

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

AUG 08 2014

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2013-CP-36-332

Raymond Hobby .....Respondent

vs.

Mary T. Hobby .....Appellant

**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA

2012CV3610100450  
CIVIL CASE NUMBER

COUNTY OF NEWBERRY

IN THE MAGISTRATE'S COURT  
NOTICE TO QUIT PREMISES

Raymond Hobby  
11795 Bush River Road  
Kinards, SC 29355  
(803) 924-0015

PLAINTIFF(S)

Vs

Mary T. Hobby  
544 Crowder Road  
Kinards, SC 29355

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

**Mary T. Hobby NEEDS TO VACATE THE PROPERTY**

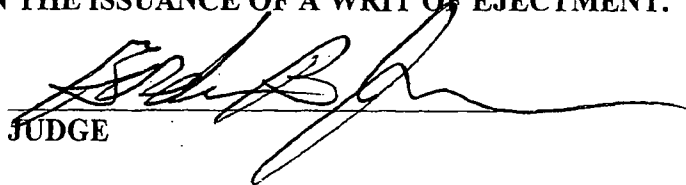
defendant(s), are a trespasser(s) and are occupying the premises at **544 Crowder Road, Kinards, SC 29355** without permission of the owner of said premises. You are required to immediately vacate the premises or contact the:

**Newberry Central Traffic Court Court  
3239 Louis Rich Drive  
Newberry, SC 29108  
Phone: (803) 321-2144 Fax: (803) 321-2172**

**within five (5) days** to show cause, if any you can, why you should not be ejected from these premises.

**FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN FIVE (5) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.**

Dated: May 2, 2012

  
JUDGE

PERSONALLY appeared before me, the undersigned deponent, who being duty sworn, says that s/he served the herein Notice to Quit Premises/Rule to Show Cause on \_\_\_\_\_

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ at \_\_\_\_\_  AM  PM

Sworn to and subscribed before me  
this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Sheriff's Deputy or Constable

\_\_\_\_\_  
NOTARY PUBLIC or JUDGE  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 ) IN THE FAMILY COURT  
 ) EIGHTH JUDICIAL CIRCUIT  
COUNTY OF NEWBERRY )  
 )

Mary T. Hobby, )  
 )

Plaintiff, )

ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS

vs. )  
 )

Raymond D. Hobby, )  
 )

Defendant. )  
 )

Docket No.: 2012-DR-36-194

**Plaintiff's Attorney:**

John O. McDougall  
Michael B. Brackett

**Hearing Date:**

November 13, 2012

**Defendant's Attorney:**

Timothy E. Madden  
Winston I. Marosek

**Judge:**

Deborah Neese

**Guardian Ad Litem:**

None

**Court Reporter:**

Angela Berry

FILED  
NEWBERRY COUNTY  
2013 JAN - 7 P 2:46  
JACKIE S. SOYERS  
CLERK OF COURT

This Order addresses the Motion to Dismiss filed by Defendant on July 12, 2012, a hearing on which was held before the undersigned on November 13, 2012. Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court makes the following findings of fact and conclusions of law and enters this Order.

Plaintiff and Defendant are citizens and residents of Newberry County, South Carolina and have so resided for more than one year prior to the commencement of this civil action.

Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56. The Divorce Decree approved the agreement of the parties. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the

trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 9, 2010 and December 6, 2010, respectively.

One of the assets which the Divorce Decree required to be transferred to the Trust is the former marital home and three (3) surrounding acres (the "Crowder Road Property"). At the time of the entry of the Divorce Decree, the Crowder Road Property was titled solely in Plaintiff's name. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to:

sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . , for cash or on credit . . . at such times and upon such terms and conditions as it may deem best . . . (See Trust, Article IX(a)(vi)).

By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

Beginning in December, 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant individually negotiated with the Trustee for the purchase of the property after the Trustee gave notice of an intention to sell the Crowder Road Property. Both Plaintiff and Defendant presented offers to purchase the Crowder Road Property from the Trust. On or about February 9, 2012, the Trustee accepted Defendant's offer to purchase the Crowder Road Property from the Trust. On April 11, 2012, Plaintiff transferred the Crowder Road property to the Trust by general warranty deed. On April 19, 2012, the Trustee transferred the Crowder Road property to Defendant by quitclaim deed after Defendant paid the Trust in accordance with the offer accepted by the Trustee.

Plaintiff remained in the possession of the Crowder Road Property, and on May 15, 2012, filed this action seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Defendant for the Crowder Road Property is void ab initio, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Crowder Road Property, (4) exclusive possession of the property until all of the Trust assets are liquidated; (5) an order prohibiting Defendant from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

With the filing of this action, Plaintiff also filed Motion for Temporary Relief in May 15, 2012 seeking (1) an emergency hearing on Defendant's eviction proceedings against Plaintiff; (2) an emergency order prohibiting Defendant from pursuing eviction proceedings against Plaintiff; (3) temporary alimony; (4) sole and exclusive use of the Crowder Road Property during the pendency of this action; (5) discovery rights, and (6) attorney's fees and costs.

On May 15, 2012, the Family Court issued an Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff regarding the Crowder Road Property.<sup>1</sup> In the Emergency Order, the Court scheduled an expedited hearing for May 18, 2012. Counsel for the parties agreed to continue the hearing until June 4, 2012, and allowed the provision of the Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff to remain in effect until the next hearing, without prejudice to either party.<sup>2</sup>

On July 12, 2012, Defendant filed a Motion to Dismiss in which he requested the Court dismiss Plaintiff's Complaint (as it related to the relief requested concerning the Crowder Road

---

<sup>1</sup> As of the date of the hearing on November 13, 2012, Plaintiff remained in possession of the Crowder Road Property.

<sup>2</sup> The hearing was continued a second time to November 13, 2012, in the Consent Order of Continuance dated August 30, 2012.

Property) pursuant to Rules 12(b)(1), (6), and (7) of the South Carolina Rules of Civil Procedure.

In summary, Plaintiff contends the Family Court maintains jurisdiction to hear the issues raised in Plaintiff's Complaint concerning the Crowder Road Property based on the language of the Trust, which states:

The parties to this Agreement hereby acknowledge and agree that the exclusive jurisdiction for matters involving this Trust or any matters related thereto is the Family Court for the Eighth Judicial Circuit Newberry County, South Carolina, and waive any right to object or otherwise take issue with the convenience of such forum.

Plaintiff further argues the "subject matter" before the Court concerning the Crowder Road Property involves the equitable division of an asset and the purpose of the Trust provision cited above is to ensure the fair and equitable liquidation of the assets of the Trust. Plaintiff contends the Trustee is the agent of the Family Court for the purpose of equitable apportionment. Plaintiff relies on Thomas v. McGriff, 368 S.C. 485, 629 S.E.2d 359 (2006), for the proposition of concurrent jurisdiction with the Probate Court. Plaintiff also argues the Court has jurisdiction over the contract (the Trust) between the parties and because the Trust apportions marital property, this Court maintains jurisdiction to hear and determine the issues raised by Plaintiff's Complaint.

In summary, Defendant argues the Family Court lacks subject matter jurisdiction over the subject matter of Plaintiff's Complaint because the subject matter does not fall within S.C. Code § 63-3-530 (jurisdiction of the Family Court) and the Probate Court maintains exclusive jurisdiction over matters related to trusts. Defendant further contends the subject matter of Plaintiff's Complaint is not the equitable division of an asset, but rather the administration of an independent Trust.



The Family Court is a court of limited jurisdiction. It maintains exclusive jurisdiction over those matters specified in S.C. Code § 63-3-530 (1976, as amended). Those matters include, but are not limited to:

1. actions under the provisions of the Uniform Interstate Family Support Act;
2. actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees and costs, if requested by either party in the pleadings;
3. actions for and related to the adoption of children and adults; and
4. actions for termination of parental rights, whether such action is in connection with an action for adoption or apart therefrom.

Pursuant to S.C. Code § 62-1-302 (1976, as amended), the Probate Court maintains exclusive original jurisdiction over all subject matter related to trusts.

The subject matter of Plaintiff's Complaint does not fall within S.C. Code § 63-3-530 (1976, as amended). The subject matter of Plaintiff's Complaint as it relates to the Crowder Road Property concerns an independent trust and transactions occurring after the entry of the Divorce Decree and after the formation of the Trust. Specifically, Plaintiff's Complaint as it relates to the Crowder Road Property concerns the actions of the Trustee of the Trust (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). The equitable distribution of the marital property was accomplished in the Divorce Decree. While the vast majority of the marital property was transferred into the Trust, the Trustee's powers and duties do not include the equitable distribution of Trust property. The Trust contains



specific provisions concerning the powers and duties of the Trustee as it relates to the property of the Trust. While the Trust contains language concerning the exclusive jurisdiction of the Family Court for matters involving the Trust or any matters related thereto, individual parties cannot confer subject matter jurisdiction upon this Court. November 4, 2008 Bluffton Town Council Election v. Fulgham, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court."); State v. Richburg, 304 S.C. 162, 165, 403 S.E.2d 315, 317 (1991) (. . . "parties cannot, by their actions or agreements, confer subject matter jurisdiction upon the trial court . . .").

Upon careful review, this Court does not have jurisdiction to hear and determine so much of Plaintiff's Complaint as it relates to the relief requested concerning the Crowder Road Property (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). While the Divorce Decree required the creation of a trust containing certain terms, and also included language by which the Family Court retained jurisdiction to interpret, enforce, and to the extent necessary, effectuate the terms of the Divorce Decree, the parties themselves settled and created the Trust and signed it more than six weeks after the entry of the Divorce Decree. The language in the Divorce Decree which retained jurisdiction for certain purposes is not sufficiently broad to include a retention of jurisdiction to resolve any dispute arising out of the actions or conduct of the Trustee or the administration of the terms of the Trust. After the entry of the Divorce Decree, no marital property was acquired and the Family Court maintains jurisdiction only over marital property. There is no indication the Trust was ever

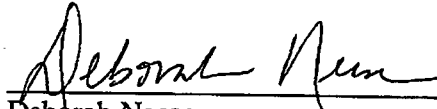



reviewed by the Family Court. There is no challenge presented by Plaintiff that the Trust is in fact the product of the Family Court Order or that the Trust contains terms or provisions different from those required by the Divorce Decree.

Actions related to the administration of a Trust are within the exclusive jurisdiction of the Probate Court pursuant to S.C. Code § 62-1-302. As such, the Family Court lacks jurisdiction to hear and decide the issues set forth in Plaintiff's Complaint concerning the Crowder Road property.

**NOW, THEREFORE, IT IS ORDERED** Plaintiff's Complaint filed May 15, 2012, as it relates to the Crowder Road Property is dismissed.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
Deborah Neese  
Judge of the Family Court

          , South Carolina

Dated: Jan. 02, 2013

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF NEWBERRY ) FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby, )  
 Plaintiff, )

Civil Action No. 2013-CP-36-0193

v. )

Mary T. Hobby, )  
 Defendant. )

**ORDER DENYING MOTION FOR  
 SUMMARY EJECTMENT OF  
 TRESPASSER AND DENYING MOTION  
 FOR TEMPORARY INJUNCTION.**

FILED  
 NEWBERRY COUNTY  
 2013 JUN 9 9 53 AM  
 JACOBIE S. CLARK  
 CLERK

This matter came before the Court for hearing on Plaintiff's Motion for Summary Ejectment of Trespasser and Motion for Temporary Injunction. Present at the hearing were Benjamin C. Bruner, attorney for the Plaintiff, and Pope D. Johnson, III, attorney for the Defendant.

Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court DENIES the Plaintiff's Motion for Summary Ejectment; and DENIES the Plaintiff's Motion for Temporary Injunction.

**Motion for Summary Ejectment**

Plaintiff seeks an Order of the Court pursuant to Chapter 67 Title 15 of the South Carolina Code of Laws directing the Defendant, Mary T. Hobby, to vacate the property at issue in this action within, upon the following grounds:

1. The property at issue in this case is the former marital home located at 544 Crowder Road in Kinards, South Carolina (the "Property");
2. Plaintiff and Defendant were divorced on October 8, 2010;
3. Defendant conveyed the Property into a liquidating trust pursuant to the divorce decree;

4. Plaintiff purchased the property from the trust on April 19, 2012, as evidenced by the quitclaim deed attached to the Verified Complaint;
5. Although she conveyed the property away, Defendant never moved out of the home on the Property;
6. After he bought the Property, Plaintiff demanded the Defendant move out, but she refused;
7. Plaintiff commenced an action in the Magistrate's Court and served Defendant with a notice to quit the property on May 14, 2012;
8. On May 15, 2012, Defendant obtained an Emergency Order temporarily enjoining Plaintiff from pursuing ejectment;
9. On January 7, 2013, the Family Court entered an Order granting Plaintiff's Motion to Dismiss and releasing the temporary injunction against Plaintiff;
10. Plaintiff subsequently attempted to reschedule the hearing in Magistrate's Court, but the Magistrate has declined, citing jurisdictional concerns; and
11. Plaintiff further alleges he is the owner of the property and Plaintiff has no colorable claim of possession to the property, yet she remains on the property and refuses to move out or pay for her use of the Property.

The Defendant has moved to dismiss the Motion for lack of subject matter jurisdiction upon the grounds that the Motion for Summary Ejectment of Trespassers is a statutory claim within the jurisdiction of the magistrate court. This Court agrees.



## ANALYSIS

Article V, Section 11 of the South Carolina Constitution states that "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. Summary Ejectment of Trespasser actions are controlled by S.C. Code Ann. § 15-67-610 through 640. S.C. Code Ann. § 15-67-610 provides that:

If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, the owner of the land so trespassed upon may apply to any **magistrate** to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such **magistrate** shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary. (emphasis added)

S.C. Code Ann. § 15-67-610 et seq. specifically grant the magistrate court the authority to issue warrants pursuant to this section. Further, S.C. Code Ann. § 15-67-640 specifically provides that "Either party to these proceedings shall have the right of appeal....pending the determination of his appeal by the circuit court." "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529 (2010). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Here, the statute's language is plain, unambiguous, and conveys a clear, definite meaning. The legislature intended to grant the magistrate the exclusive jurisdiction to hear motions and issue warrants pursuant to this section, and intended the Circuit Court to have appellate



jurisdiction. Therefore, pursuant to Article V, Section 11 of the South Carolina Constitution, this Court lacks jurisdiction and declines to hear this matter.

### **Motion for Temporary Injunction**

Plaintiff seeks a Temporary Injunction pursuant to Rule 65, SCRPC, restraining the Defendant from continuing to trespass on the property at issue in this action. This Court declines to grant the Temporary Injunction.

An Injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). To establish a cause of action for injunction, the plaintiff must show “(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005) (Citing *Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908).

#### **A. Irreparable Harm**

The Defendant argues Plaintiff has not suffered irreparable harm entitling her to injunction relief because the harm he alleges can be remedied by monetary damages alone. This Court agrees. The Plaintiff alleges the Defendant has been trespassing on the Property in excess of one year. The Plaintiff also alleges the Defendant has sold or attempted to sell Plaintiff's personal property. If the Plaintiff prevails, monetary damages will remedy the harm alleged.



**B. Success on the Merits**

This Court finds that the Plaintiff has made a prima facie showing entitling the plaintiff to injunctive relief.

**C. Inadequate Remedy at Law**

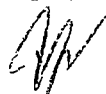
The Defendant argues the Plaintiff has an adequate remedy at law because he can recover money damages for his injuries. This Court agrees.

The purpose of an injunction is the preservation of the status quo. *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). A temporary injunction is used to preserve the subject of controversy in the condition which it is at the time of the order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation. *Id.*

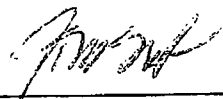
Plaintiff alleges the Property was transferred to him by general warranty deed on or about April 11, 2012, and that Defendant has been trespassing on the property for more than one year. It further appears from the record before this Court that the Defendant has been living on the Property since at least 2005 when the parties initially separated. To preserve the status quo during the pendency of the litigation requires the Defendant remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff's Motion for Temporary Injunction is DENIED.

**IT IS THEREFORE ORDERED** that the Plaintiff's Motion for Summary Ejectment is DENIED.

**IT IS FURTHER ORDERED** that the Plaintiff's Motion for Temporary Injunction is DENIED.



AND IT IS SO ORDERED.



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R. Knox McMahon  
Presiding Judge,  
Eighth Judicial Circuit

Newberry, South Carolina  
May 31, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )  
  
RAYMOND D. HOBBY )  
 )  
PLAINTIFF )  
 )  
VS )  
 )  
MARY T. HOBBY )  
DEFENDANT )

2012CV3610100450  
CIVIL CASE NUMBER

IN THE MAGISTRATE OFFICE

JUDGMENT

THE ISSUES IN THIS ACTION WERE TRIED BEFORE A MAGISTRATE AT NEWBERRY COUNTY CENTRAL COURT BEFORE JUDGE JOHNSON ~~HALFACRE~~ IN A ~~JURY~~ NON JURY PROCEEDING, ON THE \_\_\_ 28TH DAY OF JUNE 2013 AT WHICH TIME, A VERDICT FOR THE PLAINTIFF/DEFENDANT (CIRCLE ONE) WAS RENDERED EVICTIØN/OR NO EVICTION (CIRCLE ONE).

DATED: 6-28-13

  
\_\_\_\_\_  
MAGISTRATE

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

---

RAYMOND HOBBY,  
*Plaintiff,*

-v-

MARY T. HOBBY,  
*Defendant.*

---

FILED  
NEWBERRY COUNTY  
2013 SEP 30 PM 12 19  
JACKIE S. BOWERS  
CLERK OF COURT  
C.A. No. 13-CP-36332  
ORDER OF COURT

**THIS APPEAL FROM THE MAGISTRATE'S COURT CAME BEFORE THE**

---

**COURT** on September 4, 2013. Present were Benjamin Bruner representing the Plaintiff and Pope Johnson, III representing the Defendant. Davis Howser appeared representing Frances Knowlton on a companion case which will be discussed below. Subsequent to the hearing, the court was provided with a copy of the transcript from the lower court proceedings, and the court has now had an opportunity to fully review the law, facts and consider the decision of the lower court. The court affirms the finding of the magistrate's court.

*Standard of Review*

In appeals from non-jury magistrate cases, the circuit court sits in an appellate capacity and may reverse a judgment based upon errors of fact or law. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 312 S.E. 2d 20 (S.C. App. 1984). Review by the circuit court is limited to the issues raised before the magistrate. Indigo Associates v. Ryan Inv. Co., 314 S.C. 519, 431 S.E.2d 271 (S.C. App. 1993).

### *Procedural History*

The procedural history of this case is convoluted. As background, Plaintiff and Defendant were formerly married. In the divorce decree, the marital home was placed in a trust overseen by a third-party trustee, Frances Knowlton. Per the agreement, Defendant resided there rent-free for several years. Subsequently, the Trustee sold the home out of trust to Plaintiff. Plaintiff then brought an action before the magistrate seeking removal of Defendant. A factual dispute may exist regarding both the scope of the Trustee's power to sell the property and the agreed terms of the sale. To date, this case has been transferred from the magistrate's court, to the family court, to the probate court, and to the circuit court. In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere.

A companion case was brought by Plaintiff in the circuit court (13-CP-36-193). In a prior hearing on that case, wherein Plaintiff requested a TRO, Judge McMahon issuing an order stating that the circuit court lacked jurisdiction to evict Defendant and that the magistrate's court had jurisdiction. Plaintiff then proceeded with his action before the magistrate, the order from which is the subject of this appeal.

The hearing of September 4, 2013 before the circuit court addressed Plaintiff's motion for partial summary judgment on case 13-CP-36-193 and also this appeal. Defendant again asserted that, because 13-CP-36-193 addresses matters involving the trust, jurisdiction was proper in the probate court. Out of an abundance of caution and in order to cure any jurisdictional defects, the court suggested that Plaintiff file his complaint with the probate court and then have the matter removed to the circuit court under Section 62-1-302 (d). During a break, Plaintiff filed an identical action in the probate court, the probate action was then removed to the circuit court

with the consent of the Defendant, and it was consolidated with 13-CP-36-193. For reasons stated at the hearing on 13-CP-36-193, the court found that Plaintiff's motion for partial summary judgment should be stayed pending a hearing on the Trustee's motion for summary judgment.

*Merits of the Appeal*

With regard to the magistrate's appeal, the hearing before the magistrate took place on June 28, 2013. Prior to taking testimony, Defendant objected on jurisdictional grounds, asserting that subject matter jurisdiction lay with the probate court, not the magistrate. Defendant also maintained that Judge McMahon's order in 13-CP-36-193 constituted *res judicata* on the issue of eviction in that the circuit court declined to issue temporary, injunctive relief. The magistrate found he had jurisdiction over the subject matter and that Judge McMahan's order did not constitute an adjudication on the merits. This appeal followed challenging the findings of the magistrate with regard to jurisdiction, the merits, and bond.

*(a) Subject Matter Jurisdiction*

Concerning the jurisdictional claim, the magistrate has jurisdiction over ejectments under Section 15-67-610. As will be explained in the following paragraphs, although Plaintiff received his title from the Trustee and although a trust was tangentially involved in the underlying factual presentation, the probate court does not have jurisdiction over ejectment. *See* Sections 15-67-610, 62-1-302. The court finds that the magistrate properly exercised jurisdiction over the subject matter.

*(b) Findings on the Merits*

On the merits, Plaintiff sought ejectment of Defendant under Section 15-67-610. Defendant claims insufficient evidence was presented demonstrating that Defendant was in



possession unlawfully. The record supports the order of the magistrate requiring Defendant to vacate the premises. Plaintiff possesses a quitclaim deed from the Trustee evidencing Plaintiff as the title owner of the property in fee. Although Defendant asserts that the Trustee breached his fiduciary duty to Defendant in selling the property to Plaintiff, this assertion is not fatal to the magistrate's ruling under 15-67-610. Section 15-67-610 essentially requires that two elements be met to warrant ejectment: (1) plaintiff must be the owner of the land, and (2) the person sought to be ejected must be on the property unlawfully. Having read the transcript and reviewed the law, this court finds that the magistrate did not err when he concluded that Plaintiff proved entitlement to relief under 15-67-610. The record fully supports the ruling of the magistrate's court.

To the extent that Defendant asserts the Trustee violated the terms of the trust and breached his fiduciary duty to Defendant, Defendant's remedy is for damages from the Trustee based upon the causes of action alleged in Defendant's third-party complaint against the Trustee in case 13-CP-36-193. Restatement (2d) of Torts, Section 874; Lowndes Products, Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972). To the extent Defendant asserts that Plaintiff lacks good title, that issue may also be raised in case 13-CP-36-193, but any claim of inferior or defective title does not divest the magistrate of jurisdiction in an action for ejectment. Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E. 2<sup>nd</sup> 3, at 5-6 (1940).

Although Defendant also complains that the Plaintiff did not introduce the trust document into evidence, thereby failing to prove his case, the court notes that Defendant did elect to present a case, so Defendant had a similar opportunity to move exhibits into evidence and inform the court of any instruments or documents which supported her position. Therefore, if the trust contained a provision permitting Defendant to reside on the property indefinitely, Defendant

could have alerted the court to that provision, or any other lease or agreement she had, permitting her to remain on the property. Clearly, a defendant possessing a valid lease and who is served with notice of ejectment would present that evidence to the trial court when given the opportunity. Therefore, the magistrate's conclusion that Defendant was present on the property without warrant of law is supported by the lack of evidence of any legal right she possessed which would permit her continued, legal occupation of the property.

(c) *Bond*

Finally, the Defendant challenges the magistrate setting bond in the sum of \$10,000, per Section 15-67-620, in light of the \$7,500 jurisdictional limitation imposed in Section 22-3-10.<sup>1</sup> By the express language of 15-67-620, requiring bond is intended to protect a plaintiff pending a defendant's appeal. Furthermore, the court can conceive of situations where damage to a plaintiff could easily exceed \$7,500. Although the court can find no precedent reconciling the jurisdictional limitations of 22-3-10 with the requirements of 15-67-620, the court finds that the requirement of bond in the sum of \$10,000 is proper and authorized pursuant to 15-67-620.

Accordingly, the order of the magistrate is affirmed.

<sup>1</sup> At the hearing of September 4, 2013, the court was not entirely clear on whether Defendant was contesting jurisdiction based on the value of the real estate involved in this dispute, which clearly exceeded \$7,500, or whether Defendant was contesting the setting of bond in the sum of \$10,000, or both. The court cannot find any reference to this objection in the transcript. However, because the jurisdictional limit relates to subject matter jurisdiction, the issue may be raised at any time, even on appeal. Rock Hill Body Co. v. Rainey, 294 S.C. 426, 429, 365 S.E.2d 228, 230-31 (Cl. App. 1987) (*holding that the amount in controversy limits under 22-3-10 implicate subject matter jurisdiction*). To the extent Defendant's argument is that the value of the real estate exceeded \$7,500, thereby depriving the magistrate's court of jurisdiction under 22-3-10, the court rejects this argument, as the vast majority of habitable real estate in this State possesses a value exceeding \$7,500. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.).

