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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY  
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER  
CASE NO. 2015-CP-11-0319  
APPELLATE CASE NO.: 2017-001459

RECEIVED  
FEB 06 2020  
SC Court of Appeals

Brenda Halsey, Bernay F. Halsey, Jr., Demont Halsey,  
Fredericka Halsey and Brittany Halsey,

Appellants,

versus

Gwendollette Halsey Simmons, Kenneth Wayne Oglesby, Roderick Terrill  
Oglesby, any heirs of the Roderick Gaffney Estate, known and unknown, who  
may claim any interest in the subject property, and any unknown heirs or parties  
who may claim title or ownership in the real estate which is the subject of this action,  
Elijah Reddish, Jackie W. Williams, as Cherokee County Treasurer, or the Successor  
in Office, Vernon L. Price, as Delinquent Tax Collector of Cherokee County, or the  
Successor in Office,

Of Whom,

Gwendollette Halsey Simmons, Elijah Reddish, Jackie W. Williams, as Cherokee  
County Treasurer, or the Successor in Office, Vernon L. Price, as Delinquent Tax  
Collector of Cherokee County, or the Successor in Office, are the

Respondents.

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APPELLANTS' PETITION FOR RE-HEARING  
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Richard H. Rhodes, Esquire  
William H. Rhodes, Esquire  
Burts, Turner & Rhodes  
260 North Church Street  
Spartanburg, SC 29306  
(864) 585-8166  
Attorneys for Appellant

February 4, 2020

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF APPEALS

Brenda Halsey, Bernay F. Halsey, Jr., )  
Demont Halsey, Fredericka Halsey and )  
Brittany Halsey, )

Appellants, )

vs. )

Gwendollette Halsey Simmons, Kenneth )  
Wayne Oglesby, Roderick Terrill )  
Oglesby, any heirs of the Roderick )  
Gaffney Estate, known and unknown, )  
who may claim any interest in the )  
subject property, and any unknown heirs )  
or parties who may claim title or )  
ownership in the real estate which is the )  
subject of this action, Elijah Reddish, )  
Jackie W. Williams, as Cherokee County )  
Treasurer, or the Successor in Office, )  
Vernon L. Price, as Delinquent Tax )  
Collector of Cherokee County, or the )  
Successor in Office, )

PETITION FOR REHEARING  
CASE NO.: 2015-CP-11-0319  
APPELLATE CASE NO.: 2017-001459

Of Whom, )  
Gwendollette Halsey Simmons, Elijah )  
Reddish, Jackie W. Williams, as )  
Cherokee County Treasurer, or the )  
Successor in Office, Vernon L. Price, )  
as Delinquent Tax Collector of Cherokee )  
County, or the Successor in Office, are the )

Respondents. )

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The Appellants, through their undersigned attorneys, have filed this Petition pursuant to Rule 221(a). It is respectfully submitted that the holding in Opinion filed January 22, 2019 failed to consider and apply pertinent facts which are important to this case. For brevity, each point is presented in outline form below:

1. **Gwendollette Owned The Home on the Adjoining Property** [Page 2 of Opinion]– The Court found that Gwendollette Halsey Simmons (Gwendollette) owned a home on the adjacent lot with Tax Map Number 100-08-00-056.00. This is incorrect. The owners of the adjoining home were Bernay and Brenda Halsey (Brenda). Brenda and Bernay built the subject house while living in the adjoining home. Although Brenda and Bernay never moved out of the adjoining home into the new home at 305 Leadmine, they received their mail at the Leadmine address (Tr. 10-15).

Gwendollette and Bernay owned the mobile home tract (100-08-00-005.00) as joint tenants in common. Although they were brother and sister, they were not close.

Gwendollette does not claim any ownership of either the subject property or the adjoining home. Gwendollette was joined only because she was identified by the Delinquent Tax Office as the owner and they served her with all notices relating to the Tax Sale.

