealt with
5 and were all denied.

6 MR. WOODS: I understand that, but we need the text of
7 it, that should be part of the record. It was like the
8 statute says, all of the papers filed needs to be sent to
9 the circuit court.

10 THE COURT: Okay. Well, I read the magistrate's
11 return and he referenced that you made post-trial motions
12 and all were --

13 MR. WOODS: Yeah, he read them but I don't think he
14 put them in there though, but I think Mr. Brackett has got
15 them in this black book here. We're operating off of Mr.
16 Brackets' record now.

17 THE COURT: Okay. What tabs are you referring to?

18 MR. WOODS: I don't really know, I saw it in there.
19 Where are the motions at in there? Mr. Brackett wrote him
20 two or three emails and asked him to put the motions in
21 there.

22 MR. BRACKETT: Well, Your Honor, I'm curious. Is Mr.
23 Woods saying he does not have copies of the motions he
24 filed with the Court?

25 THE COURT: I don't know, I'm trying to follow the

1 arguments.

2 MR. BRACKETT: He's trying desperately to find missing
3 documents that he says he doesn't have, and what he's
4 referencing right now are two documents that he created and
5 that he filed and he served, so --

6 MR. WOODS: I've got copies of it, yeah.

7 MR. BRACKETT: Okay, that's fine. He's got copies now
8 of motions that he was just complaining about.

9 THE COURT: Okay. I'm listening, go ahead.

10 MR. WOODS: I've got copies of it right here, Judge,
11 but I don't think it's in the record.

12 THE COURT: I have Judge Zamore's order on your Rule
13 59E motion, I'm looking at it right here.

14 MR. WOODS: Well, he didn't include copies -- can I
15 hand this up? This is a copy of what I'm talking about.

16 MR. BRACKETT: No objection.

17 MR. WOODS: You want to look at it?

18 MR. BRACKETT: No objection.

19 THE COURT: All right, without objection. Go ahead
20 and hand this up, we'll make this part of the record in the
21 case.

22 MR. WOODS: All right. There was five or six more but
23 this is the only one we're talking about now. And I've got
24 another paper I would like to hand up that's not in the
25 record if I can.

1 MR. BRACKETT: I don't know that I have seen this
2 document.

3 MR. WOODS: You haven't, I just handed it to him.

4 MR. BRACKETT: So you're filing this for the first
5 time?

6 MR. WOODS: That's right.

7 THE COURT: All right. Well, let me look at it and
8 see --

9 MR. BRACKETT: Then I will object to this as being
10 untimely.

11 THE COURT: Let me look at this and see.

12 MR. WOODS: It's more material than that, Judge, it
13 has to do with that motion I just handed you up.

14 THE COURT: This is dated June 1st. All right.
15 Before we deal with this let's deal with what already is in
16 the record and then I'll come back to this, okay? Because
17 I want to make sure the record stays in line with what
18 we're doing here. Let's go with your appeal, not raising
19 these new issues that you just handed up. Talk to me about
20 why you are entitled to reversal of Judge Zamore's
21 decision.

22 MR. WOODS: Well, one reason, he didn't rule on that
23 Rule 59 motion there except turn it down, and that relates
24 directly to that piece of paper with the date June 1st on
25 it that I just handed up. What it is is a statute that I

1 cited on there --

2 THE COURT: 15-67-20.

3 MR. WOODS: Yes, sir, that says you can only file one
4 action to evict somebody in South Carolina. It used to say
5 two, but since 1988, which is 30 years ago nearly, 28 years
6 ago they changed it to one action and that's what that
7 paper is about and that's what this paper is about. And
8 what they did in this case, they switched actions from one
9 to another, and it's here on page -- it's on page -- I've
10 got it in the transcript, it's on page 12 of 13. Can I
11 read a couple paragraphs out of here?

