

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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

**RECEIVED**  
JUN 02 2020  
SC Court of Appeals

Appellate Case No. 2020-000451

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

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.

## 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 ejectment.**

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

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.

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 there pockets and placing it in an account with no interest, only crippling appellants finances. Appellants believe this is the reason for all of the unorthodoxed 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.**

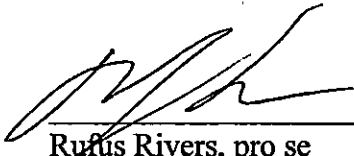
This is a private matter and the idea that people should be forced to pay rent because one day someone wakes up and say,"I'm going to make this my property and have the courts make someone pay me rent", is absurd. And the for an attorney to facilitate that kind of activity is even worst. This has become the norm for some attorneys using the magistrate's court to settle property disputes because of the laxed 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**

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

II.Kathleen McDaniel, Attorney  
III.P.O. Box 1929  
IV.Columbia, South Carolina 29202

## **Affidavit To The Court Of Appeals**

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

**RECEIVED**

JUN 02 2020

SC Court of Appeals

The undersigned, RUFUS AND MERLE RIVERS, being duly sworn, hereby deposes and says:

1. We are over the age of 18 and are residents of the State of South Carolina. We have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. We suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. We currently have an appeal pending in the Court of Appeals with an appeal bond of \$700.00 per month being paid in to escrow.
4. The appeal alleges the Magistrate lacked subject matter jurisdiction because there was legal action pending in circuit court when the plaintiff filed eviction papers and had already been served on August 14, 2018.(see attached)
5. Magistrate Grant also ordered us to pay rental payments of \$700.00 per month when there was no landlord-tenant agreement and the plaintiff did not ask for rental payments. (see attached)
6. Magistrate Grant's staff refused our payment when we visited the office to provide a notice of appeal on March 2, 2020 without any valid explanation other than the notice did not state a reason for the appeal.
7. It is our belief that we are being treated unfairly and that the magistrate and her staff has taken this matter personally because of the appeal.
8. On March 11, 2020 the sheriff came to evict us and allowed us to remain to another date.
9. We personally visited the Court of appeals on March 12, 2020 and paid the filing fee and obtained a filed copy and provided it to the magistrate's office and was told they would get back with us. We received a call from the magistrate's office, allowing us until March 18, 2020 to make the rental payment.
10. On March 17, 2020, after obtaining a copy of Judge Beatty's order, we emailed the magistrate's court a correspondence requesting an extention. (see attached)
11. We received a reply from Sylvia Edwards stating that our request was denied. (See attached) We also received a reply from Lisa Proveaux explaining when the payments were due. (See attached)
12. On May 1, 2020, we visited the magistrate's office to bring the payments current in the amount

of \$1400.00 and again the staff told us that they were instructed not to accept the payment by Judge Grant and to return on May 4, 2020 without any reason for returning. (see attached)

13. On May 4, 2020, we visited the magistrate's office as instructed. After being told to have a seat, Rufus Rivers waited for almost 30 minutes. He then approached the receptionist to ask how much longer and was told they could not accept the payment and to contact his lawyer knowing we are pro se litigants.

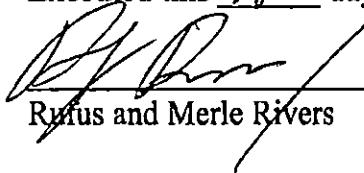
14. We have come to believe that we are being treated differently than anyone else. This is nothing more than retaliation for appealing a matter that should not have been decided by the magistrate in the first place. We certainly have the right to pay what was past due while the evictions were halted.

15. Because of the magistrate's actions, Rufus Rivers had to take temporary work to make certain we could take on the added expense of the rental payments. The temporary work ended March 11, 2020.

16. We believe the magistrate's office is acting in bad faith as agents for the Plaintiff and his counsel against us senior citizens with chronic medical issues.

I declare that, to the best of our knowledge and belief, the information herein is true, correct, and complete.

