

92695

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas
W. Haigh Porter, Special Referee

RECEIVED
MAY 12 2020
SC Court of Appeals

Civil Action No. 2018-CP-33-00653
Appellate Case No. 2020-000139

Ex Parte Beullah Belin and James Belin,..... Appellants

In re Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage
Loan Trust A,..... Plaintiff,

v.

Bertha Dunham a/k/a Bertha E. Dunham; and Ernest L. Dunham,Defendant(s)

of which Wilmington Savings Fund Society, FSB, as trustee of Stanwich
Mortgage Loan Trust A is the Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

Peter M. Balthazor #68244
RILEY POPE & LANEY, LLC
2838 Devine Street (29205)
Post Office Box 11412
Columbia, South Carolina 29211
(803) 799-9993 – Office
(803) 239-1414 – Facsimile
peteb@rplfirm.com

Attorneys for Respondent

This is a mortgage foreclosure case. Respondent filed suit to foreclose on a mortgage covering real property in Marion County. After the special referee granted a judgment of foreclosure and sold the real property at public auction, Appellants moved to intervene and to vacate the special referee's judgment. The special referee denied Appellants' motion.

Respondent is the mortgagee of record for a mortgage given by Bertha Dunham, which was recorded on April 13, 2006.

In their motion to intervene Appellants alleged their mobile home has been located on the subject real property "since approximately June of 2006." (See Exhibit One, Appellants' Notice of Motion, Motion to Intervene and Motion to Set Aside Judgment) Appellants alleged they have adversely possessed the real property since 2006. Appellants did not submit any affidavits, exhibits, or other materials in support of their motion to intervene.

Now, in their initial brief, Appellants assert it is undisputed that they have had a mobile home on the property since 1988. Appellants do not cite to any portion of the record below in making this assertion. See Rule 208(b)(4), SCACR (stating a brief shall contain references to the exhibits or other materials which may be properly included in the Record on Appeal to support the salient facts alleged). Respondent contests this fact and asserts that this fact cannot be found in the record presented to the lower court. "The statement of facts should not include any information not found in the record on appeal." Jean Hoefler Toal et al., Appellate Practice in South Carolina 431 (3d ed. 2016), citing Rule 210(c), SCACR. An appellate court's review is limited to only those facts that appear in the record and "the appellate court will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR.

Further, in their designation of matter, Appellants designated for inclusion in the record on appeal a “Retail Installment contract dated 7/16/1988.” This document was never presented to the lower court.

Rule 209, SCACR, addresses each party’s duties in designating matter to be included in the Record on Appeal. At the time of filing an initial brief, each party shall designate the materials it desires to have included in the Record on Appeal. “[T]he designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may properly be included in the Record on Appeal [See Rule 210(c)].” Rule 209(b), SCACR. Rule 210(c), SCACR, instructs parties to an appeal that the “Record on Appeal shall include all matter designated to be included by any party under Rule 209” but that the “Record shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR.

“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal” Rule 260(a), SCACR; see Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992) (stating an appellate court is justified in dismissing an appeal for failure to follow the appellate rules of procedure).

Based on Appellants’ failure to comply with the appellate court rules by their inclusion of matter not found in the record below, Respondent hereby moves to dismiss this appeal.¹ Appellants flout this Court’s rules by asserting facts not found in the record on appeal and by designating matters not presented to the lower court.

¹ In the alternative, Respondent moves to strike the offending matter from Appellants’ brief and from Appellants’ designation of matter. See Toal, supra, at 405 (stating the proper mechanism to dispute a designation is to file a motion asking the appellate court to strike the improper material).

Respectfully submitted,



Peter M. Balthazor #68244
RILEY POPE & LANEY, LLC
2838 Devine Street (29205)
Post Office Box 11412
Columbia, South Carolina 29211
(803) 799-9993 – Office
(803) 239-1414 – Facsimile
peteb@rplfirm.com

Attorneys for Respondent

May 8, 2020
Columbia, South Carolina

the premises of the property subject to this foreclosure action. This mobile home has been located on the premises of the subject property since approximately June of 2006. Beulah Mae Belin and James Belin have occupied the land continuously, hostilely, openly, obviously, exclusively, notoriously and continuously against the interests of Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham since 2006. Beulah Mae Belin and James Belin were not served within the foreclosure process by Plaintiff and have adversely possessed the property for greater than 10 years. They have not had a chance to answer this foreclosure matter and assert this defense or any other defenses they may have. As such Beulah Mae Belin and James Belin have equitable and legal interests in the above referenced property subject to the foreclosure and wish to intervene in this matter.

