IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master-In-Equity

Appellate Case No.: 2020-001006

Sara Gleaton, as Personal Representative of the Estate of Wilton Gleaton, ……..... Appellant,

v.

Orangeburg County, A Political Subdivision of the State of South Carolina, …...….. Respondent.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

This appeal arises from the flawed, delinquent tax sale and subsequent deeds of a property owned by Appellant, Sara Gleaton, as Personal Representative of the Estate of Wilton Gleaton (hereinafter "the Gleatons"), which created a cloud on the title of the property and predictably torpedoed the Gleaton's chances of profiting from its sale. Wilton Gleaton[1] filed a Complaint against Respondent Orangeburg County, a Political Subdivision of the State of South Carolina (hereinafter " the County"), on December 9, 2010, in the Orangeburg County Court of Common Pleas, alleging a cause of action for slander of title. (Compl.). On February 3, 2011, the County filed its Answer in which it (1) denied that the delinquent tax sale and deed were derogatory to the Gleaton's title, (2) denied that the delinquent tax sale and deed were published with malice, and (3) raised section 15-78-60 of the South Carolina Tort Claims Act as an affirmative defense. (Answer).

On December 12, 2013, the action was referred to the Orangeburg County Master-in-Equity by consent of the parties. The matter came up for hearing before the Master on September 17, 2014, with appearances by counsel for Appellant and counsel for Respondent (Hr'g Tr.). Ms. Gleaton, James Fields, and Kathy Henderson, the Director of the Orangeburg County Delinquent Tax Collector at the time of the hearing, offered testimony. Following the hearing the Master issued a "Final Order" finding that: (1) the delinquent tax sale was flawed for failure of proper notice of the tax sale to the Gleatons, (2) the delinquent tax sale was derogatory to the Gleatons' title to the property, and (3) ***the allegations of the Gleatons were true***. (Order, Dec. 31, 2014). The County did not file a motion to reconsider or otherwise challenge this Order.

The Master also ordered and decreed that: (1) the tax sale was flawed and not valid, (2) the issues of liability and damages would be taken under advisement, (3) The Gleatons would

[1] Mr. Gleaton passed away on March 8, 2015.

make further attempts to sell the property within the next four months, and (4) additional relief could be sought by either party to assist with the sale of the property. After the Court's Order, extensive efforts were undertaken by the Gleatons to sell the property; unfortunately, these efforts did not result in the sale of the property. (Order, Dec. 27, 2019 p.1).

On December 2, 2016, the Appellant moved to substitute Ms. Gleaton as Personal Representative of the Estate of Wilton Gleaton as Plaintiff. Appellant also moved for relief and to determine damages. On April 13, 2017, the Master heard testimony and reviewed the parties' submissions again for a final determination on damages.[2] On the same day, the Master granted Ms. Gleaton's request to be substituted as Plaintiff. On December 27, 2019, the Master issued an Order finding that: (1) the false statement that harmed the Gleatons was not published by the County, (2) the delinquent tax sale was not derogatory to the Gleatons' title, (3) a subsequent quitclaim deed had created the cloud on the title, (4) there was no malice because the County did not intend to cause harm to the Gleatons, (5) there was no malice because the County did not conduct the tax sale with knowledge or reckless disregard of its invalidity, and (6) the County ***may*** have been immune from liability under section 15-78-60(11). (Order, Dec. 27, 2019). With that, the Master dismissed the Gleatons' claim for damages for slander of title.

On January 7, 2020, counsel for Appellant received notice of the Order, and on January 13, 2020, filed a Motion to Alter or Amend pursuant to Rules 52(b) and 59(e), SCRCP. (Mot. to Amend). On June 11, 2020, the Master denied Appellant's motion. (Order, June 11, 2020). The Appellant timely filed her Notice of Appeal on July 10, 2020.

[2] A transcript of the hearing does not appear to exist, as no court reporter was present for the hearing.

STATEMENT OF FACTS

In June of 1999, Wilton and Sara Gleaton submitted a successful high bid on property located at 150 Country Acres Road in North, South Carolina. (Compl. ¶¶ 5-6; Hr'g Tr. 8:6-9:15). The Gleatons purchased the property at a foreclosure auction from Bank of America Housing Services ("BOA"). (*Id.*; Compl. ¶¶ 5-6). The property was previously owned by Debra Foxworth and was received by BOA at a public sale authorized by the Orangeburg County Master-in-Equity after it foreclosed on the property. (Compl. ¶ 5; June 16, 1999 Deed). The deed was recorded in the office of the Register of Deeds ("RoD") in Deed Book 764 at Page 91. (*Id.*). The deed was filed with the Orangeburg County Assessor on July 8, 1999. (*Id.*).

