

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court

Kristi Lea Harrington, Circuit Court Judge

Circuit Court Case No.: 2016-CP-10-03504
Appellate Case No.: 2017-002523

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SC Court of Appeals

Ernest McKnight,

.....Appellant,

v.

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

.....Respondents.

FINAL BRIEF OF RESPONDENTS

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FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. APPELLANT'S CLAIMS ARE BARRED BY THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL.....
2. S.C. CODE ANN. § 15-61-25 DOES NOT CONFER ANY RIGHT OF FIRST REFUSAL UPON APPELLANT.....

STATEMENT OF CASE

On January 12, 2010, John Wright, Respondent Eugene D. Gathers'(hereinafter "Respondent Gathers") predecessor in title, filed a Suit to Quiet Title captioned John Wright v. Ned Wright, Hattie Wright Gaston, Annie M. Wright, Edward Wright, Samuel Wright, James Wright, Earline Wright Maxwell, Wilmenia Wright, Henry Wright, Oscar Wright, Leroy Wright, Harold Wright, Charles Wright, Samuel Wright, Jr., Ernestine Wright, Henry Wright, Jr., Ernest McKnight, et al., Case No.: 2010-CP-10-00250 (hereinafter "Case No. 1")(Supp.R.pp.3-8). The real property which was the subject of Case No. 1 (and also the subject of the subsequent cases) is situated in Charleston County, South Carolina and is more fully described as follows:

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

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

TMS No. 245-00-00-026 (Supp.R.pp.1-2)

Appellant filed an Answer and Counterclaim on March 18, 2010, asserting claims for adverse possession, foreclosure of mortgage, and reimbursement of taxes (Supp.R.pp.9-14). A Consent Order dismissing Appellant's claim for adverse possession but reserving his counterclaim for foreclosure of mortgage and reimbursement of taxes was filed on August 2, 2010 (Supp.R.pp.24-25).

An Order granting Respondents' Motion for Summary Judgment as to all Defendants except Appellant was issued on April 21, 2011 (Supp.R.pp.28-30). This Order quieted title to the property and preserved Appellant's counterclaims.

On April 27, 2011, Appellant filed a Motion to Set Aside Summary Judgment under Rule 59(e) along with the Affidavits of Appellant and Respondent Anna Porcher (hereinafter "Respondent Porcher")(Supp.R.pp.31-36). On January 11, 2012, Respondent Porcher filed a Motion to Intervene in Case No. 1 and joined Appellant's Motion to Set Aside Summary Judgment (Supp.R.pp.42-43)(Supp.R.pp.37-41).

On February 13, 2012, Judge Nicholson heard Appellant's Motion to Set Aside Summary Judgment and Respondent Porcher's Motion to Intervene and Join in the Motion to Set Aside Summary Judgment. On March 15, 2012, an Order was issued allowing Respondent Porcher to intervene in Case No. 1 (Supp.R.pp.56-57).

On May 4, 2012, Judge Nicholson denied Appellant's Motion to Set Aside Summary Judgment (Supp.R.pp.58-61). The Court also found Appellant to be a creditor with no statutory right of first refusal under S.C. Ann. § 15-61-25.

On May 17, 2012, Appellant filed a Notice of Appeal (Supp.R.pp.62-63). On March 19, 2014, the Court of Appeals issued an unpublished opinion finding that Appellant had no right to challenge the trial court's summary judgment order and that his

motion pursuant to Rule 59(e) SCRPC, was not properly before the Court (Supp.R.pp.64-66).

The trial of Case No. 1 was held before Judge Nicholson on November 14, 2014. On December 29, 2014, Judge Nicholson issued an order as to Appellant's claims and found that Respondent Gathers owed Appellant the total sum of \$12,646.27 (Supp.R.pp. 85-91). On February 16, 2015, Respondent Gathers paid this sum to the Clerk of Court in accordance with said Order.

On February 19, 2015, Appellant appealed Judge Nicholson's order (Supp.R.pp.92-93). Appellant's appeal was dismissed on March 6, 2015 (Supp.R.pp.94-96).

On July 21, 2015, Appellant filed a second action captioned Ernest McKnight v. Eugene D. Gathers, Estate of Ned Wright, Estate of Hattie Gasden, Anna Michelle Porcher, Edward Wright, Estate of Samuel Wright, James Wright, Estate of Earline Wright Maxwell, Ida Wright, Estate of Wilminia Wright, Henry Wright, Jr., Estate of Henry Wright, Estate of Ernestine Wright, Estate of Samuel Wright, Edward Wright, Estate of James Wright, Estate of Oscar Wright, Martha Wright, Estate of Leroy Wright, Estate of Edward Wright, Estate of Harold White, Estate of Charles Wright, Jr., Estate of Hattie Wright Gaston a/k/a Hattie Wright Gadsden, Estate of Earline wright, Estate of Annie Wright, Walter Nathaniel Porcher, III, Keisha Kenyatta Porcher, et al., Case No. 2015-CP-10-04071 (hereinafter "Case No. 2") in which Appellant sought to re-litigate the issues determined in Case No. 1 (Supp.R.pp.100-107). The real property which was the subject of Case No. 2 included the same property that was the subject of Case No. 1 and additional lots, more fully described as:

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

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

TMS No. 245-00-00-026

AND

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

TMS: 245-00-00-169

AND

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

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

TMS: 245-00-00-183

AND

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

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

TMS: 245-00-00-031 (Supp.R.pp.97-99)

In Case No. 2, Appellant sought the following relief in his prayer:

- A. *That the deed conveying a portion of the subject property to Eugene Gathers pursuant to the prior quiet title action entitled "John Wright v. Ned Wright, et al., Case No. 2010-CP-10-00250", be set aside because of the fraudulent assertions of the Defendant Eugene Gathers;*
- B. *That the Court determine the lawful heirs of the deceased title-holder Ned Wright and their respective interest in the subject property;*
- C. *That Plaintiff be awarded attorney fees and costs for the prosecution of this action;*
- D. *That the Plaintiff has suffered damages as a result of the fraudulent actions of the Defendant, Eugene Gathers, to include divestment of his interest in the subject property, loss of the value of betterments and the loss of his statutory right of first refusal; and*
- E. *And for any other relief that the Court may deem just and proper.*(Supp.R.pp.106-107)

On January 21, 2016, Judge Nicholson issued an Order dismissing Appellant's Complaint in Case No. 2 pursuant to the doctrine of *res judicata* (Supp.R.pp.143). Appellant's appeal of Judge Nicholson's order was dismissed on March 17, 2016.

On July 7, 2016, Appellant filed the present case (hereinafter "Case No. 3") which arises out of the same occurrences that were the subject of Case Nos. 1 and 2 and involve the same parties and property (R.pp.1-10). The real property which was the subject of Case No. 3 is described herein more fully as:

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

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

TMS No. 245-00-00-026

AND

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

TMS: 245-00-00-169

AND

All that certain lot, piece, parcel or lot of land, situate, lying and being in St. Paul's Parish, County of Charleston, State of South Carolina, known and

designated as Lot 3, on a plat thereof entitled "PLAT TO SUBDIVIDE THE ESTATE OF NED WRIGHT" said Plat being dated March 4, 1991 and revised on April 16, 1991 and again on May 20, 1991 was made by James G. Pennington, RLS, and recorded in the RMC Office for Charleston County on July 2, 1991 in Book CD at page 47. The aforesaid plat is made a part and Parcel of this description by reference.

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TMS: 245-00-00-183

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

TMS: 245-00-00-031 (R.pp.5-6)

Appellant's prayer for relief in Case No. 3 is identical to his prayer in Case No. 2:

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

- D. That the Plaintiff has suffered damages as a result of the fraudulent actions of the Defendant, Eugene Gathers, to include divestment of his interest in the subject property, loss of the value of betterments and the loss of his statutory right of first refusal; and*
- E. And for any other relief that the Court may deem just and proper. (R.pp.9-10)*

On July 21, 2016, Respondent Porcher filed her Answer and Motion to Dismiss pursuant to Rules 12(b)(5) & 12(b)(6)(R.pp.13-17)(R.pp.101-115). On August 25, 2016, Respondent Gathers also filed an Answer and Motion to Dismiss pursuant to Rules 12(b)(5) & 12(b)(6)(R.pp.18-21)(R.pp.81-100).

On August 26, 2016, Appellant filed a Return to Defendant's Motions to Dismiss (R.pp.63-80). On January 4, 2017, Respondents Gathers and Porcher filed a Memorandum in Support of their Motions to Dismiss (R.pp.22-62). On January 5, 2017, Judge Harrington issued a Form 4 Order granting Respondents Gathers and Porcher's motions to dismiss Case No. 3(R.pp.136-137).

On February 9, 2017, Appellant filed a Motion to Reconsider (R.pp.116-117). On October 10, 2017, Respondents Gathers and Porcher filed a Memorandum in Opposition to Appellant's Motion to Reconsider (R.pp.118-120). On October 25, 2017, Judge Harrington issued an order denying Appellant's motion for reconsideration (R.pp.121-130). Appellant filed a Notice of Appeal on November 25, 2017.

STANDARD OF REVIEW

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)5 or 12(b)(6), SCRPC. See

Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to dismiss under Rule 12(b)(6), SCRCP.

FACTS

In Case No. 1, Appellant asserted claims for adverse possession, foreclosure of mortgage, and reimbursement of taxes (Supp.R.pp.3-8). While Appellant's counterclaim for adverse possession was dismissed and the monies due to him determined by Judge Nicholson in Case No. 1, Appellant has since reasserted claims of ownership to the property and has attempted to re-litigate these issues. In Case Nos. 2 and 3, Appellant asked the Court to set aside the findings of the prior quiet title action, re-determine the lawful heirs of Ned Wright, and address Appellant's purported loss of his interest in the subject property (Supp.R.pp.100-107, R.pp.3-10). In Case Nos. 2 and 3, Judge Harrington and Judge Nicholson ruled that Appellant's claims were barred by the doctrines of *res judicata* and collateral estoppel (Supp.R.pp.143, R.pp.131-135). Judge Harrington, noting Appellant's efforts to re-litigate issues previously determined, barred Appellant from filing additional frivolous actions.

