THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
OCT 21 2020
SC Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas
W. Haigh Porter, Special Referee

Civil Action No. 2018-CP-33-00653
Appellate Case No. 2020-000139

Ex Parte Beaullah Belin and James Belin, ...Appellants

In re Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,.....Plaintiff,

v.

Bertha Dunham a/k/a Bertha E. Dunham; and Ernest L. Dunham,.....Defendant(s)

of which Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A ..... is the Respondent.

RESPONDENT'S BRIEF

Peter M. Balthazor #68244
RILEY POPE & LANEY, LLC
2838 Devine Street (29205)
Post Office Box 11412
Columbia, South Carolina 29211
(803) 799-9993 – Office
(803) 239-1414 – Facsimile
peteb@rplfirm.com

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF THE CASE

On September 20, 2018, Respondent filed its Lis Pendens, Summons and Notice, and Complaint seeking foreclosure of a real estate mortgage. [R. p. 40] On February 7, 2019, Plaintiff filed a Notice of Denial of Foreclosure Intervention giving Defendants Bertha Dunham and Ernest L. Dunham (collectively "the Dunhams") thirty days from the date of mailing of the notice to file and serve a copy of their response to the Summons and Complaint. [R. p. 68] Thereafter, the Dunhams failed to answer the Summons and Complaint, and Plaintiff filed a Notice of Default on March 12, 2019. [R. p. 69]

By order filed March 12, 2019, and pursuant to Rule 53(b), SCRCP, this matter was referred to a special referee to take testimony and to enter a final judgment, and to hear any issues, including motions, after sale or judgment. [R. p. 1] On April 25, 2019, the special referee entered his Order of Judgment of Foreclosure and Sale Decree. [R. p. 3] On the same day, the special referee filed a Notice of Sale directing the real property to be sold at public auction on June 11, 2019. [R. p. 75] The Notice of Sale was published in the Star Enterprise in Marion, South Carolina on May 22, 2019, May 29, 2019, and June 5, 2019. [R. p. 74]

Respondent was the high bidder at the public auction on June 11, 2019. [R. p. 70] After compliance with their bid, the special referee issued a deed to the subject property which was recorded with the Marion County Clerk of Court on August 28, 2019, in volume 466 at page 309. [R. p. 76]

On October 25, 2019, Appellants filed their Motion to Intervene and Motion to Set Aside Judgment (hereinafter "Motion"). [R. p. 81] The special referee heard the Motion by telephone on October 29, 2019. [R. p. 79] On November 15, 2019, Respondent filed a Memorandum in Opposition to Motion to Intervene and Motion to Set Aside Judgment of Beulah Mae Belin and James Belin. [R. p. 83] The special referee adopted Respondent's Memorandum *in toto* and denied

Appellants' Motion by an Order filed on December 31, 2019. [R. p. 12] Appellants filed a Notice of Appeal on January 29, 2020, and a corrected Notice of Appeal on February 11, 2020.

STATEMENT OF FACTS

William Dunham, Jr. and Bertha Dunham purchased the subject property on October 15, 1975.[1] [R. p. 50] William Dunham, Jr., conveyed his interest in the subject property to Bertha Dunham by deed dated May 10, 1983, and recorded September 19, 1983 in Deed Book A196 at page 24. [R. p. 50]

Thereafter, for value received, the Dunhams made, executed, and delivered a note ("Note") dated April 13, 2006, to Respondent's predecessor. [R. p. 49, 54] To better secure the payment of this Note, Dunham made, executed, and delivered a real estate mortgage ("Mortgage") to Respondent's predecessor on April 13, 2006, covering the subject property. [R. p. 50, 59] The Mortgage was recorded on April 13, 2006, in book 819 at page 146. [R. p. 50, 59] By various assignments the Mortgage was assigned to Respondent. [R. p. 50, 65-66] The Mortgage evidences and secures the repayment of money advanced by Respondent to, or on behalf of, Dunham and constitutes a first mortgage lien on the subject property. [R. p. 50]

The Note payments which became due on December 24, 2017, and subsequent months had not been made as required, and Respondent prosecuted this mortgage foreclosure action. [R. p. 51] The special referee entered an order on April 25, 2019, declaring the Mortgage to be a first mortgage lien and that Respondent should have judgment of foreclosure of the Mortgage. [R. p. 3]

---

[1] The facts stated herein are taken from the Complaint in this matter. By suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations. Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998).