12 THE COURT: Yes, sir.

13 MR. WOODS: All right. In the middle of page 12 it
14 says, "The original case was an eviction which ordinarily
15 would be a landlord/tenant type situation. This new case
16 is a notice to quit, which is predicated upon the
17 allegation that Mr. Woods has no business on the property.
18 He is a trespasser and should be ejected from the property.
19 These types of cases can be viewed" -- this is judge -- the
20 judge over here, the magistrate judge talking -- "these
21 types of cases can be viewed as mutually exclusive.
22 Certainly I myself when I was practicing sometimes argued
23 in the alternative but this can be difficult and for our
24 purposes here it is desirable to have, if possible, the
25 single cause of action. I take it from the filing of the

1 notice to quit action, Mr. Brackett, that it is the action
2 of the plaintiff to proceed on the notice to quit and not
3 proceed on the original action, is that correct, Mr.
4 Brackett?" He said, "That's correct." And Mr. Zamore, he
5 says, "Very good. So we will be proceeding with the new
6 case and the old case has been dealt with." He dismissed
7 one case and started another one, there was two numbers.
8 So in this proceeding right here they dismissed a case and
9 started another one, the second case is barred under that
10 statute. And on top of that, it wasn't brought up in
11 there, but -- they tried this one time before when Judge
12 Moore was over there, here is the transcript from that, so
13 actually they filed three eviction cases against me and the
14 statute says now you can only have one.

15 THE COURT: Okay. Thank you. Mr. Brackett?

16 MR. BRACKETT: Just for the record, Your Honor, this
17 is his -- appellant's issue on appeal number five, that is
18 addressed on pages 18, 19 and 20 of the brief that I have
19 given to the Court on the case, only -- and the argument is
20 only one case has ever gone to judgment. This is -- the
21 statute he cites, 15-67-20, is now a statutory res judicata
22 statute, it used to be governed by common law res judicata
23 principles, but this is statutory, and for res judicata to
24 apply one of the key elements is that the prior decision
25 must have gone to a final judgment.

1 MR. WOODS: Your Honor --

2 THE COURT: Hang on, I'll come back to you.

3 MR. WOODS: Okay.

4 MR. BRACKETT: So in this particular case we readily
5 admit that we at first filed a tenant eviction case, and
6 when Mr. Woods began to argue that he wasn't a tenant, he
7 claimed ownership, then we discontinued the tenant case and
8 then filed the trespass case, so he was claiming title.
9 Only one proceeding has ever gone to judgment and that's
10 the one he's appealing, is the trespass case. But all of
11 that is fully addressed under his issue number five.

12 THE COURT: And I've read the brief. Yes, sir, Mr.
13 Woods, coming back to you.

14 MR. BRACKETT: Judge, as usual -- I mean, what he's
15 got here, it doesn't go by the case law, that's all I can
16 say. He twists stuff around and it's not what it is. I
17 did look the law up myself and it's in that first paper
18 that I gave you there.

19 THE COURT: The blue one?

20 MR. WOODS: No, not the blue one but --

21 THE COURT: The one you just handed up today dated
22 today.

23 MR. WOODS: The one dated June 1st. And the fact of
24 the matter is that the same thing happened up there in York
25 in the 20's which one of those cases is cited, and Ms.

1 Hankins is the name of the case, I went up there and looked
2 it up, I even got the old records here. And Judge Henry at
3 that time was a circuit judge right here in this courtroom
4 in this courthouse and ruled that if they had filed three
5 eviction actions that the property was deeded over to that
6 lady because of that bar. And it was not 15-67-20 at that
7 time, it was whatever they called it, it was the exact same
8 wording. It was never changed until 1988, and then the
9 only thing they changed was the two actions were allowed at
10 that time and then they changed it to one action. So what
11 he's saying about the res judicata is not true, it's not
12 true what he's got in his brief, not with the 15-67-20.
13 That's a special specifies of res judicata and it's
14 designed to keep people from having to be in court forever
15 like he's put me through when I actually own the place, I
16 don't care what he says.

17 MR. BRACKETT: Your Honor, I am going to move for
18 sanctions if he's going to stand in this court now and
19 continue to allege ownership when the Supreme Court of this
20 State has told him --

21 MR. WOODS: Your Honor --

22 THE COURT: Hang on, one at a time.

23 MR. BRACKETT: -- has told him he has no title, for
24 him to come into court and continue to claim title totally
25 ignoring what the Supreme Court has said, I'm going to move

1 for sanctions. This has got to stop.

