STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Chester County
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

2015-CP-12-0179

Appellate Case No. 2016-002016

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

v.

Mell Woods .... Appellant.

Respondent's Brief

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Counter-Statement of Issues on Appeal

The Appellant's Brief is superficial and essentially devoid of meaningful and substantive content. The Appellant requested two extensions (60 days +/-) from the court for the filing and service of his initial brief and designation of matter for the record only to ultimately produce an empty brief and a Designation of Matter for the record on appeal that violates both the letter and the spirit of Rule 209, SCACR. Although Appellant's Statement of Issues on Appeal identifies five issues (Appellant's Initial Brief, p.1), Appellant offers actual argument and citation of authority solely on issue A, namely whether Appellant was entitled to a jury trial in magistrate's court. (Appellant's Initial Brief, p. 7). Issues B through E are mentioned only in Appellant's Statement of the Case and only in very general, conclusory and perfunctory terms, without analysis or citation to authority. Accordingly, issues B through E have been abandoned. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 75, 76 (2d ed. 2002), citing Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E. 2d 283 (Ct. App. 1993).

Rule 208(b)(1)(D), SCACR requires the brief of appellant be divided into as many parts as there are issues to be argued, the particular issue to be addressed set forth in distinctive type at the head of each part, and the argument section of the brief contain discussion and citations of authority. Where a party fails to specifically argue an issue in the brief, including making only general and conclusory statements without supporting authority, the issue is not preserved for review and is deemed abandoned. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 214 (2d ed. 2002), citing Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue, 342 S.C. 34, 535 S.E.2d 642 (2000) and Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (1992).

See also State v. Black, 319 S.C. 515, 462 S.E.2d 311 (Ct.App. 1995) and Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct.App. 2009), affirmed 395 S.C. 129, 716 S.E.2d 910 (2011).[1]

Appellant's Designation of Matter to be Included in the Record on Appeal is not in compliance with Rule 209(a), SCACR in that it does not set forth "with specificity" those parts of the transcript, pleadings, orders, exhibits or other materials proposed to be included in the record. It essentially designates for inclusion in the record everything from the magistrate's court and the circuit court hearings when the only issue argued in his initial brief relates to whether Appellant was entitled to jury trial. All trial exhibits and the entire transcript are not necessary or relevant to the question of entitlement to a jury trial. The pleadings and orders are all that are needed for Appellant's one issue argued in his initial brief.

Respondent's Motion to Dismiss Appeal was denied by Orders of this Court dated March 22, 2018 and May 3, 2018, however the May 3, 2018 Order permits Respondent to include in this brief his argument for dismissal of the appeal on untimeliness grounds.

Accordingly, Respondent's Counter-Statement of Issues on Appeal are:

I. Appellant's Rule 59(e), SCRCP motion in Circuit Court was untimely served, thereby not tolling the time for serving a notice of appeal, thereby making Appellant's Notice of Appeal to this court untimely and depriving this court of appellate jurisdiction.

---

[1] Appellant will no doubt try to argue the abandoned issues in his reply brief notwithstanding that an appellant may not use the reply brief to argue issues not argued in his brief in chief. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 215 (2d ed. 2002), citing Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E. 2d 283 (Ct. App. 1993).

II. The Magistrate's Court and the Circuit Court were correct to hold that Appellant was not entitled to a jury trial in this case because the case did not, and does not, involve an issue of adverse possession, that claim having been previously decided adversely to the Appellant by the Court of Appeals. (Appellant's Issue on Appeal "A").

III. The Magistrate's Court and the Circuit Court were correct to hold that Appellant was not entitled to a jury trial in this case because neither the governing statute, S.C. Code Ann. §15-67-610,[2] nor the nature of the proceeding (to provide an expedited remedy to remove a person from premises when there is no landlord-tenant relationship) provide for a jury trial. (Appellant's Issue on Appeal "A").

