

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000451

RECEIVED
May 26 2020
SC Court of Appeals

APPELLANTS REPLY TO RESPONDENT'S RETURN TO APPELLANTS'
EMERGENCY MOTION FOR STAY OR AN INJUNCTION PENDING APPEAL

Rufus Rivers and Merle Rivers, pro se

Appellants

V.

James Smith, Jr.

Respondent

APPELLANTS' REPLY TO RESPONDENT'S RETURN TO APPELLANTS'
EMERGENCY MOTION FOR STAY OR AN INJUNCTION PENDING APPEAL

NOW COMES Rufus Rivers and Merle Rivers, replying to Respondent James Smith, Jr.'s

Return To Appellants' Emergency Motion For Stay Or an Injunction Pending Appeal.

STATEMENT OF THE CASE

Appellants in their Summons and Complaint with an expedited motion for injunctive relief was

filed with the First Judicial Circuit Court in Orangeburg County on August 6, 2018 where the respondent signed the receipt on August 14, 2018 that alleges James Smith, Jr. fraudulently transferred

the property at 1429 Legrand Smoak Street Cordova, SC 29039 to himself using a fraudulent

power of

attorney to execute a quit claim deed to himself. This was done after the previous owner granted

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appellants permission to reside at the residence indefinitely without any strings attached, in which Mr.

Smith was well aware of and had no say in the matter in September, 2010. Mr. Smith advised appellants

that the property was in his name in May, 2016, just weeks prior to her death. On July 2, 2018, Mr.

Smith wrote to the defendants for the first time as if they were holdovers. Appellants responded back

asking Mr. Smith to communicate. Instead of peacefully communicating, he chose to file eviction

papers on August 20, 2018. The documents dated August 8, 2018 only appeared in the magistrate's

return. In any event, the document that was served was the only valid document which was filed after

service of the Summons and Complaint, deliberately, to move the eviction along before the Summons

and Complaint could be properly addressed. Respondent alleges appellants filed a separate action on

August 6, 2018. It was the only action, because the eviction action had not been filed at that time. The

proper procedure was to hold off on the eviction until questionable title issue had been resolved pursuant

S.C. Code Of Laws 22-3-20. Instead, opposing counsel felt it would hasten the process and appellants

would be displaced immediately. Therefore, not only causing the appellants to file an appeal, but pay

unjust rents until the Master-in-Equity made his decision, which was improper. Appellants did not

appeal.

Appellants were blindsided with the affidavit of Connie Gaston. Opposing counsel and magistrate states that Mr. and Mrs. Rivers were provided this document ahead of time. The affidavit was executed November 2, 2018, the same date as the bond hearing which leaves one to question the validity of the document. How else could appellants adequately respond without adequate notification. This has been an issue throughout this process, the lack of validity and transparency.

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ARGUMENT

I. Appellants must comply with the statutory requirements set forth on S.C. Code 27-40-800(f) to stay execution of writ of ejection.

Appellants are being made to comply with a statute that has been improperly applied.

It was never determined that appellants were tenants, nor did appellants sign a bond undertaking

as required by the statute. Appellants have not received any documentation requesting the

circuit court to set rental payments. The Circuit Court lacks jurisdiction now that the appeals

court has the matter. The Respondent has failed to establish a landlord-tenant relationship existed at any time and relied on the magistrate's court to establish a landlord-tenant

relationship. The landlord-tenant statutes are being applied without the existence of a relationship. Appellants feels that there are underlying factors driving this issue. “Evidence

Connie Gaston) is material if it is offered to prove a fact that is an issue in a case”... (see Findlaw, Summary of the Rules of Evidence). Certainly, all parties must be provided copies to

examine in a timely manner.

II. Appellants are entitled to a stay pending appeal without posting supersedeas as required by statute.

Appellants feel under the unique circumstances, an appeal bond was not warranted. The statute

was misapplied. South Carolina Code 22-3-1120 was the appropriate undertaking and if the statute was applied properly there would have been no need for an appeal bond. The appeal bond has

been weaponized against appellants and opposing counsel is seeking to perpetuate this weaponization.

Respondent's counsel believes they are bulletproof, however, justice is blind not unbalanced and the

facts speak for themselves. Appellants see no justifiable reason they should be subjected to the financial

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burden that is being deliberately inflicted upon them because of judicial bias. Certainly, there is irreparable harm being inflicted through a concerted effort. Respondent's only concern is to have

appellants removed at any cost even if due process is lacking. The following legal questions need to be

answered:

a. Appellants will prevail on the merits of this appeal

1. Was the Respondent's eviction filing valid?
2. Did the magistrate find there was a valid landlord-tenant relationship?
- 1.3. Did the magistrate have jurisdiction over the matter?
- 2.4. Did the circuit court judge have jurisdiction to adjudicate?
- 3.5. Did the magistrate have the authority to order rental payments?

1The answer to all is no, and each question needs a deliberative investigation which has not
been
2
3addressed.

Proper notification is essential in any legal proceeding. Ex. Appellants failed to provide
proof of

service of the motion and was told the case would be dismissed unless it was provided. Does
this mean

that notifications are only required of pro se litigants and not attorneys? However, in the case of

Connie Gaston, it was stated that appellants were provided a copy. Opposing counsels response

appears to imply that it would not have made a difference as if rental payments had already been

predetermined. It is hard to challenge a proposal after it has already been determined without
your

input. The same thing is true about the appeal request. It was never appellants' intention to
appeal, but,

provide a bond undertaking pursuant to South Carolina Code of Laws 22-3-1120. Appellants
were

forced to appeal and pay a rental payment bond without any consent or fair discussion. There
was no

other means of having a fresh set of eyes and ears in the matter. It all showed the signs of a

predisposed matter.