**IT IS SO ORDERED.**



---

Frank R. Addy, Jr.  
Eighth Judicial Circuit

September 26, 2013  
Greenwood, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

---

RAYMOND HOBBY,  
*Plaintiff,*

-v-

MARY T. HOBBY,  
*Defendant.*

---

C.A. No  
13-CP-36-332

ORDER ON MOTION FOR  
RECONSIDERATION

FILED  
NEWBERRY COUNTY  
2013 NOV 1 AM 10 24  
JACKIE S. BOWERS  
CLERK OF COURT

THIS MATTER CAME BEFORE THE COURT ON Defendant's motion to alter or amend the court's order of September 26, 2013. Having considered Defendant's motion, the court alters the order as follows:

The final sentence, which begins "In every venue . . . ." and which appears in the first full paragraph on page two (2), is deleted. Defendant is correct that jurisdiction was successfully challenged by various parties at various stages of the litigation.

In all other respects, the order of September 26, 2013 remains unchanged.

**IT IS SO ORDERED.**



Frank R. Addy, Jr.  
Eighth Judicial Circuit

October 28, 2013  
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Raymond D. Hobby

Plaintiff(s)

vs.

Mary T. Hobby

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

2013 CP-36-00332

FILED  
NEWBERRY COUNTY  
2013 JUL 2 PM 12 4  
JACKIE S. DOMINICK  
CLERK OF COURT

Submitted By: Pope D. Johnson, III  
Address: Johnson & Barnette, LLP  
P.O. Drawer 11209, Columbia, SC 29211-1209

SC Bar #: 3048  
Telephone #: 803-799-9791  
Fax #: 803-253-6084  
Other: pdjohnson@johnsonbarnette.com  
E-mail: johnsonbarnette.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-..., Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: July 1, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 Raymond D. Hobby )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Mary T. Hobby )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action No.

2013-CP-36-00332

**NOTICE OF INTENTION TO APPEAL**

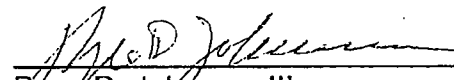
FILED  
 NEWBERRY COUNTY  
 2013 JUL 2 PM 12 44  
 JACKIE S. BOWERS  
 CLERK OF COURT

The Defendant hereby gives notice of her intent to appeal the judgment in the above-referenced action rendered on June 28, 2013, a copy of the judgment being attached hereto and incorporated herein. The grounds for appeal are as follows:

1. The Magistrate erred as a matter of law in failing to dismiss this action for lack of subject matter jurisdiction;
2. The Magistrate erred as a matter of law in failing to continue the hearing and permit the trustee, Frank Knowlton, to be joined as a party or third party defendant to the action;
3. The Magistrate erred as a matter of law in failing to grant the motion to dismiss and/or in failing to grant judgment in favor of the defendant based upon the doctrine of *res judicata*, which bars the plaintiff's claim since the plaintiff has sought the relief in the circuit court proceeding;
4. The Magistrate erred as a matter of law in failing to make a finding and set forth the basis thereof that the defendant was in possession of the property in question without warrant of law, there being no evidence submitted by the plaintiff to establish the same; and
5. The Magistrate erred as a matter of law in granting the plaintiff relief based upon the fact that the matter had been pending without a decision for an extended period of time and such was irrelevant to the issues to be determined.

-1-  
 #1  
 [Signature]

The defendant moves the Court to determine what bond, if any, must be posted pursuant to Section 15-67-620.



---

Pope D. Johnson, III  
Johnson & Barnette, LLP  
P.O. Drawer 11209  
Columbia, SC 29211  
803-799-9791  
803-253-6084 (Fax)  
[pdjohnson@johnsonbarnette.com](mailto:pdjohnson@johnsonbarnette.com)  
**Attorney for the Defendant and Third  
Party Plaintiff**

Columbia, South Carolina  
July 1, 2013

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

Raymond D. Hobby )

Plaintiff, )

vs. )

Mary T. Hobby )

Defendant. )

IN THE COURT OF COMMON PLEAS

Civil Action No. *2013-CP-36-00332*

**CERTIFICATE OF SERVICE**

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 1<sup>st</sup> day of July, 2013.

**COUNSEL SERVED:**

Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260-1110

**PLEADINGS:**

Notice of Intention to Appeal

FILED  
NEWBERRY COUNTY  
2013 JUL 2 PM 12 44  
JACKIE S. BOWERS  
CLERK OF COURT

*Sherry W. Wise*  
\_\_\_\_\_  
Sherry W. Wise



# NEWBERRY COUNTY CENTRAL COURT

3239 Louis Rich Drive • Newberry, SC 29108



**Ron Halfacre**

Newberry County Magistrate

803-321-2144

rhalfacre@newberrycounty.net

July 19th, 2013

Return of appeal

In reference to Raymond Hobby vs. Mary Hobby (civil case # ) 2012CV3610100450, the Court held a trial on June 28th, 2013 at 9:30 A.M. at the courtroom located at 3239 Louis Rich Drive, Newberry, SC 29108.

The following parties were present at the trial:

Raymond Hobby (Plaintiff)

Mary Hobby (Defendant)

(Attorney for the Defendant) Pope D. Johnson, III

The Court took testimony from all parties and witnesses, which was electronically recorded. The Court ruled that the Plaintiff, Raymond Hobby proved his case against the Defendant, Mary Hobby.

The hearing was recorded electronically and the court will provide a transcript of the record if requested at the defendant's expense. A disk containing a copy of the trial is enclosed.

In reference to Raymond Hobby vs. Mary Hobby (civil case # ) 2012CV3610100450, the Court held a hearing on July 19th, 2013 at 10:30 A.M. at the courtroom located at 3239 Louis Rich Drive, Newberry, SC 29108 for the purpose of hearing a motion for reconsideration of judgment and to set a bond amount for an appeal. The Court heard from all parties, which was electronically recorded. The Court gave bond in the amount of \$10,000 pending the appeal ruling of on this case.

Respectfully submitted this 19th day of July, 2013.

Ron Halfacre

Magistrate of Newberry County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

MAGISTRATE'S COURT

Raymond Hobby, )  
 )  
 )  
Plaintiff, )  
 )  
 )  
vs. )  
 )  
Mary Hobby, )  
 )  
 )  
Defendant. )  
----- )

Case No.: 2012CV3610100450

**TRANSCRIPT OF  
HEARING**

\*\*\*\*\*

June 28, 2013



**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 **THE COURT:** Today is June 28, 2013. The time now is  
2 9:35 a.m. We have Civil Case Number 2012-CV-  
3 36-10100450, Raymond Hobby is the defendant --  
4 I mean the plaintiff. The defendant is Ms.  
5 Mary Hobby, being represented by Mr. Pope  
6 Johnson. All parties are present. Before we  
7 get started, I believe Mr. Johnson had made a  
8 motion to the Court to address -- or several  
9 issues to address before we start the case.  
10 I'm going to ask him to please address these  
11 motions.

12 **MR. JOHNSON:** Thank you, Your Honor. For the  
13 record, I'm Pope Johnson representing Mary  
14 Hobby. This is an action by Mr. Hobby to ask  
15 you to eject Ms. Hobby from her residence,  
16 which was the former marital residence pursuant  
17 to 15-67-610. In order for you to consider  
18 ejecting her pursuant to the statute requires  
19 a finding that she is a trespasser and is not  
20 on the property with warrant of law. The  
21 record will reflect this property -- we'll  
22 offer evidence that this property was in -- was  
23 put into a liquidating trust as part of a  
24 divorce and the liquidating trust was -- you  
25 know, the property was turned over to the



1 trustee to liquidate it and other marital  
2 property. We will offer evidence that Ms.  
3 Hobby and Mr. Hobby -- Ms. Hobby made an offer  
4 to purchase the property in question that  
5 triggered Mr. Hobby to make a counter-offer to  
6 the trustee.

7 **MR. HOBBY:** Your Honor, I object to this. This has  
8 nothing to do with the merits of this case.  
9 What happened before, prior to, or after. The  
10 point of this case is that I own -- I'm the  
11 legal registered owner at the courthouse of the  
12 property and we have a trespasser. His claims  
13 --

14 **MR. JOHNSON:** Well, (inaudible)

15 **MR. HOBBY:** His claims for -- for whatever happened  
16 in the past or whatever will happen in the  
17 future has no impact whatsoever.

18 **THE COURT:** Okay. Now, this is a motion hearing, of  
19 course. You know, I hadn't -- you know, no  
20 sworn testimony or anything yet. So let's --  
21 let me go ahead and hear it. I can hear  
22 hearsay in motion hearing and I'll determine  
23 whether it's, you know, if it's anything that  
24 I need to consider, you know, in the case and  
25 see if it's going to be something that would



1           affect the outcome of the case, but I would --  
2           of course, I could hear this and let's just go  
3           ahead and hear it and let me just decide.

4       **MR. HOBBY:**    Sure.

5       **MR. JOHNSON:**  And Mr. Hobby has offered to -- under  
6           the trust agreement, Ms. Hobby had the right to  
7           live in the house until it was sold or until it  
8           was -- until she -- the trust was terminated.  
9           Mr. Hobby made an offer to buy the property  
10          from the trustee.    His offer included an  
11          agreement to leave the property in the trust,  
12          which would -- our position is under the trust  
13          agreement would entitle Ms. Hobby to continue  
14          to live there.    Now, to the point of the  
15          motion, the first motion.  Matters involving  
16          trusts are in the exclusive jurisdiction of the  
17          Probate Court, Section 62-1-302 provides that  
18          the Probate Court has exclusive original  
19          jurisdiction over all subject matter related to  
20          trusts, inter vivos, testamentary including the  
21          appointment of successor trustees.  Now, there  
22          is a right under that Code provision to remove  
23          actions that involve trusts from the Probate  
24          Court to the Circuit Court, but you have to  
25          start the action in the Probate Court.  And



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1 since this will inevitably involve trusts and  
2 it's related to a trust, we say the Probate  
3 Court has exclusive jurisdiction and he has to  
4 start there. If the Court should determine  
5 that -- if this Court does have subject matter  
6 jurisdiction, we move that before you hear the  
7 case, you join Frank Knowlton, who is the  
8 trustee as a party to the action in order that  
9 we may assert a cause of action against him for  
10 indemnification. And under this statute that  
11 allows the ejectment, if you find that my  
12 client's entitled to be there, you can -- if  
13 you choose, you can say she can stay during the  
14 pendency of the action, provided she pays a  
15 certain amount of money. So our position --  
16 and if she does that, she's entitled to claim  
17 over against Frank Knowlton and he should be  
18 enjoined in the action and be heard. We joined  
19 him in the Circuit Court action and we think he  
20 should be joined here before you hear the  
21 merits.

22 **THE COURT:** Okay.

23 **MR. JOHNSON:** The other motion is this, Your Honor.  
24 This action is barred under the doctrine of res  
25 judicata. Res Judicata is a legal doctrine



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1           that says you can't litigate a matter and then  
2           re-litigate it between the same parties  
3           involving the same issues.

4           **THE COURT:** (Inaudible)

5           **MR. JOHNSON:** And the basis of the motion is this is  
6           the very action that was tried in Circuit Court  
7           when he asked the Circuit Court to grant a  
8           temporary injunction for continuing trespass on  
9           the property and asked to stop the trespass.  
10          An what the Circuit Court did was look at  
11          whether an injunction should be issued. Of  
12          course, to issue an injunction, you've got to  
13          show irreparable harm, likelihood of success on  
14          the merits, and adequate remedy of law. The  
15          Circuit Court judge found that he was -- had  
16          failed to prove those elements and that,  
17          therefore, he was not entitled to a temporary  
18          injunction, and the Court went on to hold and  
19          say in its Order to preserve the status quo  
20          during the pendency of the litigation requires  
21          that the defendant remain on the property until  
22          a full investigation can (inaudible). So it's  
23          our -- and, of course, in this matter, what  
24          he's asking you to find is that she is a  
25          trespasser and grant summary -- ejectment. The



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1 Circuit Court Order says she's entitled to  
2 remain there so that the status quo's  
3 preserved. So it's our position that he's  
4 litigated this in the Circuit Court and he's  
5 been unsuccessful; same parties; same issue;  
6 res judicata bars it. We would ask that,  
7 therefore, this action be dismissed or stayed  
8 until the Circuit Court rules.

9 **THE COURT:** Okay. All right. Let's see, Mr. Hobby,  
10 let's address one at a time. Of course, the  
11 first motion he's got is, of course, about the  
12 trust. He's saying that this should be in --  
13 shouldn't be in this court; it's a matter of  
14 trust and let me look up the -- before we get  
15 started, let me just look that law up, 62 --

16 **MR. HOBBY:** The trust -- the trust --

17 **THE COURT:** Well, let me -- let me -- let's look --  
18 let me look -- oh, you got it. Let's see what  
19 he's got. Let's just look it up and just -- so  
20 we'll all be familiar with this. I do know  
21 that -- let's see what we've got. Subject  
22 matter jurisdiction, concurrent jurisdiction  
23 with the Family Court. Subsection (d), is that  
24 what you said? Or was it (p)?

25 **MR. JOHNSON:** I said --



1     **THE COURT:** Yeah, right there. I think it is (d).

2             Notwithstanding the exclusive jurisdiction of  
3             the Probate Court, is that correct? Is that --

4     **MR. JOHNSON:** Your Honor, what I was pointing you to  
5             was --

6     **THE COURT:** Is that what --

7     **MR. JOHNSON:** -- 3 --

8     **THE COURT:** Okay.

9     **MR. JOHNSON:** -- which says exclusive jurisdiction.  
10            And then this section says you can remove the  
11            trust -- the matter involving trusts to the --  
12            it can be removed.

13     **MR. HOBBY:** Your Honor, just for the record, Judge  
14            Johnson referred this to Probate Court, Ms.  
15            Kelly Nobles. Kelly Nobles had her legal  
16            people review and concurred that it was not a  
17            probate issue and I've got an e-mail that  
18            represents that.

19     **THE COURT:** Okay. Well, let's address -- all right,  
20            he's saying that she's already -- you've  
21            already addressed that with -- is that correct,  
22            you've already presented that?

23     **MR. HOBBY:** Judge Johnson addressed that with her  
24            and her recommended -- recommendation to Judge  
25            Johnson was that it would be a civil court



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1 matter and Judge Johnson remanded me to civil  
2 court.

3 **THE COURT:** Circuit Court, you mean, Circuit --

4 **MR. HOBBY:** I mean Circuit Court, excuse me.

5 **THE COURT:** That's fine. I just -- all right.

6 **MR. HOBBY:** And -- and --

7 **THE COURT:** Well, actually, Common Pleas, I guess in  
8 the Circuit Court.

9 **MR. HOBBY:** And he's taking the same position with  
10 you today that he took in Circuit Court. He's  
11 going to greatly opposite of what he testified  
12 to before Judge McMahan saying that it wasn't  
13 his jurisdiction. He determined that it was  
14 magistrate's jurisdiction and --

15 **THE COURT:** Okay.

16 **MR. HOBBY:** What the trust -- what Frank Knowlton,  
17 what anybody else has to do with this is -- is  
18 irrelevant. We're dealing with a deed -- the  
19 owner of a piece of property in Newberry County  
20 and it's on record, been on record for 14  
21 months, and if they have claims outside the --  
22 for indemnity, they have to pursue them  
23 individually. It hasn't got anything to do  
24 with us today in court.

25 **THE COURT:** Let me just make sure I'm clear now.



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1           This -- this home was in a trust account, put  
2           in a trust account.

3   **MR. JOHNSON:** Right.

4   **THE COURT:** All right. And then he -- he had the  
5           right to sell -- he sold the home out of the  
6           trust -- the trustee actually sold the home --

7   **MR. HOBBY:** He was charged to sale all the assets  
8           that were transferred into the trust.

9   **THE COURT:** Okay.

10   **MR. HOBBY:** It's called the Hobby Family Liquidating  
11           Trust.

12   **THE COURT:** Okay.

13   **MR. HOBBY:** And he has the right to sell in any way,  
14           shape, form, or fashion, and I got that  
15           document with me if you choose to read it, but  
16           it's not relevant to what we're doing today.  
17           But, yes, he --

18   **THE COURT:** It's not in -- well, I guess my question  
19           is is the home in the trust right now?

20   **MR. HOBBY:** No, sir.

21   **MR. JOHNSON:** (Inaudible)

22   **MR. HOBBY:** He claims that -- he claims that I --  
23           part of the purchase agreement was to leave it  
24           in the trust. The purchase agreement was just  
25           an offer that the trustee chose to leave it in



1 the trust to preserve the integrity of the  
2 surrounding real estate in the event that he  
3 had a sale for it. But I was -- my purpose of  
4 that statement was that -- that if somebody  
5 wanted that house and 2.75 acres and wanted to  
6 buy 500 contiguous acres but wouldn't do it  
7 without the residence, Frank would have -- the  
8 trustee would have the right to include that  
9 house in that sale. It didn't mean he had  
10 control over whether she could live in it or  
11 whether I lived in it or whether I rented it or  
12 anything else. And the trust has provisions  
13 for that if we want to put additional assets  
14 in. But, once again, I --

15 **THE COURT:** It's not in the trust. Is it in the  
16 trust or not?

17 **MR. HOBBY:** It's not in the trust.

18 **THE COURT:** That's I guess what I'm asking. If it's  
19 in the trust --

20 **MR. HOBBY:** Here's the --

21 **MS. HOBBY:** Why is he not represented by a lawyer?

22 **THE COURT:** That's his choice. He can --

23 **MR. HOBBY:** Here's the certified --

24 **THE COURT:** Let's see what we have here. Okay.  
25 Let's see what you have.



1 **MR. JOHNSON:** The property has been transferred out  
2 of the trust. The issue involving the trust is  
3 this, Mr. Hobby made an offer to buy the  
4 property and agreed to leave it in trust.

5 **MR. HOBBY:** I offered to, didn't agree.

6 **THE COURT:** Well, now --

7 **MR. HOBBY:** Offering and agreeing is two different  
8 things.

9 **MR. JOHNSON:** Excuse me. I'll try -- I'll try not  
10 to interrupt you, Mr. Hobby, if you'd show me  
11 the same courtesy.

12 **MR. HOBBY:** I'm just stating the truth.

13 **MR. JOHNSON:** The offer he made was to leave it in  
14 trust. The trustee sold the property but  
15 failed to keep it in trust -- accepted that  
16 offer, but failed to keep it in trust. It's  
17 our position the trustee erred in failing to  
18 keep it in trust and, therefore, interpretation  
19 of who under the statute that he's proceeding  
20 under, the question is is my client a  
21 trespasser or does she have -- does she own the  
22 property without warrant of law and it's our  
23 position that the failure to put it in trust --  
24 leave it in trust gives her authority to live  
25 there until the Court -- the Circuit Court or



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1 the Probate Court or the -- or this Court makes  
2 a determination about that. Your Honor, you  
3 were right when you said this was sort of  
4 complicated in the beginning. One of the  
5 principle complications is which court has  
6 jurisdiction to do what. The Circuit Court  
7 found that it did not have jurisdiction to make  
8 an order under this statute. That's all they  
9 -- the Circuit Court did. We have moved now to  
10 dismiss the Circuit Court action on the same  
11 grounds because the Probate Court has exclusive  
12 jurisdiction. The fact that Judge Johnson  
13 communicated with the Probate Judge and got an  
14 e-mail back doesn't change what the law is.  
15 And to the extent this dispute will involve,  
16 and you'll hear testimony about the trust, it  
17 necessarily involves a trust committed to the  
18 jurisdiction of the Probate Court.

19 **THE COURT:** Okay.

20 **MR. HOBBY:** Your Honor, it clearly states in the  
21 Order that it's magistrate's jurisdiction and I  
22 know you've read it.

23 **THE COURT:** I read the Order. Sure, I read it this  
24 morning.

25 **MR. HOBBY:** I brought a certified copy in here and



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1           it's on --

2     **THE COURT:** I think I have a copy.

3     **MR. HOBBY:** -- page three of six, the opinion is  
4           there.

5     **THE COURT:** Yes, I had it and I highlighted a few  
6           things in it. Page six --

7     **MR. HOBBY:** Page three of six.

8     **THE COURT:** Three of six. Let's see, all right.  
9           Let's see --

10    **MR. HOBBY:** Let's see if we've got the same page  
11           here.

12    **THE COURT:** No, that's analysis.. This would be -- I  
13           may not have this.

14    **MR. HOBBY:** I brought a certified copy down here.  
15           This was an action that was filed -- this is  
16           the --

17    **THE COURT:** Okay.

18    **MR. HOBBY:** -- Judge's opinion.

19    **THE COURT:** Okay. Three of six, do y'all have a  
20           copy of this?

21    **MR. JOHNSON:** Yes, Your Honor. That's what I had  
22           sent. I say, let me see if we've got the same  
23           thing.

24    **THE COURT:** He has got -- let's see if we have --  
25           make sure we got the same one. I probably do



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1           have this. I was reading through this other  
2           one.

3   **MR. HOBBY:** I know -- I know I presented it to the  
4           Court. I got a certified copy from the  
5           courthouse.

6   **MR. JOHNSON:** Yeah, we got it.

7   **THE COURT:** Okay. Is this my copy or is this yours?

8   **MR. HOBBY:** You can have it.

9   **THE COURT:** Let me just -- let me just glance at  
10           this. If any person should have gone into or  
11           shall hereafter go into possession of any land  
12           or tenants of another without his consent or  
13           warrant, the owner of the land (inaudible)  
14           trespass, that's reading the law. I think  
15           that's just -- that's the statute on that. 15-  
16           67-610, specifically grant the Magistrate Court  
17           the authority to issue warrants, and they're  
18           talking about the writ of ejectment on this,  
19           that's what they're talking about, and actually  
20           file a notice to quit and be able to issue a  
21           writ of ejectment, the authority to do that.  
22           Either party have the right of appeal, and, of  
23           course, that's the right they have to do that.  
24           Okay. Exclusive jurisdiction will be given to  
25           inferior courts that have no appellate



1 jurisdiction. All right. Okay. What he's  
2 saying essentially is that if it's not in the  
3 trust account, then the Court would have --  
4 would be -- it should be in our court pretty  
5 much is essentially that. So that's what we  
6 have to decide whether -- and we'll -- I want  
7 to hear from both parties on this and I think  
8 Mr. Pope has already addressed. Anything else  
9 you want to address on that?

10 **MR. JOHNSON:** I would like to respond to that, Your  
11 Honor.

12 **THE COURT:** All right.

13 **MR. JOHNSON:** He didn't really -- that wasn't what  
14 he was -- he was deciding whether he had  
15 jurisdiction under the statute or only the  
16 magistrate had jurisdiction to proceed under  
17 the statute. He made no finding one way or the  
18 other as to whether it was in trust or whether  
19 that would affect any other court's  
20 jurisdiction. What he did was he dismissed  
21 that cause of action because he found and he  
22 said on page -- page seven -- excuse me, four  
23 of seven, therefore, pursuant to Article V,  
24 Section 11 of the South Carolina -- this Court  
25 lacks jurisdiction and declines to hear the



1 matter. When he declines to hear the matter,  
2 he doesn't make any finding. He can't because  
3 he doesn't have jurisdiction to do anything  
4 other than to dismiss it. So, the question of  
5 whether this court has jurisdiction -- subject  
6 matter jurisdiction because it involves  
7 questions of trust or the jurisdiction of this  
8 court is an open question.

9 **THE COURT:** Okay.

10 **MR. HOBBY:** Your Honor, they played this same  
11 position in Family Court, as well. It was  
12 dismissed from Family Court and Judge Neese not  
13 only dismissed it, but they filed two motions  
14 for reconsideration and she denied both of  
15 those, as well. And they've beat a dead horse  
16 here for a long damn time and we need to get  
17 this resolved and it doesn't have anything to  
18 do with any third-party actions, it's an  
19 individual property owner who has an individual  
20 that's trespassing, the trespasser needs to be  
21 removed.

22 **THE COURT:** Okay. All right. Anything on that?  
23 Anything?

24 **MR. JOHNSON:** Nothing more on that point, Your  
25 Honor. I would ask that the Court (inaudible)



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1 of a joinder and postpone the action until the  
2 joinder takes place. And on the res judicata,  
3 I think aside from anything else, it's clear  
4 they've litigated this same issue.

5 **THE COURT:** Okay. Let's -- let's address the trust  
6 issue first. Now, Mr. Hobby, you say you own  
7 the property. You have a deed to the property,  
8 is that correct?

9 **MR. HOBBY:** Yes, sir, I just brought it to you.

10 **THE COURT:** Oh, it's a quit -- Okay. She signed a  
11 quit claim, so she's saying that she -- did Ms.  
12 Hobby sign this? Is that correct? Let's see,  
13 or the trustee signed it?

14 **MR. HOBBY:** No, the trustee -- I signed it and the  
15 trustee signed it.

16 **THE COURT:** Okay.

17 **MR. HOBBY:** That's where he was just explaining the  
18 process of transferring the deed.

19 **THE COURT:** Okay. With condition (inaudible) of  
20 Raymond Hobby and Mary Hobby, whom are citizens  
21 and residents, okay. So what essentially he's  
22 saying is -- if I'm reading this right, the  
23 trust account is actually assigned a quit claim  
24 saying it's -- that they no longer have any  
25 interest in the property, is that correct?