IV. Appellant should be sanctioned to put a stop to the obvious mis-use of the courts to harass the Hinson heirs.

General Background

Appellant is a *pro se* serial litigant who, since 2010, has used the courts to harass the Reba Hinson heirs and to extend his occupancy and use of real property that he does not own. The Respondent's principals identified in the above caption are the owners of the property. These facts have been established in prior legal actions, but Appellant refuses to acknowledge the prior decisions of the courts; files every possible motion, petition and appeal to delay the day of reckoning (just as he has done in this appeal); repeatedly tries to

[2] S.C. Code Ann. §15-67-610: 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.

re-litigate those decisions in subsequent proceedings, thereby triggering a new round of appeals; and has in bad faith mis-used the courts' process and rules to claim and cloud title to land he does not own.

The Appellant has commenced five actions in either the Chester County Probate Court or Circuit Court, all having to do with his dispute with the Hinson family over the administration of the Reba Hinson Estate and his (Appellant's) claim that his entitled to a deed for a lot or parcel of land he originally leased from the decedent Reba Hinson. All five cases resulted in trial court orders and/or appeal orders/opinions favorable to the above-captioned Respondent in his capacities as personal representative and/or attorney-in-fact.[3] They are:

1. 2010-CP-12-0168 (Appellant's claims against the Reba Hisnon Estate removed to Circuit Court from probate court). After slogging through many procedural delays, Respondent Breakfield, as Personal Representative, was granted summary judgment by the circuit court. Appellant appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (R. p. 182-183). Appellant's petition for writ of certiorari to the South Carolina Supreme Court was denied. (All documents are available

[3] All of the facts relevant to this history are established in the myriad filings in prior trial court and appellate court proceedings identified later in this brief. As such, the documents of record in those court proceedings are subject to judicial notice in this proceeding. Courts may take judicial notice of matters of public record, Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F.Supp.2d 553 (W.D.N.C. 1998); prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F.Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993); decisions of other courts, Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group. Ltd., 181 F.3d 410 (3d Cir. 1999); and reliable sources found on the Worldwide Web, In re Yahoo Mail Litigation, 7 F.Supp.3d 1016,1024 (N.D.Cal 2014); and Rule 201, SCRE.

on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents.

2. 2010-CP-12-0201 (Appellant's appeal from probate court regarding estate administration). Appellant Woods tried to insert himself into matters of probate estate administration in the estate of Reba Hinson. Appellant sought to have Breakfield removed as personal representative because, among other things, he was probating the wrong will. The probate court found the Appellant to be a stranger to the Reba Hinson estate and denied Appellant's various efforts to interfere in estate administration. Appellant appealed to circuit court where the probate court orders were affirmed. Appellant appealed to the Court of Appeals where the circuit court and the probate court were affirmed in a per curiam unpublished opinion. (R. p. 184-185). Appellant's petition for certiorari to the South Carolina Supreme Court was denied. (All documents are available on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents.

3. 2011-CP-12-0323 (Appellant's quiet title action filed in circuit court). This case is dispositive of the case *sub judice*. After the Hinson bodily heirs (the above-captioned Respondents) commenced an action in the magistrate's court to have Appellant declared to be a tenant at will and to have him evicted (2011CV1210400002), Appellant filed an action in the Chester County Court of Common Pleas in June, 2011 (2011-CP-12-0323) that he self-identified as one for trespass to try title or to quiet title to the land at issue by having the last will of Reba Hinson's husband, Levie Hinson, construed to have devised Reba Hinson a fee interest in the land rather than a life estate. **This would serve as the springboard for Appellant's claim to title via adverse possession.** The Appellant has no deed to the subject property executed by either Levie Hinson or Reba Hinson. The land

at issue in 2011-CP-12-0323 is the same land at issue in the case *sub judice*. The Hinson heirs counterclaimed for a declaration that they are the owners of the property at 1537 Hinton Road because, in part, Appellant is not a member of the Hinson family; he was neither a devisee in Levie Hinson's last will nor an heir of Levie Hinson, and Reba Hinson held only a life estate and could not have transferred a greater estate to the Appellant. Nevertheless, Appellant had his day in court, and the circuit court granted summary judgment in favor of the Hinson family. (Circuit Court Order dated December 29, 2011 in case no. 2011-CP-12-0323). Appellant appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (R. p. 186-189). Appellant's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. (All documents are available on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents. THIS CASE DECIDED THE QUESTION OF APPELLANT'S CLAIM TO AN OWNERSHIP INTEREST IN THE SUBJECT REAL PROPERTY, INCLUDING BY ADVERSE POSSESSION.