Appellants asserted in their Motion they have a 1995 Oakwood mobile home that "has been located on the subject property since approximately June 2006." [R. p. 81-82] Appellants claimed they have adversely possessed the land since 2006. Appellants asserted this entitled them to intervene in the action pursuant to Rule 24, SCRCP. Appellants also asserted that the alleged adverse possession required the special referee, pursuant to Rule 55, SCRCP, to set aside the Order of Judgment of Foreclosure and Sale Decree. Appellants' Motion was not supported by affidavit or other exhibits. Despite their claim that they moved a mobile home to the property without the consent of the Dunhams, Appellants have not filed any evidence with the court to support their claim of adverse possession.[2]

In their brief, Appellants claim it is undisputed that they have had a mobile home on the property for a period in excess of ten years. There are no facts in the record below to support this claim and it should not be considered by this Court. See Zaman v. S.C. State Bd. of Med. Examiners, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (declining to consider an issue where record contained no factual basis for raising the issue on appeal); Rule 210(h), SCACR (stating the appellate court will not consider any fact which does not appear in the record).

STANDARD OF REVIEW

The decision to deny a motion to intervene in an action, pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court. Kiawah Resort Assocs., L.P. v. Kiawah Island Community Ass'n, Inc., 421 S.C. 538, 808 S.E.2d 521 (Ct. App. 2017). An appellate court will

[2] In the Statement of Facts of their Amended Initial Brief, Appellants state they moved their mobile home to the property and "thereafter" Dunham executed a note and mortgage. Any inference that Appellants moved their mobile home on the property prior to the recording of the mortgage is not supported by the record. The only statement in the record concerning the placement of the mobile home is Appellants' unsupported claim in their motion to intervene that the mobile home has been on the property since approximately June 2006. [R. p. 82]

not disturb the trial court's decision on appeal unless a manifest abuse of discretion is found resulting in an error of law. Id. "Moreover, the error of law must be so opposed to the lower court's sound discretion as to amount to a deprivation of the legal rights of the party." Id. at 552, 808 S.E.2d at 528 (quoting Jeter v. S.C. Dep't of Transp., 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006)).

"Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." Ex parte Gov't Employee's Ins. Co., 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007). "Accordingly, the Court should consider the practical implications of a decision denying or allowing intervention." Id.

ARGUMENT

I. The special referee did not abuse his discretion by not allowing Appellants to intervene as of right.

A. Intervention of right was not required by Rule 71(b), SCRCP.

First, Appellants argue "Rule 24 allowed intervention as of right based upon rule 71(b) of the South Carolina Rules of Civil Procedure." Rule 71(b), SCRCP, provides direction for the court concerning the form and substance of a final order of judgment in foreclosure cases. See Ex parte Moore, 352 S.C. 508, 510, 575 S.E.2d 561, 562 (2003) ("The terms and conditions of a judicial sale are controlled by court order, Rule 71, SCRCP, and statute."). First, this section provides that the judgment shall direct that the mortgaged premises be sold by the master or other appropriate court officer. Id. Next, this section provides that the "judgment shall also contain a good and sufficient legal description of the property being sold, a provision for the necessary legal advertisement, the time and location of the sale, and notice of any senior liens, taxes, or other rights to which the property to be sold is subject." Id.

It is this last clause that Appellants contend should have been considered by the special referee when deciding whether to allow intervention as of right. Appellants also contend the special referee's order should be set aside because it did not identify Appellants' senior adverse claim of ownership.