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1 MR. HOBBY: That's correct.

2 THE COURT: Is that correct?

3 MR. HOBBY: That's exactly correct, yes, sir.

4 THE COURT: Do you have any argument on that?

5 MR. JOHNSON: I do have this argument, Your Honor.

6 There's no question there's a quit claim deed,  
7 but all a quit claim deed is is saying whatever  
8 I have, I give it away. It's our position that  
9 held the subject in the trust accepted the  
10 offer showing it would stay in trust, and he  
11 didn't do it. And he was obligated to do it.

12 THE COURT: Well, you know, I'm --

13 MR. HOBBY: Judge, did he present you the -- my  
14 offer to purchase?

15 THE COURT: I've got a letter here, Exhibit C, is  
16 that it? Is that the --

17 MR. HOBBY: Yes, sir.

18 THE COURT: Okay.

19 MR. HOBBY: And it just states down there in the  
20 third paragraph, I am further offering to leave  
21 this asset in the trust to make sure most of  
22 the property's value for any future sale  
23 opportunities and receive no distribution until  
24 the property is sold and all trust liabilities  
25 are satisfied. And that was an offer, okay.



1 She made offers, as well, that he declined,  
2 okay, in this purchase process. And so he has  
3 a right to accept or decline, and I can show  
4 you that in the trust agreement, any, all, or  
5 none, part of the -- part of the -- part of an  
6 offer to purchase.

7 **THE COURT:** Okay.

8 **MR. HOBBY:** Or an offer to sell.

9 **THE COURT:** All right.

10 **MR. JOHNSON:** But it involves the interpretation of  
11 the trust and that's why it's in the Probate  
12 Court jurisdiction, Your Honor.

13 **MR. HOBBY:** This is not a trust property.

14 **THE COURT:** All right. Try to simplify this thing a  
15 little bit. Try to -- I try to be fair and I  
16 try to think I'm a reasonable person, but I am  
17 compelled to go by what the law says. Now, you  
18 know, I don't know what Mr. Knowlton as far as  
19 what all the situations that -- since he's the  
20 -- he was the trustee, is that correct?

21 **MR. HOBBY:** Still is.

22 **THE COURT:** All right. I don't think it would be  
23 anything that I can determine today as far as  
24 anything that he -- what he did, if it was  
25 anything that, you know, he -- the only thing



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1 I do know is he signed the quit claim deed  
2 saying that the trust does not have any  
3 interest in this property. Whether that was  
4 proper, whether it was improper, you know,  
5 that's nothing I -- I have to determine today.

6 **MR. HOBBY:** You're absolutely correct.

7 **THE COURT:** Since it's -- since he says it's out of  
8 the trust, which would give the Probate then I  
9 guess and you said Kelly Nobles -- Judge Nobles  
10 has already been approached with this and  
11 saying that it -- saying that she has no -- I  
12 guess did she say she had no jurisdiction or  
13 how did you word it again, Mr. Hobby?

14 **MR. HOBBY:** Let me find that. I should be able to  
15 find it. I wasn't prepared to respond to that  
16 today, but I did bring it with me.

17 **THE COURT:** But he's already -- I guess my point,  
18 though, is being it's already been addressed in  
19 front of the Probate Court and --

20 **MR. HOBBY:** Yes, sir.

21 **THE COURT:** -- at this time -- at that time she felt  
22 like it was not --

23 **MR. JOHNSON:** Your Honor --

24 **MR. HOBBY:** Yes, sir, she -- it was -- Judge Johnson  
25 forwarded it to her for her review and her



1 opinion --

2 **MR. JOHNSON:** Your Honor --

3 **MR. HOBBY:** -- and she e-mailed Judge Johnson back  
4 that she had no part or no involvement with the  
5 trust.

6 **THE COURT:** Okay. All right. And since, you know,  
7 we're here today in the court and it's out of  
8 the -- it's out of the trust account, I'm going  
9 to deny that motion and we're going to proceed  
10 with the second motion. This motion on the  
11 trust account is the one I'm denying. Is this  
12 my copy or yours?

13 **MR. JOHNSON:** No, that's mine.

14 **THE COURT:** Let me give that back to you. All  
15 right. Now, let's proceed to the second  
16 motion, which is the jurisdiction of the  
17 magistrates, whether we have jurisdiction to  
18 hear this case. Let's --

19 **MR. JOHNSON:** There is one question.

20 **THE COURT:** Sure.

21 **MR. JOHNSON:** Could I ask Mr. Hobby to produce the  
22 e-mail? I'm totally in the dark. I wasn't  
23 involved --

24 **THE COURT:** I have no idea what -- I know he said he  
25 -- I think Judge -- was it Judge Johnson sent



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1 the e-mail, is that correct?

2 **MR. HOBBY:** Yes, sir, Judge Johnson sent me an e-  
3 mail. We can call him as a witness if he's  
4 here.

5 **THE COURT:** I don't think we want to do that.

6 **MR. HOBBY:** Okay.

7 **MR. JOHNSON:** Go ahead and get him (inaudible).

8 **THE COURT:** He's involved in a jury trial at the  
9 moment, so -- well, why don't -- I tell you, we  
10 --

11 **MR. HOBBY:** My e-mails don't go that far back, but -  
12 -

13 **MR. JOHNSON:** Well, submit it later, Ray, that'd be  
14 okay.

15 **THE COURT:** All right.

16 **MR. HOBBY:** But here's this e-mail, Mr. Hobby, it is  
17 our opinion this is a matter for the circuit  
18 court. You may want to consider letting your  
19 attorney of record proceed.

20 **THE COURT:** Okay. All right.

21 **MR. HOBBY:** And my response back --

22 **THE COURT:** I don't know if that really gives a  
23 clear answer, but still, yet, what I'm going to  
24 rule today is still that it's out of the trust  
25 account, which would, in my opinion, is that



1           it's not -- it's not an action for the Probate  
2           Court as of the knowledge I have right now,  
3           it's not an action. Now, of course, that can  
4           be -- this can be appealed, of course, and  
5           we'll go over all that at the end and see what  
6           -- All right. Let's see, that's just on the  
7           motion. The motion can be appealed. Each  
8           motion can be appealed. Each case can be  
9           appealed, so just be aware of that, so.

10   **MR. HOBBY:** I understand.

11   **THE COURT:** All right. Now, the second motion is  
12           whether we have jurisdiction or not. Let's go  
13           ahead, he's already argued that with the -- I  
14           think the res judicata, I think you said that  
15           it's already -- this case has already been  
16           tried in Family Court, is that what I  
17           understood or and the Circuit Court also ruled  
18           on it?

19   **MR. JOHNSON:** The Circuit Court, if you take the  
20           order that you were handed and go to page four  
21           and begin and read temporary -- motion for  
22           temporary injunction.

23   **THE COURT:** All right.

24   **MR. HOBBY:** Can I see what you got there? I gave  
25           him mine.



1     **THE COURT:** I may have it. Let me see -- you said  
2             you sent one in?

3     **MR. HOBBY:** Yes, sir. I got a certified copy.

4     **THE COURT:** You got another copy? Okay, good.

5     **MR. JOHNSON:** Will you take a moment and read that  
6             (inaudible)?

7     **THE COURT:** That was just a -- that was just an  
8             injunctive relief. I think Judge Partridge, if  
9             I saw his name in here originally, I don't know  
10            how he was involved. Did he have some  
11            involvement in this?

12    **MR. HOBBY:** He was the attorney of record when it  
13            was first brought before a magistrate --

14    **THE COURT:** Oh, okay.

15    **MR. HOBBY:** -- back in May of 2012.

16    **THE COURT:** I think I had -- well, he's filed some  
17            injunctive relief and that probably was on  
18            this?

19    **MR. HOBBY:** Then they went to Family Court, yes.

20    **THE COURT:** Family Court, okay, I got you. All  
21            right. Let's see, temporary injunction.

22    **MR. JOHNSON:** That's Mr. Hobby seeking injunctive  
23            relief.

24    **THE COURT:** Okay. So this is not -- oh, that was  
25            Family Court injunction he filed. This is a --



1 MR. JOHNSON: Circuit Court.

2 THE COURT: I got you, okay.

3 MR. JOHNSON: I told you it was convoluted.

4 MR. HOBBY: All these complaints are in the process  
5 of being amended. They've done the same thing  
6 and we are as well that component of our  
7 complaint is soon to be dismissed and the only  
8 action with civil court --

9 THE COURT: This is just a motion, not a case file.  
10 A motion filed in the Circuit Court. Need to  
11 make sure I'm clear on that.

12 MR. HOBBY: Yes, sir.

13 THE COURT: Seeks temporary injunction. Okay. All  
14 right. He's filed a motion, that just kind of  
15 states what the motion says. I didn't -- I  
16 guess it had been ruled on --

17 MR. JOHNSON: (Inaudible) -- will begin and  
18 irreparable harm be addressed as the three  
19 elements necessary to get an injunction.

20 MR. HOBBY: Once again, it's not pertinent to this -  
21 -

22 THE COURT: Okay. Let's see that. He's filed the  
23 injunction and he's got -- the judge looked  
24 through all this and the judge -- what did the  
25 judge decide on the motion?



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1 MR. HOBBY: He dismissed --

2 THE COURT: Dismissed it.

3 MR. HOBBY: -- the temporary injunction.

4 MR. JOHNSON: No, that's not correct. He denied the  
5 temporary injunction and he found that the  
6 defendant -- this is the irreparable harm  
7 element, it says the defendant argues the  
8 plaintiff has not suffered irreparable harm  
9 entitling her to injunctive relief because he  
10 alleges it can be remedied by monetary damages  
11 alone. This court agrees plaintiff alleges  
12 that the defendant has been trespassing for  
13 excess of a year. Plaintiff alleges defendant  
14 has sold or attempted to sell personal  
15 property. If the plaintiff prevails monetary  
16 damages will remedy the harm alleged. The  
17 Court -- success on the merits, the Court finds  
18 that the plaintiff has made a prima facie  
19 showing that he's entitled to injunctive  
20 relief. As to inadequate remedy at law, he  
21 says the plaintiff has an adequate remedy of  
22 the law because he can recover monetary  
23 damages. He goes on to say the purpose of an  
24 injunction is to preserve the status quo and  
25 then he concludes that to preserve the status



1           quo during the pendency of that litigation  
2           requires the defendant, that'd be my client, to  
3           remain on the property until the full  
4           investigation can be held on the matter. Now,  
5           here, if you put this Order next to what he has  
6           to prove for summary ejectment of my client, if  
7           you put it next to the statute, he has to prove  
8           my client is a trespasser and that the Court  
9           should eject her immediately. The Circuit  
10          Court judge has said to the contrary. He says  
11          the status quo has to be maintained while the  
12          matter's investigated in the circuit court  
13          action.

14       **THE COURT:** Where does it say that?

15       **MR. JOHNSON:** So you can --

16       **THE COURT:** Where does it say that?

17       **MR. JOHNSON:** To preserve the status quo during the  
18          pendency of the litigation requires the  
19          defendant to remain on the property until a  
20          full investigation of the matter is -- can be  
21          had on the matter. So what he's saying is I'm  
22          denying this relief, which would be the  
23          identical relief he's seeking under the statute  
24          because there needs to be an investigation in  
25          the Circuit Court action as to who's right and



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1 who's wrong. And it's my position that he's  
2 litigated the same issue in the Circuit Court  
3 unsuccessfully and res judicata bars it and  
4 that, with all due respect, the Magistrate's  
5 Court can't overrule the Circuit Court and make  
6 a different finding. In other words, you can't  
7 -- since a judge in the Circuit Court says the  
8 status quo has to be preserved, it would be  
9 improper for the Magistrate's Judge to say  
10 well, it doesn't matter what the Circuit Court  
11 judge says, I'm kicking her off. And so under  
12 the doctrine of res judicata, and under the  
13 judge's Order, the Court should decline to rule  
14 on the matter and leave it with the Circuit  
15 Court.

16 **THE COURT:** Okay.

17 **MR. HOBBY:** He's making all kinds of interpretations  
18 of what this judge was trying to say. He  
19 intended the status quo to be until it was  
20 presented in the jurisdiction that it was --  
21 fell under and he clearly indicated that the  
22 jurisdiction is Magistrate's Court. And we  
23 have preserved the status quo until we came  
24 before the proper authority to hear this case.  
25 That's the only intent. He's not telling you



1 that you can't -- that you'll be overriding the  
2 Circuit Court, he's just telling us in his  
3 denial that to preserve the status quo, let her  
4 remain in the residence until it goes before  
5 the court who has jurisdiction and he clearly  
6 states that Magistrate's Court has  
7 jurisdiction.

8 **MR. JOHNSON:** Your Honor, the Order says what the  
9 Order says. Stay on the property until a full  
10 investigation can be held in the matter and the  
11 action in Circuit Court for damages and  
12 everything else proceeds. Judge who -- a judge  
13 who dismisses a case for lack of jurisdiction  
14 has no authority to rule on anything related to  
15 the lack of subject matter jurisdiction.  
16 That's just fundamental. He can rule --

17 **THE COURT:** All right. Any other argument?

18 **MR. HOBBY:** The only -- the only point I need to  
19 make is we would be in Magistrate's Court for  
20 monetary damages had the amount not exceeded  
21 the \$7,500 limit in Magistrate's Court. We're  
22 in excess of \$40,000 to date in damages as a  
23 result of this trespass and that's why that  
24 action is going to remain in civil court  
25 because they do have authority to make a ruling



1 on that amount of money and Magistrate's Court  
2 does not. Thank you.

3 **THE COURT:** Okay. All right. Reading this now, this  
4 -- I interpret things a little different. I  
5 try to keep things simple --

6 **MR. HOBBY:** Yes, sir.

7 **THE COURT:** -- simple and it looks like to me that  
8 the Circuit Court Judge has -- he's denied the  
9 motion for summary ejection in there saying  
10 that -- he's pretty -- he's going to give it to  
11 us to do, that's what he's saying. Deny the  
12 motion for a temporary injunction is denied.  
13 Now, what he's saying to -- to preserve the  
14 status quo until a full investigation, I think  
15 he's putting that on us. I think he's saying  
16 that that's -- we're going to have, you know,  
17 to preserve -- everything's going to stay like  
18 it is until you go to the right court, which is  
19 the Magistrate's Court is what I understand,  
20 because he's saying let them decide.

21 **MR. HOBBY:** Yes, sir.

22 **THE COURT:** Let us decide if that's what's right,  
23 that's kind of the way I -- I don't know who  
24 else would be doing the investigation other  
25 than us. I don't think they're going to --



1 unless you file a separate case up in the  
2 Circuit Court, I don't -- as far as this motion  
3 case, it's gone. I mean, he's dismissed --

4 **MR. JOHNSON:** It's not gone, Your Honor. There's a  
5 case pending in Circuit Court.

6 **THE COURT:** That's the damages' case.

7 **MR. JOHNSON:** And it continues, he was seeking a  
8 permanent -- temporary and permanent  
9 injunction.

10 **THE COURT:** But I don't think they're going to rule  
11 on the ejectment, though. He's suing for  
12 damages, though, didn't he say that?

13 **MR. HOBBY:** And there was language that included  
14 ejectment and we're going to amend that  
15 complaint to remove that.

16 **MR. JOHNSON:** Well, Your Honor --

17 **THE COURT:** Let me see -- let me see that. Let me  
18 see what you're -- let's see, the -- well,  
19 that's really nothing that I would -- I want to  
20 hear -- I could hear today, because that's a  
21 separate case there. I don't think it's  
22 anything that I would be concerned about if he  
23 files it in Circuit Court. Now, unless it was  
24 on a ejectment, then you've got two cases of  
25 the same matter going then, but you're not



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1 filing for ejection in the Circuit Court, are  
2 you?

3 **MR. HOBBY:** No, sir.

4 **MR. JOHNSON:** He absolutely is, Your Honor. And  
5 he's -- he's doing it in the cause of action he  
6 was seeking the injunction on. He was seeking  
7 an injunction to prohibit her from going on the  
8 property, which is the same thing as ejecting  
9 her from the property. And, Your Honor, I ask  
10 that you take judicial notice of what's in the  
11 Circuit Court file and what the pleading is.  
12 I didn't bring -- let me see if I brought that  
13 pleading, but I'll show you what's been  
14 (inaudible) there if I've got it. It seems to  
15 me that the Court ought to consider what is in  
16 Circuit Court remains in Circuit Court --

17 **THE COURT:** Which one was filed first? This one?

18 **MR. HOBBY:** This one, yes, sir.

19 **THE COURT:** Okay.

20 **MR. HOBBY:** And they further enjoined the trustee as  
21 a third party defendant.

22 **MR. JOHNSON:** Your Honor, here's the Amended  
23 Complaint.

24 **THE COURT:** Let's see what you got. And I really --  
25 I don't even know if I really should be looking



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1 at this --

2 **MR. HOBBY:** I don't think you should, Your Honor.

3 **THE COURT:** -- because this is in the Circuit Court  
4 -- Judge instead of -- this is the Circuit  
5 Court issue.

6 **MR. JOHNSON:** Your Honor, there's no way to rule on  
7 our motion. I think you've got to consider this  
8 business about things not being up in the  
9 Circuit Court. You'll see that the variation  
10 of (inaudible) he sought and continues to seek  
11 (inaudible).

12 **THE COURT:** Has any ruling been made on this case or  
13 anything?

14 **MR. HOBBY:** No, sir. Never been before a judge.

15 **THE COURT:** I'm a little hesitant to look at it  
16 because I don't want it to --

17 **MR. JOHNSON:** It has been ruled. There's an Order  
18 right here.

19 **MR. HOBBY:** That was on the --

20 **THE COURT:** That was a motion. Was that a motion,  
21 not a case, though? Let me see what --

22 **MR. HOBBY:** Now, the ruling was on the first --

23 **THE COURT:** Hand that back to Mr. Johnson. I don't  
24 think I'm going to --

25 **MR. HOBBY:** -- he's talking about the Amended



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1 Complaint. There's no merits to this issue.

2 **MR. JOHNSON:** Hobby said he didn't have something  
3 pending in the Circuit Court. The only way you  
4 -- that you ought to rule as it relates as they  
5 said here, I think the Court respectfully has  
6 to rule -- has to look at either the original  
7 Complaint or the Amended Complaint and see  
8 what's there.

9 **THE COURT:** What did I read? Wait a minute, I read  
10 something earlier. Let me make sure somewhere,  
11 I think it came up in this hearing, about the  
12 case. Where did I see -- didn't I see  
13 something where they said that you could file  
14 a case -- have actions in Circuit Court, didn't  
15 I just read that?

16 **MR. HOBBY:** Yes, sir.

17 **THE COURT:** Where is that at? Let me re-read that.  
18 Do you know where that's located at?

19 **MR. HOBBY:** (Inaudible) I'm doing the same thing  
20 you're doing.

21 **THE COURT:** I just -- I'm not real sure where I read  
22 that. I'm just --

23 **MR. HOBBY:** Our only motive to stay in the civil  
24 court process is for damages, period.

25 **MR. JOHNSON:** Your Honor --



1     **MR. HOBBY:**       They've already ruled that it's  
2                   Magistrate's jurisdiction for the ejection.

3     **MR. JOHNSON:**   Your Honor, I know you said you didn't  
4                   want to read this Amended Complaint --

5     **THE COURT:**    Uh-huh (affirmative response).

6     **MR. JOHNSON:**   -- I ask you to reconsider and re-  
7                   examine Mr. Hobby's statement that all they're  
8                   seeking is damages, which is false because  
9                   their Second Cause of Action seeks an  
10                  injunctive relief to prevent the continuing  
11                  trespass.    So that issue, the issue you're  
12                  being asked to deal with, is pending in the  
13                  Circuit Court.  It's the Second Cause of Action  
14                  in    (inaudible)   and the Court declines  
15                  (inaudible) and I'd like to make it an exhibit,  
16                  proffer it as an exhibit so it'll be in the  
17                  record.

18    **THE COURT:**    So it's the same issue we just went over  
19                    though, wasn't it, about the injunctive relief  
20                    on -- he's filed -- he's filed it again in that  
21                    other case?

22    **MR. JOHNSON:**   Yes, it's the Second Cause of Action.  
23                    For Mr. Hobby to say that's not being sought in  
24                    the Circuit Court is simply not correct.

25    **MR. HOBBY:**     I'm saying that it is in the Amended



1 Complaint and it is being dropped (inaudible).  
2 **THE COURT:** Okay. I'll tell you what we can do. We  
3 can -- let's -- let's -- if we get into  
4 evidence and stuff, if he wants to present that  
5 as evidence, but this is a motions hearing as  
6 far as let me just -- let's just -- let's do  
7 one thing at a time. As far as before anything  
8 can be -- the res judicata, you know, if it had  
9 already been handled in Circuit Court or  
10 anything like that, or the Circuit Court had  
11 already ruled and said that it's -- that it was  
12 no -- that she could stay on the property,  
13 yeah, I would think that would be something I  
14 could not overrule. I couldn't say anything.  
15 We couldn't come back to the circuit -- I  
16 couldn't come back to our court. But looking  
17 at this, seeing that we -- the res judicata and  
18 whether we have jurisdiction or not, we have --  
19 we have -- and he does say that we have  
20 jurisdiction, which I know we have jurisdiction  
21 to hear this type matter. We have the  
22 jurisdiction to hear it. What I'm going to do,  
23 I'm going to deny the motion of the -- whether  
24 the lack of jurisdiction and the res judicata  
25 and proceed -- well, we'll proceed on to the --



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1 are there any other motions we need to address?

2 **MR. HOBBY:** No, sir.

3 **MR. JOHNSON:** No, Your Honor.

4 **THE COURT:** All right. Anything before we proceed  
5 with the hearing?

6 **MR. HOBBY:** No, sir, proceed.

7 **THE COURT:** Okay. All right. Let's go into --  
8 let's go into the hearing on the notice. And  
9 this, again, is case number -- let me just  
10 restate that again. Case number 2012CV3 --  
11 CV3610100450, Raymond Hobby is the plaintiff  
12 and Ms. Mary Hobby is the defendant, being  
13 represented by Pope Johnson. At this time, I'm  
14 going to swear you in, Mr. Hobby. Mr. Hobby,  
15 do you swear to tell the truth, the whole  
16 truth, and nothing but the truth, so help you  
17 God?

18 **MR. HOBBY:** I do.

19 **THE COURT:** All right. Now, it's your opportunity  
20 to tell the Court why you filed a notice  
21 (inaudible) against Ms. Hobby.

22 **MR. HOBBY:** (Inaudible) Road for over 14 months as  
23 of April 17<sup>th</sup>, 2012, and May of 2012, a final  
24 ejection notice and she was served. They --  
25 they got a temporary emergency order to stay



1 the eviction until it could be heard in the  
2 Family Court to whether it was a Family Court  
3 issue. That was denied. We've been through  
4 all of that. Brought it back to Magistrate's  
5 Court along with both denials of motion for  
6 reconsiderations and, again, the Magistrate's  
7 Court mandated that I --

8 **MR. JOHNSON:** Object, Your Honor. I object, Mr.  
9 Hobby.

10 **THE COURT:** All right. You got an objection. All  
11 right.

12 **MR. JOHNSON:** Opinions by Mr. Hobby on any --

13 **THE COURT:** Yeah, just state the facts. I just want  
14 to hear the facts.

15 **MR. HOBBY:** That's what I'm stating.

16 **THE COURT:** All right.

17 **MR. HOBBY:** Took it to Civil Court, Civil Court  
18 determined that it was Magistrate's  
19 jurisdiction.

20 **MR. JOHNSON:** Objection, Your Honor.

21 **THE COURT:** All right. Just --

22 **MR. JOHNSON:** The Order speaks for itself, not what  
23 Mr. Hobby says.

24 **THE COURT:** All right. Okay.

25 **MR. HOBBY:** And -- and I feel like I'm entitled to



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1           its use in any fashion I choose to use it.

2   **THE COURT:**   Okay.   All right.   You are the -- you  
3           are the legal owner of the property?

4   **MR. HOBBY:**   Yes, sir.

5   **THE COURT:**   Is that correct?   I think, did you  
6           present this --

7   **MR. HOBBY:**   I brought the quit claim deed.

8   **THE COURT:**   Are you entering that as evidence, Mr.  
9           Hobby?

10   **MR. HOBBY:**   Yes, sir.

11   **THE COURT:**   All right.   Do you have any objection to  
12           him entering that into evidence?

13   **MR. JOHNSON:**   No.

14   **THE COURT:**   Okay.   All right.   We have a copy of the  
15           quit claim deed.   Let me see if I can find  
16           that.   Well, I'll call it Exhibit One.   I don't  
17           have a sticker.   I thought it was (inaudible).  
18           We'll call this Exhibit One.   Okay.   Anything  
19           further, Mr. Hobby?

20   **MR. HOBBY:**   Other than call a witness.

21   **THE COURT:**   All right.   You got a witness you want  
22           to call?

23   **MR. HOBBY:**   Yes, sir.

24   **THE COURT:**   All right.

25   **MR. HOBBY:**   I'd like to call the defendant, Mary T.



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1 Hobby.

2 **THE COURT:** You know, we -- you know, she's being  
3 represented, do you have any objection to her  
4 being called as a witness?

