

Dear Clerk,

Please find enclosed the Judges Order To Quiet Title in Case No: 2020-CP-36-00200 in which I have sent to your office a Notice Of Appeal, an Inmate Trust Fund Account Report and Proof Of Service just prior to this, perhaps a day or two earlier. I inadvertently left the order out because I was attempting to have another copy made of it but realized, this had to be done now.

Thank you for your kind services.

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SEP 20 2021

SC Court of Appeals

Respectfully,
Ernest D. Perry 281290
Ernest D. Perry, 281290
Turbeville Ct, RA-256
1578 Clarence P. Coker Hwy.
Turbeville, S.C. 29162

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 JOY PHIL II, LLC,)
)
 Plaintiff,)
)
 v.)
)
 MATTIE LADORA PERRY, ERNEST D.)
 PERRY AND ANGELA M. PERRY)
 be they alive or be they dead, and if)
 dead, their heirs or devisees, and)
 JOHN DOE and RICHARD ROE,)
 representing all unknown persons)
 having or claiming to have any right,)
 title or interest in or to, or lien upon)
 the real estate herein described, any)
 such persons, heirs assigns, and all)
 other persons, firms, or other)
 entities who may claim under, by or)
 through any of the above defendants)
 and all other persons or entities)
 unknown claiming any right, title,)
 interest, estate in or lien upon, the)
 aforesaid known as Newberry County)
 TMS No. 357-13,)
 Defendant,)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.
 2020-CP-36-00200

FINAL ORDER QUIETING TITLE

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SEP 20 2021

SC Court of Appeals

This matter was before the Court for hearing on August 3, 2021 at 10:00am. The hearing was held via video conference. This is an action brought by Plaintiff seeking judgment quieting title to certain property located in Newberry County described below, title to which Plaintiff claims by virtue of a tax title issued by the Newberry County Delinquent Tax Collector. The named defendants are the record title holders prior to the subject tax sale.

The record in this matter reflects that it has been previously adjudicated that Defendant Angela M. Perry is in default. By virtue of said default, this Defendant, by failing to appear and defend, has admitted the allegations of the Complaint, and further admitted Plaintiff's right to the relief requested therein. e.g., Roushe v. Young Bros., Inc. of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998).

Defendant Ernest D. Perry has appeared in this action pro se. Since the entry of the order of the Honorable William P. Keesley dated May 21, 2021, referring the matter to me as Special Referee, Mr. Perry has filed 1) a motion for appointment of counsel or guardian ad litem; 2) an amended answer and

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counterclaim; 3); a motion for leave and extension of time to amend counterclaim; and, 4) a motion to join parties and actions/claims. Having fully considered the parties' positions concerning these procedural matters, the Court will address each of these filings in that order.

As to Mr. Perry's motion to appoint counsel, the same is denied. There is no right to appointed counsel in a civil action, nor is there a right to appointment of a guardian ad litem. Mr. Perry is presently an inmate with the South Carolina Department of Corrections. While the appointment of a guardian ad litem is permissible under the law for an incarcerated individual such as Mr. Perry, it is not required. I am informed that Judge Keesley raised the issue of such an appointment during the hearing on the motion for reference and apparently decided against it, and rightfully so. By the above referenced filings, Mr. Perry has shown the ability to adequately protect his rights, and the Court has gone to extraordinary lengths to allow him to meaningfully participate in these proceedings.

Judge Keesley's order allowed Mr. Perry to amend his answer if desired within 30 days of the date of the order, May 21, 2021. Mr. Perry's amended answer was not filed or served within such time. Therefore, a further motion to amend would be necessary under the rules of procedure. Nonetheless, the Court will address Mr. Perry's proposed amendment.