2. **No Document Showing Ownership of Subject Property** [Page 3 of Opinion]– The Court held that there was no document which showed that Bernay Halsey was the owner of the property with Tax Map Number 100-08-00-055.03. This is incorrect. Probate File Number 2014-ES-11-104 and Deed of Distribution recorded in Deed Book 71, page 1331, Clerk of Court's Office for Cherokee County show the subject property being owned by Bernay Halsey. [A summary of the chain of title was presented (Tr. 31)]. Prior to the trial, it was agreed by all attorneys that the Appellants could introduce the chain of title and other County documents at trial, but since the Appellants were not allowed to present their case in chief, these documents could not be introduced at trial. Instead, summaries were attached and introduced in the 59(e) Motion.

In addition to the estate file and the Deed of Distribution, the Court's attention is invited to the following:

- Assessor's Statement dated November 21, 2001 (Tr. 46). The document shows that Brenda went into the Assessor's Office on December 3, 2001 requesting Bernay's name to be shown as the owner.

- Delinquent Tax Office statement showing that Brenda owned the subject property at 305 Leadmine Street (Tr.31).
- S.C. DHEC form showing Bernay Halsey and Lula Oglesby owned the property at 305 Leadmine Street (Tr. 51). [This was a 1983 statement and did not use tax map numbers.]
- A Board of Public Works for Cherokee County showing Bernay Halsey owned the property at 305 Leadmine Drive (Tr. 520). [This was a July 2002 document and did not use tax map numbers.]

Note: At trial, the Appellants planned to present the records of the county offices. The documents did not consistently use the correct Tax Map Number and did not consistently use the same name as the purported owner.

3. **First Correct Set of Tax Documents** – [Page 3 of Opinion] – The Court held that the first correct tax documents were in 2004 and 2005. These showed Gaffney Reddick Estate c/o Gwendolyn Dawkins. This holding is not accurate. The first tax records which showed the correct tax map number and correct address were dated November 21, 2001 (Tr. 46). The Assessor’s Office showed Gaffney Reddick Estate at 305 Leadmine Street. This document shows that Brenda went to the Assessor’s Office on December 3, 2001 to request that the correct name be added.

4. **Brenda Never Represented Herself As Owner** [Page 4 of Opinion] – The Court used the testimony of Mr. Price to hold that Brenda had never represented herself as being an owner. Since this was a directed verdict, Brenda (and her witnesses) did not have the opportunity to show the **numerous meetings** she had had with the taxing authorities. Even though Brenda could not present testimony to show her assertions of ownership, the Record still showed the following:

- Mr. Price testified that since 1997 he knew that Brenda was an owner of this property (Tr. 70).
- Brenda went into the Delinquent Tax Office in January 2006 and paid for the taxes for 2004 and 2005 on the subject property (Tr. 131).
- Mr. Price testified that the only two (2) people he knew who would be owners of this property were Gwendolette and Brenda. [As the Court notes, the Delinquent Tax Office used the name of Gwendolette. What makes this so egregious is that Gwendolette does not claim any ownership in this property. She was in default

and simply filed a Notice of Appearance; she was joined as a party because she had been identified as the owner and had been served with notice of the delinquent taxes.]

- Since Mr. Price knew that Brenda was an owner, he sent her a redemption notice; he testified that the only reason that she was not presented with the other notices was because the **computer** did not send them to her (Tr. 75).

5. **No Notice of Bernay Halsey's Estate** [Page 5 of Opinion] – The Court infers that since the Delinquent Tax action was commenced in March 2013 there was no notice of record to the Delinquent Tax Office about any ownership pursuant to the Estate of Bernay Halsey. This is not true:

- Estate File Number 2014-ES-11-0104 shows that the Personal Representative was appointed on April 13, 2014 - - long before the end of the redemption period. The estate file shows that Bernay owned 305 Leadmine with the County Tax Map Number 100-08-055.03.
- The Deed of Distribution was filed on September 16, 2014 in the Clerk of Court's Office for Cherokee County - - long before the end of the redemption period. This document shows that Bernay owned 305 Leadmine with the County Tax Map Number 100-08-055.03.

6. **Mailing Notice of Delinquent Taxes** – [Page 7 of Opinion] – The Court held that since the ownership of the property was unclear, tax officials were not required to mail notices to Brenda. This holding is incorrect. As noted above, and also discussed in the subsequent paragraphs, Brenda made efforts to have tax notices mailed to her at the address of 305 Leadmine. In addition, Code §12-51-40(a) mandates that notices be sent to the best address available which is either the address on the deed, the address on the property, or any other corrected address.

