

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's  
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

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

Respondents,

vs.

Mell Woods,

Appellant.

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FINAL Brief for APPELLANT

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JUN 14 2019  
SC Court of Appeals

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

TABLE OF CONTENTS

I. Table of Authorities . . . . .	iii
II. Statement of Issues on Appeal . . . . .	1
III. Statement of the Case . . . . .	2
IV. Statement of the Facts . . . . .	6
V. Argument and Citation of Authority . . . (includes Standard of Review)	7
Jurisdiction Raised . . . . .	8
Conclusion . . . . .	9
Certificate of Service . . . . .	9

## I. TABLE OF AUTHORITIES

S.C. STATUTE § 18-7-130 requires that a circuit court sitting as an appellate court, review *all* of the papers filed in the magistrate court. **R, 235** Appellant rests on the Record and the authorities listed therein. Citations were full on both sides and all of the Record will be supplied.

In addition appellant cites two additional cases:

Ellenburg v. McWhorter, 192 S.C. 418, 7 S.E.2d 68 (1940).

Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

II. STATEMENT OF ISSUES ON APPEAL

- A. Whether appellant was entitled to a jury trial.
- B. Whether ten years adverse possession was properly tried.
- C. Whether South Carolina Statute § 22-3-1130, about a Magistrate Judge trying a land Title Case was properly applied.
- D. Whether three attempts at eviction are legal after the Bar under SC § 15-67-20 was filed.
- E. Whether listing dead people as parties is perjury when the action is sworn to, and if this conduct is a fraud upon the court where the person doing the swearing is an officer of the court.

### III. STATEMENT OF THE CASE

This case concerns the adverse possession of land in Chester County, South Carolina. Appellant, Mell Woods possessed the land in question, adversely to everyone else, and in a legally hostile manner, in excess of ten years. The methods of possession, and the dates are in the Record, but to specify here, appellant Mell Woods was placed in possession of the land in question on May 07, 2005, by the then possessor, Mrs. Reba Hinson. Each day of the possession was adverse to everyone else with activities such as fences being torn down during the night, and threats by certain members of the Hinson family made toward appellant Mell Woods. Mrs. Reba Hinson, the seller of the land in question, died within a couple of years after the sale. But Mell Woods, the appellant, held on. During year 2010, some of the Hinson family got together and tried to evict appellant through the Magistrate Court but that case was dismissed with Judge Moore Ruling: "There was no clear ownership of the property." None of the Hinsons appealed the dismissal, but instead filed another eviction case on 03/16/2011, which was dismissed, and then another eviction case on 12/01/2014, which is the one this Court of Appeals case is about. To date, appellant Mell Woods has been subjected to three suits attacking the validity of appellant's land title.

The ten years adverse possession is calculated as follows: the possession started on May 07, 2005, and ten years later on May 08, 2015, appellant Mell Woods, completed his ten years of adverse possession without the need to tack to the possession of any other person. Appellant occupied the land in question under a written instrument for ten years in a continuous, hostile, actual, open, notorious, and exclusive manner. **R, 82-83.**

The adverse possession matured during year 2015. Over a year later, during June, 2016, the respondents herein, forced appellant from land to which appellant Mell Woods had, and still has, a fully matured land title through ten years of adverse possession. One of the reasons that the case took so long to get completed in the circuit court is that the Magistrate, Yale Zamore would not file a return to the appeal that was filed by appellant to the circuit court. Although the magistrate return is supposed to be filed within 30 days, the magistrate would not prepare the return and file it. Part of the reason could have been that Magistrate Zamore was collecting \$200.00 per month out of appellant Mell Woods, for what Zamore called "Bond Money" and the case had gone on so long that the total amount of the money being held by Zamore and not being turned in to the county, was close to ten thousand dollars. After appellants' adverse possession title matured, **R, 82-83** appellant wrote Zamore and demanded the money back because the case was over as far as Zamore was concerned. The "Bond Money" came from Zamore's original Ruling in the present case that appellant must pay-in \$200.00 per month as long as the case lasted, or be immediately evicted if any month was skipped. Zamore did finally stop taking the \$200.00 per month, but has never returned appellant's money. And Zamore never would file the required return with the Circuit Court. Appellant wrote Zamore about the missing return several times to no avail, and finally, appellant had to resort to filing a mandamus action against Zamore personally in order to get the required return filed. The mandamus action was Chester County Civil Case Number 2015 CP 12 00368. In total, it was over a year before the required return was filed, when the return needed to be filed within 30 days.