The property was transferred from BOA to the Gleatons by a warranty deed on August 4, 1999, which was recorded in the office of the RoD for Orangeburg on August 18, 1999, in Deed Book 771 at Page 51. (Compl. ¶ 6; Dec. 31, 2014 Order; Aug. 4, 1999 Deed). The deed was filed with the County Assessor on August 20, 1999. (*Id.*). A mortgage on the property granted to Orangeburg National Bank by Mr. Gleaton was simultaneously recorded in the office of the RoD on August 18, 1999. (August 17, 1999 Mortgage).

The Gleatons were informed and believed that they were purchasing the subject property free and clear of any encumbrances or delinquent taxes. (Hr'g Tr. 13:14-17; Order, Dec. 31, 2014 p. 2). However, at the time the Gleatons purchased the property, taxes for the years 1998 and 1999 were delinquent, as they had not been paid by Ms. Foxworth. (*Id.*). After the property was transferred to the Gleatons on August 4, 1999, three notices were sent by the Orangeburg County Delinquent Tax Collector, Shelton Sistrunk, to the "Property Owner" informing the recipient that the property had been sold on February 7, 2000 at public auction for the purpose of collecting delinquent taxes. (Correspondence from Orangeburg Cnty. Delinquent Tax Collector

dated Feb. 23, 2000, March 31, 2000, and Jan. 5, 2001). The correspondence also informed the recipient that the property could be redeemed by paying the taxes before February 7, 2001. (*Id.*).

Unfortunately, the notices were never sent to the Gleatons. Instead, they were sent to Ms. Foxworth's address of 1205 Cleckley Blvd., Orangeburg, South Carolina 29115. (*Id.*). The Gleatons' address is 431 Dry Swamp Road, Cordova, South Carolina 29039. (Hr'g Tr. 6:9-15). The notices were returned to the Delinquent Tax Collector each time after attempts at delivery were unsuccessful.[3] (Correspondence from Orangeburg Cnty.). Additionally, the first two notices were addressed to "Debra L Foxworth" and not Wilton or Sarah Gleaton. (*Id.*). In the final notice sent on January 5, 2001, Ms. Foxworth's name was lined out and replaced with Mr. Gleaton's name, but the address on the notice was unchanged from Ms. Foxworth's address.

On January 13, 2001, Ms. Gleaton went to the Orangeburg County Courthouse because she had not received any tax receipts for the subject property. (Hr'g Tr. 14:9-12). Upon arrival, an agent of the County gave her a copy of the tax receipts for the year 2000, which she paid for with a check which documented that her proper address was on Dry Swamp Road. (*Id.* at 14:9-15:3; Year 2000 Tax Receipt). Unbeknownst to the Gleatons, on February 7, 2000, the subject property had been auctioned to James Fields, an acquaintance of Mr. Sistrunk's, for $500.00 through a delinquent tax sale. (May 3, 2001 Deed). The deed conveying the subject property from Mr. Sistrunk as the Delinquent Tax Collector to James Fields was recorded in the office of the RoD for Orangeburg on May 10, 2001. (May 3, 2001 Deed). The deed was recorded in the office of the Assessor on May 19, 2001. (*Id.*). The deed is flawed and wrongfully states that Debra L Foxworth was the record owner of the subject property at the time of its conveyance.

[3] One notice was returned because it was deposited in the mail without an address.

(*Id.* at 2; Hr'g Tr. 19:1-4). Instead, at the time the deed was conveyed the Gleatons were the record owners of the property by way of the previous August 4, 1999 deed from BOA.

Unaware of the delinquent tax sale, the Gleatons continued to pay the taxes for the property. (Hr'g Tr. 19:17-23:20). The Gleatons also paid for utility expenses and the upkeep of the property, upon which there was a mobile home into which they invested over $12,000.00. (*Id.* at 24:11-33:9; Certificate of Title of Vehicle). Sometime in 2006, it was finally brought to the Delinquent Tax Collector's attention that the Gleatons were the record owners of the property at the time it was conveyed to Mr. Fields, notwithstanding the fact that for the entire intervening period (1) the August 1999 deed and mortgage had been recorded with the County conveying the property to the Gleatons and (2) the Gleatons had been continuously paying taxes on the property and receiving notice of the taxes at their Dry Swamp Road Address since 2001. (Hr'g Tr. 85:7-13; August 7, 2006 Deed; Year 2001, 2002, 2003, 2004, 2005, 2006 Tax Receipts).