5 **MR. JOHNSON:** I think he can call her.

6 **THE COURT:** Okay. All right. Do you want to --

7 **MS. HOBBY:** What if I don't want to?

8 **MR. JOHNSON:** (Inaudible)

9 **MS. HOBBY:** Okay.

10 **MR. JOHNSON:** Don't have a choice.

11 **MS. HOBBY:** That's fine.

12 **THE COURT:** All right. This is a civil action, it's  
13 not a criminal court. Ms. Hobby, do you want  
14 to stay right there as a witness, or you're  
15 welcome to sit up here, or do you have any  
16 objection to her sitting right there?

17 **MR. JOHNSON:** Wait a minute, Your Honor, I'm not  
18 sure I do want her to testify. This is civil,  
19 you'll be making some finding possibly that she  
20 is a trespasser. (Inaudible) civil and  
21 criminal provisions.

22 **THE COURT:** You know --

23 **MR. HOBBY:** Sir, the only reason I'm calling her --

24 **THE COURT:** Yeah, what is the reason you're calling  
25 her?



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1     **MR. HOBBY:** To establish that she is residing on the  
2             property.

3     **THE COURT:** Okay. Well, I don't think that would be  
4             any -- I don't think that's anything we --  
5             we're not -- they're not going to dispute that,  
6             so I think the best thing is just --

7     **MS. HOBBY:** And also to establish if she's got any  
8             contracts, lease agreements, or anything else  
9             with me that would allow her the right to use  
10            the property.

11    **THE COURT:** Well, that'll be -- what's going to  
12            happen, this -- let me just clear it up again  
13            and, of course, I'm not -- I know you're pro  
14            se, Mr. Hobby, and I try to -- the Court  
15            advises us to be a little lenient with you  
16            since you don't -- you're not being represented  
17            and, of course, she is being represented, so I  
18            have to -- but we're going to get into the case  
19            and they're going to present their case and  
20            then you'll have an opportunity, you know,  
21            they're going -- they'll have their defense and  
22            you'll have an opportunity to question them  
23            just like he's going to have an opportunity to  
24            question you when you -- as soon as you finish  
25            yours, so let's -- let's go forward with that



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1 and anything else you want to present?

2 **MR. HOBBY:** That's all.

3 **THE COURT:** Okay. You got any questions for Mr.  
4 Hobby?

5 **MR. JOHNSON:** Yes, Your Honor.

6 **MR. HOBBY - EXAMINATION BY MR. JOHNSON:**

7 Q: Mr. Hobby, you made an offer to purchase the  
8 property we're talking about?

9 A: I did.

10 Q: Letter dated January 3<sup>rd</sup>, 2012?

11 A: I did.

12 Q: Is this a copy of that?

13 A: Yes, sir, it is.

14 Q: Read the paragraph I have marked in blue? I am  
15 further offering --

16 A: I can read that. I am further offering to  
17 leave this asset in the trust to maximize the  
18 property's value of any future sale  
19 opportunities and receive no distribution until  
20 the property is sold and all trust liabilities  
21 are satisfied.

22 **MR. JOHNSON:** We'd offer this in the record.

23 **THE COURT:** All right. We'll call this Exhibit One  
24 for the defense. Any objections to this, Mr.  
25 Hobby?



1 MR. HOBBY: No, sir.

2 Q: Mr. Hobby --

3 THE COURT: I'm sorry, it's got Exhibit C. Let's  
4 leave it marked Exhibit C if that's all right  
5 with you, we'll leave it Exhibit C.

6 Q: Mr. Hobby, when you closed on the property, did  
7 you get a quit claim deed to it?

8 A: Yes, sir.

9 Q: Was it the left in the trust as your offer --  
10 as your letter states or was it deeded out to  
11 you?

12 A: It was deeded to me.

13 Q: And it was deeded to you by the trustee of the  
14 liquidated trust agreement?

15 A: Yes, sir.

16 Q: And the trustee of the liquidated trust  
17 agreement has a fiduciary duty to both you and  
18 to your ex-wife, Mary, correct? He's a  
19 fiduciary as trustee.

20 MR. HOBBY: I really want to object to the question  
21 because it's -- his interest in today's cases  
22 is of no interest to the Court.

23 THE COURT: Well, I'm not sure whether -- I can't  
24 really rule whether it's relevant or not until  
25 I hear it. Let's go ahead -- he's asking do



1           you know what a fiduciary -- and I can give you  
2           the definition of a fiduciary.

3   **MR. HOBBY:** Oh, I know exactly what it is.

4   **THE COURT:** Okay. All right.

5   **MR. HOBBY:** Yes, he does.

6   Q:   And under his fiduciary duty, he has a duty of  
7       fair dealing with you and a duty of fair  
8       dealing with her?

9   **MR. HOBBY:** Again, I object because it has no merits  
10       on the issue at hand.

11   A:   But, yes, he does.

12   **THE COURT:** Okay.

13   Q:   Under the liquidating trust, let me get you to  
14       just read some language for me.

15   **MR. HOBBY:** I object to reading anything involving  
16       the trust or any other issue related to the  
17       trust because it's not a party to this action.

18   **THE COURT:** Okay. Well, I have to -- I have to see  
19       it or hear it before I can rule on it. The  
20       objection is that -- he's got an objection  
21       saying the trust is not a party to the action.  
22       We've ruled on the motion for the trust, but if  
23       you want to insist that this is the case, you  
24       still have the right to -- even though I made  
25       rulings on it, you still have a right to bring



1           it back up. I mean, my motion was to proceed  
2           with the -- with the -- so we're into the case  
3           now, so if he wants to bring this up and I can  
4           still consider that and, of course, he's  
5           bringing it up for reasons that it could maybe  
6           for an appeal. I mean, he has to raise these  
7           issues and I'm going to allow it in to -- I'm  
8           going to allow it in and then we'll rule on it  
9           later.

10   **MR. HOBBY:** Just want you --

11   **THE COURT:** And of course, your --

12   **MR. HOBBY:** (Inaudible)

13   **THE COURT:** And sir, you can raise -- you can just  
14           make note of your objection and the Court will  
15           make duly note of that, sir.

16   **Q:** On page 18 of the liquidated trust agreement,  
17           which is the trust that's liquidating the  
18           marital assets that you and Ms. Hobby had, in  
19           paragraph (f), would you read the first  
20           sentence?

21   **A:** The first sentence of paragraph (f) reads MTH  
22           shall have sole and exclusive rent-free use of  
23           the property until -- the property known as the  
24           marital home of MTH and RDH together with the  
25           surrounding three acres of land until such



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1 property is sold or vacated by her.

2 Q: All right. Who is MTH?

3 A: Mary T. Hobby.

4 Q: And who is RDH?

5 A: Raymond D. Hobby.

6 Q: Now, did the trustee require that the property  
7 remain in the liquidated trust or did he deed  
8 it out to you?

9 A: The property was deeded to me.

10 Q: Mr. Hobby, you have -- you brought an action in  
11 the Court of Common Pleas, did you not?

12 A: Yes, sir.

13 Q: And the Court of Common Pleas -- and the Court  
14 of Common Pleas issued an order dealing with  
15 certain issues, did it not?

16 A: It did.

17 Q: And is this a copy of the order?

18 A: To the best of my knowledge.

19 Q: We'd like to offer it into evidence.

20 **THE COURT:** Okay. This will be exhibit -- we'll  
21 just call it Exhibit D, since we already have  
22 Exhibit C. Any objection, Mr. Hobby?

23 **MR. HOBBY:** No, sir.

24 Q: In your civil action, you have asked that the  
25 Circuit Court eject Ms. Hobby pursuant to



1 Section 15-67-610, correct?

2 A: To the best of my knowledge.

3 Q: And the Court declined to do that and  
4 ultimately it did not have jurisdiction to do  
5 so, did it?

6 A: Yes, sir.

7 Q: The Court then made no rulings on whether the  
8 Magistrate's Court had jurisdiction in the  
9 matter or the Probate Court had jurisdiction in  
10 the matter, did it?

11 A: Please repeat that question.

12 Q: The Circuit Court judge didn't make any  
13 determination in his order as to whether the  
14 Magistrate's Court had jurisdiction to proceed  
15 or whether the Probate Court had jurisdiction  
16 to proceed, did it?

17 A: Yes, she did.

18 Q: Read me the language you rely upon in that?

19 A: Summary ejection of trespass actions are  
20 controlled by S.C. Code Ann. 15-67-610 through  
21 640. S.C. Code Ann. 15-67-610 provides that if  
22 any person shall have gone into or shall  
23 hereafter go into possession of any lands or  
24 tentaments of others -- of another without his  
25 consent or without warrant of law the landowner



1 so trespass upon may apply to any measures to  
2 serve notices for such trespasser to quit the  
3 premises and if after expiration of five days  
4 from the personal service of such notice if  
5 trespasser refuses or neglects to quit, such  
6 magistrate shall issue this warrant to any  
7 sheriff or constable requiring him  
8 therewith to eject such trespasser using  
9 such force as may be necessary. The next  
10 paragraph, S.C. Code 15-67-610 specifically  
11 grant the Magistrate's Court the authority to  
12 issue warrants pursuant to this action.  
13 Further, S.C. Code 15-67-640 specifically  
14 deprives that either party of these proceedings  
15 shall have the right to appeal pending  
16 determination of his appeal by circuit court.  
17 But it clearly gives the Magistrate Court the  
18 authority.

19 Q: Mr. Hobby, isn't it -- isn't what the judge  
20 actually ruled was, it's on page four of six,  
21 that the Court lacks jurisdiction and declines  
22 to hear the matter? That was the Court's  
23 ruling. The Circuit Court lacked jurisdiction  
24 and declined to hear the matter. The Court  
25 didn't rule on whether -- on whether it ought



1 to be heard in the Probate Court or the Circuit  
2 Court and --

3 A: Yes, sir.

4 Q: Show me where there's some discussion in the  
5 Order where the Judge made a decision that it  
6 shouldn't be in Probate Court and should be in  
7 the Circuit Court.

8 A: He made specific reference on page three of six  
9 in the first paragraph that's it's a  
10 Magistrate's Court action and that's -- you can  
11 read into that whatever you choose, but, but he  
12 determined in that --

13 Q: Show me in the Order where he discussed the  
14 Probate Court jurisdiction question at all.

15 A: I believe he did discuss probate.

16 Q: No, he didn't. Then after he issued -- let me  
17 be sure I'm correct. In this action in Circuit  
18 Court, you were asking that Ms. Hobby be found  
19 to be a trespasser, weren't you?

20 A: Correct.

21 Q: And you were asking that the Court enjoin her  
22 from trespassing on the property?

23 A: Correct.

24 Q: And you were seeking -- and in this action, you  
25 were asking that she be declared a trespasser?



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1 A: Requesting her to be ejected from the property.

2 Q: Mr. Hobby, you're asking that she be declared  
3 a trespasser and, therefore, ejected from the  
4 property?

5 A: I'm only pleading in this case for her to be  
6 ejected from the property.

7 Q: So you don't claim in this case that she's a  
8 trespasser?

9 A: She is a trespasser.

10 Q: So you do claim she's a trespasser?

11 A: Now, I claim she's a trespasser and I'm asking  
12 this Court not just based on trespass, on  
13 ownership, that she be ejected from the  
14 property.

15 Q: Actually, what you're asking the Court to do is  
16 apply 15-67-610, aren't you?

17 A: I'll have to read that to determine that. And  
18 is that a -- is that a matter of Circuit Court  
19 or is that a matter of --

20 **THE COURT:** This is my court. He's referring to the  
21 notice of summary of ejectment, notice of quit  
22 statute.

23 Q: 15-67-610, Mr. Hobby.

24 A: I just read that. And that's correct.

25 Q: So you're asking -- you asked the Circuit Court



1           -- you're asking in the Circuit Court action,  
2           you're asking in your injunctive relief for a  
3           declaration that she was a trespasser and an  
4           Order enjoining her from continuing to  
5           trespass, correct?

6           A:     Correct.

7           Q:     And the judge refused your temporary  
8           injunction, didn't he?

9           A:     He qualified it to preserve the status until it  
10          appeared before the appropriate court.

11          Q:     Mr. Hobby, he denied your motion for a  
12          temporary injunction, didn't he?

13          A:     The word denied is on the paper, but he gave  
14          reference to the reasons he denied it.

15          Q:     Let's read what he ordered. It is further  
16          ordered that the plaintiff's motion for  
17          temporary injunction is denied.

18          A:     That's correct.

19          Q:     So you tried that in Circuit Court and lost it  
20          and you're seeking the same relief, the  
21          identical relief, in the Magistrate's Court,  
22          aren't you?

23          A:     I didn't lose. I actually won because the  
24          judge referred it to the proper jurisdiction,  
25          so I did win. That was --



- 1 Q: Mr. Hobby, you were seeking a temporary  
2 injunction to prohibit her from trespassing,  
3 you lost that, didn't you?
- 4 A: I don't consider it a loss, no, sir.
- 5 Q: Well, the judge denied that, didn't he?
- 6 A: He denied it based on jurisdiction.
- 7 Q: He denied it. Doesn't say he denied it based  
8 on jurisdiction. The only thing he denied  
9 based on jurisdiction was that you were trying  
10 in Circuit Court to have him apply 15-67-610.
- 11 A: That's correct.
- 12 Q: Your other actions were left in Circuit Court,  
13 weren't they?
- 14 A: To my knowledge.
- 15 Q: And one of the actions you had in Circuit Court  
16 that you actually litigated was the temporary  
17 injunction.
- 18 A: Okay.
- 19 Q: And you lost that.
- 20 A: He did deny the temporary injunction.
- 21 Q: Now, after he lost -- after you lost and he  
22 denied it, you filed an Amended Complaint,  
23 didn't you?
- 24 A: I have not seen it.
- 25 Q: Your lawyer acted for you and filed it? I



1 think you can look at this and tell me if  
2 that's your Amended Complaint?

3 A: I can't answer that because I have not seen  
4 this. Can't answer that. I have not seen  
5 this.

6 **MR. JOHNSON:** Well, then, Your Honor, I would ask  
7 that the Court take judicial notice pursuant to  
8 Rule 201 of the Rules of Evidence, I would ask  
9 that the Court take judicial notice of what is  
10 in the file at the Circuit Court, which I will  
11 represent to you includes this Amended  
12 Complaint.

13 A: I do have knowledge that my attorney was filing  
14 an Amended Complaint.

15 **THE COURT:** All right. We'll take (inaudible)

16 Q: All right. Now, let's look in your Amended  
17 Complaint what you're really gaining in that  
18 court as relates to what you're trying to get  
19 His Honor to rule on in this case. Look at  
20 your --

21 **MR. HOBBY:** I continue to object to this line of  
22 questioning because it's outside this Court's -

23  
24 **THE COURT:** Okay. Let's continue on and if it's all  
25 right with you, I want to be able to hear



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1 everything, but I'll go ahead and allow it now.

2 Q: All right. Your first -- in your Complaint,  
3 you allege that the Circuit Court has  
4 jurisdiction over the claims that are asserted  
5 in this Complaint, don't you? Why don't you  
6 just read paragraph four into the record and  
7 you don't have to worry about -- you'll see  
8 exactly what you see.

9 A: Under a -- under a different statute.

10 Q: Would you read paragraph four?

11 A: This Court has jurisdiction over these claims  
12 pursuant to Article 5, Section 11, South  
13 Carolina Constitution (inaudible) 22-3-10, Code  
14 23 -- 27-33-40, and Resident Landlord and  
15 Tenant Act, S.C. Code 27-40-10, as otherwise  
16 provided by law.

17 Q: So what you're saying in that paragraph is that  
18 the Court of Common Pleas has jurisdiction over  
19 all the claims you're asserting in your First  
20 Amended Complaint, correct?

21 A: Repeat the question.

22 Q: What you're saying in paragraph four of your  
23 First Amended Complaint is that the Court of  
24 Common Pleas has jurisdiction over all the  
25 claims you allege in your Amended Complaint?



1 A: Yes.

2 Q: All right. Now, let's go to your factual  
3 allegations. You allege that the first  
4 (inaudible) you and the defendant, my client,  
5 were married and divorced, correct?

6 A: Yes, sir.

7 Q: You allege that in the divorce decree there was  
8 a liquidated trust created?

9 A: Correct.

10 Q: You allege that y'all did create the trust and  
11 one of the assets that was put in trust was the  
12 property that's in dispute in this case?

13 A: Yes, sir.

14 Q: You allege that it was solely titled in your  
15 name?

16 A: Yes, sir.

17 Q: You allege that the trustee was granted certain  
18 powers and you refer to some of the powers the  
19 trustee had?

20 A: Yes, sir.

21 Q: Do you say that the assets were controlled and  
22 directed by the trustee, correct?

23 A: Yes, sir.

24 Q: And you allege that the trust said she had the  
25 sole and exclusive possession of the property



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1 until it was sold or until vacated by her?

2 A: Yes, sir.

3 Q: Do you go on to allege that she's not vacated,  
4 but the property's been sold, she's not  
5 vacated, and you allege that she has continued  
6 to live on the property?

7 A: Yes, sir.

8 Q: Do you allege that she is either a trespasser  
9 or a holdover tenant?

10 A: Yes, sir.

11 Q: In other words, you're asking the Court -- the  
12 Court of Common Pleas to find that she is a  
13 trespasser, correct?

14 A: Yes, sir.

15 Q: And then you allege a history of how you filed  
16 a notice to quit in Magistrate's Court?

17 A: Yes, sir.

18 Q: And there was a Family Court proceeding?

19 A: Yes, sir.

20 Q: And then you go on to allege that the plaintiff  
21 is entitled to an order directing the defendant  
22 to vacate the property in addition to a  
23 judgment against her for -- for an  
24 ascertainable sum in excess of \$21,000 for  
25 double your actual damages, for punitive



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1 damages, and for other damages as may be  
2 discovered, plus attorneys' fees, prejudgment  
3 interest, and costs, correct?

4 A: Yes, sir.

5 Q: So you're litigating in Circuit Court a request  
6 that the Court issue an Order directing her to  
7 vacate the property, correct?

8 A: We have not litigated that. That is not  
9 correct.

10 Q: That's raised -- of course we haven't litigated  
11 it because we haven't tried the case yet. But  
12 you filed an Amended Complaint that asked the  
13 Court to address that very issue?

14 A: And we can again file an Amended Complaint to  
15 leave that section out of it.

16 Q: I'm not talking about what you can or can't do  
17 in the future, I'm talking about where we are  
18 as we sit here today, you've got an Amended  
19 Complaint alleging that she's a trespasser and  
20 asking the Circuit Court to require her to  
21 vacate the property, correct?

22 A: Do you have a copy that's been stamped and  
23 dated and filed? I can't testify to that. All  
24 you have is a copy of what was given to you as  
25 an Amended Complaint.



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- 1 Q: Would you answer my question?
- 2 A: I just did.
- 3 Q: No, you didn't.
- 4 A: No, to my knowledge.
- 5 Q: Your Complaint, Amended Complaint, in the Court  
6 of Common Pleas asked that she be determined to  
7 be a trespasser and that the Court issue an  
8 order requiring her to vacate the property,  
9 correct?
- 10 A: My answer is the paper that you handed me says  
11 that we're asking her to be declared a  
12 trespasser.
- 13 Q: And so we'll -- so we'll know, so we won't  
14 dance around technicalities, what I handed you  
15 is a copy of a letter from your lawyer to  
16 Jackie Bowers filing the Amended Complaint  
17 where he sent me a carbon copy of what he's  
18 filed.
- 19 A: Okay.
- 20 Q: Isn't that what it is?
- 21 A: That's what it says.
- 22 Q: Okay. Do you have any reason to believe your  
23 lawyer didn't send that identical Complaint to  
24 Jackie Bowers and file it?
- 25 A: I do not know.



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1 Q: That wasn't my question. Do you have any  
2 reason to believe that he didn't do what he  
3 says in his letter?

4 A: No.

5 Q: Now, if we look at what he purports to be  
6 filing in the Circuit Court, it says that  
7 you're asking the Court to declare in that  
8 action my client a trespasser and require to  
9 vacate the property, correct?

10 A: Correct.

11 Q: That's the identical thing you're asking this  
12 Court to do, correct?

13 A: Correct.

14 Q: That was the identical thing you asked the  
15 Court to do on a temporary -- Circuit Court to  
16 do on the basis of your motion for a temporary  
17 injunction, determine that she was a trespasser  
18 and require her to vacate the property?

19 A: In our first action, yes.

20 Q: Mr. Hobby, let's look at the -- as it relates  
21 to whether this involves the trust or does not  
22 involve the trust, in your Amended Complaint,  
23 you actually -- in your Amended Complaint, you  
24 attached an Exhibit A, which is a letter from  
25 Ms. Hobby's lawyer to the trustee making an



1 offer, correct?

2 A: Yes, sir.

3 Q: And in the Amended Complaint you attach your  
4 offer of January 3, 2012, wherein you say that  
5 you're offering to buy it, but leave it in the  
6 trust, correct?

7 A: I offered to buy it and in the second paragraph  
8 I offered to leave it in the trust.

9 Q: And those are -- and in your First Cause of  
10 Action you say the trust agreement established  
11 a rental agreement, correct?

12 A: I don't recall that.

13 Q: Well, let's look. Turn to paragraph 41, read  
14 it into the record, would you, please? Just  
15 read it aloud please, sir.

16 A: Which one do you want me to read?

17 Q: 41.

18 A: Certain terms in the trust agreement  
19 established a rental agreement as defined by  
20 statute pursuant to which defendant was  
21 entitled to occupy the property to the  
22 exclusion of all others until property was sold  
23 or until vacated by her.

24 Q: Read paragraph 42.

25 A: The rental agreement, therefore, expired and



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1 terminated when the trustee sold the property  
2 to the plaintiff pursuant to the divorce  
3 decree.

4 Q: And then look down in paragraph 49 and tell the  
5 judge the relief you're seeking. Read what --

6 A: Accordingly the plaintiff is entitled to an  
7 order directing defendant to vacate the  
8 property and enter a judgment against her for  
9 reasonable rent for greater than three months  
10 periodic rent or double plaintiff damages for  
11 attorneys' fees pursuant to S.C. Code 27-40-750  
12 and 770 and prejudgment interest and costs as  
13 allowed by law.

14 Q: Now, would you agree with me that in order to  
15 determine whether the rental -- the trust  
16 agreement established a rental agreement, you  
17 would have to look at and read the trust  
18 agreement?

19 **MR. HOBBY:** I object that the trust has no relevance  
20 in this issue whatsoever today before  
21 Magistrate's Court.

22 **THE COURT:** Okay.

23 Q: Would you please now that you've objected  
24 answer my question?

25 **THE COURT:** All right. Let's see, he's objected to



1           it as no relevance. I'm going to go ahead and  
2           hear it. Just let's go ahead and hear it.

3       Q:    Answer my question.

4       A:    Will you restate your question?

5       Q:    Would you agree with me that in order to  
6           determine whether the trust agreement  
7           established a rental agreement, you'd have to  
8           look at the trust agreement?

9       A:    That's correct.

10      Q:    Therefore, you'd have to -- someone would have  
11           to read and interpret the trust agreement to  
12           make a determination as to whether or not it  
13           established a rental agreement.

14      A:    The rental agreement has no --

15      **MR. HOBBY:** Object again.

16      A:    -- has no merits on anything we're discussing  
17           today what the trust does or what any other  
18           trust does or what anybody else --

19      **THE COURT:** Okay.

20      A:    (Inaudible)

21      **THE COURT:** He's objecting. I'll go ahead and hear  
22           it. I just want to --

23      Q:    Will you answer my question?

24      A:    Will you restate the question?

25      Q:    That someone would have to look at the trust



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1 agreement and interpret it to determine whether  
2 it involved -- established a rental agreement.

3 A: Yes.

4 Q: And are you aware that matters involving trusts  
5 and interpretation of trusts are in the  
6 exclusive jurisdiction of the Probate Court?

7 **MR. HOBBY:** Object again.

8 A: I do not agree with that.

9 Q: So -- well, would you answer my question?

10 A: I did. I do not agree.

11 Q: You don't agree that (inaudible) probate court  
12 (inaudible) trust are the exclusive subject  
13 matter of the Probate Court?

14 A: I do not (inaudible) do not (inaudible).

15 Q: If the Judge in this case has to determine  
16 whether my client is a trespasser or whether my  
17 client is on the property under a warrant of  
18 law to the extent the trust agreement is as you  
19 allege a rental agreement, then the judge would  
20 have to look at the trust agreement to  
21 determine what rights my client has or doesn't  
22 have to be on the property, correct?

23 A: I don't have knowledge of that.

24 Q: Well, let's look at what you've alleged in your  
25 Complaint, Mr. Hobby. Work with me here a



1 little bit. You've alleged that the trust  
2 established a rental agreement and you claim  
3 that she is now a holdover tenant?

4 A: That is correct.

5 Q: Okay. For the Court to determine whether she  
6 is a holdover tenant or not and has a right to  
7 be there or has no right to be on the property,  
8 the Court would have to look at the trust  
9 agreement, wouldn't it, which you claim  
10 established the rental agreement?