2 THE COURT: Okay. All right.

3 MR. BRACKETT: He doesn't have title, he can't prove
4 title, he has no indication of title, and I've got a
5 Supreme Court opinion that says he doesn't have title.

6 THE COURT: Yes, sir, I've read the Supreme Court
7 opinion. All right. Anything else, Mr. Woods, on your
8 grounds for appeal?

9 MR. WOODS: Yeah. I mean, I would like to bring up
10 the rest of the motions, the Rule 59E motions.

11 THE COURT: Yes, sir, go ahead. This is your appeal,
12 I want to make sure you tell me everything you want to tell
13 me.

14 MR. WOODS: I mean, what Mr. Brackett is saying --
15 he's trying to scare me with this sanctions stuff, they've
16 got a bar, he can't threaten me with criminal prosecution
17 but this is about as bad. If the Court would apply the
18 law, the statutory bar, then this case is not any good
19 because they done filed too many cases.

20 THE COURT: Let me stop you there then. Talk to me
21 about this statutory bar. Anything else you wish to tell
22 me about that based upon this new information he handed up?

23 MR. BRACKETT: Other than the fact that by the time
24 the trespass case was started the Supreme Court had ruled
25 that he didn't have title, that is a key element in the

1 chronology of this case. But the fact is that we -- it's
2 not whether you filed an action. You know, the law used to
3 be you could go to court, suffer an adverse judgment and
4 then file another action to try to recover your property.
5 It has never been the law to my understanding that says if
6 you file an action and it gets discontinued there's a
7 dismissal without prejudice or whatever, that is not an
8 action counted under this statute for barred, it's just
9 not.

10 MR. WOODS: Your Honor, what --

11 THE COURT: All right, hang on. So as to the items
12 then, the piece of paper that Mr. Woods handed up today
13 that's dated June 1, 2016, I've heard his arguments on
14 that, I've reviewed them while y'all were making your
15 arguments, I know you objected to it coming into the
16 record, Mr. Brackett, but it appears to be just restating
17 his previous grounds and his arguments made in his briefs
18 that were submitted so I will allow that in over your
19 objection.

20 MR. BRACKETT: That's fine. Yes, sir, I believe it's
21 actually in the form of an argument brief of sorts. I
22 don't know that he's ever filed a brief in the case, if he
23 has I haven't been served with it.

24 THE COURT: I'm calling them briefs but it's filings
25 is what it is. And I think -- I just want to make -- the

1 paper you just handed up to me, you handed up two pieces of
2 paper to me just now, one is dated April 24th, 2015 and it
3 has got the blue cover.

4 MR. WOODS: That's right.

5 THE COURT: Yes, sir, I've reviewed that.

6 MR. WOODS: You can call that a brief, it's got
7 citations in there.

8 THE COURT: It is what it is, it's part of the record
9 in the case. And then the other is June 1 of 2016, that's
10 what you just handed up, that's the one that cites Judge
11 Henry sitting here in this courthouse in 1928 in the
12 Stewart Jones Company versus Hankins case, yes, sir, I've
13 read that, I understand your argument. All right, what
14 else?

15 MR. WOODS: I believe -- earlier I asked to continue
16 this because the record was not complete, I mean, this is
17 one of the non-complete things, we don't have the motions
18 here for me to show to the Court and they're not in the
19 record. Is there anything we can do about that?

20 THE COURT: No, sir. I denied your continuance
21 earlier and I'm denying it again, the record is clear on
22 that. As far as the post-trial motions made, there is an
23 order that is part of the record of the case where your 59E
24 motion was denied. What other post-trial motions are you
25 talking about?

1 MR. WOODS: Well, there was several. One was 12B8,
2 another action --

3 THE COURT: Okay. That's referenced in the return and
4 that was denied.

5 MR. WOODS: He denied all of them. But the material
6 part about the 12B8 is the partition case that's been
7 pending since 2008, and Judge Hamilton is the special
8 referee on the case. What it is comprised of is that the
9 Hinsons are still fighting among themselves about who owns
10 which piece of property. It's my position as long as that
11 partition is going on over there that none of them actually
12 own anything until it's over. I don't know if anybody
13 would agree with me or not but that's my position. When
14 they get that over then that's when they can start evicting
15 people if that's what they want to do. But right now it's
16 still up in the air and it's not my fault it's been going
17 on since 2008, it's not Judge Hamilton's fault either, it's
18 the Hinsons, they can't agree on anything.

