

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Orangeburg County

Judge Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-38-01339
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers

Appellants

VS.

James Smith, Jr.

Respondent

FINAL BRIEF OF APPELLANTS

January 14, 2021

Rufus Rivers, pro se



Merle Rivers, pro se

Kathleen McDaniel, Esq.
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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 22-3-111-80 of statutory law after the issues were raised and never addressed adequately by the courts.

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 James Smith, Jr.'s fraudulent transfer of ownership to property previously owned by Jessie Mae Smith, now deceased, appellants/defendants filed a summons and complaint in the first judicial circuit court on August 6, 2018 alleging the same. See initiating summons and complaint, (R.pp.10-20). Respondent/plaintiff signed for receipt of the documents on August 14, 2018. (R.p.45). Respondent, through his counsel, Kathleen McDaniel, Esq., filed eviction documents on August 20, 2018. (R,pp. 50-51). After being served defendants/appellants requested a hearing which was held on September 18, 2018. At the hearing, pursuant to South Carolina Code of Laws 22-3-20 and 22-3-1110 defendants advised the court and opposing counsel through a written document titled, Reply To Plaintiff's Rule To Show Cause that legal action was pending Circuit Court disputing Respondent Smith's ownership to the property. (R.p.24). It alleged that Mr. Smith forged a power-of-attorney and used that same power-of-attorney to transfer the property at 1429 Legrand Smoak Street, Cordova, South Carolina 29039, to himself. Appellants has always contended that they were granted physical possession of the property at 1429 Legrand Smoak Street, by Jessie Mae Smith, the owner, whom died intestate in May, 2016. Throughout the proceedings, including appellants continuing to emphasize and re-emphasize the issues which can be heard on recorded audio. Instead, of deferring as required by statute, appellants had to motion the court for reconsideration and motion to vacate writ of ejectment.

On October 9, 2018, hearings were held simultaneously on appellant's motion for reconsideration and motion to vacate writ of ejectment. The Magistrate denied both motions forcing appellants to appeal and maintain the status quo. 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 counsel's recommendation for an appeal bond. On November 2

2018, while awaiting the bond hearing, appellants were approached by attorney McDaniel whom presented appellants with a copy of a rental analysis which was executed on November 2, 2018, not allowing appellants 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 which was not her jurisdiction. A hearing was held in Circuit Court on April 8, 2019 where a visiting Judge upheld the Magistrate' decision on the appeal bond. Appellants immediately file a motion for reconsideration which was never addressed in any way. On May 21, 2018, after another visiting Judge ordered a continuance of the appeal 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 been filed and served on respondent pursuant to South Carolina Code of Laws 22-3-20.

On November 18, 2018, the appeal hearing was held in Circuit Court where the Honorable 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 appellants' 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 hearing on October 17, 2018. Appellants had been ordered to vacate on September 17, 2018 and never given a written decision. 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. (R.pp.24, R. pp.10-20, R.p.45). 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 quit claim deed (self-dealing) transferring the property at 1429 Legrand Smoak Street, Cordova, South Carolina to himself. Respondent accepted the documents by certified mail on August 14, 2018.(R.p. 45). Appellants had been granted exclusive physical possession of the property in September 2009.

Respondent, through his counsel, claims filed a contemporaneous lawsuit. (R.p.TR.p.2 line 24-25). It is clear that respondent had legal documents from the Circuit Court 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 of laws 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 a higher court." At

the eviction hearing, respondent, through his counsel, states that he 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, the respondent is entitled to the property because he is the son of 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), *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, as provided by appellants (R.pp.52-53). Respondent, through his counsel, contends the purpose of appellants' lawsuit was to prove they owned the property. (R.p.TR.p.3.lines 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.

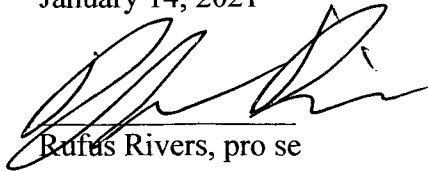
The eviction hearing was held on November 18, 2019 before the Honorable Edgar W. Dickson. The issue of a landlord-tenant relationship and the Magistrate's lack of subject matter jurisdiction were not explicitly addressed. On January 6, 2020, the court issued it's order. (R.pp.4-9). Appellants filed a motion for reconsideration on January 14, 2020. (R.pp.21-24). On February 21, 2020 the court issued a final order denying appellants' motion for reconsideration, dismissing the matter and remanding the case back 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 determine a landlord-tenant relationship exists. (See South Carolina Judicial Branch's Elements Of Common Landlord-Tenant Problems SB, Commencing Ejectment. The Magistrate must determine a landlord-tenant relationship exist. Appellants respectfully ask this court to reverse the trial court's decision and release appellants' funds being held in escrow by the Magistrate.

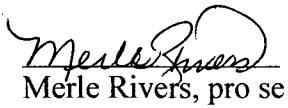
CONCLUSION

For the preceding reasons, Appellants respectfully ask this court to reverse the trial court Judge's order and allow Respondent to proceed with whatever remedies that may be available to him and release appellants' funds being held in escrow.

January 14, 2021


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