

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APR 12 2021

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable William P. Keesley  
Dorchester County  
Appellate Case Number 2019-001516

Trial Court Case No.: 2009-CP-18-2200

Rene McMasters, now known as Rene McMasters Ronaghan,.....Respondent,

V.

H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia, Defendants,

of whom H. Wayne Charpia a/k/a Howard W. Charpia is the.....Appellant.

INITIAL BRIEF OF RESPONDENT

This 9<sup>th</sup> day of April, 2021

Appellant of record:  
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### STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN DISMISSING THE MOTION TO VACATE SALE AS THE ISSUES CONTAINED IN THE MOTION HAD BEEN LITIGATED AND RE-LITIGATED TO FINAL JUDGMENT?
2. DID THE TRIAL COURT ERR IN DISMISSING THE MOTION FOR A RULE TO SHOW CAUSE AS THE ISSUES CONTAINED IN THE MOTION HAD BEEN LITIGATED AND RE-LITIGATED TO FINAL JUDGMENT?
3. DID APPELLANT FAIL TO PRESERVE ANY ISSUE CONCERNING THE TWO ORDERS ON APPEAL BY FAILING TO SET FORTH ANY ISSUE CONCERNING THE TWO ORDERS IN APPELLANT'S STATEMENT OF ISSUES ON APPEAL?
4. DID APPELLANT FAIL TO PRESERVE ANY ISSUE CONCERNING THE TWO ORDERS ON APPEAL BY FAILING TO BRIEF ANY ISSUE CONCERNING THE TWO ORDERS ON APPEAL?

### STATEMENT OF THE CASE

The Respondent filed this action in the Court of Common Pleas for Dorchester County on August 10, 2009, wherein the Respondent sought the foreclosure of a judgment lien that the Respondent obtained against the Appellant, Howard W. Charpia (ROA\_\_ Filed copy of Complaint).

On July 30, 2012, the case came before Judge Dickson for trial. By Order dated October 29, 2012, Judge Dickson issued an Order of Foreclosure and Sale ( ROA\_\_ Order of Foreclosure and Sale).

The Appellant then appealed the denial of Appellant's motion to reconsider the granting of Judge Dickson's Order of Foreclosure and Sale to the Court of Appeals. The Court of Appeals affirmed Judge Dickson's Order of Foreclosure and sale in an Unpublished Opinion filed on

October 5, 2016, 2011 (ROA\_\_\_\_ Unpublished Opinion number 2016-UP-423).

The Appellant then Petitioned for a writ of certiorari to the Supreme Court of South Carolina. The petition for a writ of certiorari was denied by Order dated February 8, 2017.

(ROA\_\_\_ Order from the Supreme Court dated February 8, 2017)

Pursuant to the order of Judge Dickson, the property was sold at public sale on August 1, 2017. The Respondent was the high bidder at the sale.(ROA\_\_\_ Assignment of Bid filed August 1, 2017).

On November 16, 2017, the Appellant filed a Motion to Vacate Sale. (ROA\_\_\_ Motion to Vacate Sale filed November 16, 20217) and Affidavit (ROA\_\_\_ Affidavit filed November 16, 2017).

The Motion to Vacate sale was heard by Judge William P. Keesley on April 27, 2018. By order filed on June 22, 2018 Judge Keesley denied the Motion to Vacate Sale. (ROA\_\_\_ Amended Order On Motions To Vacate Sale And To Disburse Homestead Exemption Funds filed June 22, 2018). Appellant did not appeal Judge Keesley's order.

The Appellant then filed another Motion To Vacate Sale on June 10, 2019. (ROA\_\_\_ Motion To Vacate Sale filed June 10, 2019). By order filed June 13, 2019 Judge Keesley denied the second Motion to Vacate Sale. (ROA\_\_\_ Administrative Order Of Dismissal Of Motion Re: Motion To Vacate Sale filed June 13, 2019). This order is the subject of Appellant's first appeal of these two consolidated appeals.

On August 3, 2017 Appellant filed a Petition To Disburse Homestead Exemption Funds. (ROA\_\_\_ Petition To Disburse Homestead Exemption Funds filed August 3, 2017). By order filed June 22, 2018 Judge Keesley denied the Petition/Motion to Disburse Homestead Exemption

Funds. (ROA\_\_\_ Order On Motions To Vacate Sale And To Disburse Homestead Exemption Funds filed June 22, 2018). Appellant did not appeal Judge Keesley’s order.