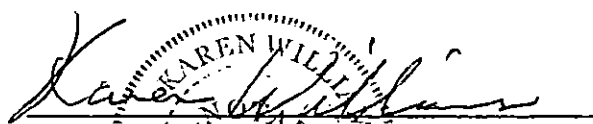
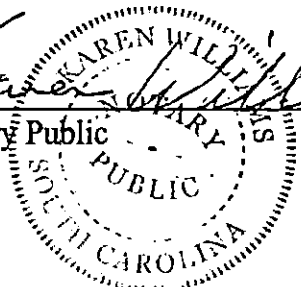
Executed this 18<sup>th</sup> day of May, 2020:

  
\_\_\_\_\_  
Rufus and Merle Rivers

**NOTARY ACKNOWLEDGMENT**

STATE OF SOUTH CAROLINA, COUNTY OF ORANGEBURG, ss:

The foregoing Affidavit was acknowledged before me this 18<sup>th</sup> day of May, 2020, by Rufus and Merle Rivers, who, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit subscribed by him/her, and that the matters stated herein are true to the best of his/her information, knowledge and belief.

  
\_\_\_\_\_  
Notary Public  




Search mail



8 of 377

to me, twolfe@burnetteshutt.law

Payment of \$700.00 is due on today, 3-18-2020 and thereafter \$700.00 payments are to be made by the 2<sup>nd</sup> of each month.

**From:** Rufus Rivers [mailto:[rivers788@gmail.com](mailto:rivers788@gmail.com)]

**Sent:** Wednesday, March 18, 2020 10:23 AM

**To:** Lisa Proveaux

**Cc:** Kathleen M. McDaniel

**Subject:** Eviction- Rufus & Merle Rivers

As of today, we are requesting that our appeal bond payments be extended, pursuant to the attached Supreme Court order issued 03/17/2020. Please see attached. We are placing a hard copy in the mail.

**Rufus Rivers** <[rivers788@gmail.com](mailto:rivers788@gmail.com)>

Wed, Mar 18, 5:22 PM (22 hours ago)

to Lisa, twolfe@burnetteshutt.law

2020-03-17-02

# The Supreme Court of South Carolina

**RE: Statewide Evictions**

\_\_\_\_\_  
ORDER  
\_\_\_\_\_

Pursuant to provisions of Article V, Section 4 of the South Carolina Constitution,

**IT IS ORDERED** that all evictions currently ordered and scheduled statewide from March 17, 2020, through March 31, 2020, shall be rescheduled for a date not earlier than May 1, 2020. However, case-by-case exceptions for evictions may be made for matters that involve essential services and/or harm to person or property.

s/Donald W.  
Beatty \_\_\_\_\_ C.  
J.

FOR THE COURT

Columbia, South Carolina  
March 17, 2020



Search mail



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-Rufus Rivers - Eviction Inbox x

**Sylvia Edwards** <sedwards@orangeburgcounty.org>

12:13 PM (3 hours ago)

to me

Good afternoon,

Your request for extension is denied and payment of \$700.00 was due on March 18, 2020 and thereafter payments of \$700.00 are due by 2<sup>nd</sup> of each month and are to be made on time as previously ordered.

Will do, thank you.

Paid.

Thank you for informing me.

sc

Reply

Forward



Search mail



83 of 452

Labels

**-RE: Eviction- Rufus & Merle Rivers** Inbox x

**Lisa Proveaux**

Wed, Mar 18, 3:38 PM

Payment of \$700.00 is due on today, 3-18-2020 and thereafter \$700.00 payments are to be made by

**Rufus Rivers** <rrivers788@gmail.com>

Wed, Mar 18, 5:22 PM

to Lisa, twolfe@burnetteshutt.law

Received, thank you.



ch

Reply

Reply all

Forward



**ORANGEBURG COUNTY  
CENTRAL REGION  
MAGISTRATE COURT**



1540 Ellis Avenue  
P.O. Box 9000  
Orangeburg, South Carolina 29116  
Phone: (803) 533-5843  
Fax: (803) 516-4011

May 18, 2020

**VIA ELECTRONIC DELIVERY: [rrivers788@gmail.com](mailto:rrivers788@gmail.com)**

Rufus and Merle Rivers  
1429 Legrand Smoak Street  
Cordova, South Carolina 29039

**RE: Defendant's Appeal on Eviction  
James Smith vs Rufus and Merle Rivers  
Magistrate Case No.: 2018CV3810702780**

Dear Mr. Rivers:

Our records reflect that your monthly rent payment was not made to our office in March or April by the specified due date as required.