On August 7, 2006, the County took steps to reverse the tax sale and deed to Mr. Fields. (Hr'g Tr. 86:10-14). The County's position was that the tax sale was not proper, and it intended to correct the situation. (*Id.* at 86:10-16). This consisted of the County performing a quitclaim deed from James Fields to Debra Foxworth as the defaulting taxpayer. (*Id.* at 87:1-4; August 7, 2006 Deed). Kathy Henderson, an employee with the Delinquent Tax Office, testified that the County reversed the tax sale and put it back in Ms. Foxworth's name even though it knew the Gleatons had purchased the property. (Hr'g Tr. 86:18-87:8). The quitclaim deed conveying the property to Ms. Foxworth was signed by Ms. Henderson and other employees of the Delinquent Tax Office. (August 7, 2006 Deed). The Gleatons were not notified of the quitclaim deed and had no idea that these events were occurring. (Hr'g Tr. 25:24-26:3).

In 2007, the Gleatons decided to sell the subject property and entered an exclusive right to sell listing agreement with ERA Wilder Realty. (Hr'g Tr. 23:21-24; Feb. 5, 2007 Listing Agreement). On October 13, 2009, the Gleatons entered an agreement with Connie and Donnie Hall to purchase the property for $33,000.00. (Order, Dec. 31, 2014; Nov. 17, 2009 Release of Agreement). During the title search process it was discovered that the property had been conveyed to Ms. Foxworth by the quitclaim deed. (Hr'g Tr. 26:17-28:3). The Gleatons met and discussed the situation with the County, after which D'Anne Haydel, the County attorney, wrote to John Shuler, attorney for the Halls, offering to file and prosecute a declaratory judgment on the Halls' behalf seeking declarations that the delinquent tax sale and quitclaim deed were flawed. (Nov. 9, 2009 Correspondence). The Halls ultimately chose not to purchase the property. (Hr'g Tr. 30:13-31:2; Nov. 17, 2009 Release). The Gleatons were subsequently unable to sell the property for the agreed upon price and continued to pay for the taxes and upkeep of the property up until the filing of this action. (Hr'g Tr. 31:7-33:9).

STANDARD OF REVIEW

Generally, in an action at law the findings of fact of a trial court must be overturned when there is no evidence that reasonably supports the trial court's findings. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). However, the Court's scope of review also extends to the correction of errors of law. *Wilson v. Gandis*, 430 S.C. 282, 291, 844 S.E.2d 631, 636 (2020). Regardless of the label, the following "finding of facts" that implicate legal errors in that (1) the Master's finding that the delinquent tax sale and deed were not derogatory to Plaintiff's title is contradictory and inconsistent with his prior finding that the sale was derogatory to Plaintiff's title, (2) his finding that the tax sale and deed were not derogatory to Plaintiff's title is inconsistent with South Carolina law, and (3) the Master erroneously based

his conclusion that the County did not act with malice solely on the assumption that the County did not intend to harm the Gleatons or make any statement in reckless disregard of its truth or falsity, when the malice contemplated by an action for slander of title also includes the act of recording an unfounded delinquent tax sale without legal justification. Therefore, the Court should review these issues on appeal *de novo* and without any deference to the Master's findings. *See Wilson v. Gandis*, 430 S.C. 282, 291, 844 S.E.2d 631, 636 (2020) ("Of course, we review de novo the trial court's legal conclusions in an action at law.") (citation omitted).

ARGUMENTS

The Master's December 27, 2019 Order dismissing the Gleatons' claim for damages for slander of title incorrectly applies the law to the facts, contains erroneous conclusions of law, and contradicts the law of the case. In their Complaint, the Gleatons alleged a single cause of action against the County for slander of title. In *Huff v. Jennings*, 319 S.C. 142, 148, 459 S.E.2d 886, 890 (Ct. App. 1995), the Court recognized a cause of action for slander of title stemming from South Carolina's incorporation of the common law of England. To prevail on a claim of slander of title, a plaintiff must prove (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title (5) that causes special damages (7) as a result of diminished value of property in the eyes of third parties. *Id.* at 149, 459 S.E.2d at 891. The Master's December 17, 2019 Order erroneously concludes that (1) the false statement that harmed the Gleatons was not published by the County, (2) the delinquent tax sale was not derogatory to the Gleatons' title, (3) a subsequent deed by James Fields had created the cloud on the title, (4) there was no malice because the County did not intend to cause harm to the Gleatons, and (5) there was no malice because the County did not conduct the tax sale with knowledge or reckless disregard of its invalidity. (Order, Dec. 27, 2019).