On July 25, 2019 Appellant filed a Motion For Rule To Show Cause As To Petition The Court To Release Homestead Exemption. (ROA\_\_\_ Motion For Rule To Show Cause As To Petition The Court To Release Homestead Exemption filed July 25, 2019). Judge Keesley denied the second Motion For Rule To Show Cause To Release Homestead Exemption.

(ROA\_\_\_Administrative Order Dismissing Motion For Rule To Show Cause filed July 25, 2019). This order is the subject of Appellant’s second appeal of these two consolidated appeals.

By letter dated October 1, 2019 the Clerk of the South Carolina Court of Appeals notified the Appellant and counsel for the Respondent that the two appeals would be consolidated for consideration by the Court. (ROA\_\_\_ Letter from Clerk dated October 01, 2019).

### STANDARD OF REVIEW

In Bloody Point Prop. Owners Ass’n, Inc. V. Ashton, 410 S.C. 62, 63, 762 S.E.2d 729, 730(Ct.App. 2014) the Court stated ‘ The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court. Wells Fargo Bank, NA v. Turner, 378 S.C, 147, 150, 662S.E.2d 424, 425 (Ct.App.2008). “ An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions.” Carson v. CSX Transp., Inc., 400 S.C.221, 229, 734 S.E.2d 148, 152 (2012).”

### STATEMENT OF THE FACTS

Appellant appeals two orders issued by Judge Keesley. One order that dismissed Appellant's Motion to Vacate Sale and a second order which dismissed Appellant's Motion For A Rule To Show Cause To Release Homestead Exemption. The basis for Judge Keesley's dismissal of both motions was that the issues contained in the motions had been litigated and re-litigated to final judgment. In fact, both motions had been previously denied by Judge Keesley by order filed June 22, 2018 which order was not appealed by Mr. Charpia.

Although Appellant appealed both orders he did not include any issue concerning the orders in his Statement of Issues on Appeal nor did Appellant address or challenge the orders in his brief.

### ARGUMENT

**I. The Trial Court did not err in dismissing the Motion To Vacate Sale as the issues contained in the motion had been litigated and re-litigated to final judgment.**

In Judy v. Martin, 381 S.C, 455, 458, 674 S. E. 2d 152, 153 (2009) the South Carolina Supreme Court stated " Appellant may not seek relief from the prior unappealed order of the circuit court because the order has become the law of the case." Hudson v. Lancaster Convalescent Ctr., 393 S.C.1,7, 709 S.E. 2d 65,68 holds that a circuit court ruling that is appealed , but subsequently withdrawn is the law of the case.

On November 16, 2017, the Appellant filed a Motion to Vacate Sale. (ROA\_\_\_Motion to Vacate Sale filed November 16, 2017) and Affidavit (ROA\_\_\_Affidavit filed November 16, 2017).

The Motion to Vacate sale was heard by Judge Keesley on April 27, 2018. By order filed on June 22, 2018 Judge Keesley denied the Motion to vacate sale. (ROA\_\_\_ Amended Order on Motions to Vacate Sale And To Disburse Homestead Exemption Funds filed June 22, 2018). Appellant did not appeal Judge Keesley's Order.

The Appellant then filed another Motion To Vacate Sale on June 10, 2019 (ROA\_\_\_ Motion To Vacate Sale filed June 10, 2019. By order filed June 13, 2019 Judge Keesley denied the second Motion To Vacate Sale. (ROA\_\_\_ Administrative Order Of Dismissal Of Motion Re: Motion To Vacate Sale filed June 13, 2019. This Order is the subject of Appellant's first appeal of these consolidated appeals. Judge Keesley stated in the order that " On its face, the issues contained in the motion have been litigated and re-litigated to final judgment...Mr. Charpia has a pattern of continuing to file seeking the same relief that was previously denied." Judge Keesley's Amended Order filed June 22, 2018 denying the Motion to Vacate Sale is the law of the case.

**II. The Trial Court did not err in dismissing the Motion For Rule To Show Cause as the issues contained in the motion had been litigated and re-litigated to final judgment. On**

On August 3, 2017 the Appellant filed a Petition To Disburse Homestead Exemption Funds.(ROA\_\_\_ Petition To Disburse Homestead Exemption Funds filed August 3, 2017). By order filed June 22, 2018 Judge Keesley denied the Petition/Motion to Disburse Homestead Exemption Funds. (ROA\_\_\_ Order On Motions To Vacate Sale And To Disburse Homestead Exemption Funds filed June 22, 2018).Appellant did not appeal Judge Keesley's order.