This Court should not address this argument. This argument is not preserved for appellate review. Appellants did not raise this argument to the special referee. The only argument raised by Appellants was that they have adversely possessed the property since 2006 and they have "equitable and legal interests in the . . . property . . . and [they] wish to intervene in this matter." [R. p. 82] Appellants did not argue they had a senior interest in the property, or that Rule 71(b), SCRCP, should have been considered by the special referee. Moreover, even if this particular issue had been raised by Appellants, it was not ruled upon by the special referee. It was incumbent upon Appellants to bring this to the attention of the special referee to obtain a ruling. To preserve an issue for appeal, an appellant must present the issue to the lower court and obtain a ruling.

> The losing party must first try to convince the lower court it . . . has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.

I'on LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 598 S.E.2d 712 (2004) (stating it is well settled that an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court); Summersell v. S.C. Dep't of Pub. Safety, 337 S.C. 19, 522 S.E.2d 144 (1999) (stating a party must raise an issue by an appropriate motion if the issue is not ruled upon by the trial court).

In any event, the special referee did not abuse his discretion. The special referee's Order of Judgment of Foreclosure and Sale Decree does not need to be set aside. The order provided notice of any senior liens and other rights in the property. Appellants had not established any right to the property at the time the special referee issued the Judgment of Foreclosure. Rule 71(b), SCRCP, does not require the court officer to provide notice of senior liens or other rights in the property that have not been recorded or established. The special referee was not required to consider Rule 71(b), SCRCP, when addressing intervention as of right. Rule 71(b), SCRCP, simply provides for the requirements for the court order of foreclosure and does not address or affect intervention as of right.

For these reasons, the special referee did not abuse his discretion by not considering Rule 71(b) when addressing intervention as of right.

B. Appellants did not meet the requirements necessary to establish intervention as of right.

Appellants also argue they have established all necessary elements for intervention as of right pursuant to Rule 24(a)(2), SCRCP.

Rule 24(a)(2) provides that:

> Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Id. "Intervention of right requires a direct, substantial, legally protectable interest in the proceedings." Ex parte Reichlyn, 310 S.C. 495, 499, 427 S.E.2d 661, 664 (1993). To be allowed to intervene as of right, a party must: "(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a

position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties." Berkeley Elec. Co-op, Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). "Failure to satisfy any one of the four requirements precludes intervention." Ex parte Reichlyn, 310 S.C. at 500, 427 S.E.2d at 664.

i. Appellants have abandoned this argument by the short, conclusory nature of their arguments.

Appellants argue that Rule 24(a)(2) allowed them to intervene because all four elements were established. However, other than unadorned, conclusory statements, Appellants did not provide any case law or reasoning as to why they meet the requirements for intervention as of right.

For example, as to the timely-application requirement, Appellants simply state that their application was timely under Rule 60. Concerning the requirement of an interest relating to the property, Appellants simply state that their "claimed interest . . . was the same property as the foreclosure action." Appellants have made no attempt to explain why their application was timely, or why they have an interest in the property.

Appellants also argue in short, conclusory fashion that the special referee abused his discretion by not recognizing disparate interests between Dunham and Appellants. However, Appellants' one-sentence argument on this point speculates as to Dunham's interests and asserts facts that are not in the record, i.e., concerning the Appellants' interests.

Finally, despite the special referee specifically citing the Sagebrush[3] factors, Appellants argue the special referee did not consider the Sagebrush factors. Appellants included no argument concerning how the special referee abused his discretion.

"[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). An issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory manner without supporting authority. Jinks v. Richland County, 335 S.C. 341, 585 S.E.2d 281 (2003).

This Court should not address Appellants' argument concerning intervention as of right pursuant to Rule 24(a)(2), SCRCP. This issue has been abandoned.

ii. Appellants did not establish a timely application for intervention.

A court considers the following factors in determining whether a motion to intervene is timely:

> 1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

Ex parte Reichlyn, 310 S.C. at 500, 427 S.E.2d at 664 (quoting Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991)).