For the above-mentioned reasons, Beulah Mae Belin and James Belin, move this Court under the South Carolina Rules of Civil Procedure Rule 55, to set aside the Special Referee's Order of Judgment of Foreclosure and Sale Decree dated April 22, 2019 against Bertha Dunham a/ka Bertha E. Dunham and Ernest L. Dunham. Moreover, the post-sale Order for Writ of Assistance dated September 24, 2019 should be vacated or held in abeyance pending a hearing on the above-referenced matters.

These motions are based on this Notice, along with all papers filed in this action and on any evidence or case law that is presented at the hearing.

October 25, 2019

FERRARA LAW FIRM, PLLC

S/Paul B. Ferrara, III
 8887 Old University Blvd.
 North Charleston, SC 29406
 (843) 569-5511/(843) 569-5411 fax
 SC Bar No.: 70511
 paul@ferraralawfirm.net

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 12 2020
SC Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas
W. Haigh Porter, Special Referee

Civil Action No. 2018-CP-33-00653
Appellate Case No. 2020-000139

Ex Parte Beullah Belin and James Belin,..... Appellants

In re Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage
Loan Trust A,..... Plaintiff,

v.

Bertha Dunham a/k/a Bertha E. Dunham; and Ernest L. Dunham,Defendant(s)

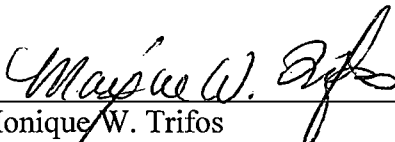
of which Wilmington Savings Fund Society, FSB, as trustee of Stanwich
Mortgage Loan Trust A is the Respondent.

CERTIFICATE OF SERVICE

I do hereby certify that I caused to be served the **RESPONDENT'S MOTION TO DISMISS APPEAL** upon the below-named party by depositing a copy of the same in the U.S. Mail, first class postage prepaid, and addressed as follows:

Paul B. Ferrara, III, Esquire
FERRARA LAW FIRM, PLLC
8887 Old University Blvd, Suite 201
North Charleston, South Carolina 29406-9603
Attorneys for Appellant

May 8, 2020
Columbia, South Carolina



Monique W. Trifos
Paralegal

RILEY
POPE &
LANEY
LAW

South Carolina | North Carolina

South Carolina Office:
Riley Pope & Laney, LLC
2838 Devine Street
Columbia, SC 29205
Phone: 803.799.9993
Fax: 803.239.1414
www.rplfirm.com

May 8, 2020

RECEIVED
MAY 12 2020
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Ex Parte Beullah Belin and James Belin, in re Wilmington Savings Fund Society, FSB,
as trustee of Stanwich Mortgage Loan Trust A v. Bertha Dunham aka Bertha E. Dunham
and Ernest L. Dunham
C/A No.: 2018-CP-33-00653, 2020-000139
Our File No.: 4043.17918

Dear Ms. Kitchings:

Please find enclosed for filing the original and six copies of *Respondent's Motion To Dismiss Appeal* and *Certificate of Service* in connection with the above-referenced matter. I have also enclosed our firm's check in the amount of \$50.00 for the filing fee. Please file the enclosed documents and return a filed copy in the enclosed self-addressed stamped envelope.

Thank you for your kind assistance in this matter.

Sincerely,

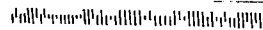


Peter M. Balthazor

PMB/mwt

Enclosures

cc: Paul B. Ferrara, III, Esquire (w/enclosures)



US POSTAGE
\$02.80⁰⁰
 First-Class
 Mailed From 29205
 05/09/2020
 032A 0061838340

RECEIVED
 MAY 12 2020
 SC Court of Appeals

Riley Pope
 & Laney, LLC ATTORNEYS AND COUNSELORS AT LAW
 POST OFFICE BOX 11412
 COLUMBIA, SOUTH CAROLINA 29211

TO:
 The Honorable Jenny Abbott Kitchings
 Clerk of Court
 South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201