4. 2011-CP-12-0595 (Appellant's tort claims against the Reba Hinson estate and the Hinson family). This case involved Appellant's claim against the Reba Hinson estate for various and sundry frivolous causes of action. The claims were removed to circuit court. The circuit court granted summary judgment in favor of the Reba Hinson estate. Appellant appealed to the Court of Appeals which affirmed the circuit court in a per curiam unpublished opinion. (R. p. 190-191). Appellant's petition for writ of certiorari to the South Carolina Supreme Court was dismissed. (All documents are available on the South Carolina Judicial Department website.) Appeal costs were awarded to the Respondents.

5. A Rule 60, SCRCP "independent action" in the Chester County Probate Court in the Estate of Levie Hinson, 1986-ES-12-0188, asking that the Probate Court's October 15, 2007 Order in the Levie Hinson estate be vacated because of alleged fraudulent conduct on the part of Respondent Breakfield, which was expressly denied, in the administration of the estate of Reba Hinson some fifteen months after entry of the October 15, 2007 order. This action involved the same issues and allegations that Appellant made in case no. 2 except that the allegations in case no. 2 were made in proceedings in the Reba Hinson estate. Appellant claimed that Breakfield was probating the wrong will and that he and others had committed a fraud on the court. He moved for Rule 60(b) relief in the form of vacating the Order appointing Breakfield as personal representative and vacating the order admitting Reba Hinson's June 23, 1998 last will to probate. Appellant tried to relitigate the subject of Reba Hinson's title, and consequently the Appellant's claim to title, by dressing it up as a Levie Hinson estate matter rather than a Reba Hinson estate matter. Respondents filed a motion to dismiss and a motion for sanctions. On the eve of the motions hearing, Appellant took a voluntary dismissal of his complaint.

There are two other proceedings that were brought by the above-captioned Respondents against the Appellant.

6. The Hinson family commenced a tenant eviction action in magistrate's court to have Appellant evicted as a hold-over tenant at will. Appellant appealed a pretrial order to the Circuit Court, and to the Court of Appeals and to the Supreme Court. As with his other

appeals, he was unsuccessful. (R. p. 192-193). His Petition for Writ of Certiorari was dismissed. Appeal costs were awarded to the Respondents.[4]

7. Summary proceeding to oust Appellant as a trespasser. This is the case that is the subject of the appeal now before the Court. It will be described below in the Statement of the Case.

Statement of the Case

Chronology

March 11, 2011	Respondent commenced a proceeding in magistrate's court to have Appellant removed from the land as a hold-over tenant.
June 2, 2011	Magistrate's Court issued order with respect to pretrial motions; Appellant appealed this order to the Circuit Court, the Court of Appeals and the Supreme Court. (R. p. 192-193). After the appeal was decided adversely to Appellant, this case was discontinued and did not proceed to judgment. (see entry for November 13, 2014 below.)
July 16, 2012	Appeal ended when Supreme Court issued Order denying certiorari.
June 22, 2011	Appellant commenced action in circuit court to have Levi Hinson last will construed to have devised fee simple title to Reba Hinson.

[4] Appellant has not paid a dime of any of the appeal costs awarded in the prior appeals (cases 1-4 described above.

December 29, 2011	Circuit Court order granted summary judgment in favor of Respondent's principals and against Appellant and his claim to title. (Order dated December 29, 2011). Appellant appealed this order to the Court of Appeals and the Supreme Court.
January 8, 2014	Court of Appeals filed unpublished opinion establishing that Appellant did not acquire title from Reba Hinson. (R. p. 186-189).
July 24, 2014	Supreme Court order denying Appellant's petition for certiorari.
November 13, 2014	Respondent, as attorney-in-fact, commenced proceeding in magistrate's court for summary ejectment of Appellant as a trespasser, based on Appellant's representations to various courts that he was claiming possession of the property as an owner and not as a tenant. (Application for Notice to Quit Premises dated November 13, 2014- R. 194-201).
December 10, 2014	Appellant filed his Response/Answer in this trespass case in which he ignored 2014-UP-010 and persisted with his claim to title by adverse possession. (R. p. 202-210).
January 30, 2015	Magistrate's Court's hearing. The Respondent elected to proceed on the summary ejectment of trespasser proceeding and discontinued the previously filed tenant-based proceeding.
March 27, 2015	Magistrate's Court's Final Order and Judgment. (R. p. 211-224).