The address of the property is 305 Leadmine. This is the address used by Brenda and Bernay Halsey. It is also the address that Brenda gave to the tax officials (Tr. 38, 46).

Just a few days before the redemption period ended, the Delinquent Tax Office sent Brenda notice at the address of 305 Leadmine. Brenda received this, but with such short notice, she had inadequate time to raise the money necessary to redeem the property. The significant point is that the Delinquent Tax Office

knew of Brenda, knew of her address, but failed to send her any notice until 23 days before the redemption period ended. The actions of the Delinquent Tax Office do not comply with the spirit of the Tax Sale Act.

7. **Brenda Did Not Exercise Due Diligence** [Page 10 of Opinion] – The Court held that Brenda did not exercise due diligence to insure that the correct mailing address was used.. This is not true:

- In December 2001, she went to the Assessor's Office and told them to use the name of her husband (Bernay Halsey) (Tr. 46).
- In January 2006, she went to the Delinquent Tax Office and paid the 2004 and 2005 taxes on the subject property. (On both of her checks, she put down what she had instructed the Tax Office which was this was Bernay Halsey's home.) (Tr. 131).
- At trial, the Appellants, and their witnesses, were prepared to testify about the visits Brenda made to the Delinquent Tax Office to try to have the correct name and the correct address to be used.
- The Tax Office is still confused. Brenda has lived in the adjoining property (100-08-00-056.00) for almost 50 years. Notwithstanding, the 2019 tax records do not reflect that she is entitled to 4%. Also, they are not giving her the homestead exemption. [See Exhibit I.]

8. **Directed Verdict** [Page 12 of Opinion] – Prior to the commencement of trial, the trial court held a conference with the attorneys in chambers. The court wanted to take testimony concerning the validity of the Tax Sale before the Appellants presented their case (Tr. 58). Because of this, counsel for Cherokee County presented the testimony of Vernon Price, the Delinquent Tax Collector. As it turned out, he was the only one presenting evidence on behalf of the County. At the conclusion of the trial, the Respondents moved for a directed verdict, and the court granted their Motion.

When the court ruled that the Tax Sale was valid and granted the Respondent's Motion, the Appellants objected. The Appellants brought to the court's attention that the Record was incomplete, and that the Appellants had been denied the opportunity to present any evidence. The court's response was "well Mr. Rhodes, that's my ruling" (Tr. 103).

Circuit Court Rule 50 governs Motions for directed verdict. The Rule offers a party the opportunity to move for a directed verdict at the close of evidence of the party opponent. In the case at bar, the Motion for directed verdict was made by the Respondents after they had presented their case in chief.

It is respectfully submitted that procedurally this was incorrect. The Respondents were given the opportunity to present their case, and then they moved for a directed verdict without giving the Appellants any opportunity to present evidence. This, in effect, is the “rule of one” and undermines the entire concept of due process.

In the case of LaSalle Bank National Association v. Davidson, 386 S.C. 276 (2009), our Court held that “due process of law requires that a person shall have a reasonable opportunity to be heard....” id at p. 279. In the case at bar, the Appellants did not have an opportunity to be heard. They were denied the opportunity to present any evidence and their case was dismissed.

A Tax Sale is considered to be a “harsh remedy”, and the purpose of the Tax Sale Act is to prevent a taxpayer from surprise and from sacrifice of their property. King v. James, 388 S.C. 16 (Ct. 2010). The Appellants owned three tracts of land: their old home place (which is known as the adjoining property); the subject property which was sold at the Tax Sale (Leadmine Road); and the trailer park (100-08-00-055.00). The tax notices did not consistently use the correct names, the correct address, and the correct tax map numbers. Brenda made efforts to correct the addresses and the names. She believed that she was paying her taxes. The facts of this case do not justify losing a home, particularly without the opportunity to be heard.

## CONCLUSION

It is respectfully submitted that even though the Appellants were unable to present testimony and even though the Appellants were unable to present all of their exhibits, The Record contains sufficient documents which show the extreme confusion relating to the title of this property. The county documents did not always use the correct Tax Map Number and did not always use the same name as the purported owner. [Even Vernon Price acknowledged that the documents surrounding this property were confusing (Tr. 73, 74).]