Appellants filed their Motion on October 25, 2019, over a year after Respondent filed the Lis Pendens and initiated this action. As of September 20, 2018, Appellants were on constructive

---

[3] See Berkeley Elec. Co-op, Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712 (1990) (applying the test for intervention set forth in Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983)).

notice of Respondent's foreclosure action. See S.C. Code Ann. § 15-11-20 (2005) ("From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby . . . .").

In addition to the notice proffered by the filing of the Lis Pendens, the real property was sold at public auction after being advertised for three consecutive weeks in a local paper of general circulation. [R. p. 74] This publication would have provided additional notice to Appellants of the pending action.

Appellants have not set forth any argument or reason for the delay or why they meet the Reichlyn factors for timeliness. Appellants simply argue their application for intervention was timely considering the one-year limitation established in Rule 60, SCRCP. However, Rule 60, SCRCP, does not apply to the evaluation of applications for intervention. Rule 60 does not apply to intervenors. See Rule 60(b), SCRCP (stating "the court may relieve *a party* or his legal representative from a final judgment, order, or proceeding") (emphasis added). A court is required to consider how much time has passed since the applicant knew or should have known of his interest in the suit. See Reichlyn, supra. A court is not required to consider whether an applicant met the outside time limit for motions made pursuant to Rule 60. Moreover, Appellants did not raise Rule 60 in their Motion. Therefore, Rule 60 should not be considered by this Court in evaluating the timeliness of Appellants' application.

At the time Appellants filed their Motion, litigation had progressed to the point that the case had been ended by judgment and the property had been sold at public auction. Respondent incurred costs and expenses in bringing this litigation. Those costs, and loss of revenue, are now continuing. If intervention is allowed Respondent would have to litigate the claim again, incurring many additional expenses that would not be recouped. The relief requested by Appellants

demonstrates the extent of the costs and expenses that would be incurred if intervention is allowed. Appellants ask that this matter be remanded for the special referee to make findings of fact as to priority under Rule 71. Such findings of fact could not be made without extensive discovery and testimony concerning Appellants' claim for adverse possession.

Moreover, even if Appellants are allowed to intervene and succeed in establishing a claim to the property, their claim will be subject to the mortgage. The property will be sold again, most likely for the same amount. This added time and expense would be extremely prejudicial to Respondent. Keep in mind, Respondent has not been accused of creating any procedural defects or problems. To allow intervention at this time, to basically start the case from scratch, would not be fair or just to a party who has complied with all rules, notices, and procedures in bringing this action. It is Appellants who have sat on their rights for almost 14 years and expect to be able to jump in after all is said and done.

Therefore, Appellants did not establish a timely application for intervention. They have not proffered any reason or justification for the delay, litigation has progressed to the point of full adjudication of the issues and the real property was sold, and the only party that would be prejudiced is the one who has acted promptly and properly to protect its rights.

iii. Appellants do not have an interest relating to the property which is the subject of the action.

In support of this requirement for intervention, Appellants state that their "claimed interest . . . was the same property as the subject foreclosure action." While it may be true that Appellants are arguing over the same piece of property, Appellants ignore that their claim is just that, only a claim. Appellants do not have an interest in the property.

Appellants have no title to the subject property. At the most, Appellants merely assert a possible civil claim for adverse possession. They do not claim that any portion of the real property was deeded to them.

Prior to the initiation of the foreclosure proceeding, a title search did not discover any interest of Appellants in the real property. The public records do not show Appellants possess any interest in the real property. There is nothing in the public records that would have put Respondent on notice of Appellants' alleged interest in the property. See S.C. Code Ann. § 30-7-10 (2007) ("All deeds of conveyance of lands . . . required by law to be recorded in the office of the register of deeds . . . are valid so as to affect the rights of subsequent creditors . . . only from the day and hour when they are recorded in the office of the register of deeds . . . ."); S.C. Code Ann. § 30-7-90 (2007) ("No possession of real property described in any instrument of writing required by law to be recorded shall operate as notice of such instrument.").