Early on in the present litigation, appellant Mell Woods raised the issue of paramount title and demanded a jury trial under Creed v. Stokes, 285 S.C. 542, 331 S.E.2d. 351 (1985). **R, 202.**

At first, the magistrate court agreed that a jury hearing could be had, but only in the magistrate court, and not the circuit court. Later, instead of calling appellant a "tenant" a new action was filed, and the magistrate court then started calling appellant Mell Woods, a "trespasser" instead of a tenant. Nothing was taken into consideration about the written mortgage appellant had been paying on since May 07, 2005. Instead, a "bench trial" was scheduled and the demand by appellant that the case be sent to the circuit court for a jury trial was ignored. The adverse decision not to allow a jury trial after an appeal citing Creed v. Stokes was filed was ignored also. Neither did the magistrate court honor the Bar filed against further attacks on the land title under SC Statute § 15-67-20. **R, 6-10, 84-86, 98-109.**

At the point, a total of three eviction actions had been filed concerning the same land, with the remaining one being the present one now pending in the South Carolina Court of Appeals. The magistrate judge would not rule on §15-67-20, during the case. Appellant filed a timely Rule 59(e) Motion about the matter. Appellant has done all that it can to preserve the issue for appeal. **R, 27, 84-87, 226.**

In addition, *Elaine H. Hensley*, one of the respondents herein has died and has no personal representative present in this appeal. But more to the point, *Elaine H. Hensley* had already died and the estate for *Elaine H. Hensley* was already closed out by the time the

- 4 -

present eviction in this case was filed. Despite being already dead, respondent herein, Robert H. Breakfield, a licensed attorney, along with his helper, B. Michael Brackett, also a licensed attorney, proceeded to swear to papers in the magistrate court to the effect that Mrs. Hensley was a proper party to these proceedings although Mr. Breakfield had witnessed the papers needed to close Mrs. Hensley's estate which were then filed in the probate court. Mrs. Hensley's probate papers were obtained from the probate court, and have been included in the Record of these proceedings. Mrs. Hensley is not a proper party to these proceedings and Robert H. Breakfield knew full well that he was including a non-representated dead person as a party to these proceedings.

#### IV. STATEMENT OF THE FACTS

The facts are contained in the Statement of the Case, and the Statement of the Case is the same as the Statement of the facts.

V. ARGUMENT AND CITATION OF AUTHORITY

Because the issue of *adverse possession* was raised in the pleadings below, the Standard of Review is contained within the South Carolina Supreme Court Case of Ellenburg v. McWhorter, 192 S.C. 418, 7 S.E.2d 68 (1940) which case Ruled that where there is any evidence of adverse possession, then the issue must be submitted to a jury, and that a reversible error occurs where there is not a jury.

Appellant demanded a jury trial several times and was not afforded one. R, 17, 38, 61, 75, 85, 202-209, 214, 226.

AS TO A JURISDICTIONAL MATTER, which can be raised at any time, and is being pointed out here - the Magistrate Judge in this case never had jurisdiction to start with. SC Statute § 22-3-20 plainly states that a magistrate cannot proceed where a land title is in question, unless the person being proceeded against, (appellant in this case) *fails* to post the \$100.00 bond and undertaking required SC Statute § 22-3-1120. Appellant Mell Woods *did* post the \$100.00 cost bond, and did sign the required undertaking, and delivered both documents to the magistrate. At that very point the magistrate was without jurisdiction to hear the case being appealed from. Please see SC Statute § 22-3-1130, "*Action discontinued upon delivery of undertaking; costs.*"

**R, 205-209** The picture of the U.S. Money Order is on page 208. And the Chester County Clerk of Court still has the \$100.00 money order, please see **R, 292** lines 12-15 for verification of where the money order is.

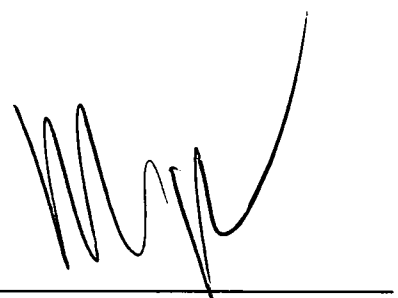
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CONCLUSION

Since the law was not followed in this case, appellant Mell Woods respectfully requests that this adverse possession case be remanded to the circuit court for a jury trial in the circuit court, and not the magistrate court. Or, in the alternative, that title to the land in question be adjudicated under SC Statute § 15-67-20 to be the land of appellant because of the three eviction cases filed.

Respectfully submitted,

This 10 day of June, 2019.



Mell Woods

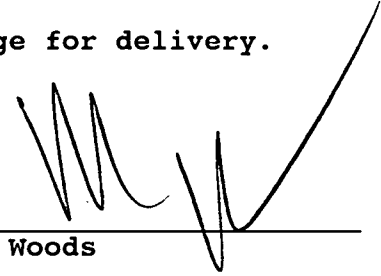
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CERTIFICATE OF SERVICE

I hereby certify that I have served Mr. B. Michael Brackett, attorney for the respondents, with a true copy of the within and foregoing *Appellant Final Brief* by depositing a copy of the same in the U.S. Mail addressed to Mr. Brackett, at his current address of record with sufficient postage for delivery.

This 10 day of June, 2019.



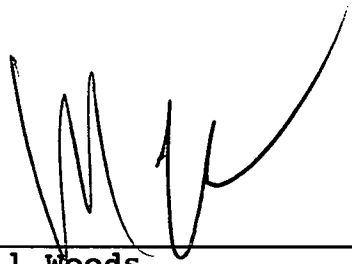
Mell Woods

Appeals Case Number 2016-002016

**CERTIFICATION BY PARTY CONCERNING COMPLIANCE WITH 211(b)**

Mell Woods, the appellant herein, certifies that the appellant Final Brief complies with Rule 211(b), SCACR.

This 12 day of June, 2019.

  
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