11 A: Correct.

12 Q: You haven't offered the trust agreement into  
13 evidence for the Court to consider, have you?

14 A: It has no part of today's case, so I have not.

15 Q: Mr. Hobby, your Second Cause of Action -- in  
16 your Second Cause of Action, read paragraph 61  
17 and it says.

18 A: The equities of this matter support an  
19 injunction to preserve plaintiff's property  
20 rights and to prevent future harm to plaintiff.

21 Q: When you said earlier in the discussion on the  
22 motion that that was not a part of your amended  
23 pleading, that was a mistake, wasn't it?

24 A: No, it wasn't a mistake.

25 Q: Well, it's in your Amended Complaint, isn't it?



1 A: Yes, it is.

2 Q: You're seeking in the Circuit Court the same  
3 thing you're seeking in this court, correct?

4 A: Correct.

5 Q: Mr. Hobby, is it fair to say that you went to  
6 Circuit Court and asked the Circuit Court to  
7 declare her a trespasser and require her not to  
8 go on the property and did not succeed in that  
9 motion and you're asking this Court to do the  
10 very same thing? In other words, you're trying  
11 the same issue twice?

12 A: Are you saying is that fair?

13 Q: No, I said isn't that what you're doing.  
14 Whether it's fair or not doesn't make it any  
15 difference.

16 A: That's what you said --

17 Q: Is it fair to say what you're doing is you  
18 litigated the question of whether she was a  
19 trespasser and you were entitled to eject her  
20 or kick her off the property with a temporary  
21 injunction and lost that motion, and you're now  
22 seeking to argue in essence the same claim in  
23 the Magistrate's Court?

24 A: No.

25 Q: Well, aren't you asking the Magistrate to



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- 1 declare her a trespasser?
- 2 A: I asked the civil court to and the civil court  
3 denied it and --
- 4 Q: Mr. Hobby --
- 5 A: -- remanded it to Magistrate's Court.
- 6 Q: Let me get my question out. Isn't it true that  
7 in the Magistrate's Court case you're asking  
8 the Magistrate to determine her to be a  
9 trespasser?
- 10 A: By his authority, yes, sir.
- 11 Q: And you're asking the Magistrate to eject her  
12 from the property?
- 13 A: Per his authority, yes, sir.
- 14 Q: And that's the very thing you asked the circuit  
15 court judge to do on your temporary motion --  
16 motion for temporary injunction and the Judge  
17 declined it, didn't he?
- 18 A: Yes, sir.
- 19 Q: Now, Mr. Hobby, you understand that Ms. Hobby's  
20 position is that the trustee should have  
21 required you to leave the property in the trust  
22 -- in the trust per your offer and that she  
23 would be entitled to live in the property until  
24 it was removed from the trust, you understand  
25 that, don't you?



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1 A: I understand.

2 Q: And that requires an interpretation of the  
3 trust agreement, doesn't it?

4 A: No, sir.

5 Q: If she's making a claim that she has a right to  
6 live there under the trust agreement, under the  
7 facts as shown, don't you have to look at the  
8 trust agreement to determine if she -- gives  
9 rise to any right?

10 A: She has no right in this court. The trust is  
11 not a party to this court.

12 Q: The trust isn't a party, but the trust in order  
13 -- this case, what the judge has to do under  
14 the statute -- have you read the statute?  
15 Well, you read it to yourself, didn't you?

16 A: Yes, sir.

17 Q: What the judge has to do is determine whether  
18 she's there without your consent without a  
19 warrant of law. So if she's there with warrant  
20 of law, that is she has a right under the trust  
21 agreement, which is what her claim is, don't  
22 you necessarily have to look at the trust  
23 agreement against the facts to interpret  
24 whether she has -- whether she's there under  
25 warrant of law?



1 A: In today's court, no. Future court, yes.

2 **THE COURT:** Okay. Before the defense starts, let me  
3 take one -- I'm going to pause one second,  
4 please. Excuse me one second.

5 (Off the record.)

6 **THE COURT:** Back on record. Now, we're ready for  
7 the defense.

8 **MR. JOHNSON:** All right. Your Honor, we would -- I  
9 think we did this, but I would move that the  
10 Court take judicial notice of the file in the  
11 Circuit Court action including the Judge's  
12 Order.

13 **THE COURT:** Okay. We'll take judicial notice of  
14 that and that's been duly noted. All right.  
15 Any --

16 **MR. JOHNSON:** Then I'll call Ms. Hobby.

17 **THE COURT:** All right. Ms. Hobby, you can just  
18 remain seated there.

19 **MS. HOBBY:** Okay.

20 **THE COURT:** Let me swear you in. Do you swear to  
21 tell the truth, the whole truth, and nothing  
22 but the truth so help you God?

23 **MS. HOBBY:** Yes, sir.

24 **THE COURT:** All right.

25 **MS. HOBBY - EXAMINATION BY MR. JOHNSON:**



1 Q: Are you Mary --

2 MR. HOBBY: Your Honor, am I going to be allowed to  
3 cross?

4 THE COURT: You sure will.

5 MR. HOBBY: Thank you, sir.

6 Q: You are Mary T. Hobby?

7 A: Yes, sir.

8 Q: At the time of your divorce, was a liquidated  
9 trust established to dispose of real estate?

10 A: Yes, sir.

11 Q: Under the trust agreement, are you entitled to  
12 live rent-free in this marital residence until  
13 it was sold or the trust was terminated?

14 A: Yes, sir.

15 Q: Did your husband make an offer to purchase  
16 where he offered to leave the property in trust  
17 while you -- wherein he offered to leave the  
18 property in trust?

19 A: I'm sorry, is something buzzing?

20 Q: Yes, that's my -- I'm sorry. Just go ahead.  
21 We'll --

22 A: I don't even know what you said. I was  
23 listening to the buzzing.

24 Q: What I asked is this, when your husband offered  
25 -- well, let's see, could I see the exhibits?



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1     **THE COURT:** Yes, sir. Right -- this right here.

2     Q: Did your husband make an offer marked as  
3     Exhibit C to purchase the property on January  
4     3, 2012?

5     A: Yes, sir.

6     Q: And under the -- his offer did he further offer  
7     to leave this marital property in trust to  
8     maximize the property's value to boost your  
9     sales opportunities and receive no  
10    distributions until the property is sold --

11    A: Yes, sir.

12    Q: -- and all the trust liabilities are satisfied?  
13    Now, did the trustee require the property be  
14    left in trust or did he deed it out by a quit  
15    claim deed to Mr. Hobby?

16    A: He immediately deeded it out.

17    Q: Do you contend that under the trust agreement,  
18    that had the offer been accepted and  
19    implemented as made, that the property would  
20    have remained in the trust and you would have  
21    had the right to continue to live there rent-  
22    free?

23    A: Yes, sir.

24    Q: And do you contend that the trustee failed to  
25    protect your interests in what he did?



1 A: Oh, most definitely, yes, sir.

2 Q: Thank you.

3 MR. JOHNSON: That's all I have, Your Honor.

4 THE COURT: Okay. Any questions, Mr. Hobby, for Ms.  
5 Hobby?

6 MR. HOBBY: Yes, sir.

7 MS. HOBBY - EXAMINATION BY MR. HOBBY:

8 Q: Ms. Hobby --

9 A: Yes.

10 Q: -- anywhere in Exhibit C, the offer to  
11 purchase, did it state that it would give you  
12 rights to continue to live in the house?

13 A: I'll have to look at the document.

14 THE COURT: You want to look at it?

15 Q: Please read that and if it is there, please --

16 MR. JOHNSON: Your Honor (inaudible)

17 THE COURT: Let's see what --

18 A: I don't think I should have to be cross-  
19 examined by --

20 MR. JOHNSON: Wait a minute. Wait a minute.

21 A: -- my ex-husband.

22 MR. JOHNSON: Excuse me. Answer the questions until  
23 the judge tells you that you don't have to.

24 A: Oh, okay. I'm sorry; you've got to ask me  
25 again. I don't understand what you're asking.



1 Q: Is there anywhere in Exhibit C, my offer to  
2 purchase, offer to allow you to continue to  
3 live in the house?

4 MR. JOHNSON: I will stipulate that language is not  
5 in there to move it along.

6 THE COURT: Okay. We'll move it along. All right.

7 A: I don't think so.

8 MR. HOBBY: I'd like to enter in the record the  
9 purchase agreement. I'd like Ms. Hobby --

10 THE COURT: Now, you --

11 MR. HOBBY: -- to review it and I'd like to ask her  
12 questions.

13 MR. JOHNSON: (Inaudible)

14 A: I never saw that purchase agreement until --

15 MR. JOHNSON: (Inaudible)

16 A: Yes, sir.

17 MR. JOHNSON: Your Honor, unless there's some  
18 evidence that she was a party to it or saw  
19 being questioned about it or either even in  
20 coming into evidence (inaudible) as a witness.

21 THE COURT: Mr. Hobby, just, you know, anything  
22 entered -- you rested your case and we're in  
23 the defense's case and unless there's -- I know  
24 this was under cross-examination you're saying  
25 this came in, but --



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1 **MR. HOBBY:** This is just to prove that the purchase  
2 agreement and the deed and my offer nowhere  
3 does it include any offer for her to continue  
4 to reside on the property.

5 **THE COURT:** This is by what she stated in her cross-  
6 examination is what you're saying? This isn't  
7 something new you're offering, is that correct?

8 **MR. HOBBY:** Correct.

9 **THE COURT:** And he's objecting saying that she  
10 wasn't aware of -- not had an opportunity to  
11 look at this, is that correct?

12 **MR. JOHNSON:** Yeah, I don't think you can put it --  
13 I know you can't put in an exhibit through  
14 someone who has nothing to do with the exhibit.

15 **THE COURT:** He's right -- he's right on that, Mr.  
16 Hobby.

17 **MR. HOBBY:** I agree completely. He's done it all  
18 day today. (Inaudible)

19 **THE COURT:** Now, he's done it when the -- he's only  
20 entered -- when he was doing his case on the  
21 cross-examination when we were actually talking  
22 about it. Now, this one --

23 **MR. HOBBY:** But he asked me to read documents that  
24 aren't entered into evidence and I'm asking Ms.  
25 Hobby to read that document to see if there's



1 anything there that indicates her right to  
2 continue to remain --

3 **THE COURT:** Well, let's give them an opportunity to  
4 look at it first. Let's do that.

5 **MR. HOBBY:** Mr. Johnson has looked at it numerous  
6 times.

7 **THE COURT:** Well, let's see if Ms. Hobby has looked  
8 at it and if she's aware of this. I don't know  
9 if her signature is on that or not. Was it on  
10 that agreement?

11 **MR. JOHNSON:** No.

12 **MS. HOBBY:** Whose signature?

13 **THE COURT:** I think it was just trustee, is that  
14 correct, if I look at that -- is that the same  
15 -- the same one I looked at earlier.

16 **MR. HOBBY:** No, you didn't see this offer, the  
17 contract for sale you saw. You saw my offer to  
18 purchase.

19 **THE COURT:** Okay.

20 **MR. HOBBY:** You didn't see it.

21 **MR. JOHNSON:** And Mr. Hobby said I asked about  
22 documents not in evidence. If anything I asked  
23 him about was not in evidence, I tender -- I  
24 thought I had put everything in evidence.

25 **MR. HOBBY:** Did she answer my question about the



1 first question? I guess -- you said no.

2 **THE COURT:** Yeah, she answered that then. This is  
3 the -- this is the -- yeah, he just said we  
4 would proceed on (inaudible). Now, what you're  
5 asking about is this agreement that the Court  
6 has not seen yet, I haven't seen it.

7 **MR. JOHNSON:** Can I ask her, Your Honor?

8 **THE COURT:** All right, sir.

9 **MS. HOBBY - RE-EXAMINATION BY MR. JOHNSON:**

10 Q: This purchase agreement, are you a party to it?

11 A: No, sir.

12 Q: Were you involved in negotiating or anything of  
13 that nature?

14 A: No, sir.

15 **MR. HOBBY:** Are you re-directing --

16 **MR. JOHNSON:** No.

17 **MR. HOBBY:** Or am I getting an answer to my  
18 question?

19 **THE COURT:** I asked him -- I asked her to look at it  
20 to see since she was aware of that before I  
21 considered putting it in evidence. What I'm  
22 going to do since she's not aware, since she  
23 didn't sign it or anything, I'm not going to --  
24 I'm not going to allow it in. Let's proceed on  
25 with the questions.



1 **MS. HOBBY - RE-EXAMINATION BY MR. HOBBY:**

2 Q: You do continue to reside at 544 Carter Road?

3 A: Yes.

4 Q: Okay.

5 **THE COURT:** All right. Anything?

6 **MR. JOHNSON:** That's our case, Your Honor.

7 **THE COURT:** All right. Okay.

8 **MR. JOHNSON:** Your Honor, in view of the testimony,  
9 I would move (inaudible) on jurisdiction  
10 (inaudible).

11 **THE COURT:** Okay. That's duly noted. Okay. Now,  
12 for the record, I'm just going to state the  
13 facts of the case as I see it and just to make  
14 -- just for the record. The case was filed in  
15 2012, I think you said May of 2012 -- April of  
16 2012.

17 **MR. HOBBY:** May of 2012.

18 **THE COURT:** May 2012, in Magistrate's Court. The  
19 case was never transferred. It was an  
20 injunctive -- injunction put on it by Family  
21 Court that held it up in our Court. Normally,  
22 our cases are resolved within 90 days and this  
23 is a little bit unusual having a case this old.  
24 But the Family Court ruled on it and then it  
25 was sent to the Probate Court or some -- some



1           -- I don't want to say sensitive, but I think  
2           a letter that was testified to was sent to the  
3           Probate Judge and she, I understand through the  
4           testimony, and I don't want to use the right --  
5           the wrong words, but she anyway refused to do  
6           it -- to address the matter to the point that  
7           there was no case -- no case filed in Probate  
8           Court. And then it went to the Circuit Court,  
9           which was a motion that was filed. No case  
10          filed.

11       **MR. HOBBY:** Just to clarify, she recommended it go  
12          to Circuit Court.

13       **THE COURT:** Circuit Court. Okay. And that's where  
14          it went to Circuit Court next on a motion.

15       **MR. JOHNSON:** And Judge Johnson upheld her  
16          recommendation.

17       **THE COURT:** Okay. All right. And then, of course,  
18          and then it went to Circuit Court on a motion,  
19          not a case. No case was filed. And the reason  
20          I'm saying that is that if the res judicata  
21          that he's raised. Saying that the Circuit  
22          Court has already addressed it and denied it.  
23          It wasn't a case; it was a motion, and then  
24          included in that motion, though, was the fact  
25          that, you know, to a summary ejectment to be



1           made. The reason I think they denied it, and  
2           I try to be reasonable with everybody, I think  
3           the reason they denied it is that they didn't  
4           want to -- there was no case filed; they didn't  
5           want to -- they didn't want to do it in Circuit  
6           Court. They wanted a Magistrate to do it.  
7           They sent it back to us and put it on us to  
8           make a decision. He just denied the motions,  
9           which that's nothing wrong with that. So he  
10          sent it back to us. Now, I've heard everything  
11          that I've heard and reading the law, what the  
12          law says and it's the thing I look at when I  
13          notice to quit, I just -- I make sure that the  
14          person who's filing it is the owner of the  
15          property and we cleared that up. And, you  
16          know, it went through a trust and whether it  
17          was properly done or not, that would be nothing  
18          I could address today. Of course, that can be  
19          addressed later. You know, that's something  
20          that can be addressed whether the trustee did  
21          it without Ms. Hobby's knowledge, I'm not so  
22          sure if she -- you know, I have no idea about  
23          that. That's nothing that I would address  
24          today. But it was done, the property was --  
25          was sold and Mr. Hobby bought the property. He



1 owns the property and reading the law, and  
2 we've read it several times already, statute  
3 15-67-610, along with the other statute, 15-67-  
4 620 through 630 and through 640, Mr. Hobby owns  
5 the property. Now, there was some issues with  
6 the trust also, whether the language, whether  
7 she could stay on the property or not. But  
8 there again it's out of the trust; it's out of  
9 the -- the language that the property was sold,  
10 if it was sold to somebody else, it would be  
11 the same -- he has the rights just like anybody  
12 else would have bought it, even though he's  
13 still married -- he was still in a marital  
14 contract before hand as far as in the Family  
15 Court. But he's the owner of the property now.  
16 He's the individual owner. Since he owns the  
17 property, I have no choice but to -- by the  
18 law, but to rule in favor of the plaintiff and,  
19 of course, what this means, and I'll read 16 --  
20 15-67-640, you have the right to appeal; you  
21 have time for an injunction time of issuing a  
22 warrant. Either party to the proceedings shall  
23 have the right of appeal. The Magistrate shall  
24 not issue his warrant until the expiration of  
25 five days. And what they say the warrant,



1 that's the writ of ejection that'll be -- it  
2 says shall not issue until the five days have  
3 expired, and that -- after announcing his  
4 decision and in the meantime, the defendant may  
5 apply for an injunction and in other cases  
6 giving bond required, restraining the execution  
7 of such warrant pending the termination of  
8 appeal by the Circuit Judge. That means the  
9 warrant will be issued -- let's see, today's  
10 Friday. Say, Monday, Tuesday, Wednesday,  
11 Thursday, Friday. He can come back and get a  
12 writ of ejection on Friday. Now, in the  
13 meantime, if there has been an appeal or an  
14 injunction filed on this, a bond -- a bond  
15 would be considered by the Court at that time  
16 while the Circuit Court is considering the  
17 appeal. What that means that both parties  
18 would have -- could argue the amount. I would  
19 determine what the amount would be and how long  
20 the amount would be and I'll tell you what I  
21 normally do, and I'll tell you right now, I get  
22 a rent that I determine -- just a rent that I  
23 think is fair and I do it for six months and  
24 that's my policy. I've done it several times  
25 and that's what I normally do, six months rent



1 would be the -- and the Court would, of course,  
2 hold that. It would have to be a money order  
3 and the court would hold that until the  
4 decision's made by the Circuit Court. But  
5 that's where we stand now, so my ruling is in  
6 favor of the plaintiff. A writ, which is a \$10  
7 fee, can be picked up -- have to be out Friday  
8 -- let's say Friday at 5:00. If she's not out  
9 this Friday at 5:00, you come Monday morning to  
10 get the writ of ejectment. If by that, if an  
11 appeal is put on -- if an injunction is heard  
12 within that five days, that stays the writ. It  
13 would not be necessary for the writ. Then we  
14 would determine then how much rent we would  
15 have to -- say for six months.

16 **MR. HOBBY:** Thank you, Your Honor.

17 **MR. JOHNSON:** Your Honor, can I be heard on one  
18 final?

19 **THE COURT:** Sure.

20 **MR. JOHNSON:** I think you're making your ruling  
21 based on Mr. Hobby being the owner of the  
22 property.

23 **THE COURT:** That's correct.

24 **MR. JOHNSON:** And I understand that you're finding  
25 on that and we haven't really contested that he



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1 has title to the property. I think Your Honor  
2 has missed the issue that has to be determined.  
3 The issue that has to be determined is whether  
4 she is on the property without his consent or  
5 without warrant of law. There's -- and he has  
6 the burden proving that she's there without  
7 consent and without warrant of law. Well, he  
8 acknowledged or there's no -- he established  
9 that she was there without his consent, but he  
10 offered no evidence whatsoever to establish  
11 that she was there without warrant of law. In  
12 fact, he agreed that she would have to -- that  
13 he's got a pleading that he alleged that the  
14 trust agreement created a rental agreement and  
15 he acknowledged you have to look at the trust  
16 agreement to determine what her rights are and  
17 whether she's a holdover --

18 **MR. HOBBY:** Are we going to retry this today?

19 **MR. JOHNSON:** Excuse me.

20 **THE COURT:** Let me hear what he says. This is all  
21 needs to be on record.

22 **MR. JOHNSON:** -- and -- and until -- yet he did not  
23 offer the trust agreement and no evidence to  
24 show she wasn't there under warrant of law.  
25 And that's where I think the failure in this



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1 evidence is and it's not our burden to prove  
2 she is; it's his burden to prove she isn't.  
3 And, Your Honor didn't make any finding and I  
4 would ask that you make a finding on those  
5 issues. That is was she there without consent  
6 having found ownership; and was she there  
7 without consent and without warrant of law and  
8 what would be the basis for without warrant of  
9 law.

10 **THE COURT:** I'll speak on that first and the reason  
11 I did that and that's why I put it on record  
12 the time frame from May of 2012 until today,  
13 and, of course, I try to be reasonable with  
14 everyone, been going on for over -- over a  
15 year, and, you know, it's been moved from  
16 different courts and finally back here and I  
17 feel like if -- if the fact that the Circuit  
18 Court or somebody would have made a ruling to  
19 say that she could stay there, they made no  
20 ruling saying that she could stay. All they  
21 say was it was denied. And they denied the  
22 motion. But being reasonable, the time frame  
23 is one thing that I looked at and I considered  
24 into it. The time that Ms. Hobby has been  
25 there, and if I would have ruled any other --



1 other way, then it would be just continue on  
2 and on on that as far as -- I have no reason to  
3 -- to think Mr. Hobby -- he owns the property,  
4 I would think, and Ms. Hobby -- I would think  
5 that she's been there for -- the time that you  
6 bought it was in April --

7 **MR. HOBBY:** April.

8 **THE COURT:** -- April, that's where I got April,  
9 April 2012, and that's my -- that's my reason  
10 for that. That she's been in -- she's been in  
11 possession that long and he's been -- he's the  
12 owner of the property for that long and saying  
13 that I really don't know any substantial reason  
14 why she should stay there other than what was  
15 said in the trust account or in the case in the  
16 Circuit Court which I can't really consider  
17 that case. And even though you -- you know put  
18 it in evidence, I'm not going to consider a  
19 case that's pending. And that was the reason  
20 I ruled on it that way.

21 **MR. JOHNSON:** Your Honor, respectfully, I don't  
22 believe that the fact that it's drug on for a  
23 long time is a requirement of the statute.

24 **THE COURT:** And it is not, no. That's just --  
25 that's what -- that lead me to my opinion. I'm



1 not saying solely on that basis, no, sir.

2 **MR. JOHNSON:** Right, but the other thing is, Your  
3 Honor, he has a claim for damages which the  
4 Court says is an adequate remedy and law  
5 (inaudible). So if it drags on for ten years  
6 and he wins, he has a claim for damages. So he  
7 has an opportunity to recover. What the  
8 statute requires you to make a finding is is he  
9 the owner, is it without consent, and is it  
10 without warrant of law, and he offered no  
11 evidence that it wasn't without warrant of law  
12 and conceded that you would have to look  
13 further to determine whether the trust is a  
14 rental agreement, a holdover or whatever, so I  
15 would ask --

16 **THE COURT:** Uh-huh (affirmative response). But on  
17 the other hand, if you look at it, though, what  
18 I looked at, I didn't see anything overwhelming  
19 from the defense side to say that she had the  
20 right to stay there. I mean, I couldn't see  
21 it. I just couldn't see anything where Ms.  
22 Hobby had the right to stay there other than  
23 what was presented. I heard all the -- that's  
24 why I let everything in. I want him to hear  
25 everything, even what the trust said, but I



1 still don't know -- see, I can't determine  
2 anything after hearing everything that tells me  
3 that Ms. Hobby has the right to continue  
4 staying there, especially with no -- not paying  
5 any rent or not paying anything. Now, if you  
6 were paying rent or something, I would say that  
7 would be an issue, but there's no rent -- no  
8 rent has ever -- it was an issue about a rent  
9 I think in the trust account if it was --

10 **MR. JOHNSON:** She was rent-free in the trust  
11 account, Your Honor, and the key is is that he  
12 has to prove -- I mean, he's alleged that it  
13 creates -- the trust agreement creates a rental  
14 agreement. And he has the burden of proving  
15 that she doesn't have a right under the rental  
16 agreement. You didn't see the trust; you  
17 didn't see the rental agreement. There's no  
18 evidence on that point. We don't have to  
19 refute it; he's got to prove it and, Your  
20 Honor, how can you determine what rights -- if  
21 we accept what he said in his pleadings as  
22 correct, that a trust creates a rental  
23 agreement, how can you ever determine what her  
24 rights are without that being put before you?

25 **THE COURT:** And I just had to take what was



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1 presented and what I did, I took Mr. Hobby's  
2 testimony and, of course, I took the testimony  
3 of everyone, and, you know, by the  
4 preponderance of evidence, which is, you know,  
5 a lot lower level than a criminal one, and  
6 that's what we're here for today, I feel like  
7 he -- he did tip the scale enough to -- to  
8 allow me to rule in his favor.

9 **MR. JOHNSON:** Well, Your Honor, will you issue a  
10 written order?

11 **THE COURT:** I'll give you -- yeah, I've got  
12 something here to sign. I sure do.

13 **MR. JOHNSON:** Okay.

14 **THE COURT:** And I understand that -- I understand  
15 you have the right for an appeal, that's why I  
16 wanted to bring all these issues out because  
17 it'll be -- anything you raise here, could be  
18 raised on appeal, so that's one thing that  
19 they'll --

20 **MR. HOBBY:** Yes, sir.

21 **THE COURT:** All right. Now, let me give you a copy  
22 of the judgment. I'm going off the record.