Appellants' placement of a mobile home on the real property does not create an interest in the real property. A mobile home is not considered real property. See S.C. Code Ann. § 56-19-10(39) (Supp. 2019). A mobile home must be registered and licensed with the Department of Motor Vehicles just like any other motor vehicle. See S.C. Code Ann. § 56-19-210 (2018). Appellants' placement of a mobile home on the real property creates no more of an interest in that real property than would the parking of any other motor vehicle on the property.

A claim of adverse possession is not an interest in real property. Adverse possession is but a claim, to be proved by the claimant. The party relying on adverse possession has the burden of proof to establish the claim by clear and convincing evidence. Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (1986). Appellants have not proved a thing. Appellants have not filed a lis pendens or a suit for adverse possession. Appellants have not even taken the step of filing an affidavit or

other proof of any interest in title. Appellants' Motion is based entirely on the unsupported legal conclusion that Appellants have adversely possessed the property by placing a mobile home on the property for over ten years.[4] However, it is presumed, unless proven otherwise, that occupancy of real property by a person other the legal title holder is in subordination to the legal title. Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992); S.C. Code Ann. § 15-67-210 (2005).[5]

Appellants' claim of adverse possession does not create an interest in real property any more than a premises liability suit would create an interest in real property. The assertion of a claim of adverse possession in a motion to intervene does not create an interest in real property any more than filing a lawsuit for adverse possession would create an interest in real property. No interest is created until such claim is adjudicated. Therefore, Appellants' argument that their claimed interest concerned the same property as the foreclosure action is unavailing.

iv. Appellants are not entitled to intervention of right because this action does not impair or impede their ability to protect their interest.

Appellants argue that, without intervention, their position is impaired because their home property interest was being foreclosed. This argument is much too simple and does not address the real question of how disposition of the action impaired Appellants' *ability* to protect their interest.

Respondent's foreclosure action has never impaired or impeded Appellants' *ability* to protect their claimed interest in the property. Respondent did not operate in the dark. The subject

---

[4] Appellants state that it is undisputed that they have had a mobile home on the property via hostile occupation for a period in excess of ten years. This claim is not undisputed. There is no competent evidence in the record to support Appellants' claim of adverse possession.

[5] Appellants' claim of adverse possession is not a defense to a foreclosure action where a mortgage was properly recorded. See Norton v. Lewis, 3 S.C. 25 (1871) (holding that a mortgagee was entitled to a foreclosure of a mortgage, notwithstanding an adverse possession by a purchaser from the mortgagor, where the purchaser had constructive notice of the mortgage).

mortgage and all assignments of the mortgage were recorded in the public records. Respondent filed a lis pendens and provided all notices required in the foreclosure action. Respondent's action did not affect Appellants' ability to protect their claimed interest. Appellants' ability to protect their claimed interest was affected only by their inaction at any point prior to October 25, 2019.[6]

v. Appellants have failed to demonstrate that their interest was not adequately represented by other parties.

On this point, Appellants claim they "demonstrated and asserted that their interest was inadequately represented by the defaulted Mrs. Dunham" and that their interest in the property was different than Dunham's interest. Appellants claim their interest is to establish a senior claim to the property via adverse possession[7] whereas Dunham's interest "may have been to avoid personal liability . . . ." Appellants also argue that the Sagebrush factors were not considered by the special referee.

Whether existing representation is adequate to protect the interests of an applicant depends on:

> (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

Berkeley Elec. Co-op, 302 S.C. at 191, 394 S.E.2d at 715. Courts presume that an applicant's interests are adequately represented "[w]hen an applicant for intervention and an existing party

---

[6] Conceivably, Appellants do not need to intervene in this action to protect their interests. The practical implication of the denial of intervention might be for Appellants to file a separate action for possession or to quiet title.

[7] As addressed earlier, Appellants' claim of a senior interest in the property is not supported by the record and should not be considered by this Court.

have the same interests or ultimate objective." S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988) (denying intervention because applicant's only objective was to retain disputed tax funds, which was identical to the objective of the county treasurer). In deciding adequacy of representation, courts consider whether the absentee is likely to have anything of his own to say that will be of value." In re Horry County State Bank, 361 S.C. 503, 510, 604 S.E.2d 723, 726 (Ct. App. 2004). The applicant bears the burden of showing that existing representation is not adequate. Id.