April 15, 2015	Appellant served a Notice of Appeal from the March 27, 2015 Order/Judgment setting out five grounds for appeal)
April 24, 2015	Appellant served motion(s) for reconsideration re the March 27, 2015 Order/Judgment.
May 14, 2015	Appellant served Amended Notice of Appeal that contained an additional nine new grounds of appeal.
July 15, 2015	Magistrate's Court's Order denying Appellant's motion(s) for reconsideration.
August 11, 2015	Appellant served a "Restated Notice of Appeal" with respect to the July 15, 2015 Order denying motion(s) for reconsideration.
August 2015	Appellant filed a motion to dismiss and motion for change of venue in the trespass case. August 24, 2015 Magistrate's Court Order denying Appellant's motion to dismiss and motion for change of venue in the trespass case.
September 2, 2015	Appellant served a Notice of Appeal from the August 24, Order in which he consolidated two grounds from the appeal of the August 24 Order to the original five grounds in his April 15 Notice of Appeal.
September 23, 2015	Appellant served his "Amended Notice of Appeal" in which he added two additional grounds to his September 2, 2015 Notice and Grounds of Appeal.

February 10, 2016	Supreme Court Order denying Appellant's petition for certiorari in the trespass case.
February 22, 2016	Remittitur issued.
February 29, 2016	Appellant filed and served a "Refiling of Appeal" in which he "restates, republishes, and incorporates by reference all of the grounds for appeal stated each [sic] of the notices of appeal from the magistrate [sic] court."
June 1, 2016	Circuit Court appeal hearing before Judge Gibbons.
June 9, 2016	Writ of Ejectment issued
July 7, 2016	Circuit Court Order Affirming Magistrate's Court Final Order and Judgment (the March 27, 2015 Order).[5] (R. p. 227-252).
July 28, 2016	Appellant claimed to have served Motion for Reconsideration.
August 31, 2016	Circuit Court Order denying motion for reconsideration.
September 9, 2016	Appellant served Notice of Appeal.
September 30, 2016	Respondent filed and served a Motion to Dismiss Appeal on the ground the Appellant's Rule 59(e), SCRCP motion and subsequent notice of appeal were untimely.

[5] The July 7, 2016 Circuit Court Order Affirming the Magistrate's Court contains a complete and helpful recitation of the procedural history and the grounds of appeal as they were identified at the time of the June 1, 2016 appeal hearing.

March 22, 2018 and May 3, 2018 Court of Appeals Orders denying motion to dismiss appeal.

Standard of Review

From Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 172 (2d ed. 2002):

> On appeal from a circuit court's affirmance of a magistrate's order, the appellate court will presume that the affirmance was made upon the merits where the testimony is sufficient to sustain the magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law. Hadfield v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (Ct. App. 2000). The appellate court therefore looks to whether the circuit court order is controlled by an error of law or is unsupported by the facts. Parks v. Characters Night Club, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001).

Argument

I. Appellant's Rule 59(e), SCRCP motion in Circuit Court was untimely served, thereby not tolling the time for serving a notice of appeal, thereby making Appellant's Notice of Appeal to this court untimely and depriving this court of appellate jurisdiction.

This was the subject of the Respondent's Motion to Dismiss Appeal. The motion, dated September 30, 2016 and all materials filed in support of the motion are incorporated herein by reference, and the Court is requested to take judicial notice of same. There were two grounds for the motion with respect to untimeliness: (1) Appellant had received email notice of the circuit court order which triggered his time for serving a Rule 59(e), SCRCP motion; and (2) independently of the email notice issue, Appellant's Rule 59(e), SCRCP

motion was not timely deposited with the USPS and consequently was not timely served by mail.