The December 27, 2019 Order does not include specific findings of fact or conclusions of law declaring that the Gleatons did not suffer special damages as a result of the diminished value of the subject property in the eyes of the prospective buyers. However, the Master's previous "Final Order" of December 31, 2014 found that the Halls "did refuse to purchase said property and mobile home due to said cloud upon the property."[4] (Order, Dec. 31, 2014). As explained below, the County did not file a motion to reconsider this Order, and the Master's finding is now the law of the case. *See infra* Section II. Thus, the issues before the Court are whether the Master's findings and legal conclusions were in error regarding (1) the publication (2) with malice (3) of a false statement (4) that was derogatory to the Gleatons' title.

To the extent that the Master's Order references S.C. Code Ann. § 15-78-60(11) as a potential defense to the Gleaton's action, the Order states that the County ***may*** have been immune from liability under section 15-78-60(11). (Order, Dec. 27, 2019 pp. 2-3). Since the Order does not definitively conclude one way or the other if the statute does in fact provide the County with immunity from liability, the issue has not been ruled upon by the Master and is not suitable for review. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("Generally, an issue must be raised to ***and ruled upon by the circuit court*** to be preserved.") (emphasis added). For the following reasons, the Master's December 27, 2019 Order should be reversed and remanded.

I. THE COUNTY'S DEED TO JAMES FIELDS AND THE SUBSEQUENT QUITCLAIM DEED TO DEBRA FOXWORTH WERE FALSE PUBLICATIONS BY THE COUNTY.

[4] "Special damages recoverable in a slander of title action are the pecuniary losses that result 'directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value cause by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation.'" *Huff*, 319 S.C. at 150-51, 459 S.E.2d at 892 (quoting 50 Am.Jur.2d *Libel & Slander* § 560).

The Master's December 27, 2019 Order erroneously concludes that "[t]he slanderous statement made in this case was the deed from Mr. Fields to Ms. Foxworth" and that the statement "was actually made by Mr. Fields." (Order, Dec. 27, 2019). However, both the deed to Mr. Fields and the quitclaim deed from Mr. Fields to Ms. Foxworth were false publications by the County which harmed the Gleatons. "When reviewing a master-in-equity's judgment made in an action at law, the appellate court will not disturb the master's findings of fact unless the findings are found to be without evidence reasonably supporting them." *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 562, 772 S.E.2d 882, 887 (Ct. App. 2015). There is no evidence in the record reasonably supporting that notion that the County did not publish the invalid delinquent tax deed and the subsequent invalid quitclaim deed, which are both false statements.

A. The deed from the County to Mr. Fields was false, invalid, and recorded with the Register of Deeds for Orangeburg.

"Wrongfully recording an unfounded claim against the property of another generally is actionable as slander of title." *Huff*, 319 S.C. at 149, 459 S.E.2d at 891 (citation omitted). The filing or recording of an invalid deed constitutes the publication of a false statement if the County should have known that it was invalid. *See id.* As an initial matter, the Master has previously found that the tax sale was flawed, and this finding was never challenged by the County. (Order, Dec. 31, 2014; Order, Dec. 27, 2019).

The Gleatons' deed and mortgage were recorded with the RoD for Orangeburg and the Assessor in August of 1999, contrary to the Master's Dec. 27, 2019 finding that at no time did the County learn that the Gleatons had acquired the property. (Order, Dec. 27, 2019 p. 2). Additionally, a 2000 tax receipt prior to the County's deed to Mr. Fields is made out to Wilton Gleaton. (Year 2000 Tax Receipt). Since proper notice was never given to the Gleatons, the tax

sale and subsequent deed were invalid, and the deed to Mr. Fields was unfounded at the time of its recording. Ms. Henderson testified that there was a flaw with the tax sale. (Hr'g Tr. 81:18-20). Regardless, the Master has previously ruled that the delinquent tax sale was flawed, and this ruling has not been challenged by the County.