On July 25, 2019 Appellant filed another Motion For Rule To Show Cause As To Petition

The Court To Release Homestead Exemption. (ROA\_\_\_Motion For Rule To Show Cause As To Petition The Court To Release Homestead Exemption filed July 25, 2019). Judge Keesley denied the second Motion For Rule To Show Cause To Release Homestead Exemption (ROA\_\_\_ Administrative Order Dismissing Motion For Rule To Show Cause filed July 25, 2019). This Order is the subject of Appellants second appeal of these consolidated appeals. Judge Keesley stated in the order that” The issues have been litigated and re-litigated to final judgment”. Judge Keesley’s Amended Order filed June 22, 2018 is the law of the case.

**III. Appellant failed to preserve any issue concerning the two orders on appeal by failing to set forth any issue concerning the two orders in Appellant’s Statement Of Issues On Appeal and by failing to brief any issue concerning the two orders.**

In Langehans V. Smith 347 S.C. 348, 552, 554 S.E.2d 681(S.C. APP.2001) the Court of Appeals described Issue Preservation as follows: “In order for an issue to be properly presented for appeal, the appellant’s brief must set forth the issue in the statement of issues on appeal. See Rule 208 (b)(1)(B) , SCACR; *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (Ct.App.2001). An appellate brief must be divided into as many parts as there are issues to be argued, and an issue is not preserved for appeal if appellants’s brief does not conform to these requirements. See Rule 208(b)(1)(D), SCACR; *Watson v. Chapman*, 343 S.C. 471, 540 S.E.2d 484 (Ct.App.2000). Further, it is error for the appellate court to consider issues not properly raised to it. *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994) (stating appellant must provide authority and supporting arguments for his issue to be considered raised on appeal); *Tirado v. Tirado*, 339 S.C. 649, 530 S.E.2d 128 (Ct.App.2000) (holding that an issue which is not supported by authority of sufficiently argued is not preserved for appellate review).”

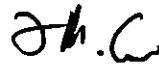
The Appellant does not mention anything in his brief about the two orders which he has appealed. He does not challenge the orders or allege or claim any error by the Trial Judge. There has been no issue preservation. In his brief, Appellant questions the validity of the foreclosure action which has been affirmed by the South Carolina Court of Appeals.(ROA\_\_\_ Unpublished Opinion number 2016-UP-423 filed on October 5, 2016 ).

#### CONCLUSION

For the reasons stated above, this Court should affirm the orders of the Circuit Court.

Respectfully submitted,

CISA & DODDS, LLP



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This 9<sup>th</sup> day of April, 2021

Mt. Pleasant, SC

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
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Rene McMasters, now known as Rene McMasters Ronaghan,.....Respondent,

V.

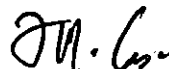
H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia,.....Defendants

of whom H. Wayne Charpia is the.....Appellant

**PROOF OF SERVICE**

I certify that I have served a copy of the Respondent’s Initial Brief and Designation of Matter to be Included in the Record On Appeal, by United States Mail, postage prepaid, on April 9, 2021, addressed to the Appellants, H. Wayne Charpia and Jody E. Charpia located at 106 Axtel Drive, Summerville, SC 29485.

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April 9, 2021

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**SC Court of Appeals**

RE: Rene McMasters V. H. Wayne Charpia  
Case No.: 2009-CP-18-2200  
Appellant No.: 2019-001516  
Our file: 09-084

Dear Ms. Kitchings:

Enclosed is the original of the Respondent's Initial Brief and Designation of Matter to Be Included in the Record on Appeal together with the original and one copy of my Proof of Service. I would appreciate you filing the originals and returning one (1) filed copy of my Proof of Service to me in the self-addressed stamped envelope provided.

With kindest regards, I am

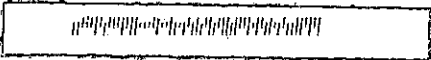
Very truly yours,



Frank M. Cisa

FMC/alp  
Enclosures

cc: H. Wayne Charpia (w/enc.)  
Jody E. Charpia ( w/ enc.)



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