

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2018-CP-06-00383

RECEIVED
JUL 27 2020
SC Court of Appeals

United States of America.....Respondent,

v.

Edgar Payton, Willie Payton, Hattie Payton, F. Hamilton Dicks,
III, the United States of America, acting through the Small Business
Administration, successors in interest to Still & Williams, Inc.,
SC Electric & Gas Co., and David Payton.....Defendants,

Of Whom, Edgar Payton is Appellant.

FINAL REPLY BRIEF OF APPELLANT

DANIEL W. WILLIAMS
PO Box 616
Barnwell, SC 29812
(803) 259-2759
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities..... iii

Statement of Issues on Appeal..... iii

Arguments

1. THE COURT ERRED IN STRIKING THE DEMAND FOR A JURY TRIAL

A. APPELLANT IS ENTITLED TO A JURY TRIAL ON HIS COUNTERCLAIM SINCE IT ARISES OUT OF THE SAME TRANSACTION AND BEARS A LOGICAL RELATIONSHIP TO THE FORECLOSURE..... 1

B. THE SIBLINGS ARE ENTITLED TO A JURY TRIAL ON THEIR ADVERSE POSSESSION COUNTERCLAIM.1

2. THE COURT ERRED IN REACHING THE CONCLUSION THAT APPELLANT COULD NOT AVAIL HIMSELF OF A STATUTE OF LIMITATIONS DEFENSE, SINCE THIS ISSUE WAS NOT BEFORE THE COURT ON USA’S MOTION..... 2

Conclusion.....3

TABLE OF AUTHORITIES

CASES

Kerr v. Richland Memorial Hospital, 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009) 2

Prasad v. Holder, 776 F.3d, 222, 226 (4th Cir. 2015) 2

Henderson v. Summerville Ford-Mercury, Inc., 405 S.C. 440, 748 S.E.2d 221 (2013) 2

STATUTES/RULES

S.C.R.C.P. 59(e)2

ARGUMENTS

I. THE COURT ERRED IN STRIKING THE DEMAND FOR A JURY TRIAL

A. APPELLANT IS ENTITLED TO A JURY TRIAL ON HIS COUNTERCLAIM SINCE IT ARISES OUT OF THE SAME TRANSACTION AND BEARS A LOGICAL RELATIONSHIP TO THE FORECLOSURE.

Eddie Payton's Counterclaim logically relates to the Foreclosure in that a verdict in his favor would affect the amount of the lien.

If it is determined that Plaintiff is liable to Defendant Eddie Payton in an amount in excess of its mortgage, then Plaintiff will seek to set off, thereby satisfying the mortgage. Therefore, there is a direct logical relationship between Eddie Payton's counterclaim and the Plaintiff's claim for foreclosure, since a judgment in Eddie Payton's favor could keep the court from foreclosing his land. Since a logical relationship exists, Eddie Payton is entitled to a jury trial.

B. THE SIBLINGS ARE ENTITLED TO A JURY TRIAL ON THEIR ADVERSE POSSESSION COUNTERCLAIM.

Adverse Possession is an action at law triable by jury and the sibling's counterclaim/crossclaim logically relates to the foreclosure.

As referenced in paragraphs 10 and 11 of Plaintiff's amended complaint (R.A.7) a 44-acre tract being foreclosed was devised to five persons, 2 of them being the defendants Hattie Payton and David Payton. The complaint further alleges that while there is no division of the tract of record, the Barnwell County Tax Assessor recognizes two separate 8-acre tracts as belonging to Hattie Payton (R. p. 13; Amended Complaint Para. 11) and Willie Payton (R. p. 12; Amended Complaint Para. 10). Nevertheless, Plaintiff seeks to foreclose on these tracts, since they were a part of the 44-acre tract devised by Angus Payton. To protect their respective

interests from foreclosure, Hattie Payton and Willie Payton asserted rights of ownership to their respective 8-acres through adverse possession. This claim is logically related to the foreclosure, and if these Defendants prevail, foreclosure against these individual 8-acre tracts would be barred. The adverse possession claims logically relate to the foreclosure, and Defendants Hattie Payton and Willie Payton did not waive their rights to a jury trial by asserting the adverse possession claim in this Court.

II. THE COURT ERRED IN REACHING THE CONCLUSION THAT APPELLANT COULD NOT AVAIL HIMSELF OF A STATUTE OF LIMITATIONS DEFENSE, SINCE THIS ISSUE WAS NOT BEFORE THE COURT ON USA'S MOTION.

It was impermissible for the Court to rule on the statute of limitations defense since it was not before the Court. Plaintiff's motion to strike only refers to striking the Defendant's demand for a jury trial. (R. p. 90) It does not move to strike any affirmative defenses, including the defense of statute of limitations. No motion was filed to strike any affirmative defense.

Any argument by the Plaintiff to the Court concerning the statute of limitations should not have been considered. Defendants properly moved pursuant to S.C. R. C.P. 59 (e) to alter or amend this order on this ground, but its motion was denied.

Moreover, appellant has been prejudiced by the ruling. The statute of limitations is a viable defense in this case since it is procedural law as opposed to substantive law. Kerr V. Richland Memorial Hospital, 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009), Prasad v. Holder, 776 F.3d. 222, 226 (4th Cir. 2015)

Since South Carolina's statute of limitations defense is procedural law, it is not preempted by any Federal rule governing the Statute of limitations. See Henderson v. Summerville Ford-Mercury Inc. 405 S.C. 440 (2013) (procedural provisions of the FAA do not preempt State procedural rules relating to arbitration.)

CONCLUSION

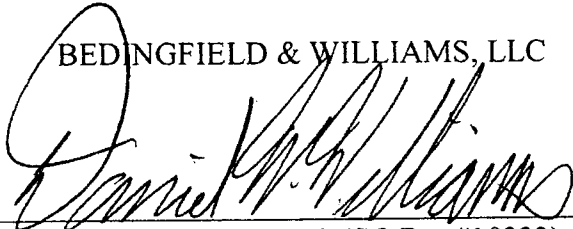
For the reason set forth in this Reply to Brief, Appellant asserts this Court's August 16, 2019, and September 9, 2019, orders be reversed.

July 8, 2020

Respectfully submitted,

BEDINGFIELD & WILLIAMS, LLC

By:



DANIEL W. WILLIAMS (SC Bar #10233)

40 Wall Street

PO Box 616

Barnwell, SC 29812

(803) 259-2759

Fax: (803) 259-5922

dan@danwilliamsllc.com

Attorney for Appellant