Additionally, the deed from the County to Mr. Fields contains a false statement. The deed states that Debra Foxworth is the owner of record of the subject property, when the Gleatons were undisputedly the record owners of the property at the time the deed to Mr. Fields was signed and recorded. The deed was signed by Mr. Sistrunk in his authority as Delinquent Tax Collector as well as two additional employees of the County. (Hr'g Tr. 87:17-24; May 3, 2001 Deed). The record is absolutely void of any evidence that the County did not publish the invalid delinquent tax deed conveying title to the Gleatons' property to Mr. Fields.

The publication of the deed from Mr. Sistrunk to Mr. Fields is in itself actionable as slander of title. However, the Master's December 27, 2019 Order erroneously finds that "[t]he slanderous statement made in this case was the [subsequent] deed from Mr. Fields to Ms. Foxworth. This statement was actually made by Mr. Fields." (Order, Dec. 27, 2019 p. 3). The Master's finding is completely unsupported by the evidence for three reasons. First, the deed from Mr. Fields to Ms. Foxworth would never have happened but for the County's flawed delinquent tax sale and deed from Mr. Sistrunk to Mr. Fields. *Vinson v. Hartley*, 324 S.C. 389, 400, 477 S.E.2d 715, 721 (Ct. App. 1996) (Finding that causation in fact is proved by establishing the injury would not have occurred "but for" the defendant's conduct). Second, the undisputed evidence demonstrates that the deed from Mr. Fields to Ms. Foxworth was not a third party's independent intervening act but an act of the County itself. *See Mellen v. Lane*, 377 S.C. 261, 283, 659 S.E.2d 236, 247 (Ct. App. 2008) ("The test by which the original actor's conduct

is insulated as a matter of law is whether the intervening act ***by a third party*** was reasonably foreseeable and anticipated, given the attendant circumstances."). And lastly, even if the deed to Mr. Fields was not actionable, the County can still be liable for the publication of the deed from Mr. Fields to Ms. Foxworth, as it was done at the County's direction. It was entirely foreseeable to the County that the property would be conveyed from Mr. Fields to Ms. Foxworth because the entire transaction was initiated and carried out at the County's behest.

B. The deed from Mr. Fields to Ms. Foxworth was false, invalid, and recorded with the Register of Deeds for Orangeburg at the County's direction.

It is undisputed and the law of this case that the quitclaim deed from Mr. Fields to Ms. Foxworth was false and invalid at the time it was published. The Master's December 27, 2019 Order finds that the quitclaim deed was a "slanderous statement." (Order, Dec. 27, 2019). This finding has not been challenged by the County. Thus, the issue for the Court is whether the publication was made by the County, and if not, whether the publication should have been anticipated by the County such that it could not have been an independent, intervening act breaking the chain of causation. The undisputed evidence demonstrates that not only was the quitclaim deed foreseeable to the County, but the County formulated, drafted, and published the quitclaim deed on its own initiative and directed Mr. Fields to sign the deed.

As previously noted, the County took steps to reverse the tax sale and deed to Mr. Fields. (Hr'g Tr. 86:10-14). The County's position was that the tax sale was not proper, and it intended to correct the situation. (*Id.* at 86:10-16). This consisted of the County performing a quitclaim deed from James Fields to Debra Foxworth as the defaulting taxpayer. (*Id.* at 87:1-4; August 7, 2006 Deed). Ms. Henderson testified that ***the County reversed the tax sale*** and put it back in Ms. Foxworth's name even though it knew the Gleatons had purchased the property. (Hr'g Tr. 86:18-87:8). The quitclaim deed conveying the property to Ms. Foxworth was signed by Ms.

Henderson and other employees of the Delinquent Tax Office. (August 7, 2006 Deed). There is no evidence in the record disputing that the quitclaim deed was drafted and recorded in a different manner than described above.

Since there is no evidence in the record supporting the Master's findings that (1) the original deed from the Delinquent Tax Collector to Mr. Fields was not a false publication by the County that harmed the Gleatons and (2) the subsequent quitclaim deed from Mr. Fields to Ms. Foxworth was not a false publication by the County or could not have been anticipated by the County, the Master's findings should be reversed. Both deeds harmed the Gleatons, as "[t]he sale [to the Halls] seems likely to have been consummated had the issue with the title not arisen." (Order, Dec. 27, 2019).