Past due payments and future payment arrangements may be coordinated directly with the plaintiff's attorney if accepted.

A physical copy of this letter will follow via today's U.S. Mail.

County of Orangeburg  
Central Region Magistrate Office

**CC: VIA ELECTRONIC DELIVERY:  
[KMcdaniel@BurnetteShutt.Law](mailto:KMcdaniel@BurnetteShutt.Law)  
[TWolfe@BurnetteShutt.Law](mailto:TWolfe@BurnetteShutt.Law)  
Kathleen M. McDaniel, Esquire  
Attorney for James F. Smith, Jr.  
Post Office Box 1929  
Columbia, South Carolina 29202**

Terry Leverette, Court Administration – by U.S. Mail and Electronic Delivery

Valid Money Order Includes: 1. Heat sensitive, red stop sign AND 2. Contains a True Watermark hold up to light to view.



INTERNATIONAL MONEY ORDER

86-186 1031

To Validate: Touch the stop sign, then watch it fade and reappear



R209458210082

CALL 1-800-542-3590 TO VERIFY

PAY TO THE ORDER OF: / PAGAR A LA ORDEN DE:

Magistrate's Court

IMPORTANT - SEE BACK BEFORE CASHING

Rufus & Merbo Rivers

PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR

ADDRESS: 4429 Legrand Smoak St, Conover, SC 29039

Payable Through BOKF, NA Enid, OK

ISSUER/DRAWER: MONEYGRAM PAYMENT SYSTEMS, INC.

PAY EXACTLY

⑆103101864⑆2094 58210082⑈90

May, 2020

Valid Money Order Includes: 1. Heat sensitive, red stop sign AND 2. Contains a True Watermark hold up to light to view.



INTERNATIONAL MONEY ORDER

86-186 1031

To Validate: Touch the stop sign, then watch it fade and reappear



R208901420508

CALL 1-800-542-3590 TO VERIFY

PAY TO THE ORDER OF: / PAGAR A LA ORDEN DE:

Magistrate Court

IMPORTANT - SEE BACK BEFORE CASHING

Rufus & Merbo Rivers

PURCHASER, SIGNER FOR DRAWER / COMPRADOR, FIRMA DEL LIBRADOR

ADDRESS: 1429 Legrand Smoak St, Conover, SC

Payable Through BOKF, NA Enid, OK

ISSUER/DRAWER: MONEYGRAM PAYMENT SYSTEMS, INC.

PAY EXACTLY

⑆103101864⑆2089 01420508⑈90

March, 2020

MONEY ORDER

WESTERN UNION FINANCIAL SERVICES INC. - ISSUER - Englewood, Colorado

Western Union WU

19-094193651



A 384024 D 042820

T 1607 06

190941936517 L 005655

\$ 500.00

PAY EXACTLY FIVE HUNDRED DOLLARS AND NO CENTS

PAYMENT FOR ACCT. #

PAY TO THE ORDER OF

Rufus & Merbo Rivers  
1429 Legrand Smoak Street  
Conover, SC 29039

⑆102100400⑆40190941936517⑈

April, 2020

MONEY ORDER

WESTERN UNION FINANCIAL SERVICES INC. - ISSUER - Englewood, Colorado

Western Union WU

19-094193652



A 384024 D 042820

T 1607 06

190941936526 L 005655

\$ 200.00

PAY EXACTLY TWO HUNDRED DOLLARS AND NO CENTS

PAYMENT FOR ACCT. #

PAY TO THE ORDER OF

Magistrate Court

**RECEIVED**

JUN 02 2020

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA**  
In The Court Of Appeals

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

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Appellate Case No. 2020-000451

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Appellants

VS.

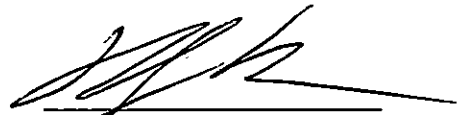
James Smith, Jr.


Respondent

**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

Rita & Medie Rivers  
1429 Legrand Street  
Cordova, SC 29039



South Carolina Court of APPEALS  
1220 Senate Street  
Columbia, SC 29201

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JUN 02 2020  
SC Court of Appeals