Anyone fraudulently transferring property to themselves using a forged power of attorney
is not

a legal owner. Yes, an owner can be a landlord but does not automatically establish a landlord-
tenant

relationship when title to real property comes in to question. See South Carolina Judicial Branch, Magistrate Law In Civil Matters;

“The magistrate has concurrent jurisdiction to adjudicate monetary disputes arising under the South Carolina Homeowners Association Act (Title 27, Chapter 30, Article 1) provided the dispute meets the jurisdictional requirements of South Carolina Code Of Laws 22-3-10...Section 22-3-20 further limits the magistrates jurisdiction by prohibiting his hearing civil cases...and for disputes as to title to real property matters except as provided in South Carolina Code Of Laws 22-3-1110-22-3-1180. Jurisdiction may not be waived or conferred upon the magistrate by consent of the parties or by order of a higher court.”

Respondent continues to define what an owner is, which is irrelevant once the validity of the

title is being challenged until that matter is resolved in the proper manner. Opposing counsel, in this

case, chose to circumvent the proper procedure by simply filing an eviction action without any legal

basis, improvising as the process progressed. Respondent and his counsel knew what they were doing

from day one. When the Summons and Complaint was filed and delivered to respondent he signed for

it, they filed an eviction action allowing appellants 10 days to respond. Within one week, appellants

filed an Amended Complaint in Circuit Court. Appellants requested a hearing and a hearing date was

set for mid-September, 2018 for the eviction. When the default date of the initiating Summons and

Complaint came, opposing counsel filed a motion to dismiss the Amended Complaint only, out of time,

in Circuit Court contending respondent had only received an amended complaint and went so far as to

state in magistrate's court there was no originating Summons and Complaint filed and that the clerk of

the Circuit Court had told her so. The record was in the Public Search the entire time. Judge William P.

Steele's article is just that, an article.

Remember, he was a magistrate at that time, also. Which carries the most weight, South Carolina Code

of Laws or a magistrate's opinion? Code statutes are legal blueprints not to be altered at will.

b. Appellants will be irreparably harmed absent Injunctive Relief.

It is not nonsensical when money is being absconded under the guise of rental payments. Mr.

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Smith could have easily approached Appellants regarding a reasonable rental agreement. Mr. Smith,

through his attorney, chose to inflict financial harm for his own satisfaction and greed.

c. Respondent stands to benefit regardless.

Appellants have resided and maintained the property for 10 1/2 years without any assistance from

Mr. Smith. This includes structural damage as well as, all other repairs. If Appellants does not make

another payment and Mr. Smith prevails. The rental payment is a surety in and of itself. A surety

would have the same effect. Appellants are taking money out of their pockets and placing it in an

account with no interest, only crippling appellants finances. Appellants believe this is the reason for all

of the unorthodox methods being used, so that appellants can cover respondent's incurred

expenses. It was never Mr. Smith's intentions to live in the property, only the appellants', who were

granted legitimate possession by Jessie Mae Smith in September 2009. Mrs. Smith died intestate with

appellants having an interest in the property that only the Probate Court could determine who are heirs.

Through Mr. Smith's self-dealing, it makes it impossible for anyone else to compete.

d. The public interest will not be harmed if Appellants are required to pay rents pending appeal.

This is a private matter and the idea that people should be forced to pay rent because one day

someone wakes up and say, "I'm going to make this my property and have the courts make someone pay

me rent", is absurd. And the for an attorney to facilitate that kind of activity is even worst. This has

become the norm for some attorneys using the magistrate's court to settle property disputes because of

the lax procedures. It is time for the courts to put a halt to this practice and have the bad actors abide

by the rules that were put in place to protect property owners and heirs.

CONCLUSION

Appellants, are now being asked to sign an undertaking while awaiting appeal.
Appellants

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were not asked to sign an undertaking when they initially appealed, and there is no record on file, and

was ordered to pay \$700.00 per month pursuant to S. C. Code 27-30-800, rendering the order

unenforceable. Therefore, since no valid undertaking exist, appellants are willing to provide an

undertaking immediately in the form of a surety for a reasonable amount set ny the magistrate. The

original appeal is closed as stated by the magistrate's office and now with the South Carolina Court Of

Appeals, appellants are requesting the funds being held in escrow be released to them

immediately,

in lieu of a surety. There is an Emergency Motion To Stay or An Injunction Pending Appeal pending with the Court Of Appeals challenging the validity of the current appeal bond(rental payments).

May 18, 2020

Rufus Rivers, pro se

Merle Rivers, pro se

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PROOF OF SERVICE

We certify that we have served Appellants' Reply To Respondents' return To Appellants' Motion To Stay or an Injunction Pending Appeal on James Smith, Jr. by depositing a copy of it in the U.S. Mail, postage paid addressed to his attorney of record Kathleen McDaniel Post Office Box 1929 Columbia, South Carolina, 29202 on May 18, 2020.

May 18, 2020

Rufus Rivers, pro se

Merle Rivers, pro se