

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Judge Edgar W. Dickson, Circuit Court Judge

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JUL 24 2020
SC Court of Appeals

RUFUS RIVERS AND MERLE RIVERS,

APPELLANTS


V.

JAMES SMITH, JR.


RESPONDENT

INITIAL BRIEF OF APPELLANTS

July 21, 2020



Rufus Rivers, pro se



Merle Rivers, pro se

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STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err when he dismissed and remanded Appellants' civil appeal when no landlord-tenant relationship existed after the inferior court judge adjudicated the matter in violation of South Carolina Code Of Laws 22-3-20 and 22-3-1110 through 22-3-1180 of statutory law after the issues were raised and never addressed adequately by the courts.

STATEMENT OF THE CASE

After learning of Respondent James Smith, Jr.'s fraudulent transfer of ownership to property previously owned by Jessie Mae Smith, now deceased, Appellants/Plaintiffs filed a summons and complaint in the Circuit court on August 6, 2018 alleging the same. See initiating summons and complaint see Respondent/Defendant signed for the receipt of the documents on August 14, 2018. Respondent, through his counsel Kathleen McDaniel, filed eviction documents on August 20, 2018 where Appellants/Defendants were served on August 23, 2018. After being served Appellants requested a hearing which was held on September 18, 2018. At the hearing, pursuant to South Carolina Code 22-3-20 and 22-3-1110 Appellants' advised the court and opposing counsel through a written document, Reply To Plaintiff's Rule to Show Cause that legal action was pending in Circuit Court disputing Respondent Smith's ownership to the property. Alleging Mr. Smith forged Power-Of-Attorney and used that same Power-of-Attorney to transfer the ownership of the property to himself. Appellants has always contended that they were granted physical possession of the property at 1429 Legrand Smoak Street by Mrs. Jessie Mae Smith, the previous owner, whom died intestate in May, 2016. Throughout the proceedings, including Appellants continued to emphasize and re-emphasized the issues which can be heard on recorded audio. Instead of deferring as required by statute. Appellants motioned the court for reconsideration and motion to vacate writ of ejectment.

On October 9, 2018, hearings were held simultaneously on Appellants' Motion for Reconsideration and Motion to Vacate Writ of Ejectment, copy of the original decision or decisions on either motion. The magistrate denied both motions forcing Appellants to appeal. Appellants' Notice Of Appeal was filed on October 18, 2018. On October 19, 2018, Appellants received a copy of a letter from the magistrate's office directed to Attorney McDaniel asking for her recommendation for an appeal bond. On November 2,

2018, while awaiting the bond hearing, Appellant were approached by Attorney McDaniel whom presented Appellants with a copy of a rental analysis which was executed On November 2, 2018, and not allowing Appellant's adequate time to respond to the analysis. This document was used by the magistrate to determine rents at \$700.00 per month.

On November 5, 2018 Appellants filed a motion for review of rental payment bond(appeal bond) with the Circuit Court and delivered a copy to the magistrate. The magistrate denied the motion on November 6, 2018. A hearing was held in Circuit Court on April 8, 2018 and the court upheld the magistrate's decision on appeal bond, Appellants immediately filed a motion for reconsideration which was never addressed in any way. On May 21, 2018, after a hearing the Judge ordered a continuance of the appeal hearing citing the case was not ripe for a decision on appeal until the Circuit Court case had been determined. It is Appellants' belief that the order was improper and should have been dismissed because the eviction order was done after the Circuit Court case had already been filed and served on the Respondent pursuant to South Carolina Code 22-3-20.

On November 18, 2018, The appeal hearing was held in Circuit Court where the Honorable Judge Edgar W. Dickson presided. The Judge subsequently upheld the magistrate's decision. Appellants filed a motion for reconsideration which was denied. On January 6, 2020 Judge Dickson issued a final order and Appellants' notice of appeal timely followed.

ARGUMENT

The trial court judge erred when he dismissed and remanded Appellant's civil appeal when no landlord-tenant relationship existed after the inferior court adjudicated the matter in violation of statute for lack of subject matter jurisdiction where the issues were raised and never addressed.

Appellants had their Rule to Show Cause on October 17, 2018. They had been ordered to vacate on September, 2018. Appellants provided a written reply to the Rule to Show Cause to the judge and attorney McDaniel, Respondent's counsel, pursuant to South Carolina Code of Laws 22-3-1110, defense of questionable title in defendant's answer. (See Exh. A, summons and complaint). Appellants had filed legal action in Circuit Court on August 6, 2018, alleging Respondent, James Smith, Jr., fraudulently executed power-of-attorney and used it to execute a quitclaim deed (self-dealing) transferring the property at 1429 Legrand Smoak, Cordova, SC, 29039 to himself. Respondent accepted the documents by certified mail on August 14, 2018. (See Exh.B, certified receipts). Appellants had been granted exclusive physical possession of of the property in September, 2009.