23 **(There being nothing further, the hearing was**  
24 **concluded.)**

25



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**CERTIFICATE**

This is to certify the transcript of the Hearing consists of Eighty-Eight (88) pages. This transcript was prepared by me without the benefit of my being present during the Hearing. Additionally, this transcript was prepared from a audio recording provided to me.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this September 12, 2013.

Carenn N. Moore  
Carenn N. Moore  
Notary Public for South Carolina  
My Commission Expires: 3/24/2019

State of South Carolina ) In the Court of Common Pleas  
County of Newberry ) Eighth Judicial Circuit  
2013-CP-36-0193  
2013-CP-36-0332

Raymond D. Hobby, )  
Plaintiff, )  
vs. ) Transcript of Record  
Mary T. Hobby, et al. )  
Defendants. )

---

September 4, 2013  
Newberry, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

A P P E A R A N C E S:

Benjamin C. Bruner, Esquire  
Attorney for Plaintiff Raymond Hobby

Pope D. Johnson, III, Esquire  
Attorney for Defendant Mary Hobby

R. Davis Howser, Esquire  
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Maryann S. Nevers, CVR-M-CM  
Circuit Court Reporter

## TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:54 a.m.)

THE COURT: All right. We're kind of gathered in two cases. One's a magistrate's appeal. That case, I think, is 13-CP-36-332, *Raymond Hobby v. Mary T. Hobby*. Following that, we have 13-CP-36-193, *Raymond D. Hobby v. Mary T. Hobby and Frances Knowlton*.

I was talking to the attorneys before we went on the record. And there was a difference on opinion on exactly what the best way to proceed is. The docket has the appeal at nine-thirty and the common-pleas case, the -193 case, at ten o'clock. And essentially, this is the -- my understanding of the facts on the magistrate's case is this is one that's bounced around a little bit. And Judge McMahon, I think, ruled that the magistrate had jurisdiction over the ejectment action. The common-pleas case, I believe -- the other case, -193 -- is related in many respects.

I wanted to go ahead and address the issue of the appeal. And hopefully, that'll segue nicely into the next action, if that's acceptable to everybody.

MR. JOHNSON: Sure.

MR. BRUNER: Yes, Your Honor.

THE COURT: All right.

MR. JOHNSON: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. JOHNSON: I'm Pope Johnson; I represent Mary Hobby  
3 in connection with the appeal. Your Honor, I'm going to  
4 have to give you a little background to get you to the  
5 appeal and the grounds for the appeal. And I'm going to  
6 try and give you the short version, rather than the long  
7 version.

8 But I will tell you that if there was ever a case that  
9 cried out for being tried in the right court, this is the  
10 case. It's been in the family court. It's been in the  
11 magistrate's ---

12 THE COURT: It's been everywhere.

13 MR. JOHNSON: I think it's been in the probate court.

14 THE COURT: Right.

15 MR. JOHNSON: But the -- the action in the  
16 magistrate's court and the action before Judge McMahon  
17 arose out of a 2008 divorce between the parties in which --  
18 and a -- under their agreement, they entered into a  
19 liquidating trust agreement to dispose of literally  
20 millions of dollars' worth of property. This is a trust  
21 and it's page after page and page of -- of valuable  
22 property that the trustee has responsibilities to the two  
23 parties for disposition. The specific dispute we're  
24 dealing with, both in the magistrate's court and the  
25 circuit court action, has to do -- involves a property

1 that's described as a marital residence. It's a house, 3  
2 -- approximately, I think, 3 acres up in the Bush River  
3 part of the county, where my client lived before the  
4 divorce and has lived ever since.

5 Under Article 12(f) of the liquidating agreement, she  
6 has a right to live there until the property is sold or  
7 otherwise disposed. Beginning in, I believe, December of  
8 2011, the parties made offers to the trustee to buy;  
9 trustee accepted Ms. Hobby's [sic] offer over Mary Hobby's  
10 objection. The trust allows for the trustee to sell to  
11 either one of them, but it's subject to certain conditions.  
12 And that's found on page 26 of the agreement. And it --  
13 the trustee may sell trust assets to a transferor, provided  
14 the sales and the terms -- terms of the sale are  
15 reasonable, fair, and reflect fair market value, and any  
16 other terms mutually agreed to by the parties.

17 In this case, of course, Mary Hobby agreed to nothing.  
18 The trustee sold the property anyway. Mr. Hobby got a  
19 quitclaim deed. He brought an action in magistrate's  
20 court, which is the action we're here on the appeal on.

21 Apparently, they told him he ought to go to circuit  
22 court. He brings an action in circuit court. That's the  
23 matter that the judge hear and you'll hear matters on today  
24 for ejectment, trespass, and unjust enrichment.

25 Judge McMahon heard the motion for -- for a temporary

1 injunction to eject her out of the house. And in his order  
2 he made the -- he denied that and found that to preserve  
3 the status quo during the pendency of the action requires  
4 that the defendant remain on the property until a full  
5 investigation can be had on the matter.

6 He granted our motion to dismiss the claim on the  
7 statutory ejectment of a trespasser and, under Section 15-  
8 67-610, finding that the circuit court had no authority  
9 under that section or the following sections to act.

10 When that occurred, we went -- I -- let me say this:  
11 In the meantime complaint was amended; the answer was  
12 amended; third-party defendants were -- was joined. We  
13 went back to the magistrate's court. And the magistrate --  
14 even though Judge McMahon had just ruled that -- and denied  
15 an injunction for ejectment, he found that he, in essence,  
16 overruled Judge McMahon and found there was a basis for  
17 ejectment.

18 Now, he -- we have appealed his order. And the  
19 grounds I want to argue have to do -- there's several, and  
20 several of them I would argue. First of all, we -- I  
21 believe the magistrate erred in failing to dismiss the  
22 action for lack of subject-matter jurisdiction because the  
23 action involved more than \$7500. This is borne out by the  
24 fact that the value of the house that she's being ejected  
25 from and the later proof by Mr. Hobby that he was entitled

1 to some \$23,000 for rent that was unpaid.

2 It's our position that if you look at the jurisdiction  
3 of the magistrate under Section 22-3-10, all of the  
4 provisions grant the magistrate authority up to \$7500.  
5 This was a million-dollar-a-month rental piece of property.  
6 Obviously, it couldn't be -- a magistrate would have no  
7 jurisdiction over it. And we contend that the Court should  
8 find that he erred in failing to dismiss it ---

9 THE COURT: All right.

10 MR. JOHNSON: --- for lack ---

11 THE COURT: My ---

12 MR. JOHNSON: --- of subject-matter jurisdiction.

13 THE COURT: Let -- let me jump in there real quick.

14 I'm -- I'm a little bit concerned about that argument  
15 because in -- anytime you have an ejectment from a piece of  
16 property, more often than not, the property that you're  
17 trying to kick the person out of, if it's real estate, it's  
18 going to be valued at more than \$7500. So ---

19 MR. JOHNSON: Your Honor, the -- what we had here was  
20 her living in the house rent-free and the rent -- rental  
21 value of the house and her and his claim that if she was  
22 going to stay in -- post a bond and stay in, she needed to  
23 post a bond for \$23,000. Now, he required her to --  
24 ultimately required her to post a -- a bond of \$10,000.

25 But if you look at the section regarding civil

1 jurisdiction, everything in there is limited to \$7500. And  
2 we don't believe the magistrate could require a bond of  
3 23,000 or require a bond of 10,000. That is to pay damages  
4 to Mr. Hobby if he prevails in the action. It would be a  
5 claim for damages, a bond posted to cover damages up to  
6 \$10,000. So we say that the magistrate lacked jurisdiction  
7 to proceed.

8 Secondly, Your Honor, it's our position that the  
9 magistrate erred in failing to grant judgment or dismiss  
10 the action on the basis of res judicata. Because he had  
11 just sought -- Mr. Hobby had just sought the identical  
12 relief in circuit court and had been denied.

13 It makes no sense that judge -- that a circuit court  
14 judge issues an order that says the status quo requires  
15 that she stay in the property pending an investigation of  
16 the matter, only to have a magistrate judge reverse him and  
17 say, "No. I'm going to evict her." And we believe that  
18 his order bars the claim in magistrate's court; that the  
19 magistrate would have no authority to overrule him; and  
20 that this Court should so rule.

21 We also, Your Honor, appeal his decision on the  
22 grounds that he made no finding and took no evidence at all  
23 regarding the requirement of 15-67-610, which says if a --  
24 which requires that you -- the person seeking to evict the  
25 other must prove that the person's gone into possession

1 without his consent or without warrant of law. And there  
2 was no evidence -- there was no testimony taken on that  
3 point. We called his attention to it at the hearing.

4 He did not focus on that and instead, basically said  
5 the matter had been pending so long; it had bounced back  
6 from one court to the other; he was going to do what he  
7 thought was fair; and that's what he was going to do. But  
8 he made no finding whatsoever on that point.

9 And so we would ask that the Court reverse that  
10 decision on any more of the -- of those grounds. Thank  
11 you.

12 THE COURT: Thank you. All right, Mr. Bruner. Let me  
13 hear from you.

14 MR. BRUNER: Yes, Your Honor. I did submit a -- a  
15 memorandum yesterday. I don't know if Your Honor's had  
16 time to review it.

17 THE COURT: I know my clerk did this morning before I  
18 -- is this the one that you e-mailed to me?

19 MR. BRUNER: I e-mailed yesterday.

20 THE COURT: Yes.

21 MR. BRUNER: And there were two e-mails. The second  
22 one is the -- the bigger one relates to the motions that  
23 are coming later.

24 THE COURT: Right.

25 MR. BRUNER: I can ---

1 THE COURT: I -- I ---

2 MR. BRUNER: --- I can summarize for Your Honor. And  
3 I ---

4 THE COURT: Go ahead, please.

5 MR. BRUNER: --- and -- and I want to clarify the --  
6 the -- the primary thrust of this ejectment case. Now,  
7 we're dealing with a summary-ejectment case under -- under  
8 Section 15-67-610.

9 And the primary thrust of this is that Mr. Hobby  
10 bought a house from a liquidating trust. Of course, the  
11 purpose of the trust is to liquidate assets, to sell them.  
12 He bought a house.

13 The defendant was living in the house at the time he  
14 bought it, and she won't move out. Just like anyone else  
15 who buys property, he wants to use it. And she won't let  
16 him. She will not move out. That's why we're here.

17 Now, as to -- I -- I first want to -- want to point  
18 out: I -- I'm not sure the trust agreement was in the  
19 record in the magistrate's court case. I don't -- I -- I  
20 listened to the transcript. I personally was not present;  
21 my client represented himself pro se in that action.

22 And -- and Mr. Johnson can correct me if I'm wrong.  
23 But I don't know that the trust agreement was ever entered  
24 into the record, so I don't know that's properly before the  
25 Court on this appeal. I think we're restricted to what

1 Judge Halfacre had before him on June 28th.

2 And -- and so Mr. Johnson's arguments about what the  
3 trust created and -- and -- and the terms of the trust, I  
4 think, are improper. Furthermore, Your Honor, as -- as to  
5 the burden of proof, there was extensive testimony during  
6 this hour-and-a-half hearing that -- that my client  
7 offered. He said, "I own the property." And he entered a  
8 quitclaim deed into evidence. And I believe that's in the  
9 record.

10 Your Honor, in the -- in the smaller binder I handed  
11 up to you, I've attached it behind Tab 2. It's Exhibit A  
12 to my memorandum.

13 It is well established in this state that -- that a  
14 deed that meets the statutory requirements and has been  
15 signed and delivered is presumed valid. We have heard no  
16 evidence to the contrary. And -- and, in fact, Ms. Hobby,  
17 her claim is -- is -- "Well, he may have bought it, but --  
18 but the trust agreement and his offer to purchase give me a  
19 right or warrant of law to continue living there." And the  
20 fact is, they don't.

21 Because when she was cross-examined about that, she  
22 said she couldn't find any -- or -- I'm sorry -- she  
23 stipulated, through her counsel, that she couldn't find any  
24 language in the offer to purchase that allowed her to keep  
25 living there. In truth, if you read the offer to purchase,

1 the whole reason was to maximize the value of the trust.  
2 And there's nothing that allows her to keep living there.

3 And -- and I think, after my -- after my client put up  
4 a -- a prima facie case for ejectment, she has a duty to  
5 prove her affirmative defense. She has an obligation to  
6 prove that -- that she had a right to keep living there,  
7 Your Honor. And she didn't do that. She just said she  
8 thought that generally, she -- she had a right, based on  
9 those documents.

10 I'll take -- I'll take the points that Mr. -- given  
11 that background, I'd -- I'd like to take the points that  
12 Mr. Johnson raises in turn.

13 The -- the jurisdictional -- the jurisdictional  
14 argument -- the \$7500 jurisdictional argument is news to  
15 me. In fact, when we were here months ago in this very  
16 courtroom in the circuit court case, when I was arguing my  
17 motion for summary ejectment, I argued that the -- that the  
18 magistrate's court didn't have jurisdiction. Mr. Johnson  
19 argued that the magistrate's court had exclusive  
20 jurisdiction under the statute. I lost that motion. And  
21 my summary-ejectment claim got kicked out.

22 Judge McMahon said go -- go bring your claim in  
23 magistrate's court. So we did. They -- they have  
24 contested subject-matter jurisdiction about every way,  
25 shape, and form they can. When the magistrate's court was

1 first filed in May of last year, you can -- you can look in  
2 her answer; it's behind Tab 3 after my memo. And she says  
3 she -- she contests jurisdiction.

4 And -- and then she turned around and got a family  
5 court TRO, staying my client from ejecting her from the  
6 house. She sought a whole bunch of other relief in that  
7 action. And eventually, the family court found that it  
8 didn't have subject-matter jurisdiction over the claim --  
9 or over -- over those issues. So they kicked them out.

10 So my client says, "Okay. Family court doesn't have  
11 subject-matter jurisdiction. I'm going to go back to  
12 magistrate's court." He does.

13 Judge Johnson says, "I don't think I can hear this  
14 case. You should go bring it in circuit court."

15 So he calls me. And we file it in circuit court. And  
16 by this time you better believe his damages that have  
17 accrued over the past year are in excess of \$7500.

18 After Judge McMahon kicks my summary-ejectment claim  
19 out, then we -- then we take it back to the magistrate's  
20 court. And they say -- now the defendant is saying, "Well,  
21 well, wait a minute. Wait a minute. I was wrong before.  
22 Judge McMahon was wrong before. There's no subject-matter  
23 jurisdiction in the magistrate's court."

24 Under the law they can't do that. Judge McMahon's  
25 ruling is the law of the case. And -- and *Judy v. Martin*

1 says that. And I can give you the cite for that, Your  
2 Honor. It's in my memo. But -- but they cannot come back  
3 now and contest subject-matter jurisdiction, because that's  
4 the law of the case.

5 Now, he argues in his notice of appeal that the  
6 magistrate erred in failing to allow the trustee to be  
7 joined as a party. The trustee's not the trespasser. The  
8 trustee doesn't own the property. The trustee has no stake  
9 in this ejection case. He's got no stake in it.

10 The only reason the trustee's involved in the circuit  
11 court case is because she has third-partied him in,  
12 bringing claims that should be brought in the probate  
13 court. And she has tried to do that to destroy -- to -- to  
14 make a case to destroy this Court's subject-matter  
15 jurisdiction in the circuit court of -- of the damages  
16 case.

17 And I want to clarify: Our -- our circuit court  
18 action, during the magistrate's court trial, my client  
19 stipulated on the record that he's bringing an action for  
20 possession in the magistrate's court and that the circuit  
21 court case is for damages. And we are stipulating that our  
22 circuit court case is for damages.

23 Now, Mr. Johnson will probably disagree with me. I  
24 have asked him if he would consent to an amended complaint  
25 that seeks damages only. He will not. I haven't heard

1 that he will, anyways.

2 The defendant argues that -- that the case -- that the  
3 summary-ejectment claim is barred by res judicata. Your  
4 Honor, the -- the three elements of res judicata are  
5 identity of the parties; identity of the subject matter;  
6 and ---

7 THE COURT: --- adjudication on ---

8 MR. BRUNER: --- adjudication ---

9 THE COURT: --- the merits.

10 MR. BRUNER: --- on the merits. He doesn't have the  
11 third one. He simply does not have the third one because  
12 this is a -- a denial of preliminary relief on -- on a  
13 12(b)(1) motion.

14 As to the fourth matter, his notice of appeal, he says  
15 there's no evidence that -- there's no evidence that she  
16 wasn't there with warrant of law -- or wasn't there -- she  
17 had no right to be there. Well, there's testimony in the  
18 record -- I don't have -- I haven't transcript or had the  
19 transcript transcribed. I believe there should be a  
20 recording in the Court's file. But if you listen to the  
21 hour-and-a-half hearing, you will hear testimony from my  
22 client that supports his claim.

23 You will also hear testimony -- you also hear Judge  
24 Halfacre say on the record -- he -- he comments that the  
25 case is old and it's unusual for an ejectment like this to

1 be so old. However, he says, "Well, I -- I believe the  
2 plaintiff has clearly shown he owns the property. He's  
3 clearly shown he owns the property, and I don't see how she  
4 has any right to stay there."

5 That's the basis of his -- that's his ruling. And the  
6 basis is the testimony and the documents, Mr. Johnson's  
7 arguments; both parties testified. It's not simply the  
8 fact that the case is so old.

9 You know, with respect to the bond, the -- the bond  
10 was set in the amount of \$10,000. And that's -- that's  
11 purely within the discretion of the magistrate under these  
12 -- under this scenario. Section 15-67-620 allows him to  
13 set a bond to protect the property owner.

14 Now, if the Court has a recording of the -- of the  
15 bond hearing that occurred on July 19th before Judge  
16 Halfacre, you will hear that he -- that he consulted -- he  
17 will -- he consulted with Court Administration and said,  
18 "Do I have jurisdiction to do this?" And they referred him  
19 to the statute.

20 And he looked at the statute and he said, "Well, this  
21 isn't a claim. This is not a claim. This is just a bond.  
22 It's a bond to preserve -- to protect the -- the property  
23 owner's interest."

24 Now, if there is later a damages claim brought in the  
25 magistrate's court for the entire \$10,000, that's a whole

1 nother issue. But right now the fact that she paid the  
2 bond is purely within his discretion.

3 And finally, Mr. Johnson made a comment about how  
4 Judge McMahon ruled that -- that it's -- that his client is  
5 -- the defendant's allowed to stay on the property rent-  
6 free pending a full investigation. Your Honor, I think  
7 that's what we got before Judge Halfacre. I think we got  
8 an adjudication on the merits. I think the issues were  
9 litigated. The ownership of the property was litigated.

10 She had her opportunity to prove that she had a right  
11 to be there or that she had my client's consent. And she  
12 simply failed to do that. I think we have had a full  
13 investigation in the magistrate's court on those issues.  
14 And I think Judge Halfacre properly -- properly ruled in  
15 accordance with all the evidence presented; that she has to  
16 go; she has to move out.

17 I'll be happy to answer any questions the Court has.

18 THE COURT: All right. Do you have anything to  
19 respond?

20 MR. JOHNSON: Your Honor, just briefly. And first of  
21 all, counsel did not point the Court to any statutory  
22 provision that would give the magistrate authority beyond  
23 75 -- \$7500. And we would say he has none.

24 Counsel says it's the law of the case that the  
25 magistrate has jurisdiction. Well, he would only have

1 jurisdiction within the statute, which is what the statute  
2 would require anyway. But if it's the law of the case  
3 there, then it must be law of the case, his finding that  
4 requires her to remain on the property. I do not see how a  
5 magistrate can overrule that.

6 And, Your Honor, we're going to talk about  
7 jurisdiction in the civil case. And there is a way to  
8 correct all this and get it to go through where we know  
9 it's right and we do it once and for all. And I ask the  
10 Court to consider the arguments that'll be made on those  
11 motions in conjunction with this matter to see if there's  
12 some way to get the thing structured where we know we got  
13 jurisdiction and there's no -- not going to be a problem  
14 about that in the future. And I'll address that with the  
15 other motions.

16 THE COURT: All right. Well, that segues nicely into  
17 the first argument that you're going to be making about the  
18 probate court jurisdiction versus the circuit court  
19 jurisdiction.

20 MR. BRUNER: Well, Your Honor, I would -- I would like  
21 to point out that the appeal is going to be limited to the  
22 record. And we would object to the Court considering  
23 matters not -- not related to the magistrate's court case.  
24 I just want to put that objection on the record. I -- I  
25 don't think it's proper for the Court to consider things

1 that she could have entered into the record in the  
2 magistrate's court case and now she's trying to shoehorn  
3 in.

4 MR. JOHNSON: I'm ---

5 THE COURT: Okay.

6 MR. JOHNSON: --- I'm not asking you ---

7 MR. BRUNER: Yeah.

8 MR. JOHNSON: --- to do that ---

9 THE COURT: Yeah.

10 MR. JOHNSON: --- Your Honor.

11 THE COURT: I -- I -- I'm going to limit -- I've -- of  
12 course, I'm going to limit my -- my decision on the  
13 magistrate's court action based upon the record from that  
14 particular case. I have some qualms with -- with the  
15 argument that was made in front of Judge McMahon that this  
16 needs to be in front of the magistrate; and then when you  
17 get in front of the magistrate, the argument's made: Well,  
18 you shouldn't be in front of the magistrate; we should be  
19 in circuit court. And now the argument on the circuit  
20 court case is that: Well, we need to be over in probate  
21 court.

22 I want to see this case resolved. It has to end at  
23 some point in time. And the question of subject-matter  
24 jurisdiction, of course, is a very, very important one.  
25 More important, however, is that there be some resolution.

1 These parties couldn't live together; they got divorced.  
2 They entered into this arrangement themselves. It isn't  
3 working out. It has to end ---

4 MR. BRUNER: I -- I ---

5 THE COURT: --- somehow.

6 MR. BRUNER: --- agree.

7 MR. JOHNSON: We --, we agree, Your Honor.

8 MR. BRUNER: Well -- well, I think we all agree with  
9 that, Your Honor. And it -- but the point you raise is  
10 key, because if I -- if I -- if I agree to -- to dismiss my  
11 circuit court case and bring the same claims that I raise  
12 in the damages case in probate court, I don't think the  
13 probate court has original jurisdiction over several of  
14 those.

15 And so then I'm left in a position where they've  
16 already contested subject-matter jurisdiction at every  
17 turn. And you better believe if they don't contest it at  
18 the trial level, they can raise it on the appellate level.  
19 And here I am, left with, you know, an appeal of a court --  
20 of a case that -- that I agreed to bring in probate court.  
21 It -- you know, the only solution I know of is to go ahead  
22 and file the identical claim -- the -- the identical claims  
23 in probate court, remove it, and consolidate the two.  
24 Because then, there's no way they can argue ---

25 THE COURT: That the two ---

1 MR. BRUNER: --- if -- if that makes any sense, Your  
2 Honor.

3 THE COURT: Right.

4 MR. BRUNER: And that's what -- and that's what I'm  
5 struggling with. I think this Court does have  
6 jurisdiction. And -- and I don't think we need to go to  
7 probate court for my -- for the plaintiff's claims. The  
8 defendant's claims, you better believe, belong in probate  
9 court.

10 MR. JOHNSON: Your Honor, since it's my motion ---

11 THE COURT: Yeah. Let's hear from you.

12 MR. JOHNSON: I ---

13 THE COURT: Go ahead.

14 MR. JOHNSON: --- I -- I would like to tell you the --  
15 the road map I think you could follow that would do exactly  
16 what you just talked about doing and would ensure that  
17 subject-matter jurisdiction was treated appropriately.  
18 I've had this subject-matter-jurisdiction thing used  
19 against me when I've filed suits and that -- that have been  
20 kicked back to the probate court, where I have to just  
21 start over and then remove them.

22 And, you know, it's a headache. But you got to do it,  
23 because the statute says that's what you've got to do.

24 And so here, 62-1-302 provides for trusts or within  
25 the original, exclusive jurisdiction, Mr. Bruner correctly

1 points out there's a statute in the -- in the trust code  
2 that provides that there is jurisdiction in the -- in the  
3 probate court involving internal matters that involve the  
4 administration and distribution of assets from the trust  
5 rights and authorities. And, of course, that's the very  
6 issue that we've got in our case, is whether the trustee  
7 had authority to convey the property to Mr. Hobby and/or  
8 did not have the right to do it as part of his  
9 administration of the trust.

10 And whether you look under the trust code or whether  
11 you look under the probate code, 62-1-203, we would say  
12 that it is clear that these claims have to be brought in  
13 the probate court. And then they can be removed. There's  
14 no question they can be removed and removed up.

15 But if the Court doesn't do that and a -- an appellate  
16 court later says, "Wait a minute; these are within the  
17 original, exclusive jurisdiction of the probate court,"  
18 then we will have to start all over with everything. It  
19 could be clarified right now by letting the matters proceed  
20 -- dismiss; let the matters proceed in the -- in probate  
21 court; remove them back up; and would get all of the issues  
22 before the Court in a -- in a format that we would know the  
23 circuit court had jurisdiction. And that's -- that's the  
24 whole point of it, Your Honor.