Ground 1 was meritorious as held in Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC, 422 S.C. 211, 810 S.E.2d 856 (2018); however the holding of the case was applied prospectively only, meaning that it did not operate with respect to this appeal.

Ground 2 alleged that Appellant did not timely deposit his Rule 59(e) motion with the USPS resulting in the motion not having been timely served by mail. If a motion is served by mail, mailing normally occurs when the document is deposited with the United States Postal Service, properly addressed with sufficient postage attached. Green v. Green, 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995). Although Appellant's motion was dated July 28, 2016, and the Click-N-Ship mailing label on his envelope to Respondent's attorney bears the date July 28, 2016, the Postal Service's tracking report shows that the envelope was not deposited to the Postal Service's custody until August 1, 2016 at 9:20 PM in Jacksonville, Florida. (USPS tracking report, Exhibit C to Exhibit 4 to Motion to Dismiss Appeal – R. p. 253). Exhibit B to Exhibit 4 to the Motion to Dismiss Appeal is the mailing label on the envelope used to serve Respondent's attorney. (Mailing label- Exhibit B to Exhibit 4 to Motion to Dismiss appeal – R. p. 254). Exhibit D to Exhibit 4 to the Motion to Dismiss appeal is an authenticating affidavit of Paris Cherry, a USPS manager, who explains how the Click-N-Ship service works. (Paris Cherry affidavit – R. p. 255-267).

Appellant's mailing label, which corresponds with the tracking report, bears the date "07/28/2016" notwithstanding that the tracking report shows the date of deposit as August 1, 2016. (R. p. 253). The ability to manipulate the information on the mailing label is demonstrated by the fact that the label is printed on Appellant's computer (Paris Cherry

affidavit - R. p. 255 ¶ 2) and the label shows that the envelope was "mailed from 29721," the zip code for Lancaster, SC, when the USPS tracking report shows that the envelope was actually deposited with the Postal Service in Jacksonville, FL. (tracking report and mailing label – R. p. 253-254).

Appellant has previously suffered the consequences of having legal proceedings discontinued or dismissed because of his playing fast and loose with the Postal Service's Click-N-Ship program resulting in untimely service and filing of legal documents. Appellant's appeal in the initial tenant eviction action, case no. 6 above, was decided adversely to him by the Court of Appeals. When his petition for Writ of Certiorari was untimely filed and served, it was dismissed by the Supreme Court. (Supreme Court no. 2014-001039). Appellant moved to have the appeal/petition reinstated which prompted consideration of Appellant's use of the Click-N-Ship program. The undersigned's Return to Appellant's Motion to Reinstate appeal in 2014-001039 included the affidavit from Paris Cherry, the USPS manager. The evidence showed that Appellant would print the mailing label but not actually deliver the envelope to the post office until later. He would deposit the envelope at a post office in Charlotte. The Supreme Court was not impressed with Appellant's shenanigans and denied the motion to reinstate appeal. All materials filed in the Supreme Court with respect to Appellant's motion in 2014-001039 are incorporated herein by reference, and the Court is requested to take judicial notice of same.

II. The Magistrate's Court and the Circuit Court were correct to hold that Appellant was not entitled to a jury trial in this case because the case did not, and does not, involve an issue of adverse possession, that claim having been previously

decided adversely to the Appellant by the Court of Appeals. (Appellant's Issue on Appeal "A".)

In his Statement of the Case, Appellant states "This case concerns the adverse possession of land in Chester County, South Carolina." (Appellant's Initial Brief, p. 2, l. 1-3.) In his argument on the sole issue on appeal Appellant states "Because the issue of adverse possession was raised in the pleadings below . . ." he was entitled to a jury. (Appellant's Initial Brief, p. 7, l. 2).

This Court's unpublished opinion no. 2014-UP-010 was filed January 8, 2014, well before the summary trespass case now under consideration was filed on November 13, 2014. (R. p. 186-189). The Circuit Court's summary judgment Order that was the subject of the appeal in 2014-UP-010 contained the following findings/rulings: "Plaintiff alleges that he is a bona fide purchaser for value without notice but more importantly that he is entitled to ownership of the subject property based on the theory of adverse possession." (Circuit Court Order dated December 29, 2011). The Circuit Court granted summary judgment in favor of the Hinson heirs and held that Appellant had no claim to title by grant, presumption of grant or by adverse possession.

