

IN THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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SEP 17 2020

APPEAL FROM ORANGEBURG COUNTY SC Court of Appeals  
The Honorable Edgar W. Dickson

Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers  
pro se

Appellants

VS.

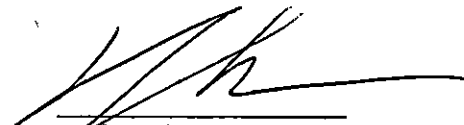
James Smith, Jr.

Respondent

APPELLANTS' REPLY TO RESPONDENT'S INITIAL BRIEF

September 14, 2020

Kathleen McDaniel, Esquire  
P. O. Box 1929  
Columbia, South Carolina 29202

  
\_\_\_\_\_  
Rufus Rivers, pro se  
\_\_\_\_\_  
Merle Rivers, pro se

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## STATEMENT OF CASE

Respondent/plaintiff allegedly owns the property at 1429 Legrand Smoak Street, Cordova, SC, 29039. Appellants have been residing at the after being granted physical possession of the property in September 2009 by Jessie Mae Smith, now deceased and died intestate in May 2016. An Application for Ejectment along with a Rule to Vacate or Show Cause was executed on August 2, 2018 by Respondent's/plaintiff's counsel but not filed with the magistrate's court and signed by the judge until August 20, 2018. Respondent's counsel repeatedly refers to an eviction-related document dated August 8, 2018 and Appellants/defendants first acknowledgment of it was in the magistrate's return which was not computer generated, but mostly hand-written.

After receiving a 30-day notice from respondent/plaintiff dated July 2, 2018, appellants wrote back to respondent/plaintiff advising him of their intentions of filing legal action challenging the validity of plaintiff's/respondent's ownership of the property if no solution could be reached before August 6, 2018. (see letter in magistrate's return). Plaintiff/respondent never responded and appellant's/defendants filed their lawsuit on August 6, 2018 with motion for injunctive relief inside and never addressed or ruled upon.(see Summons and Complaint) After filing the documents in Circuit Court, appellants/defendants proceeded directly to the Post Office and sent the documents to plaintiff/respondent by certified mail.

Defendants/appellants texted the plaintiff/respondent the case number and tracking number for the documents immediately after mailing. The notion that defendants/appellants contemporaneously filed a separate action is totally false. Plaintiff's/respondent's counsel deliberately filed their eviction action after knowing that the property would potentially be involved in a dispute in an attempt to avoid the delay.

On August 17, 2018 appellants/defendants did file an amended complaint and at no time did they know plaintiff/respondent had filed or intended to file eviction paperwork with the magistrate's

office. In defendants'/appellants' summons and complaint. Appellants/defendants were only attempting to seek protection in the event an eviction process was to be initiated. At the eviction hearing, Respondent's/plaintiff's attorney did acknowledge the amended complaint was served. That was more than enough notice that legal action was pending in Circuit Court, pursuant S.C. Code 22-3-1110, even if respondent through his counsel denies receiving the initiating summons and complaint. (see certified receipts).

On August 28, 2019, Judge Jackson dismissed Defendant's/appellants' action for failure to state a cause of action upon which relief could be granted, not before advising appellants that they probably would not have gotten injunctive relief anyway, which was odd. Appellants concluded that the Master-in-equity made a determination that appellants were not entitled to any relief because of lineal descent. Since Jessie Mae Smith died intestate, that determination could have only been made by Probate Court.

Appellants only appealed because the magistrate would not accept their bond undertaking pursuant South Carolina Code 22-3-1110 through 22-3-1180. The magistrate's office sent a letter to attorney McDaniel asking for her recommendation for appeal bond amount and copied the letter to appellants. (see exh. ). Appellants right to due process was violated when the magistrate ruled on the matter and determined rents before the circuit court case had been heard and magistrate ordering rental payments without appellants signing a bond undertaking to stay execution of an invalid ejectment.

### **STANDARD OF REVIEW**

Pertaining to standard of review upon this matter on appeal, there was no finding of a landlord-tenant relationship, nor did one ever exist. Also, the Magistrate lacked subject matter jurisdiction. Therefore an error of code law has occurred.

### **ARGUMENT**

I. Appellants argue that pursuant to South Carolina Code 22-3-20, the magistrate's court lacked subject matter jurisdiction when adjudicating a matter while validity of ownership of the property was

actively being challenged in Circuit Court and not because Appellants were attempting to challenge the Respondent's ownership of the property. South Carolina Code 22-3-1110 is unambiguous. "when the title to real property shall come in to question...the defendant...either with or without other matter of defense, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing signed by the defendant or his attorney and delivered to the Magistrate. A copy of such answer shall be served on the plaintiff or his attorney." (See exh. & audio recording of magistrate's hearing). Pursuant to South Carolina Code 22-3-1120, Appellants attempted to present their undertaking to the Magistrate for an amount to be quoted and was told by a second judge in the courtroom that Appellants' undertaking was only used in criminal cases.(See exh ). Appellants' surety was on standby and only needed to be notified of the amount and the undertaking would have been provided. Appellants' argument to the Magistrate was that the Power-Of-Attorney and Quitclaim deed used for the Respondent to transfer the property to himself were being challenged in Circuit Court. Appellants advised the Magistrate that they had been residing in the property since September, 2009 after being granted physical possession by Jessie Mae Smith, now deceased. Pursuant to South Carolina Code 22-3-0 through 22-3-1180, ejectment proceedings should have been halted by the Magistrate until the Circuit Court had an opportunity to address Appellants' case in its entirety. The idea that section 22-3-20(2) does not apply to eviction proceedings is ridiculous, that is the reason for the statute. Simply, because another Magistrate wrote an article voicing his opinion about questionable title, does not change the statute.