25 THE COURT: All right.

1           MR. BRUNER: Your Honor, I -- I'd like to point out  
2 that for purposes of determining whether this Court has  
3 subject-matter jurisdiction, the -- it -- it's based solely  
4 on the two statutes that -- that Mr. Johnson referenced. I  
5 referenced them in my memo.

6           I think also the Court has to look at the claim. They  
7 have to look at the claim -- the Court has to look at the  
8 claim that is brought. And in the plaintiff's claims, the  
9 claims that -- the claims that I'm bringing and that I'm  
10 seeking summary judgment on, are based on the defendant's  
11 failure to move out of house -- out of a house that she  
12 doesn't own and that she has no right to live in.

13           My client bought the house. Just -- as just as a  
14 third party who could've bought the house, he's got a right  
15 to use it. He's got a right to enjoy it. He's got a right  
16 to rent it out and use it however he wants.

17           He can't do that. He cannot do that. That is not --  
18 that does not require construction of any term of the  
19 trust. That does not relate to -- that does not require a  
20 determination of parties' rights to the trust, because it's  
21 no longer trust property. It's out.

22           If anything -- if anything, the issues that -- that  
23 Mr. Johnson has raised relate to his claims against the  
24 trustee. If the trustee -- if the trustee breached some  
25 duty, which I don't think he did, but if he breached some

1 duty in distributing and selling the property, then -- then  
2 that relates to the claim against -- that she has against  
3 the trustee. That doesn't relate my plaintiff's -- the  
4 plaintiff's trespass and quantum meruit and landlord-  
5 tenant-act claims.

6 So -- and -- and I think -- I think the proper thing  
7 to do would be for Mr. Johnson to bring his claims in the  
8 probate court. If we want to adjudicate them all in one  
9 fell swoop, he can remove them and then we can all be back  
10 in the same place, postured differently procedurally. But  
11 -- but that's -- that's the basis of it.

12 I -- I don't -- I don't think this is an internal  
13 matter related to a trust, because we're not asking the  
14 Court to -- to remove the trustee. She is. We're not  
15 asking the Court to determine rights of parties to the  
16 trust. She is. And I don't believe that she can simply  
17 bring those claims that should be brought in the probate  
18 court and destroy subject -- this Court's subject-matter  
19 jurisdiction for claims that it can hear.

20 MR. JOHNSON: Your Honor, just briefly, if it was  
21 uncontested that he acquired title to the property and the  
22 owner -- is owner of the property, I might agree with  
23 counsel. But we've submitted an affidavit from an expert  
24 in -- in these matters who says, in his opinion ---

25 MR. BRUNER: Your Honor, I'm -- I'm going to object to

1 this affidavit and to Mr. Johnson's reading it in the  
2 record. I -- I -- I state my reasons in my memorandum.  
3 There's no evidence that he's an expert, and it's purely  
4 opinion testimony.

5 THE COURT: All right.

6 MR. JOHNSON: Well ---

7 THE COURT: Just so that the record's complete, I'll  
8 let you go ahead and proffer the evidence.

9 MR. JOHNSON: Thank you, Your Honor. In any event, he  
10 points out that the trust agreement on transferor requires  
11 that the transfer be for fair market value. There's no  
12 evidence to show that that occurred. And it -- it requires  
13 her approval to the terms of it. And here the terms were  
14 the fact that there was financing. And she agreed to  
15 nothing about the sale.

16 So it's our position that the Court necessarily, in  
17 determining whether he's the owner or not, would have to  
18 determine whether the trustee had authority to do what the  
19 trustee did. And if the trustee didn't, it would  
20 necessarily be a nullity. He can't acquire what the  
21 trustee doesn't have authority to give him.

22 And so given that and the dispute over that, it  
23 involves the right and the privilege and the duty of the --  
24 of the trustee to make a transfer. It requires a  
25 determination regarding a distribution of a trust. And so

1 all of those are within -- involve the internal affairs of  
2 the trust and the probate court has original jurisdiction.

3 THE COURT: Okay. The point that he makes, though,  
4 concerning the plaintiff's cause of actions or his client's  
5 cause of action in the circuit court case are somewhat well  
6 taken. It -- I -- I -- this isn't a situation where the  
7 defendant can seek removal to federal court because it  
8 involves, you know, a federal claim or a federal statute or  
9 something. So it's not like -- as I see it, it's not like  
10 the wife is able to defeat the circuit court subject-matter  
11 jurisdiction by pleading causes of action which could be  
12 brought in the probate court.

13 I -- I do feel that his contention that you have to  
14 look at the underlying cause of action to determine where  
15 it should be brought, that's valid. At the same time, if  
16 the actions of the trustee are a nullity because he's  
17 acting outside the scope of the trustee's authority, then  
18 perhaps that is a matter to be determined in the probate  
19 court.

20 However, in this case, wife -- you did interplead the  
21 trustee into the common-pleas action, right? Am I -- or am  
22 I ---

23 MR. JOHNSON: Your Honor ---

24 THE COURT: --- thinking incorrectly?

25 MR. JOHNSON: --- we -- we did bring a third-party

1 claim against the trustee.

2 THE COURT: Okay.

3 MR. JOHNSON: And the -- the distinction I would ask  
4 you to make is this: They have a cause of action for  
5 trespass. And they have a cause of action for unjust  
6 enrichment that are premised upon the plaintiff being the  
7 sole and exclusive legal owner of the property. That is  
8 disputed, because it's our position the trustee had no  
9 authority to do what the trustee did. So that's going to  
10 necessarily involve fighting -- if we had asserted no  
11 claims or no third-party complaint, that in itself would be  
12 a -- would -- would require a court to look at the terms of  
13 the trust to determine whether the trustee has authority  
14 and the right to do what the trustee and determine if it's  
15 right that he's the sole and exclusive owner.

16 THE COURT: No argument. Let's go back to basic  
17 property law, though. If we're dealing with A transfers to  
18 B and B transfers to C and C transfers to D, D then brings  
19 an action against C after he purchases the property,  
20 presumably -- or -- bad example. Let -- let me -- let me  
21 -- let me move back.

22 If -- if -- if the underlying person who got the  
23 property, you know, or who -- who sold the person -- that  
24 -- who sold the property at the beginning, the one -- the  
25 first one in the chain of title, if they didn't have

1 authority to sell to Person A, then A doesn't have  
2 authority to sell to B; B's got nothing, okay? And that  
3 would be an -- an affirmative defense perhaps that could be  
4 asserted by somebody who has an interest in the property  
5 that you -- you don't own it because this problem with the  
6 chain of title. Why can't you bring that same argument in  
7 the common-pleas action and litigate that question as an  
8 affirmative defense ---

9 MR. JOHNSON: Your Honor, I think you can, but you got  
10 to start in the probate court. And the -- this -- this ---

11 THE COURT: Why hasn't she done that, then?

12 MR. JOHNSON: Your Honor, we made a motion to dismiss  
13 and answered. It -- it made our answer, I believe, subject  
14 to our motion to dismiss for lack of subject-matter  
15 jurisdiction. As you know, we can challenge that at any  
16 time, even if we had done otherwise. But ---

17 THE COURT: I understand. But if the wife is truly  
18 genuine in her interest to get this resolved and if she's  
19 also genuine in her belief that the probate court is the  
20 court with jurisdiction, I would think that she would've  
21 already brought an action in the probate court to  
22 adjudicate the authority of the trustee. The -- the only  
23 other alternative, if -- if she hasn't brought that, is  
24 that she is simply trying to stall and buy more time for  
25 her to live in the house.

1 MR. JOHNSON: Your Honor, it's a loser for her to  
2 stall and buy more time to live in the house, to the extent  
3 he has a claim for trespass. And so the -- the only  
4 benefit to her is that if she prevails that the trustee had  
5 no authority, on that point, does she have the right to  
6 live there rent-free?

7 So it's -- and, of course, had we brought that claim  
8 in the probate court, it may have been subject to a  
9 12(b)(8) motion to have matters pending before the same  
10 parties in the circuit court. I mean, we're not the only  
11 ones who've raised procedural issues.

12 THE COURT: Certainly.

13 MR. JOHNSON: And the -- I -- I guess I come back to  
14 where I started on this argument. I -- I know the one way  
15 we can be sure: I think anything less than that -- and  
16 it's very simple: Just file over; remove it right up;  
17 we're right back where we are. But if we don't do that and  
18 we guess wrong -- not guess, but reason wrong here -- it's  
19 going to be hanging over us the rest of the way out through  
20 this case.

21 And the one thing, Judge, I've only been in this  
22 matter since, I think, June. I touched the tar baby at  
23 that point. But these parties have shown a propensity to  
24 litigate. They've been litigating a long time. I think  
25 the divorce action started in 2005. So I -- I want to see

1 us start where we know we got jurisdiction.

2 THE COURT: That's not a bad practical suggestion.

3 MR. BRUNER: That's -- and -- and Your Honor points  
4 out a -- I think you made a pretty good point: that the --  
5 she could go ahead and file her claims in the probate court  
6 if the -- what the record shows in this case -- and -- and  
7 really, in -- in all of the -- the family court case, the  
8 damages case in circuit court, and the ejectment case in  
9 magistrate's court -- what that shows is we have been  
10 actively trying to -- to bring this thing to a head and get  
11 it resolved; get everything -- move it through the process;  
12 get an adjudication; and get it off the Court's docket.

13 That's what we've been trying -- we have been the ones  
14 filing claims. We've been the ones looking for  
15 jurisdiction. And -- and she has contested it at every  
16 turn.

17 So I don't think it's fair to say that if -- that if I  
18 turn around and file a complaint in -- in the probate  
19 court, that we'll be sure that we'll have jurisdiction.  
20 Because I -- I fully expect a subject-matter-jurisdiction  
21 challenge, if not at the trial level, at the appellate  
22 level, because she can do that. And -- and maybe the thing  
23 to do is for her to file her claims in the probate court  
24 and then I can remove them. And if they'll stipulate to  
25 consolidating the two cases, this case with that, we can go

1 on our merry way.

2 THE COURT: All right. Well, let's -- let's ask that  
3 question, then. We're here at the courthouse annex because  
4 they're reroofing the main courtroom in the courthouse.  
5 Assuming that he walks across the street -- or walks  
6 across, rather, the hallway to the probate court office  
7 and, five minutes, files an action in the probate court  
8 while everybody's here, I'm assuming that you're willing to  
9 stipulate to removal and file the exact same answer in the  
10 probate court that was filed here; is that right?

11 MR. JOHNSON: Yes, sir, Your Honor.

12 THE COURT: All right. Well, let's do that. I'll  
13 take the matter under advisement. Then we'll consolidate  
14 the two actions as soon as you make a copy of this, file it  
15 in the probate court, pay them \$150, and let Ms. -- let  
16 Judge Nobles know that we have a common-pleas action that  
17 this can be consolidated with and the defendant has agreed  
18 to consolidate it and we'll have it all in the same court

19 --

20 MR. BRUNER: So I've got to ---

21 THE COURT: --- without any problem.

22 MR. BRUNER: I've got to draft the complaint and pay  
23 the filing fee? I ---

24 THE COURT: I'd ---

25 MR. BRUNER: If ---

1 THE COURT: --- just -- I think ---

2 MR. BRUNER: --- if he's the one bringing the  
3 complaint, you know, he's the one raising the issue and my  
4 claims are within the circuit court's jurisdiction and his  
5 are not, I think the proper thing to do would be to have  
6 her file the complaint and then I can answer with the same  
7 claims.

8 THE COURT: I -- I'm trying to get it done today.

9 MR. BRUNER: I understand.

10 THE COURT: And you get costs if you win. So why  
11 don't y'all -- I'll take it under advisement. Make a copy  
12 of this complaint; walk next door; file it with Judge  
13 Nobles. He can file a handwritten answer, saying: "I  
14 consent to removal to -- I consent to the removal of the  
15 action to the Court of Common Pleas." Judge Nobles will be  
16 an appreciate person and thank me for doing that. And  
17 we'll make sure that we have jurisdiction all the way  
18 around.

19 I -- I don't know -- he has a point. I don't know --  
20 if you're right, he has been fighting -- the wife has been  
21 fighting jurisdiction throughout. What I would hate to see  
22 is for me to simply deny his motion to dismiss; we have an  
23 appeal to the Court of Appeals; they take six months to  
24 decide whether to even hear the appeal; some clerk reads  
25 that, "Oh, well, it involves subject-matter jurisdiction

1 between the magistrate's court, the circuit court, the  
2 family court, and the probate court," and feels like it'd  
3 make for a nice bar-exam question to research, and so they  
4 decide to take it up; the clerk convinces Judge Few to take  
5 the thing up; and all of the sudden, we're two years down  
6 the road and we get a decision from the Court of Appeals.  
7 So I'd rather get it done today.

8 MR. BRUNER: Yes, sir.

9 THE COURT: That's ---

10 MR. BRUNER: I don't ---

11 THE COURT: --- just me.

12 THE COURT: --- think any of that, though, affects the  
13 appeal -- the magistrate's court appeal ---

14 THE COURT: I ---

15 MR. BRUNER: --- because ---

16 THE COURT: --- I would agree.

17 MR. BRUNER: --- because that's subject-matter-  
18 jurisdiction question is settled.

19 THE COURT: Right. But I'm taking that under  
20 advisement too.

21 MR. BRUNER: Okay.

22 THE COURT: Thank you. And then y'all let me know  
23 when it's all consolidated and appealed and -- or  
24 consolidated and removed and we'll be in good shape. All  
25 right?

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby )  
Plaintiff, )

Civil Action No. 2013-CP-36-193

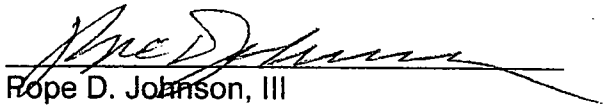
vs. )

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO DISMISS**

Mary T. Hobby )  
Defendant. )

TO: THE PLAINTIFF and his attorney BENJAMIN C. BRUNER

YOU WILL PLEASE TAKE NOTICE that the Defendant will move to dismiss the complaint in this matter for lack of subject matter jurisdiction upon the grounds that the claim for summary ejection upon which all claims are based is a statutory claim within the jurisdiction of the magistrate court, not the circuit court.

  
Pope D. Johnson, III  
Johnson & Barnette, LLP  
P.O. Drawer 11209  
Columbia, SC 29211  
803-799-9791  
803-253-6084 (Fax)  
[pdjohnson@johnsonbarnette.com](mailto:pdjohnson@johnsonbarnette.com)  
**Attorney for the Defendant**

Columbia, South Carolina  
May 8, 2013

#/

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby )  
 )  
Plaintiff, )

Civil Action No. 2013-CP-36-193

vs. )

**CERTIFICATE OF SERVICE**

Mary T. Hobby )  
 )  
Defendant. )  
\_\_\_\_\_ )

I, Susan J. Mondello, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 8<sup>th</sup> day of May, 2013.

**COUNSEL SERVED:**

Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260-1110

**PLEADINGS:**

Defendant's Notice of Motion and Motion to Dismiss

  
\_\_\_\_\_  
Susan J. Mondello

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE MAGISTRATE'S COURT

Raymond D. Hobby )  
Plaintiff, )

Case No. 2012 CV 36 10100450

vs. )

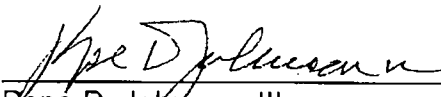
**DEFENDANT'S NOTICE OF MOTION  
AND MOTION**

Mary T. Hobby )  
Defendant. )

TO: THE PLAINTIFF and his attorney, BENJAMIN C. BRUNER

YOU WILL PLEASE TAKE NOTICE that the defendant hereby moves the Magistrate Judge to amend the order and find that the plaintiff has failed in his burden of proof because the plaintiff failed to establish that the defendant was in possession of the land without warrant of law, or in the alternative, that the Magistrate make specific findings regarding the evidence that would support that the defendant was in possession of the property without warrant of law.

YOU WILL TAKE FURTHER NOTICE that the defendant hereby moves for an injunction pursuant to S.C. Code Ann. Section 15-67-640 and moves the Magistrate to set a hearing to determine what bond, if any, is required by Section 15-67-620.

  
\_\_\_\_\_  
Pope D. Johnson, III  
Johnson & Barnette, LLP  
P.O. Drawer 11209  
Columbia, SC 29211  
803-799-9791  
803-253-6084 (Fax)  
[pdjohnson@johnsonbarnette.com](mailto:pdjohnson@johnsonbarnette.com)  
**Attorney for the Defendant**

Columbia, South Carolina  
July 1, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

IN THE MAGISTRATE'S COURT

Raymond D. Hobby )  
 )  
Plaintiff, )

Civil Action No. 2012 CV 36 10100450

vs. )

**CERTIFICATE OF SERVICE**

Mary T. Hobby )  
 )  
Defendant. )  
\_\_\_\_\_ )

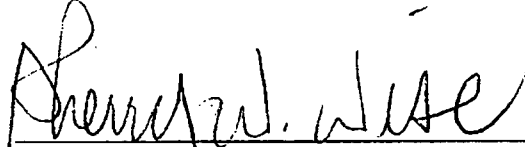
I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 1<sup>st</sup> day of July, 2013.

**COUNSEL SERVED:**

Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260-1110

**PLEADINGS:**

Notice of Motion and Motion

  
\_\_\_\_\_  
Sherry W. Wise

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby )  
Plaintiff, )

Civil Action No. 2013-CP-36-00332

vs. )

**DEFENDANT'S  
MOTION TO ALTER OR AMEND**

Mary T. Hobby )  
Defendant. )

FILED  
NEWBERRY COUNTY  
2013 OCT 11 AM 10 03  
JACKIE S. BOWEN  
CLERK OF COURT

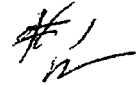
The defendant hereby moves the Court, pursuant to Rule 59(e), SCRPC, to alter or amend its Order dated September 26, 2013, a copy of which is attached, upon the following grounds:

1. The Court should reconsider its ruling on subject matter jurisdiction and reverse the Magistrate and dismiss the action for lack of subject matter jurisdiction. A determination as to whether the trustee violated the terms of the trust or whether the plaintiff has good title necessarily requires a review of the trust, the actions of the trustee, and the internal workings of the trust. More importantly, if the plaintiff does not have good title, then he is not "the owner of land" who is entitled to seek ejectment under S.C. Code Ann. Section 15-17-610. The Court, apparently in frustration, found:

"In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere."

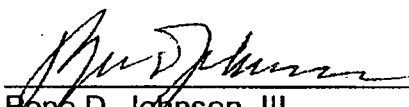
This is factually incorrect. The defendant sought relief in the Family Court and plaintiff successfully moved to dismiss. The defendant objected to the jurisdiction of the circuit court to proceed under Section 15-17-610 and Judge McMahon agreed. This Court, as a matter of caution, suggested re-filing in probate court. Defendant should not be unfairly judged for raising subject matter jurisdiction issues, particularly when certain of those issues have been determined favorably to defendant.

2. The Court should reconsider its ruling affirming the Magistrate that the defense of *res judicata* did not apply because "Judge McMahon's Order did not constitute an adjudication on the merits" because the Magistrate made no such finding. See attached pages 32 and 37 of the Transcript.

~1~  


3. The Court should reconsider its ruling affirming the Magistrate that the defense of *res judicata* did not apply because Judge McMahon's Order was not a determination on the merits. A temporary injunction was sought and denied on the merits that being that there was no irreparable harm and plaintiff could recover damages. The effect of the Magistrate's Order is the reversal of the Order of Judge McMahon who found that the status quo, that is, defendant remaining in the should, should be maintained.

4. The Court ruled on the bond issue had not been determined with finality (see defendant's motion to reconsider), had not yet been appealed (see attached Notice of Appeal), and was not before the circuit court. All findings related to the bond issue should be set aside.

  
\_\_\_\_\_  
Pope D. Johnson, III  
Johnson & Barnette, LLP  
P.O. Drawer 11209  
Columbia, SC 29211  
803-799-9791  
803-253-6084 (Fax)  
[pdjohnson@johnsonbarnette.com](mailto:pdjohnson@johnsonbarnette.com)  
**Attorney for the Defendant**

Columbia, South Carolina  
October 10, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

---

RAYMOND HOBBY,  
*Plaintiff,*

-v-

MARY T. HOBBY,  
*Defendant.*

---

FILED  
NEWBERRY COUNTY  
2013 SEP 30 PM 12 19  
JACKIE S. BOWERS  
CLERK OF COURT  
C.A. No. 13-CP-36733  
ORDER

**THIS APPEAL FROM THE MAGISTRATE'S COURT CAME BEFORE THE**

---

COURT on September 4, 2013. Present were Benjamin Bruner representing the Plaintiff and Pope Johnson, III representing the Defendant. Davis Howser appeared representing Frances Knowlton on a companion case which will be discussed below. Subsequent to the hearing, the court was provided with a copy of the transcript from the lower court proceedings, and the court has now had an opportunity to fully review the law, facts and consider the decision of the lower court. The court affirms the finding of the magistrate's court.

*Standard of Review*

In appeals from non-jury magistrate cases, the circuit court sits in an appellate capacity and may reverse a judgment based upon errors of fact or law. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 312 S.E. 2d 20 (S.C. App. 1984). Review by the circuit court is limited to the issues raised before the magistrate. Indigo Associates v. Ryan Inv. Co., 314 S.C. 519, 431 S.E.2d 271 (S.C. App. 1993).

### *Procedural History*

The procedural history of this case is convoluted. As background, Plaintiff and Defendant were formerly married. In the divorce decree, the marital home was placed in a trust overseen by a third-party trustee, Frances Knowlton. Per the agreement, Defendant resided there rent-free for several years. Subsequently, the Trustee sold the home out of trust to Plaintiff. Plaintiff then brought an action before the magistrate seeking removal of Defendant. A factual dispute may exist regarding both the scope of the Trustee's power to sell the property and the agreed terms of the sale. To date, this case has been transferred from the magistrate's court, to the family court, to the probate court, and to the circuit court. In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere.

A companion case was brought by Plaintiff in the circuit court (13-CP-36-193). In a prior hearing on that case, wherein Plaintiff requested a TRO, Judge McMahon issuing an order stating that the circuit court lacked jurisdiction to evict Defendant and that the magistrate's court had jurisdiction. Plaintiff then proceeded with his action before the magistrate, the order from which is the subject of this appeal:

The hearing of September 4, 2013 before the circuit court addressed Plaintiff's motion for partial summary judgment on case 13-CP-36-193 and also this appeal. Defendant again asserted that, because 13-CP-36-193 addresses matters involving the trust, jurisdiction was proper in the probate court. Out of an abundance of caution and in order to cure any jurisdictional defects, the court suggested that Plaintiff file his complaint with the probate court and then have the matter removed to the circuit court under Section 62-1-302 (d). During a break, Plaintiff filed an identical action in the probate court, the probate action was then removed to the circuit court



with the consent of the Defendant, and it was consolidated with 13-CP-36-193. For reasons stated at the hearing on 13-CP-36-193, the court found that Plaintiff's motion for partial summary judgment should be stayed pending a hearing on the Trustee's motion for summary judgment.

*Merits of the Appeal*

With regard to the magistrate's appeal, the hearing before the magistrate took place on June 28, 2013. Prior to taking testimony, Defendant objected on jurisdictional grounds, asserting that subject matter jurisdiction lay with the probate court, not the magistrate. Defendant also maintained that Judge McMahan's order in 13-CP-36-193 constituted *res judicata* on the issue of eviction in that the circuit court declined to issue temporary, injunctive relief. The magistrate found he had jurisdiction over the subject matter and that Judge McMahan's order did not constitute an adjudication on the merits. This appeal followed challenging the findings of the magistrate with regard to jurisdiction, the merits, and bond.

*(a) Subject Matter Jurisdiction*

Concerning the jurisdictional claim, the magistrate has jurisdiction over ejectments under Section 15-67-610. As will be explained in the following paragraphs, although Plaintiff received his title from the Trustee and although a trust was tangentially involved in the underlying factual presentation, the probate court does not have jurisdiction over ejectment. *See* Sections 15-67-610, 62-1-302. The court finds that the magistrate properly exercised jurisdiction over the subject matter.

*(b) Findings on the Merits*

On the merits, Plaintiff sought ejectment of Defendant under Section 15-67-610. Defendant claims insufficient evidence was presented demonstrating that Defendant was in

possession unlawfully. The record supports the order of the magistrate requiring Defendant to vacate the premises. Plaintiff possesses a quitclaim deed from the Trustee evidencing Plaintiff as the title owner of the property in fee. Although Defendant asserts that the Trustee breached his fiduciary duty to Defendant in selling the property to Plaintiff, this assertion is not fatal to the magistrate's ruling under 15-67-610. Section 15-67-610 essentially requires that two elements be met to warrant ejectment: (1) plaintiff must be the owner of the land, and (2) the person sought to be ejected must be on the property unlawfully. Having read the transcript and reviewed the law, this court finds that the magistrate did not err when he concluded that Plaintiff proved entitlement to relief under 15-67-610. The record fully supports the ruling of the magistrate's court.