19 THE COURT: All right. What other grounds are you
20 basing your appeal on?

21 MR. WOODS: Well, I believe you said you were just
22 going to allow that June 1st brief or whatever it is in?

23 THE COURT: Yes, sir, I've made that part of the
24 record. That is the bar under statute 15-67-20.

25 MR. WOODS: Yes, sir. And another part of it, they

1 still have Ms. Hensley listed and she's a dead person, I've
2 mentioned that in the other case, but she's in this case
3 too.

4 THE COURT: Right.

5 MR. BRACKETT: And I feel like she should have a
6 personal representative if she's going to evict somebody,
7 that's just my position. And I gave the Court the
8 documents about --

9 THE COURT: I've got that, that's part of the record
10 about the case.

11 MR. WOODS: There's also a rule and I need to get in,
12 this is one of the motions, too, during the hearing, he
13 swore Mr. Brackett and he swore Mr. Breakfield and he swore
14 me to be witnesses during the hearing, I think it's in that
15 transcript.

16 THE COURT: Yes, sir.

17 MR. WOODS: And so since I knew Mr. Breakfield was not
18 telling the truth about Ms. Hinson I wanted to cross
19 examine him but he wouldn't let me do that, he just told me
20 I couldn't cross examine Breakfield although he testified
21 during the hearing, that's a defect.

22 THE COURT: Okay.

23 MR. WOODS: But the biggest thing I want to point out
24 to the Court is that bar statute, it says that you can't do
25 it more than one time now.

1 THE COURT: Yes, sir.

2 MR. WOODS: Even if -- it doesn't have to be completed
3 until the final adjudication, there's plenty of cases in
4 there that says that. It can be just discontinued on their
5 own and they just get one time now. Used to they get two
6 but if they -- there was also a statute built into it if
7 they let it go by two years then they couldn't refile it.
8 But in this case, I mean, here is where in their own
9 transcript here where they dropped one case and started
10 another one, and that's the main point I want to make.

11 THE COURT: Okay. All right. Anything further?

12 MR. WOODS: Not right now.

13 THE COURT: All right. This is the oral argument part
14 of your appeal. I've read everything that's in the file
15 and I've allowed you to introduce more matters into the
16 file. Anything else you want to tell me before I hear from
17 the response?

18 MR. WOODS: No.

19 THE COURT: Okay. Yes, sir?

20 MR. BRACKETT: It's my understanding that Mr. Woods
21 has now offered an argument on his issue on appeal number
22 five which is the operation of the bar statute, whether or
23 not that has been violated. He has argued that it was
24 improper for the Court to have denied his post-trial
25 motions, that would be a motion to dismiss and a motion for

1 change of venue, to have someone other than Judge Zamore
2 hear the case. Those were filed in August, what is that,
3 six months, five months after the final order had been
4 entered in the case that he had file these two motions?
5 That would be issues on appeal numbers 15, 16, 17 and 18 as
6 I identified them in the brief. On their face those
7 motions are untimely. The type of relief they seek require
8 that they be pretrial motions, and he waited until five
9 months after he had suffered -- after he'd suffered an
10 adverse ruling from magistrates court to even raise those
11 issues, so on their face without any other showing they're
12 untimely. And the only argument he's given to you today is
13 he just doesn't like the fact that they were denied, he
14 never stated any particular reasoning for it. And then he
15 was not allowed to cross examine Mr. Breakfield, that is
16 his -- I was looking for that when you called on me -- that
17 would be his issue on appeal number three. And I've
18 argued -- I have set out that argument on the brief.
19 Essentially that's not preserved for any appellate review
20 at this point because he never made a proffer of what Mr.
21 Breakfield would have testified to had he been allowed to
22 examine him. My first argument is he doesn't have an
23 absolute right to cross examine witnesses, the magistrate
24 can determine who gets to question who. I was not allowed
25 to cross examine Mr. Woods at the hearing either.