ARGUMENTS

1. APPELLANT'S CLAIMS ARE BARRED BY THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL.

In Case No. 1, Appellant asserted multiple claims and maintained that he had an ownership interest in the property. On December 29, 2014, Judge Nicholson issued an order determining that Appellant had no ownership interest but was owed the sum of \$12,646.27 (Supp.R.pp.87-91). Appellant refused to accept payment from Respondent Gathers who paid this sum to the Charleston County Clerk of Court on February 16,

2015. Thereafter, Appellant filed an untimely appeal, which was dismissed, concluding Case No. 1 (Supp.R.pp.94-96).

Despite the dismissal of his appeal, Appellant was undeterred and sought to re-litigate the issues determined in Case No. 1 by filing Case No. 2 on March 6, 2015 (Supp.R.pp.100-107). On January 21, 2016, Judge Nicholson granted Respondent Gathers' motion to dismiss Case No. 2 pursuant to the doctrine of *res judicata* (Supp.R.pp.143). Appellant's appeal from Judge Nicholson's order in Case No. 2 was dismissed as untimely by order issued March 17, 2016.

On July 7, 2016, Appellant filed the present case involving the same property and seeking the identical relief sought in Case No. 2 (R.pp.1-10). On January 19, 2017, Judge Harrington dismissed Case No. 3 and found that it was barred by the doctrines of *res judicata* and collateral estoppel (R.pp.131-135). In support, Judge Harrington cited Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E. 2d 106 (1999) and Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 537, 520 S.E. 2d 817 (Ct. of App. 1999). Judge Harrington noted that "*When an issue of fact or law is litigated and determined by a valid and final judgment, the determination is conclusive and a subsequent action between the parties, whether on the same or different claim, is barred under the doctrine of collateral estoppel.*" Appellant's efforts to distinguish Case No. 3 from Case Nos. 1 and 2 are contrary to the record of these cases¹.

¹ While Appellant attempts to minimize Respondent Porcher's involvement in Case No. 1, he acknowledges her intervention and participation in said case. Furthermore, the record reflects that Appellant named Respondent Porcher as a defendant in Case No. 2.

2. S.C. CODE ANN. § 15-61-25 DOES NOT CONFER ANY RIGHT OF FIRST REFUSAL UPON APPELLANT.

On May 4, 2012, Judge Nicholson denied Appellant's Motion to Set Aside Summary Judgment in Case No. 1 and found Appellant's motion to be untimely and improper (Supp.R.pp.58-61). In his appeal from Judge Nicholson's order, Appellant maintained he had standing to assert claims as a non-petitioning co-tenant pursuant to S.C. Code Ann. § 15-61-25. As Appellant's purported rights under S.C. Code Ann. § 15-61-25 were the subject of prior litigation between the parties, any consideration of this issue is barred by the aforementioned doctrines of res judicata and collateral estoppel.

S.C. Code Ann. § 15-61-25 confers a right of first refusal upon a non-petitioning joint tenant or tenant in common when a petition for partition of real property is filed by a joint tenant or tenant in common. The conveyance of land in South Carolina is governed by S.C. Code Ann. § 27-7-10. The creation of a joint tenancy is addressed in S.C. Code Ann. § 27-7-40. As the holder of a note and mortgage, Appellant was neither a co-tenant, joint tenant, or tenant in common. He was simply a creditor.

The filing of a petition for partition of real property gives rise to the right of first refusal claimed by Appellant. In Case No. 1, Respondent Gathers' predecessor in title filed a suit to quiet title (Supp.R.pp.3-8). The Complaint contained no reference to the partitioning of the property. Appellant's contention that "*quiet title actions result in several owners implicating a partition action by default*" is without support. In many quiet title cases, including Case No. 1, the result is the issuance of an order recognizing ownership by a single person. Quiet title actions are also brought to clear the title for parties who have no interest in the partitioning of their property.

Since the commencement of Case No. 1, Appellant has attempted to acquire title to Respondents' property. Initially, Appellant asserted a claim for adverse possession. After the dismissal of his adverse possession claim and acknowledging his status as a creditor, Appellant argued that his mortgage somehow constituted an assignment of rights. Appellant's contention was without legal support.

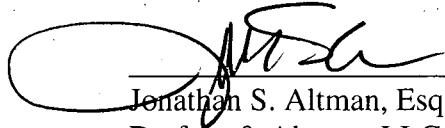
S.C. Code Ann. § 15-61-25 confers no rights upon Appellant. As Appellant is neither a joint tenant or tenant in common, he has no rights under S.C. Code Ann. § 15-61-25.

CONCLUSION

For the reasons stated herein, Respondents respectfully request that this Court affirm the judgment of the Lower Court.

Respectfully submitted,

Date: August 7th, 2019



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