II. THE MASTER ERRED IN CONCLUDING THAT THE DELINQUENT TAX SALE AND SUBSEQUENT DEED FROM THE COUNTY TO MR. FIELDS WERE NOT DEROGATORY TO THE GLEATONS' TITLE.

The Master's December 27, 2019 Order finds that the quitclaim deed from Mr. Fields to Ms. Foxworth created the cloud on the title but not the initial delinquent tax sale and deed from the County to Mr. Fields. (Order, Dec. 27, 2019 p. 2). However, "[a] publication is derogatory to the plaintiff's title if the publication disparages or diminishes the quality, condition, or value of the property." *Huff*, 319 S.C. at 150, 459 S.E.2d at 891. The delinquent tax sale and May 3, 2001 deed to Mr. Fields clearly disparaged and diminished the quality and value of the Gleatons' title, as the deed transferred title to a third party, while publicly representing that Ms. Foxworth was the record owner at the time of the deed. As previously noted, both Orders find that the Halls refused to purchase the Gleatons' property due the cloud on the title.

As an additional ground for reversing the Master, the finding that the May 3, 2001 deed was not derogatory and did not create a cloud on the Gleatons' title is an erroneous legal

conclusion contrary to the Master's prior ruling, which was not challenged by the County. Legal conclusions may be reviewed by the Court *de novo*. *See Wilson*, 430 S.C. at 291, 844 S.E.2d at 636. In his December 31, 2014 Order, the Master found that "the delinquent tax sale was flawed for failure of proper notice of tax sale to Plaintiff. I find further that the Deed issued to James Fields on May, 2001 was improper. ***Said sale was derogatory to the deed and title to the property Bank of America conveyed to Plaintiff***." (Order, Dec. 31, 2014 p. 3). The only reasonable conclusion from this finding is that if the sale was derogatory to the Gleaton's title, then the subsequent delinquent tax deed memorializing the sale was also improper and derogatory to the Gleaton's title.

An unappealed ruling is the law of the case. *Bakala v. Bakala*, 352 S.C. 612, 632, 576 S.E.2d 156, 166 (2003). A subsequent written order cannot overrule a prior unchallenged written order. *See id.*; *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, "right or wrong, is the law of this case and requires affirmance."); *McAleese v. McAleese*, 309 S.C. 548, 551, 424 S.E.2d 558, 559-60 (Ct. App. 1992) (finding that prior unappealed order constitutes the law of the case). The Master clearly committed a legal error in contradicting his prior order and finding that only the quitclaim deed and not the delinquent tax sale deed created a cloud on the Gleaton's title. Both deeds were false publications that disparaged and diminished the quality and value of the Gleaton's title to the subject property. Since the Order contradicts a previous unchallenged Order in finding that the delinquent tax deed was not derogatory to the Gleatons' title, the Master's finding should be reversed.

III. THE MALICE CONTEMPLATED BY A SLANDER OF TITLE ACTION INCLUDES PUBLICATIONS MADE WITHOUT LEGAL JUSTIFICATION.

The December 27, 2019 Order erroneously states that "there was no malice on behalf of the Defendant in this case. Clearly, the Defendant made no publication that was intended to cause harm to the Plaintiff, nor was any statement made that was knowingly false or in reckless disregard of its truth or falsity." (Order, Dec. 27, 2019). In finding that there was no malice due to a lack of intent or recklessness, the Order seems to conflate the standard for common law actual malice for defamation actions with the malice standard for slander of title actions. This constitutes an erroneous legal conclusion and should be reviewed *de novo*.[5]

In conventional defamation actions, common law malice arises when "the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference." *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.C. 502, 511 n.3, 506 S.E.2d 497, 501 n.3 (1998). However, the malice contemplated by a slander of title action includes publications made without legal justification. *Huff*, 319 S.C. at 150, 459 S.E.2d at 891 ("In slander of title actions, the malice requirement may be satisfied by showing the publication was made in reckless or wanton disregard to the rights of another, ***or without legal justification***."). In fact, within the context of a slander of title claim malice "merely means a lack of legal justification and is to be presumed if the disparagement is false, if it caused damage, and if it is not privileged." *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 204, 723 S.E.2d 597, 603

[5] As an alternative ground for reversing the Master's finding, there is no evidence in the record reasonably supporting the Master's conclusion that the County did not act in reckless disregard to the Gleaton's rights as property owners. *See Huff*, 319 S.C. at 150, 459 S.E.2d at 891. The County did not have a legal basis for the delinquent tax sale of the Gleatons' property, and it had notice at the time the property was conveyed to Mr. Fields that the Gleatons were the record owners of the property.