Respondent counsel claims that Appellants filed a contemporaneous lawsuit. See TR 2,24-25. It is clear that Respondent had in his possession before filing eviction documents. Respondent, through his counsel deliberately ignored the initiating summons and complaint which included a motion for injunctive relief to circumvent the Circuit Court and hasten the eviction, a process that is becoming more and more prevalent when attempting to settle property disputes through the magistrate's court. The magistrate's court violated South Carolina Code 22-3-20, "No magistrate shall have cognizance ... when title to real property shall come in to question, except, as provided in Title 11 of this chapter." See Magistrate's Law in Civil Actions, "jurisdiction may not be waived or conferred upon the magistrate by consent of the parties or by order of a higher court." At the eviction hearing Respondent, through his counsel, states that he had only received an amended complaint. That alone, is proof that

the title to property was in question. Respondent, through his attorney, would have the court believe that, no matter what, the Respondent is entitled to the property because he is the son of the previous owner who died intestate. Unfortunately, that is a matter that only the probate court can determine. The magistrate, once the issue was raised, knew or should have known to defer the matter to the Circuit Court. See *Hargrove v. Cox*, 104 S. E. 757, 180 (N.C. 1920), *Hargrove v. Cox* 180, N.C. 360, 104 S.E. 757, 759, (1920), *Hayes v. Turner* 98 N.C. App. 451454, 391, S.E. 2D 513, 515(1920), *Hodges v. Rainey*, 341 S.C. 79,85,533 S.E. D 578, 581 (2000) and allowed Appellants to sign an undertaking once she had provided an amount for the surety. (See Exh. C), Appellants' proposed undertaking. Through his counsel, Respondent contends the purpose of Appellants' lawsuit was to prove they owned the property. TR 3. 14-16. Appellants alleges in their lawsuit, Mr. Smith forged a power-of-attorney and used that power-of-attorney to self-deal by transferring the property to himself.

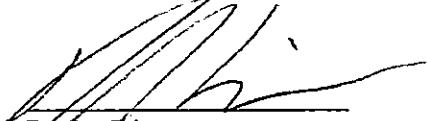
The eviction hearing was held on November 18, 2019 before the Honorable Edgar W. Dickson. The issue of a landlord-tenant relationship and the magistrate's lack of subject jurisdiction were not explicitly addressed. On January 6, 2020, the court issued it's order. (See Exh. D). Appellants filed a motion for reconsideration on January 14, 2020. (See Exh E). On February 21, 2020, the court issued a final order denying Appellants' motion for reconsideration, dismissing the matter and remanding to the magistrate.

The trial court judge erred by upholding the magistrate's court decision for the reasons described above. To maintain subject matter jurisdiction in an ejectment case, the court must find that a landlord-tenant relationship exists. See South Carolina Judicial Branch, **Elements Of Common Landlord-Tenant Problems 3B. Commencing Ejectment**. The magistrate must determine a landlord-tenant relationship exist Appellants respectfully ask This Court to reverse the trial court's decision and

CONCLUSION

For the preceding reasons, Appellants respectfully asks this Court to reverse the Judge's order and allow Respondent to proceed with whatever remedies available to him and release Appellants' funds being held in escrow.

Respectfully submitted,



Rufus Rivers, pro se

Merle Rivers, pro se

THE STATE OF SOUTH CAROLINA

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In The Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2020-000451

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Rufus Rivers and Merle Rivers
pro se

Appellants

VS.


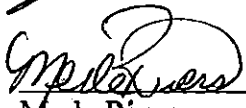
James Smith, Jr.

Respondent

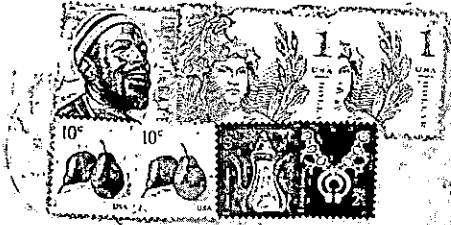
PROOF OF SERVICE

We hereby certify that a copy of Appellants' Designation of Matter To Be Included in the Record of Appeal and Appellant's Initial Brief were served on Respondent, James Smith, Jr.'s attorney Kathleen McDaniel at her last known address of P. O. Box 1929, Columbia, South Carolina, 29202 by depositing a copy in the U. S. mail, in an envelope with proper postage affixed.

July 21, 2020


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