On appeal, in 2014-UP-010, this Court affirmed the summary judgment and in so doing confirmed that Reba Hinson held only a life estate, and that with respect to adverse possession tacking is allowed only between ancestor and heir (Appellant is neither of these) and that adverse possession cannot run against remaindermen until the death of the life tenant. Reba Hinson died January 2007.

In its Final Order and Judgment dated March 27, 2015 in the case *sub judice*, the Magistrate's Court noted that unpublished opinion no. 2014-UP-010 was received into

evidence and that the Appellant "lost this issue and is estopped from asserting it here pursuant to the doctrine of res judicata and this is also the law of the case." (Final Order dated March 27, 2015 – R. p. 212-224; p. 220, l. 7 to p. 221, l. 10).

On appeal to the Circuit Court, the Court in its Order Affirming the Magistrate' Court, held:

> Appellant continues to claim, assert and allege that he holds some form of title or interest in the real property at issue, the property being occupied by Appellant as a trespasser as found by the Magistrate's Court, by virtue of an agreement between appellant and Reba Hinson. That subject has already been decided adversely to Appellant by the Court of Appeals in its unpublished opinion no. 2014-UP-010. Whatever interest, if any, Appellant may have received from Reba Hinson terminated upon her death in 2007 because Reba Hinson owned only a life estate. The Magistrate's Court was correct in so finding. Consequently, issues on appeal nos. 1, 2, 4 and 11, in which Appellant claims that the trespass case involved a defense of questionable or paramount title are without merit. This is not a case that attacks Appellant's title because it was judicially determined prior to the trespass proceeding that Appellant has no title.

(Order – R. p. 227-252; p. 235, l. 14 to p. 236, l. 2).

III. The Magistrate's Court and the Circuit Court were correct to hold that Appellant was not entitled to a jury trial in this case because neither the governing statute, S.C. Code Ann. §15-67-610, nor the nature of the proceeding (to provide an expedited remedy to remove a person from premises when there is no landlord-tenant relationship) provide for a jury trial. (Appellant's Issue on Appeal "A").

The Magistrate's Court addressed this issue in its March 27, 2015 Final Order and Judgment. (R. p. 214-215). The Circuit Court addressed the issue in its July 7, 2015 Order. (R. p. 238-239). The purpose of S. C. Code Ann. § 15-67-610 is to give the real owner of land an "expeditious method of ejecting trespassers." <u>Richland Drug Co. v. Moorman</u>, 71 S.C. 236, 50 S.E. 792 (1905). A jury trial is not provided for in proceedings

under § 15-67-610 precisely because it is a proceeding for an expeditious "summary ejectment." See the heading for Title 15, Chapter 67, Article 7; Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792 (1905) ; Lynch v. Ball, 79 S.C. 243, 60 S.E. 691 (1908); Cotton v. Johnson, 71 S.C. 413, 51 S.E. 245 (1905). Neither S.C. Code Ann. § 15-67-610 nor § 15-67-620[6] mentions a right to a jury trial.[7] Additionally, § 15-67-620 provides that the Respondent (the person who is sought to be ejected from the premises) must appear before the magistrate and satisfy "him" [the magistrate], not a jury, of the bona fides of Respondent's possession.

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

1. The Plaintiff/Applicant "must bring himself within the statute by at least making before the magistrate prima facie showing that he is the owner of the premises and that defendant is a trespasser." Richland Drug Co. v. Moorman, supra. Plaintiff must make such proof as should satisfy the magistrate that the case is one falling within the statute. Id.

2. Once the plaintiff has made his showing of ownership and that the defendant is in possession without consent, the defendant, to avoid summary ejectment, must do two things: (a) satisfy the magistrate that Defendant "has a bona fide color of claim to the

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[6] § 15-67-620: If the person in possession shall, before the expiration of the five days, appear before such magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him, by any of the modes of proceeding now provided by law, the magistrate shall not issue his warrant as provided in Section 15-67-610.