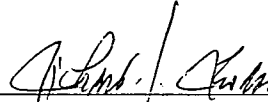
Actions which are brought to set aside a Tax Sale are equitable in nature. Smith v. Barr, 375 S.C. 157 (Ct. App. 2007). Since this is a case in equity, this Court has the authority to review testimony and records and make its own findings.

The Appellants respectfully requests this Court to exercise its equity powers and render an opinion which is just. The Appellants were denied the opportunity to present evidence. In effect, the Appellants have been denied their day in court and, they have lost a home which they built. Our courts have consistently held that in matters involving a directed verdict, all reasonable inferences should be resolved against the one who is seeking the directed verdict. Whelan v. Welch, 304 S.C. 548 (Ct. App. 1991). Such a standard mandates that a party be given the opportunity to present evidence.

Losing property pursuant to a Tax Sale is a drastic measure. As a result, our courts have always required strict compliance. This would include making every reasonable effort to notify the owner of the property of a pending sale/redemption. The Delinquent Tax Office knew that the only two (2) people involved with this land were Gwendollette and Brenda, the Delinquent Tax Office notified Brenda at the address of the subject property just days before the redemption period ended. This shows that the Delinquent Tax Office knew Brenda was involved with the property and knew her address. Therefore, the Delinquent Tax Office should have given Brenda notice of all stages of the delinquent tax proceedings.

For these reasons, it is respectfully submitted that the Tax Sale should not have been upheld. In the alternative, the Appellants ask that the directed verdict be set aside and allow the case to be remanded for a complete trial.

Respectfully submitted,



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William H. Rhodes, Esquire  
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260 North Church Street  
Spartanburg, SC 29306  
(864) 585-8166

February 4, 2020



Jackie W. Williams  
Treasurer, Cherokee County  
PO Box 1267  
Gaffney, SC 29342



**CHEROKEE COUNTY, SOUTH CAROLINA**  
**PROPERTY TAX NOTICE**

SEE REVERSE SIDE

**2019**

RETURN SERVICE REQUESTED

1 38



00016689

\*\*\*\*\*AUTO\*\*SCH 5-DIGIT 29379

**HALSEY BRENDA W ETAL**  
**305 LEADMINE RD**  
**GAFFNEY, SC 29340**

	PROPERTY VALUATION	TAX LEVY	PROPERTY TAX
COUNTY	2,610	314.00	819.54

NO. ACRES	NO. LOTS	NO. BUILDINGS	TOTAL APPRAISAL	TOTAL ASSESSMENT	
43		1	43,500	2,610	
PERSONAL APPRAISAL	RATIO	PERSONAL ASSESSMENT	LAND APPRAISAL	RATIO	LAND ASSESSMENT
			8,000	6%	480
MAP NUMBER					
100-08-00-056.000			BUILDING APPRAISAL	RATIO	BUILDING ASSESSMENT
			35,500	6%	2,130
PRIOR YEAR TAXES		\$746.07			

PROPERTY / LOCATION DESCRIPTION	
1005 ONEAL ST E	1005 E ONEAL ST 10G 944 PLAT

CLASS	PROPERTY TYPE	APPRAISAL	RATIO	ASSESSMENT
RI	RESIDENTIAL IMPROVED	43500	6%	2610

*No HOMESTEAD*

RECEIPT NUMBER	DISTRICT	TOWN	PROPERTY TYPE
011592-19-3	11		REAL

COUNTY TAX DOLLARS DISTRIBUTION			
Tax Breakdown by Entity	Levy Mills	Levy %	Tax Dollars
General Schools	.1765	56.21%	460.66
School Bonds	.0298	9.49%	77.78
Ordinary County	.0748	23.82%	195.23
Library	.0041	1.31%	10.70
Recreation	.0039	1.24%	10.18
Fire District	.0120	3.82%	31.32
County Bonds	.0049	1.56%	12.79
Capital Project Fund	.0054	1.72%	14.09
Community College	.0026	.83%	6.79

COUNTY TAXES	CITY TAXES	TOTAL TAXES
\$819.54	\$ .00	\$819.54

A 1.6 Mill surcharge included for compliance with court order concerning EMS.