To the extent that Defendant asserts the Trustee violated the terms of the trust and breached his fiduciary duty to Defendant, Defendant's remedy is for damages from the Trustee based upon the causes of action alleged in Defendant's third-party complaint against the Trustee in case 13-CP-36-193. Restatement (2d) of Torts, Section 874; Lowndes Products, Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972). To the extent Defendant asserts that Plaintiff lacks good title, that issue may also be raised in case 13-CP-36-193, but any claim of inferior or defective title does not divest the magistrate of jurisdiction in an action for ejectment. Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E. 2<sup>nd</sup> 3, at 5-6 (1940).

Although Defendant also complains that the Plaintiff did not introduce the trust document into evidence, thereby failing to prove his case, the court notes that Defendant did elect to present a case, so Defendant had a similar opportunity to move exhibits into evidence and inform the court of any instruments or documents which supported her position. Therefore, if the trust contained a provision permitting Defendant to reside on the property indefinitely, Defendant

could have alerted the court to that provision, or any other lease or agreement she had, permitting her to remain on the property. Clearly, a defendant possessing a valid lease and who is served with notice of ejectment would present that evidence to the trial court when given the opportunity. Therefore, the magistrate's conclusion that Defendant was present on the property without warrant of law is supported by the lack of evidence of any legal right she possessed which would permit her continued, legal occupation of the property.

(c) *Bond*

Finally, the Defendant challenges the magistrate setting bond in the sum of \$10,000, per Section 15-67-620, in light of the \$7,500 jurisdictional limitation imposed in Section 22-3-10.<sup>1</sup> By the express language of 15-67-620, requiring bond is intended to protect a plaintiff pending a defendant's appeal. Furthermore, the court can conceive of situations where damage to a plaintiff could easily exceed \$7,500. Although the court can find no precedent reconciling the jurisdictional limitations of 22-3-10 with the requirements of 15-67-620, the court finds that the requirement of bond in the sum of \$10,000 is proper and authorized pursuant to 15-67-620.

Accordingly, the order of the magistrate is affirmed.

<sup>1</sup> At the hearing of September 4, 2013, the court was not entirely clear on whether Defendant was contesting jurisdiction based on the value of the real estate involved in this dispute, which clearly exceeded \$7,500, or whether Defendant was contesting the setting of bond in the sum of \$10,000, or both. The court cannot find any reference to this objection in the transcript. However, because the jurisdictional limit relates to subject matter jurisdiction, the issue may be raised at any time, even on appeal. Rock Hill Body Co. v. Rainey, 294 S.C. 426, 429, 365 S.E.2d 228, 230-31 (Ct. App. 1987) (*holding that the amount in controversy limits under 22-3-10 implicate subject matter jurisdiction*). To the extent Defendant's argument is that the value of the real estate exceeded \$7,500, thereby depriving the magistrate's court of jurisdiction under 22-3-10, the court rejects this argument, as the vast majority of habitable real estate in this State possesses a value exceeding \$7,500. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.).

IT IS SO ORDERED.



---

Frank R. Addy, Jr.  
Eighth Judicial Circuit

September 26, 2013  
Greenwood, South Carolina

1 unless you file a separate case up in the  
2 Circuit Court, I don't -- as far as this motion  
3 case, it's gone. I mean, he's dismissed --

4 **MR. JOHNSON:** It's not gone, Your Honor. There's a  
5 case pending in Circuit Court.

6 **THE COURT:** That's the damages' case.

7 **MR. JOHNSON:** And it continues, he was seeking a  
8 permanent -- temporary and permanent  
9 injunction.

10 **THE COURT:** But I don't think they're going to rule  
11 on the ejection, though. He's suing for  
12 damages, though, didn't he say that?

13 **MR. HOBBY:** And there was language that included  
14 ejection and we're going to amend that  
15 complaint to remove that.

16 **MR. JOHNSON:** Well, Your Honor --

17 **THE COURT:** Let me see -- let me see that. Let me  
18 see what you're -- let's see, the -- well,  
19 that's really nothing that I would -- I want to  
20 hear -- I could hear today, because that's a  
21 separate case there. I don't think it's  
22 anything that I would be concerned about if he  
23 files it in Circuit Court. Now, unless it was  
24 on a ejection, then you've got two cases of  
25 the same matter going then, but you're not



1 Complaint and it is being dropped (inaudible).  
2 **THE COURT:** Okay. I'll tell you what we can do. We  
3 can -- let's -- let's -- if we get into  
4 evidence and stuff, if he wants to present that  
5 as evidence, but this is a motions hearing as  
6 far as let me just -- let's just -- let's do  
7 one thing at a time. As far as before anything  
8 can be -- the res judicata, you know, if it had  
9 already been handled in Circuit Court or  
10 anything like that, or the Circuit Court had  
11 already ruled and said that it's -- that it was  
12 no -- that she could stay on the property,  
13 yeah, I would think that would be something I  
14 could not overrule. I couldn't say anything.  
15 We couldn't come back to the circuit -- I  
16 couldn't come back to our court. But looking  
17 at this, seeing that we -- the res judicata and  
18 whether we have jurisdiction or not, we have --  
19 we have -- and he does say that we have  
20 jurisdiction, which I know we have jurisdiction  
21 to hear this type matter. We have the  
22 jurisdiction to hear it. What I'm going to do,  
23 I'm going to deny the motion of the -- whether  
24 the lack of jurisdiction and the res judicata  
25 and proceed -- well, we'll proceed on to the --



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

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )  
Raymond D. Hobby )  
Plaintiff, )  
vs. )  
Mary T. Hobby )  
Defendant. )

IN THE MAGISTRATE'S COURT

Case No. 2012 CV 36 10100450


**DEFENDANT'S NOTICE OF MOTION  
AND MOTION**

FILED  
NEWBERRY COUNTY  
2013 OCT 11 AM 10 54  
JACKIE S. BOWERS  
CLERK OF COURT

TO: THE PLAINTIFF RAYMOND D. HOBBY

YOU WILL PLEASE TAKE NOTICE that the defendant hereby moves the Court to reconsider its oral rulings in this matter and re-open the hearing and grant the following relief:

- (1) That the Court grant an evidentiary hearing to determine what bond, if any and in what amount should be required;
- (2) That the Court issue a written order with findings of fact and conclusions of law, and rule specifically on the defendant's motion to dismiss for lack of subject matter jurisdiction and on the amount of the bond; and
- (3) That all oral rulings in this matter be reconsidered and the action be dismissed for lack of subject matter jurisdiction or the bond be set at \$2,400.00.

  
Pope D. Johnson, III  
Johnson & Barnette, LLP  
P.O. Drawer 11209  
Columbia, SC 29211  
803-799-9791  
803-253-6084 (Fax)  
[pdjohnson@johnsonbarnette.com](mailto:pdjohnson@johnsonbarnette.com)  
**Attorney for the Defendant**

Columbia, South Carolina  
July 25, 2013

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE MAGISTRATE'S COURT

Raymond D. Hobby )  
Plaintiff, )

Civil Action No. 2012 CV 36 10100450

vs. )

**CERTIFICATE OF SERVICE**

Mary T. Hobby )  
Defendant. )

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Plaintiff Raymond D. Hobby with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 25th day of July, 2013.

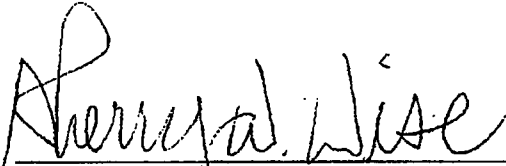
**COUNSEL SERVED:**

Raymond D. Hobby  
11795 Bush River Road  
Kinards, SC 29355

**PLEADINGS:**

Defendant's Notice of Motion and Motion

FILED  
NEWBERRY COUNTY  
2013 OCT 11 AM 10 54  
JACKIE S. BOWERS  
CLERK OF COURT

  
\_\_\_\_\_  
Sherry W. Wise

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Raymond D. Hobby

Plaintiff(s)

vs.

Mary T. Hobby

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

2013 CP-36-00332

FILED  
NEWBERRY COUNTY  
2013 JUL 2 PM 12 4  
JACKIE S. BOWEN  
CLERK OF COURT

Submitted By: Pope D. Johnson, III  
Address: Johnson & Barnette, LLP  
P.O. Drawer 11209, Columbia, SC 29211-1209

SC Bar #: 3048  
Telephone #: 803-799-9791  
Fax #: 803-253-6084  
Other: pdjohnson@  
E-mail: johnsonbarnette.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature: [Signature]

Date: July 1, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 Raymond D. Hobby )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Mary T. Hobby )  
 )  
 Defendant. )  
 )

IN THE COURT OF COMMON PLEAS

Civil Action No.

2013-CP-36-00332

NOTICE OF INTENTION TO APPEAL


FILED  
 NEWBERRY COUNTY  
 2013 JUL 2 PM 12 44  
 JACKIE S. BOWERS  
 CLERK OF COURT

The Defendant hereby gives notice of her intent to appeal the judgment in the above-referenced action rendered on June 28, 2013, a copy of the judgment being attached hereto and incorporated herein. The grounds for appeal are as follows:

1. The Magistrate erred as a matter of law in failing to dismiss this action for lack of subject matter jurisdiction;
2. The Magistrate erred as a matter of law in failing to continue the hearing and permit the trustee, Frank Knowlton, to be joined as a party or third party defendant to the action;
3. The Magistrate erred as a matter of law in failing to grant the motion to dismiss and/or in failing to grant judgment in favor of the defendant based upon the doctrine of *res judicata*, which bars the plaintiff's claim since the plaintiff has sought the relief in the circuit court proceeding;
4. The Magistrate erred as a matter of law in failing to make a finding and set forth the basis thereof that the defendant was in possession of the property in question without warrant of law, there being no evidence submitted by the plaintiff to establish the same; and
5. The Magistrate erred as a matter of law in granting the plaintiff relief based upon the fact that the matter had been pending without a decision for an extended period of time and such was irrelevant to the issues to be determined.

-1-  
 #1  
 [Handwritten signature]

The defendant moves the Court to determine what bond, if any, must be posted pursuant to Section 15-67-620.

  
\_\_\_\_\_  
Pope D. Johnson, III  
Johnson & Barnette, LLP  
P.O. Drawer 11209  
Columbia, SC 29211  
803-799-9791  
803-253-6084 (Fax)  
[pdjohnson@johnsonbarnette.com](mailto:pdjohnson@johnsonbarnette.com)  
**Attorney for the Defendant and Third  
Party Plaintiff**

Columbia, South Carolina  
July 1, 2013

~2~

#2

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

Raymond D. Hobby )

Plaintiff, )

vs. )

Mary T. Hobby )

Defendant. )

IN THE COURT OF COMMON PLEAS

Civil Action No. *2013-CP-36-00332*

**CERTIFICATE OF SERVICE**

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 1<sup>st</sup> day of July, 2013.

**COUNSEL SERVED:**

Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260-1110

**PLEADINGS:**

Notice of Intention to Appeal

FILED  
NEWBERRY COUNTY  
2013 JUL 2 PM 12 44  
JACKIE S. BOWERS  
CLERK OF COURT

*Sherry W. Wise*  
\_\_\_\_\_  
Sherry W. Wise

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby )  
Plaintiff, )

Civil Action No. 2013-CP-36-00332

vs. )

**CERTIFICATE OF SERVICE**

Mary T. Hobby )  
Defendant. )

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the Plaintiff, and Plaintiff Raymond D. Hobby with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 10th day of October, 2013.

**COUNSEL SERVED:**

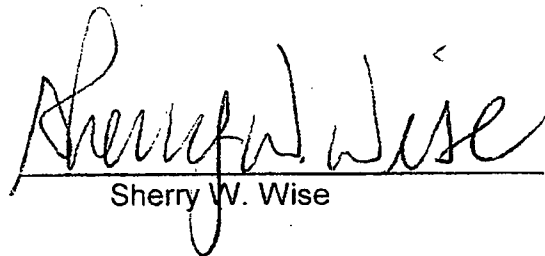
Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260-1110

Raymond D. Hobby  
11795 Bush River Road  
Kinards, SC 29355

**PLEADINGS:**

Defendant's Motion to Alter or Amend

FILED  
NEWBERRY COUNTY  
2013 OCT 11 AM 10 54  
JACKIE S. BOWERS  
CLERK OF COURT

  
Sherry W. Wise

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Case No. 2013-CP-36-332

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Raymond D. Hobby ..... Respondent

vs.

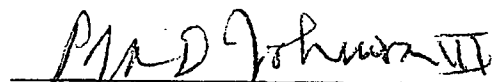
Mary T. Hobby ..... Appellant

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NOTICE OF APPEAL

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Appellant Mary T. Hobby hereby gives notice of her appeal of the Orders in the above-referenced action dated September 26, 2013 and October 28, 2013, copies of the Orders being attached hereto and incorporated herein. Appellant received written notice of the entry of the Order dated October 28, 2013 on November 3, 2013.



---

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803-253-6084 (Fax)  
[pdjohnson@johnsonbarnette.com](mailto:pdjohnson@johnsonbarnette.com)  
**Attorney for Appellant**

Columbia, South Carolina  
November 11, 2013

Other Counsel of Record:

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Columbia, SC 29260-1110  
252-7693  
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**Attorney for Respondent**

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

---

RAYMOND HOBBY,  
*Plaintiff,*

-v-

MARY T. HOBBY,  
*Defendant.*

---

FILED  
NEWBERRY COUNTY  
2013 SEP 30 PM 12 19  
JACKIE S. BOWERS  
CLERK OF COURT  
C.A. No. 13-CP-36933  
ORDER

**THIS APPEAL FROM THE MAGISTRATE'S COURT CAME BEFORE THE**

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**COURT** on September 4, 2013. Present were Benjamin Bruner representing the Plaintiff and Pope Johnson, III representing the Defendant. Davis Howser appeared representing Frances Knowlton on a companion case which will be discussed below. Subsequent to the hearing, the court was provided with a copy of the transcript from the lower court proceedings, and the court has now had an opportunity to fully review the law, facts and consider the decision of the lower court. The court affirms the finding of the magistrate's court.

*Standard of Review*

In appeals from non-jury magistrate cases, the circuit court sits in an appellate capacity and may reverse a judgment based upon errors of fact or law. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 312 S.E. 2d 20 (S.C. App. 1984). Review by the circuit court is limited to the issues raised before the magistrate. Indigo Associates v. Ryan Inv. Co., 314 S.C. 519, 431 S.E.2d 271 (S.C. App. 1993).

### *Procedural History*

The procedural history of this case is convoluted. As background, Plaintiff and Defendant were formerly married. In the divorce decree, the marital home was placed in a trust overseen by a third-party trustee, Frances Knowlton. Per the agreement, Defendant resided there rent-free for several years. Subsequently, the Trustee sold the home out of trust to Plaintiff. Plaintiff then brought an action before the magistrate seeking removal of Defendant. A factual dispute may exist regarding both the scope of the Trustee's power to sell the property and the agreed terms of the sale. To date, this case has been transferred from the magistrate's court, to the family court, to the probate court, and to the circuit court. In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere.

A companion case was brought by Plaintiff in the circuit court (13-CP-36-193). In a prior hearing on that case, wherein Plaintiff requested a TRO, Judge McMahon issuing an order stating that the circuit court lacked jurisdiction to evict Defendant and that the magistrate's court had jurisdiction. Plaintiff then proceeded with his action before the magistrate, the order from which is the subject of this appeal.

The hearing of September 4, 2013 before the circuit court addressed Plaintiff's motion for partial summary judgment on case 13-CP-36-193 and also this appeal. Defendant again asserted that, because 13-CP-36-193 addresses matters involving the trust, jurisdiction was proper in the probate court. Out of an abundance of caution and in order to cure any jurisdictional defects, the court suggested that Plaintiff file his complaint with the probate court and then have the matter removed to the circuit court under Section 62-1-302 (d). During a break, Plaintiff filed an identical action in the probate court, the probate action was then removed to the circuit court

with the consent of the Defendant, and it was consolidated with 13-CP-36-193. For reasons stated at the hearing on 13-CP-36-193, the court found that Plaintiff's motion for partial summary judgment should be stayed pending a hearing on the Trustee's motion for summary judgment.

*Merits of the Appeal*

With regard to the magistrate's appeal, the hearing before the magistrate took place on June 28, 2013. Prior to taking testimony, Defendant objected on jurisdictional grounds, asserting that subject matter jurisdiction lay with the probate court, not the magistrate. Defendant also maintained that Judge McMahon's order in 13-CP-36-193 constituted *res judicata* on the issue of eviction in that the circuit court declined to issue temporary, injunctive relief. The magistrate found he had jurisdiction over the subject matter and that Judge McMahan's order did not constitute an adjudication on the merits. This appeal followed challenging the findings of the magistrate with regard to jurisdiction, the merits, and bond.

*(a) Subject Matter Jurisdiction*

Concerning the jurisdictional claim, the magistrate has jurisdiction over ejectments under Section 15-67-610. As will be explained in the following paragraphs, although Plaintiff received his title from the Trustee and although a trust was tangentially involved in the underlying factual presentation, the probate court does not have jurisdiction over ejectment. See Sections 15-67-610, 62-1-302. The court finds that the magistrate properly exercised jurisdiction over the subject matter.

*(b) Findings on the Merits*

On the merits, Plaintiff sought ejectment of Defendant under Section 15-67-610. Defendant claims insufficient evidence was presented demonstrating that Defendant was in



possession unlawfully. The record supports the order of the magistrate requiring Defendant to vacate the premises. Plaintiff possesses a quitclaim deed from the Trustee evidencing Plaintiff as the title owner of the property in fee. Although Defendant asserts that the Trustee breached his fiduciary duty to Defendant in selling the property to Plaintiff, this assertion is not fatal to the magistrate's ruling under 15-67-610. Section 15-67-610 essentially requires that two elements be met to warrant ejectment: (1) plaintiff must be the owner of the land, and (2) the person sought to be ejected must be on the property unlawfully. Having read the transcript and reviewed the law, this court finds that the magistrate did not err when he concluded that Plaintiff proved entitlement to relief under 15-67-610. The record fully supports the ruling of the magistrate's court.

To the extent that Defendant asserts the Trustee violated the terms of the trust and breached his fiduciary duty to Defendant, Defendant's remedy is for damages from the Trustee based upon the causes of action alleged in Defendant's third-party complaint against the Trustee in case 13-CP-36-193. Restatement (2d) of Torts, Section 874; Lowndes Products, Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972). To the extent Defendant asserts that Plaintiff lacks good title, that issue may also be raised in case 13-CP-36-193, but any claim of inferior or defective title does not divest the magistrate of jurisdiction in an action for ejectment. Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E. 2<sup>nd</sup> 3, at 5-6 (1940).

Although Defendant also complains that the Plaintiff did not introduce the trust document into evidence, thereby failing to prove his case, the court notes that Defendant did elect to present a case, so Defendant had a similar opportunity to move exhibits into evidence and inform the court of any instruments or documents which supported her position. Therefore, if the trust contained a provision permitting Defendant to reside on the property indefinitely, Defendant



could have alerted the court to that provision, or any other lease or agreement she had, permitting her to remain on the property. Clearly, a defendant possessing a valid lease and who is served with notice of ejectment would present that evidence to the trial court when given the opportunity. Therefore, the magistrate's conclusion that Defendant was present on the property without warrant of law is supported by the lack of evidence of any legal right she possessed which would permit her continued, legal occupation of the property.

(c) Bond


Finally, the Defendant challenges the magistrate setting bond in the sum of \$10,000, per Section 15-67-620, in light of the \$7,500 jurisdictional limitation imposed in Section 22-3-10.<sup>1</sup> By the express language of 15-67-620, requiring bond is intended to protect a plaintiff pending a defendant's appeal. Furthermore, the court can conceive of situations where damage to a plaintiff could easily exceed \$7,500. Although the court can find no precedent reconciling the jurisdictional limitations of 22-3-10 with the requirements of 15-67-620, the court finds that the requirement of bond in the sum of \$10,000 is proper and authorized pursuant to 15-67-620.

Accordingly, the order of the magistrate is affirmed.

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<sup>1</sup> At the hearing of September 4, 2013, the court was not entirely clear on whether Defendant was contesting jurisdiction based on the value of the real estate involved in this dispute, which clearly exceeded \$7,500, or whether Defendant was contesting the setting of bond in the sum of \$10,000, or both. The court cannot find any reference to this objection in the transcript. However, because the jurisdictional limit relates to subject matter jurisdiction, the issue may be raised at any time, even on appeal. Rock Hill Body Co. v. Rainey, 294 S.C. 426, 429, 365 S.E.2d 228, 230-31 (Ct. App. 1987) (*holding that the amount in controversy limits under 22-3-10 implicate subject matter jurisdiction*). To the extent Defendant's argument is that the value of the real estate exceeded \$7,500, thereby depriving the magistrate's court of jurisdiction under 22-3-10, the court rejects this argument, as the vast majority of habitable real estate in this State possesses a value exceeding \$7,500. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.).

IT IS SO ORDERED.



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Frank R. Addy, Jr.  
Eighth Judicial Circuit

September 26, 2013  
Greenwood, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

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RAYMOND HOBBY,  
*Plaintiff,*

-v-

MARY T. HOBBY,  
*Defendant.*

---

C.A. No  
13-CP-36-332

ORDER ON MOTION FOR  
RECONSIDERATION

FILED  
NEWBERRY COUNTY  
2013 NOV 1 PM 10 24  
JACKIE S. BOWERS  
CLERK OF COURT

THIS MATTER CAME BEFORE THE COURT ON Defendant's motion to alter or amend the court's order of September 26, 2013. Having considered Defendant's motion, the court alters the order as follows:

The final sentence, which begins "In every venue . . . ." and which appears in the first full paragraph on page two (2), is deleted. Defendant is correct that jurisdiction was successfully challenged by various parties at various stages of the litigation.

In all other respects, the order of September 26, 2013 remains unchanged.

**IT IS SO ORDERED.**



Frank R. Addy, Jr.  
Eighth Judicial Circuit

October 28, 2013  
Greenwood, South Carolina

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Case No. 2013-CP-36-332

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Raymond D. Hobby ..... Respondent

vs.

Mary T. Hobby ..... Appellant

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PROOF OF SERVICE

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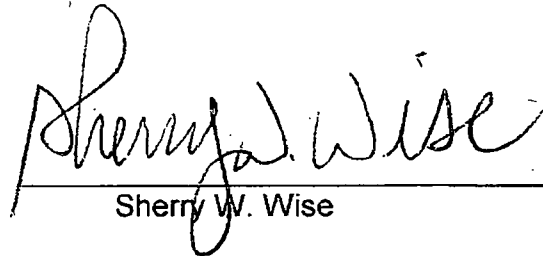
I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the Respondent, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 12th day of November, 2013.

**COUNSEL SERVED:**

Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260-1110

**PLEADINGS:**

Notice of Appeal

  
\_\_\_\_\_  
Sherry W. Wise

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

**QUIT-CLAIM DEED**

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, an action (Docket No. 2005-DR-36-56) was initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond D. Hobby, and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond D. Hobby and Mary T. Hobby, each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer various items of real and personal property, as encumbered, to The Hobby Family Liquidating Trust (the "*Liquidating Trust*") created pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (the "*Divorce Decree*");

WHEREAS, the Property (as defined below) was among the items of real property to be transferred to the Liquidating Trust pursuant to the Divorce Decree;

WHEREAS, the Liquidating Trust desires to convey any interest in the Property which the Liquidating Trust may have or have had to Raymond D. Hobby; and

WHEREAS, the Liquidating Trust has agreed to issue this Quit-Claim Deed in order to convey its interest in the Property, if any, and Raymond D. Hobby has agreed to accept this Quit-Claim Deed.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and also in consideration of the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), the receipt and sufficiency of such consideration being hereby acknowledged, to the extent the Liquidating Trust is vested or may hereinafter become vested, by virtue of a conveyance from Mary T. Hobby or otherwise, in any interest in the Property, the Liquidating Trust, as Grantor, has remised and forever quit-claimed unto Raymond D. Hobby, as Grantee, and by these presents, Grantor does hereby remise, release and forever quit-claim unto the Grantee, his heirs, successors and assigns, all its right, title and interest in and to the following (the "*Property*"):

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122



IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

---

Case No. 2013-CP-36-332

---

Raymond D. Hobby .....Respondent

vs.

Mary T. Hobby .....Appellant

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Pope D. Johnson, III  
Attorney at Law  
1230 Richland Street  
Columbia, SC 29201  
803-799-9791  
803-253-6084 (fax)  
[pope@popejohnsonlaw.com](mailto:pope@popejohnsonlaw.com)  
**Attorney for the Appellant**

Columbia, South Carolina  
August 7, 2014

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

AUG 08 2014

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2013-CP-36-332

Raymond D. Hobby ..... Respondent

vs.

Mary T. Hobby ..... Appellant

**PROOF OF SERVICE**

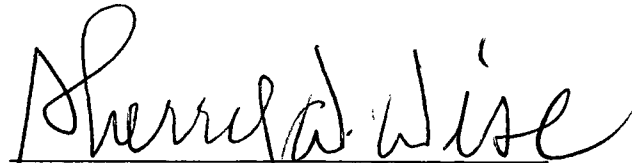
I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Benjamin C. Bruner, attorney for the Respondent, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 8<sup>th</sup> day of August, 2014.

**COUNSEL SERVED:**

Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260-1110

**PLEADINGS:**

Record on Appeal

  
Sherry W. Wise