[7] In Appellant's separate action for trespass to try title/quiet title (case no. 3 hereinabove) he would have been entitled to a jury trial on the issue of his claim to paramount title had the action not been decided adversely to him on summary judgment. Therefore, he has not been denied the right to a jury trial on the issue of title.

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

3. If the Defendant satisfies the magistrate that he has a colorable claim of rightful possession, the summary proceeding should be dismissed, and the Plaintiff is left to the ordinary remedy for recovery of possession of the land. Richland Drug Co. v. Moorman, supra.

To the extent that Appellant argues that the subject before the magistrate court in this proceeding was the "issue of paramount title" to the land in question, and that the nature of the "issue" entitled him to a jury trial, as addressed hereinabove Appellant has already litigated his claim to title to the land at issue and lost that claim. Consequently, Appellant could not, and did not, show that he had a bona fide color of claim to the possession of such premises. What was before the magistrate court in this proceeding was the issue of Appellant's right to possession of the land, if any, separate and apart from his already failed claim to title. Appellant made no such showing of a bona fide color of claim to possession of the land.

V. Appellant should be sanctioned to put a stop to the obvious mis-use of the courts to harass the Hinson heirs.

The Court should take action to impose sanctions on the Appellant in the form of:

- an award of litigation costs, including attorney fees, and an appropriate monetary sanction, and/or

- an order restricting Appellant's access to the courts with respect to proceedings having any relationship with ownership of the subject real property (known as 1537 Hinton Road, Great Falls, SC), and/or
- an order that all court clerks decline to accept any filing from the Appellant in any pending case or new case unless a judge of the Court has specifically authorized the filing after a hearing and confirmed that all appellate costs heretofore awarded against Appellant have been paid in full, including any monetary sanction awarded herein, and
- an order prohibiting the Appellant from filing any further legal actions or proceedings involving either the Reba Hinson estate or the Levie Hinson estate, or any other pleadings or submissions, unless Appellant's pleadings and/or filings are signed by a licensed South Carolina attorney and a bond is posted in the amount of $15,000 to cover litigation costs and reasonable attorney fees incurred in defending against the action.

Such a remedy is necessary because of the following considerations[8]:

Appeal costs have been awarded to the Respondents in each of the aforementioned appeals, but Appellant has not paid a penny on any award. Nevertheless, his drumbeat of litigation marches on.

Rule 11 sanctions. Rule 11(a), SCRCP, imposes a duty on parties and attorneys representing parties by construing a signature on pleadings as a certificate that (s)he has read the pleading and "that to the best of his knowledge, information and belief there is

[8] The General Background section of this brief is repeated herein and incorporated herein by reference.

good ground to support it . . ." The history of the proceedings between the captioned parties belie any suggestion that this appeal involves a new issue that has not been previously decided. Petitioner has pursued repeated and vexatious litigation, with the captioned appeal being only the latest installment.

S.C. Code Ann. §15-36-10, The South Carolina Frivolous Civil Proceedings Sanctions Act provides that:

> (C)
>
> (1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:
>
> (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
>
> (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based. (emphasis added.)
>
> (2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

Bringing and/or continuing a lawsuit based on allegations that prior court rulings have found to have no merit can be the basis for awarding sanctions, Holmes v. East Cooper Community Hospital, Inc., 408 S.C. 138, 758 S.E.2d 483 (2014), including ordering the Plaintiff (Appellant) to pay the Defendant's attorney fees and other related litigation costs, and enjoining the Plaintiff from filing any future legal proceedings in the probate court against the Defendants without first posting bond. Id. The plaintiff may also be sanctioned and enjoined from filing any future legal proceedings against the Defendants without representation on the pleadings by a licensed attorney. Id., fn. 18.

In Balcar v. Bell and Associates, LLC, 295 F.Supp.2d 635 (N.D.W.Va. 2003) the Court wrote:

> . . . courts may sanction for bad faith conduct via their inherent authority. "The case law is well-established that district courts have the inherent power to sanction parties for certain bad faith conduct, even where there is no particular procedural rule that affirmatively invests the court with the power to sanction." Strag v. Bd. of Tr., 55 F.3d 943, 955 (4th Cir. 1995). The Fourth Circuit has also held that Rule 11 and § 1927 do not displace the inherent authority of the court to impose sanctions for bad faith conduct as these other methods of sanctions "are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions." United States v. Shaffer Equip. Co., 11 F.3d 450, 458 (4th Cir. 1993)(quoting Chambers v. NASCO, Inc., 501 U.S. 32, 46, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991).