(Ct. App. 2012). The County did not have a legal justification for the delinquent tax sale and deed, as the sale itself was invalid and flawed for lack of notice. The County also did not have a legal justification for the quitclaim deed it published to correct the title error, as the quitclaim deed conveyed title to the subject property to Ms. Foxworth, who was not the record owner.

Nowhere in the Master's Orders is there a finding that the publications of the delinquent tax sale and deeds were privileged. To the contrary, the Orders find that the delinquent tax sale was flawed for lack of notice. (Order, Dec. 31, 2014 p. 3). Additionally, the County never raised privilege as an affirmative defense in its Answer. *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 562, 698 S.E.2d 845, 853 (Ct. App. 2010) (finding privilege must be raised as an affirmative defense); (Answer). Since the delinquent tax sale, deed, and quitclaim deed were undisputedly false, damaging, and were not privileged, the Gleatons were entitled to a presumption of malice.[6]

The Master's Dec. 27, 2019 Order does not afford the Gleatons this presumption and makes a finding of no malice, contrary to the law of the case that the tax sale was flawed, invalid, and without a legal basis. There is no evidence in the record of a legitimate legal justification for the tax sale and deeds. The County did not have a legal justification to convey the title to Mr. Fields, as the tax sale was invalid. Additionally, the County did not have a legal justification to convey the title back to Ms. Foxworth by quitclaim deed as she was no longer the owner of record. This accords with the Master's unchallenged initial finding that the tax sale was flawed and not valid. While the County's flawed efforts to try to make things right may be an

[6] Additionally, in their Complaint the Gleatons alleged that "Defendant knew the statement regarding the validity of the title to be false, or acted with reckless disregard to its falsity." (Compl. ¶ 18). The County did not challenge the Master's initial December 31, 2014 finding that "the allegations and averment of the Plaintiff's Complaint and the oral testimony given and the evidence having been introduce [sic] in open Court and the Court being satisfied that the allegations of the Plaintiffs are true . . . ." (Order, Dec. 31, 2014 p. 3).

appreciated gesture, the intent behind the efforts is wholly irrelevant to a slander of title malice analysis. Since the Master's Order fails to consider whether the delinquent tax sale and deeds were published without legal justification, the Master's finding that the publications were made without malice should be reversed.

CONCLUSION

For these and all other reasons previously put forth to the Master-in-Equity, the Master's December 27, 2019 Order should be reversed.

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

November 9, 2020
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ATTORNEYS FOR APPELLANT

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master-In-Equity

Appellate Case No.: 2020-001006

Sara Gleaton, as Personal Representative of the Estate of Wilton Gleaton, ……... Appellant,

v.

Orangeburg County, A Political Subdivision of the State of South Carolina ……..… Respondent,

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CERTIFICATE OF SERVICE

This is to certify that I, ***Megan C. Davis***, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Appellants, have this date emailed a true and correct copy of the within ***Appellant's Initial Brief*** to:

Jerrod A. Anderson, Esquire
Anderson Law Firm, P.A.
P.O. Box 2629
Orangeburg, SC 29116
jerrodanderson@att.net
Attorney for Respondent

Megan C. Davis
Megan C. Davis

November 9, 2020
Hampton, South Carolina

PMPED
PETERS | MURDAUGH | PARKER | ELTZROTH | DETRICK
ATTORNEYS AT LAW

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Nov 09 2020
SC Court of Appeals

November 9, 2020

John E. Parker, Jr.
Dial: (803) 943-2111
Email: jayparker@pmped.com
Paralegal: mdavis@pmped.com

Via Email Only: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: Sara Gleaton as PR for Estate of Wilton Gleaton v. Orangeburg County
Appellate Case No.: 2020-001006

Dear Ms. Kitchings:

Please find enclosed for filing, Appellant's Initial Brief and Designation of Matter to be Including in the Record on Appeal in the above-referenced case.

By copy of this letter, Appellant's Initial Brief and Designation of Matter is being served on all counsel of record.

With kind regards, I am

Sincerely,

John E. Parker, Jr.

JEP2/mcd
Enclosures as stated

cc: Jerrod A. Anderson, Esquire