	COUNTY	CITY
TOTAL TAX	819.54	
LESS HOMESTEAD EXEMPTION		
LESS SCHOOL TAX CREDIT		
LESS LOST CREDIT		
PLUS CODE ENFORCEMENT FEE	57.07	

**PAY THIS AMOUNT BY OR BEFORE**  
**January 15, 2020**

**\$762.47**

After January 15, 2020 Plus 3%	\$785.34
After February 3, 2020 Plus 10%	\$838.72
After March 16, 2020 Plus 15% Plus \$5.00 Cost	\$881.84

EXHIBIT I

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY  
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER  
CASE NO. 2015-CP-11-0319

Brenda Halsey, Bernay F. Halsey, Jr., Demont Halsey,  
Fredericka Halsey and Brittany Halsey,

Appellants,

versus

Gwendollette Halsey Simmons, Kenneth Wayne Oglesby,  
Roderick Terrill Oglesby, any heirs of the Roderick Gaffney Estate,  
known and unknown, who may claim any interest in the subject  
property, and any unknown heirs or parties who may claim title or  
ownership in the real estate which is the subject of this action, Elijah  
Reddish, Jackie W. Williams, as Cherokee County Treasurer, or the  
Successor in Office, Vernon L. Price, as Delinquent Tax Collector of  
Cherokee County, or the Successor in Office,

RECEIVED  
FEB 06 2020  
SC Court of Appeals

Of Whom,

Gwendollette Halsey Simmons, Elijah Reddish, Jackie W. Williams, as Cherokee  
County Treasurer, or the Successor in Office, Vernon L. Price, as Delinquent Tax  
Collector of Cherokee County, or the Successor in Office, are the

Respondents.

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PROOF OF DELIVERY  
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This is to certify that on the 4<sup>th</sup> day of February, 2020, the undersigned, secretary to Richard H. Rhodes, Esq., served a  
copy of the APPELLANTS' PETITION FOR REHEARING by depositing a copy of the same into the United States Mail,  
postage pre-paid and in the correct amount to the following:

Joseph L.V. Johnson, Esq.  
Joseph L. Mathis, Esq.  
Attorney for Jackie W. Williams  
as County Treasurer and Vernon  
L. Price, as Delinquent Tax Collector  
210 South Limestone Street, Suite 1  
Gaffney, SC 29340

Anna Karina Parker, Esq.  
Attorney for Gwendollette Halsey Simmons  
221 W. Floyd Baker Blvd.  
Gaffney, SC 29340

George Brandt, III, Esq.  
Attorney for Elijah Reddish  
360 E. Henry Street  
Spartanburg SC 29302

  
JO ANN CHAMPION

SWORN to before me this 4<sup>th</sup>  
day of February, 2020.

  
(SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12-10-2020

BURTS TURNER & RHODES  
ATTORNEYS AT LAW

SAM BURTS (1907 - 1982)  
NOEL TURNER (1928 - 2011)  
RICHARD H. RHODES  
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February 4, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED  
FEB 06 2020  
SC Court of Appeals

Re: Brenda Halsey, et al vs. Gwendollette Halsey Simmons, et al  
Appellate Case No. 2017-001459

Dear Ms. Kitchings:

I have enclosed the Appellants' Petition for Rehearing in the above named matter. I have also enclosed a Proof of Delivery on opposing counsel.

Please do not hesitate to contact me if you should have any questions or require any further information.

Sincerely,

  
Richard H. Rhodes

*P.S. Motion Fee of \$50.00  
is enclosed.  
RHR/jc  
Enc.*

cc:

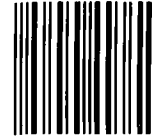
Joseph L.V. Johnson, Esquire  
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Attorney for Elijah Reddish  
360 E. Henry Street  
Spartanburg, SC 29302



1000



29211

U.S. POSTAGE PAID  
FCM LG ENV  
SPARTANBURG, SC  
29306  
FEB 04, 20  
AMOUNT

**\$1.40**

R2305K133826-07

# First Class Mail

**BURTS TURNER & RHODES**

ATTORNEYS AT LAW  
POST OFFICE BOX 3408  
SPARTANBURG, SOUTH CAROLINA 29304

**TO:**

The Hon. Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

FEB 06 2020

SC Court of Appeals