1 Basically the information came out with the magistrate
2 asking the questions and that's sort of the way that we
3 went. But in any event, even if the Court were to find
4 that there was a right to cross examine him without having
5 made a proffer, that sort of exception is not preserved for
6 appellate review, and I've set out the law, there's oodles
7 of law on that. I don't think he's argued anything else
8 that we haven't addressed.

9 MR. WOODS: Could I be heard?

10 THE COURT: I'm going to come back to you in reply.
11 But anything else that hasn't been addressed in your brief?

12 MR. BRACKETT: Well, there's lots of things in here
13 where I responded to his issues on appeal, but --

14 THE COURT: And in preparation for today, as I
15 indicated to all of you, I've read all of this stuff.

16 MR. BRACKETT: I would simply adopt and incorporate
17 the content of my brief, I don't need to stand here and
18 just read it to you and argue about it. If there's
19 anything in particular the Court has a question about I
20 would be happy to try to deal with that, but at this point
21 he --

22 THE COURT: And you're asking that the appeal be
23 dismissed.

24 MR. WOODS: Yes.

25 THE COURT: And that judgment be entered in -- or that

1 Judge Zamore's decision stand, that it will be the order of
2 the Court.

3 MR. BRACKETT: Correct, just to affirm all of those
4 orders.

5 THE COURT: Okay. In reply, yes, sir?

6 MR. WOODS: Your Honor, I was just listening to him
7 and he's talking about the motions that were filed after
8 trial, he's sort of making it sound like all the motions
9 were filed. The one about the bar was filed in the answer
10 to start with, it said clearly in the answer that people
11 nowadays are only allowed one chance, and they had already
12 used up their chance, so that's in the answer. And then I
13 filed a Rule 59E motion after he issued his order. And
14 what he's talking about was filed during the summer was --
15 one of them was the 12B8 when I found out about -- I didn't
16 know the partition case was going on because they had three
17 over there, and two of them have been dismissed and I was
18 looking at one of them. And how I found out about it, I
19 called up Mr. Hamilton to try to get him to represent me in
20 this case, and then he told me he was the special referee
21 for the Hinsons and he didn't say I could represent both
22 parties, you know? So as soon as I found out that the
23 partition case was still going on I filed a 12B8 motion.

24 THE COURT: What's the case number in that partition
25 case, do y'all know?

1 MR. WOODS: I have it, we've got it. It's 2008 -- I
2 tell you how you can find it, I used that for my email
3 after y'all told me to get it -- 2008-CP-12-475, that's it,
4 that's how I can remember. You remember you told me to --
5 I used that.

6 THE COURT: Yeah. Anytime you represent yourself in
7 court you've got to be treated just like a lawyer, all
8 lawyers have to have their emails on record.

9 MR. WOODS: And I'll tell the party to look if you
10 want to look at it. It's Louise Griffin, she's deceased
11 also but she's the one of the parties, Louise Griffin,
12 G-r-i-f-f-i-n, it's in that machine there, you can go right
13 to it.

14 THE COURT: Okay. But it's 08-CP-12-475, is that
15 accurate, Mr. Brackett? Do you know off the top of your
16 head?

17 MR. BRACKETT: I believe that to be the case, yes,
18 sir.

19 THE COURT: That is, Mr. Atkinson?

20 THE CLERK: Uh-huh.

21 THE COURT: Anything else, Mr. Woods?

22 MR. WOODS: Not at this time, Judge.

23 THE COURT: All right. Now gentleman, anything else
24 from y'all, Mr. Zamore?

25 MR. ZAMORE: Your Honor, just for the record, since

1 there is a -- I think Mr. Woods wanted an injunction that
2 our court not issue a writ of ejectment, I would just ask
3 the Court to note, we take no position because we have no
4 pecuniary interest ourselves.