The Circuit Court, including the Master-In-Equity, did not provide Appellants a fair opportunity to pursue their claim. Unfortunately, "the end does not always justify the means." Continuing the appeal in Circuit Court was of little value since the damage had already been done when the Magistrate decided the case when she should not have followed by the Master-In-Equity dismissing the matter. Respondent asserts that this is not a questionable title matter. Respondent does not get to determine

what is questionable title. The statute is clear. From the onset of Appellants' litigation, Respondent through his counsel has successfully circumvented the legal process. Justice is for all. It will always be a waste of judicial resources if violating statutes are allowed to continue. was no landlord-tenant relationship as defined by the Landlord-Tenant Act.

## **II. THERE WAS NO LANDLORD-TENANT RELATIONSHIP**

A tenant-at-will does not constitute a landlord-tenant relationship, but, is another definition tenant whose lease has terminated and no longer has an agreement oral or written. There would have had to have been an agreement some point in the past.

Appellants has always contended they were not tenants of the Respondent. Respondent in his Rule To Show Cause or Vacate states there was no agreement or rents due. Respondent has not explained anything that indicates there is or ever was a landlord-tenant relationship. The idea that the Magistrate's return is evidence that a finding of a landlord-tenant relationship was established is no evidence at all. One must examine the audio transcripts of the magistrate's hearings to make a finding determination. If statute procedure had been followed there would not be any evidence in the record that would indicate that Respondent is the owner or not the owner of the property until after the determination had been made by the Circuit Court Judge because any determination by the Magistrate would have been invalid/premature and not based on the Respondent's documents being challenged in Circuit Court.

Appellants have presented sufficient argument as to why they disagree with this decision or how the Circuit Court did not explicitly address the issues. This court only needs to review transcript from the hearing of November 18, 2019. Appellants have not waived any arguments.

## **III. APPELLANTS HAVE ABSOLUTE CLAIM TO FUNDS HELD IN ESCROW.**

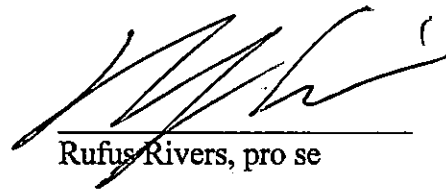
The Magistrate failed to execute or provide a bond to stay for Appellants to sign a bond undertaking when ordering rental payments, nor has Appellants seen one pursuant to South Carolina

Code 27-40-800(b), “upon appeal to the Circuit Court, it is sufficient to stay execution of a judgment for ejection that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the Magistrate in accordance with section 27-40-780...” As a result of this omission, and other Magistrate Court infractions, this court should the release of Appellants' funds forthwith.

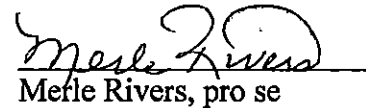
### CONCLUSION

Appellants have shown that the Magistrate lacked subject matter jurisdiction, therefore, rendering the Circuit Court's decision invalid. At no time did the Magistrate make a finding of a landlord-tenant relationship. The Magistrate did make a finding of who owns the property which is in violation of statute. Appellants ask this court to reverse the Circuit Court's decision and Respondent be allowed to file his own Summons and Complaint as provided by statute.

September 4, 2020



Rufus Rivers, pro se



Merle Rivers, pro se

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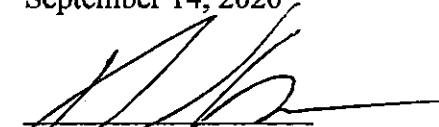
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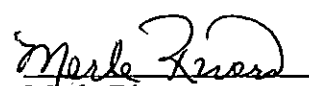
Respondent

PROOF OF SERVICE

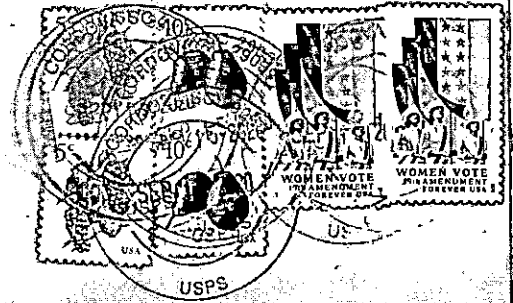
We certify that we have served Appellants' Reply to Respondent's Initial Brief and designation of matter on James Smith, Jr. by electronically filing a copy with the Court Of Appeals and mailing a copy to his attorney of record Kathleen McDaniel, esq. At \_\_\_\_\_ on September 14, 2020.

September 14, 2020

  
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Appellant

  
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