Courts may impose monetary sanctions. Balcar, supra. However,

> A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court. See generally In Re Urban, 768 F.2d 1497, 1500 (D.C.Cir.1985); Green v. Warden, U.S. Penitentiary, 699 F.2d 364 (7th Cir.1983). In fashioning such a remedy in Lysiak's case we act on our "obligation to protect and preserve the sound and orderly administration of justice," In Re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir.1984). At the same time we must take care to protect Lysiak's undeniable right of access to the court's processes, see In Re Green, 598 F.2d 1126, 1127 (8th Cir.1979) (en banc).

Lysaiak v. C.I.R., 816 F.2d 311 (7th Cir. 1987).

Courts may also impose sanctions to limit access to the courts by ordering that all court clerks decline to accept any filing from the litigant unless a judge of the Court has specifically authorized the filing. Vinson v. Heckmann, 940 F.2d 114 (5th Cir. 1991). In BKS Properties v. Shumate, 271 B.R. 794 (N.D. Tex. 2002) the Court imposed a hybrid sanction. If monetary sanctions are imposed, the Court can also require that until the monetary sanction is paid that:

> the clerk of the bankruptcy court not accept for filing any pleading or paper filed by Shumate. As a matter of comity and sound judicial administration, this court requested that all courts, state and federal, recognize and honor that order. As a further sanction, this court recommends that the district court enter a similar directive to the clerk of the district court, as well as to the clerks of all courts, not to accept any pleading or paper filed by Shumate until he pays the sanctions. . . [and] the order should further direct that if Shumate files either a paper or pleading in violation of this order, that a named defendant immediately remove the litigation to federal court, and that the federal court immediately sua sponte dismiss the matter with prejudice.

Additionally, the court may enter an injunction requiring the litigant to seek leave of court in order to file an appeal. Billman v. C.I.R., 847 F.2d 887 (D.C. Cir. 1988).

Conclusion

The Magistrate's Court and the Circuit Court, on appeal, were correct to find and hold that Appellant was a trespasser and should be ousted from the property and that Appellant was not entitled to a jury trial in the summary ejectment proceeding. The Circuit Court Order dated July 7, 2016 should be affirmed. And, the Court should sanction the Appellant by awarding litigation costs, including attorney fees, and an appropriate monetary sanction; and/or restricting Appellant's access to the courts with respect to

proceedings having any relationship with ownership of the subject real property (known as 1537 Hinton Road, Great Falls, SC); and/or ordering that all court clerks decline to accept any filing from the Appellant in any pending case or new case unless a judge of the Court has specifically authorized the filing after a hearing and confirmed that all appellate costs heretofore awarded against Appellant have been paid in full, including any monetary sanction awarded herein; prohibiting the Appellant from filing any further legal actions or proceedings involving either the Reba Hinson estate or the Levie Hinson estate or their heirs, or any other pleadings or submissions, unless Appellant's pleadings and/or filings are signed by a licensed South Carolina attorney and a bond is posted in the amount of $15,000 to cover litigation costs and reasonable attorney fees incurred in defending against the action; and/or granting any other relief that the Court finds to be proper.

May 29, 2019

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

2015-CP-12-0179

Appellate Case No. 2016-002016

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SC Court of Appeals

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

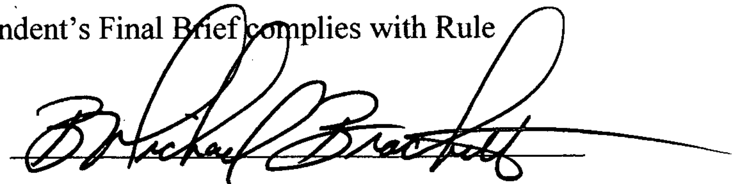
v.

Mell Woods .... Appellant.

Rule 211(a) Certificate of Counsel

The undersigned hereby certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.

May 30, 2019



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