5 THE COURT: Okay.

6 MR. BRACKETT: That is a good point, Your Honor. You
7 sort of bumped that issue over into this case.

8 THE COURT: Right. And I'm going to come back to you,
9 Mr. Woods, on that.

10 MR. BRACKETT: If I might address that. It is
11 governed by section 15-67-640, that is the right to appeal
12 from an adverse trespass action, and it says the magistrate
13 shall not issue his warrant, that's a warrant of ejectment,
14 until the expiration of five days after he announces his
15 decision. And in the meantime the defendant may apply for
16 an injunction as in other cases upon giving the bond
17 required by section 620 to restrain the execution of such
18 warrant pending the determination of his appeal. You've
19 got five days, he waited months, so on that ground alone,
20 Your Honor, I'm going to ask that the Court in essence
21 grant summary judgment on what is the second cause of
22 action in case number 0368, that Mr. Woods is untimely in
23 his request for an injunction, and the magistrate may move
24 forward with issuing a warrant of ejectment assuming the
25 Court affirms the appeal in 179, that would make the final

1 order of March 27, 2015 the operative final order, and that
2 would free the magistrates court to move forward with
3 issuing the warrant, not withstanding that Mr. Woods may
4 appeal everything we do here today. I fully expect that he
5 will. But under this statute that does not operate as a
6 supercilious.

7 THE COURT: Okay. Yes, sir, coming back.

8 MR. WOODS: Your Honor, it really doesn't matter if it
9 was late or not, he'd never done anything. Because, I
10 mean, it's -- and if the Court is going to apply the bar
11 that I have asked that was on that paper dated June 1st the
12 case is not any good anyway, there's really no need for an
13 injunction or eviction or anything. I mean, I have in the
14 record they -- how I got in possession was through Ms.
15 Hinson, I got copies of the paper here that should have
16 been in that record but I didn't see it the other day when
17 I looked. Could I hand that up? That's part of the record
18 that is supposed to be in there.

19 THE COURT: You can hand up another copy if you would
20 like to, yes, sir.

21 MR. WOODS: Because that's one of the things -- they
22 seem to go through and leave out the parts that's really
23 material.

24 THE COURT: Just hand that to Mr. Doug right here.

25 MR. WOODS: That's the contract. Do you object to

1 that? He said I could show it to him, or you can leave it
2 in the record.

3 THE COURT: I'll make it a part of the record of the
4 case.

5 MR. WOODS: Put it in the record. That's how I got in
6 possession right there, and it's recorded too.

7 THE COURT: Yes, sir. Are you okay with me keeping
8 this copy?

9 MR. WOODS: Sure, that's yours. If I'd known you were
10 going to keep it I would have got one that didn't have
11 bends in it.

12 THE COURT: That's okay, no problem. Okay. Anything
13 else on anybody?

14 MR. ZAMORE: Your Honor, I would just ask the Court to
15 note that unless the Court issues an injunction I will go
16 ahead and issue a writ of ejectment. In the event that His
17 Honor wants me to hold off until final appellate clearance
18 from the final Court of Appeals, Supreme Court, whatever, I
19 would certainly obey such a restriction.

20 THE COURT: All right. Anything else from anybody? I
21 want to make sure we have a complete record because I know
22 it's going to be read one way or the other by other judges.

23 MR. WOODS: Could I put in a copy of the first time
24 they tried to evict me?

25 THE COURT: That's the one from Judge Griffin?

1 MR. WOODS: No, Moore.

2 THE COURT: Judge Moore, I'm sorry. Yes, sir.

3 MR. WOODS: This is a copy from a court reporter.
4 I've got the original but I've never opened it. Here is
5 where they tried to evict me to start with.

6 THE COURT: That's part of the record in the case, you
7 understand that, Mr. Brackett?

8 MR. BRACKETT: Your Honor, I object to this. This was
9 not introduced at the magistrate court hearing, it has
10 never been introduced in any proceeding before now, and so
11 he's trying now to put in evidence that Judge Zamore never
12 saw and never addressed in his order, so it's improper and
13 I would object.

14 THE COURT: Okay. Objection overruled for whatever
15 it's worth, I will allow it in the record.

16 MR. WOODS: It's also in the machine there, it's 2010
17 when they did this, you can see, it's the first one.

18 THE COURT: I just want to make sure everything is in
19 the record that needs to be in the record for whatever
20 appellate review is done. Anything else?