Appellants have not met their burden of showing inadequate representation by existing parties. Since Appellants are not parties to the Note and Mortgage they cannot assert any additional or unique arguments which would not have been raised by the Dunhams. The Dunhams, had they not defaulted in this litigation, would have defended against the loss of the property due to foreclosure. Appellants likewise would have defended against the loss of the property. However, had they been allowed to intervene, their claim of adverse possession since June 2006 would not have worked to prevent the sale of the property upon a foreclosure judgment. The foreclosure judgment would have been good against Appellants' claim of adverse possession.

Because of the Dunhams' default in this litigation, we can only now presume their intentions. Appellants speculate that Dunham's interest was to avoid personal liability. Appellants should not be able to capitalize on the Dunhams' default in this litigation to make a showing of inadequacy of representation. Had the Dunhams' not defaulted, it can also be speculated that they would have defended the foreclosure action in order to retain possession of the property. The Dunhams and Appellants would have been seeking the same outcome in the case: retention of the property.

Appellants' speculation of the Dunhams' intentions here is similar to the Bank's speculation as to Ken's Cabana's intentions in In re Horry County State Bank, supra. This argument fails to address the whether or not the Dunhams adequately represented Appellants' interests in the property. "If representation could be shown inadequate by the mere possibility that two parties could have different intentions, little would be left of the doctrine of adequacy of representation." In re Horry County State Bank, 361 S.C. at 509, 604 S.E.2d at 726. Other than their claim for adverse possession, Appellants do not point to any arguments or defenses that could not have been made by the Dunhams and Appellants point to no unique knowledge, experience, or perspective they could have brought to the foreclosure proceedings.

Like in Horry County State Bank, Appellants merely reiterate that they may have an interest in the property. A claimed interest in property does not bring anything "additory or instructive" to the dispute. Id. at 510, 604 S.E.2d at 726 (stating that merely reiterating that an applicant has an interest in the property does not demonstrate inadequacy of representation). Appellants' claimed interest in the property is not enough to show inadequate representation. The Dunhams also had an interest in the property.

In conclusion, surely the Dunhams did not need to argue they adversely possessed the subject property to have adequately protected Appellants' interests. The Dunhams' interest would have been the same as Appellants' interest – to retain the property. Appellants have not identified any arguments or defenses which could not have been raised by the Dunhams to retain the property. Finally, the mere possibility of different intentions does not show inadequate representation. For these reasons, Appellants are not entitled to intervention as of right.

II. Public policy does not favor intervention in this case and public policy arguments were not raised to and ruled upon by the special referee.

Assuming, for purposes of this argument, that Appellants have lived on the property for over ten years, they have never taken any action whatsoever to protect any interest in the property. A party should not be allowed to intervene, under color of adverse possession, where there is nothing but an unsupported allegation of adverse possession. As far as public policy is concerned, public policy should not favor a claimant sitting on their rights for over ten years only to be allowed to intervene simply by alleging an interest in property after it has been sold at public auction. The public policy of this State is to not allow intervention simply based on vague notions of the ends of justice or sentimental values. The stated public policy of this State is to allow intervention only when an applicant meets the requirements under the law. Appellants' conclusory argument as to public policy is unavailing.

In addition, Appellants' public policy argument should not be considered by this Court because it was not raised to and ruled upon by the special referee. See Johnson v. Sam English Grading, Inc., 412 S.C. 433, 457, 772 S.E.2d 544, 557 (Ct. App. 2015) ("An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that the special referee's order denying Appellants' Motion should be affirmed.

Respectfully submitted,

Peter M. Balthazor #68244
RILEY POPE & LANEY, LLC
2838 Devine Street (29205)
Post Office Box 11412
Columbia, South Carolina 29211
(803) 799-9993 – Office
(803) 239-1414 – Facsimile
peteb@rplfirm.com
Attorneys for Respondent

October 19, 2020
Columbia, South Carolina