21 MR. WOODS: I also got a court order that goes along
22 with that.

23 THE COURT: The court order from Judge Moore?

24 MR. WOODS: Yes, sir.

25 THE COURT: Okay.

1 MR. WOODS: And also there's a plat -- can I put this
2 plat in?

3 MR. BRACKETT: I didn't see it. Same objection, Your
4 Honor.

5 THE COURT: Objection noted. Again, I'm going to
6 allow Mr. Woods to put --

7 MR. WOODS: A certified copy of the plat of the place
8 out there, it shows Reba Hinson's land, not everybody
9 else's land. And I'm looking for the court order from
10 Judge Moore, I've got several of them, I'll find it here in
11 a second.

12 THE COURT: And I believe I did see this plat
13 referenced in Judge Zamore's return.

14 MR. WOODS: Yeah. But that one is certified, Judge, I
15 figured it would have more weight.

16 THE COURT: Yes, sir.

17 MR. WOODS: This is Judge Moore's order, she said they
18 never --

19 THE COURT: That's the order from the transcript --

20 MR. WOODS: That's right, it goes with that
21 transcript, it says they never proved their case.

22 THE COURT: Okay. That will be part of the record of
23 the case over objection for whatever --

24 MR. WOODS: And one final thing I would like to put in
25 is about where Ms. Hensley here, is where she died in the

1 probate record.

2 THE COURT: Okay.

3 MR. WOODS: Can I put that in?

4 THE COURT: Sure.

5 MR. BRACKETT: We'll stipulate she's deceased.

6 MR. WOODS: I don't think you -- you are telling I
7 don't tell the truth so I wanted him to see it.

8 THE COURT: Everything is in the record that's needs
9 to be in the record for whatever weight it deserves.

10 MR. WOODS: I think so, Judge.

11 THE COURT: All right. Mr. Brackett, anything
12 further?

13 MR. BRACKETT: No, sir.

14 THE COURT: All right. Gentleman, I have reviewed --
15 in preparation for today because I knew there was going to
16 be a lot of arguing going on today based upon the history
17 of the case and, of course, I've had files in my office
18 reviewing them in preparation for today, and I believe
19 everything -- y'all have successfully argued every issue
20 which could have been argued today. What you didn't argue
21 is incorporated in the papers which have been filed and
22 I've considered all of those as well, okay? So based upon
23 my review of the entire record, including the magistrate's
24 return, which is again a very detailed return, I appreciate
25 Judge Zamore -- the effort he made in putting in the return

1 the way he did. Having said that I find for the
2 respondent, I dismiss the appeal, I affirm Judge Zamore's
3 ruling and I decline to issue an injunction against Judge
4 Zamore from allowing the warrant for ejectment to go
5 forward. So the order for this case as it goes forward
6 from this day forward will be Judge Zamore's final order,
7 that's the order of the Court, okay? All right. Mr.
8 Brackett, will you please prepare a very detailed and
9 thorough order as to what happened today so I can -- send
10 it to me for my signature. Since Mr. Woods is pro se and
11 since he wasn't used to using that email even though we all
12 use email now -- we're going to have to start E-filing
13 soon, I'm not looking forward to that, but anyway until we
14 start that I want you to mail me the proposed order for my
15 signature and review, at the same time you mail it to me
16 mail the proposed order to him, okay?

17 MR. BRACKETT: Yes, sir.

18 THE COURT: Mr. Woods, what will happen is I'm not
19 going to sign any order until I've reviewed everything
20 going over all of the paperwork that I have, okay? Now,
21 after I sign it, of course, you understand the rules, you
22 will have a certain amount of time, I believe ten days to
23 file any motions with this Court based upon my rule today
24 and then we'll go from there, okay?

25 MR. WOODS: All right, sir.

1 THE COURT: Anything further, gentlemen? All right.
2 Anything further, Mr. Woods? All right. Thank you very
3 much, y'all have a wonderful day.

4 (End of the hearing.)
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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of Common Pleas
8 for Chester County, South Carolina, on the 1st day
9 of June, 2016.

10 I do further certify that am neither of kin, counsel,
11 nor interest to any party hereto.

12
13 April 11, 2017

14
15 
16 Michael C. Watkins
17 Court Reporter
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25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

CERTIFICATE OF PARTY

The undersigned hereby certifies that the Record on Appeal
contains the material proposed to be included by the parties as
required by Rule 210(c), SCACR, and not any other material.

This 20 day of May, 2019.

P.O. Box 2603
LANCASTER, SC 29721

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