Mr. Perry's motion for leave and extension of time to amend counterclaim is denied. This motion is essentially a motion for leave to amend under Rule 15, South Carolina Rules of Civil Procedure. The nature of the counterclaim which Mr. Perry seeks to assert as set out in the motion and in the attempted amended pleading is one merely to set aside the subject tax sale. The Plaintiff's sole claim to the subject property is by way of a tax title obtained via a tax sale conducted by Newberry County, and the complaint asks this Court to find that Newberry County strictly complied with the statutes governing tax sale. Therefore, if Plaintiff is successful, Mr. Perry's counterclaim would necessarily fail. On the other hand, were Plaintiff unsuccessful in showing the county complied with such statutes, then the Court must set aside the tax sale anyway with or without the proposed counterclaim. As a result, the amendment would be futile, and allowing the amendment of the pleadings for this purpose unnecessarily prolongs the matter at this late stage and is consequently prejudicial.

Finally, Mr. Perry's motion to join parties and "actions/claims" is also denied. Mr. Perry's motion seeks to add the Newberry County Treasurer and Delinquent Tax Collector as parties to the case. While these individuals may be witnesses concerning the actions taken by the county with respect to the subject tax sale, they are not necessary parties to the proceedings. After all, Mr. Perry asserts no claim against nor does he seek any relief from the county. Either the county complied with the tax sale statutes or it did not. This is the lone and sole issue before the Court.

During the course of the hearing and after denying his procedural motions, Mr. Perry made a

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motion asking me to recuse myself from presiding over the matter. When asked for the basis of that motion, he asserted that he thought I had exhibited bias against him. Clearly, ruling against a party to a proceeding is something every judge in every case must do at some point or another. Doing so is not demonstrating bias but the mere exercise of the judicial function. Mr. Perry then claimed that he seemed to remember that I was his late mother's attorney some untold number of years ago and that I gave her some kind of advice that he considered adverse to him. Because I had no recollection of having spoken to, much less represented Mrs. Perry, and because Mr. Perry did not present any evidence or even indicate that evidence exists which would make this anything more than a bald assertion, I denied the motion. See Koon v. Fares, 379 S.C. 150, 666 S.E.2d 230 (2008) (holding it is not sufficient for a party seeking disqualification of a judge to simply allege bias; rather, the party must show some evidence of bias or prejudice).

Mr. Perry, on a couple of occasions during the hearing, requested that the case be continued. This matter is over 18 months old, and Mr. Perry has been joined to this action for approximately 9 months and was given more notice of the hearing than required by the rules of court. Yet, Mr. Perry did not make any indication prior the hearing that he required more time. For these reasons, the motions for continuance were denied.

Then, proceeding to the merits, testimony from Wendy Wise, Newberry County Delinquent Tax Collector, was taken. Mr. Perry also testified. The Court further took judicial notice of a deed recorded upon the public record subsequent to the subject tax title conveying the subject property to the Plaintiff.

Based on the record developed, I find and conclude as follows:

This is an action to quiet title in Plaintiff of certain real property situate in Newberry County and described as follows (hereinafter "subject property"):

All that piece, parcel or tract of land, with the dwelling house and other improvements thereon, situate, lying and being in Tax District No. 2, County of Newberry, State of South Carolina, containing two (2) acres, according to a plat made by Walton B. Halfacre, Surveyor, dated June 27, 1962, and described as Parcels A and B on such plat, and being now recorded in the Office of the Clerk of Court for Newberry County in Plat Book B at Page 185. Said tract being bounded on the West by a public highway leading from Newberry to Kempsons Bridge, on the North by lands of, now or formerly, J. C. Nichols, and on the West and South by other lands of, now or formerly, Jimmie Williams.

TMS No.: 357-13

Therefore, the Court has jurisdiction of the action, and venue is proper in Newberry County.

The subject property was conveyed to Ernest D. Perry, Angela M. Perry, and the late Mattie Ladora Perry by deed of distribution of the estate of William Dalton Perry recorded in the Office of the Clerk of Court for Newberry County in Deed Book 335 at Page 126. The said Mattie Ladora Perry died September

16, 2015.

These parties failed to pay the ad valorem taxes assessed against the subject property when due, and, following the issuance of a tax execution for collection, further failed to pay said taxes for a period exceeding thirty (30) days. Accordingly, the Newberry County Delinquent Tax Collector levied upon the subject property. A notice of delinquency was then mailed to the address appearing on the Newberry County Assessor's rolls, along with several other addresses appearing on other records of the assessor. While the initial notice of delinquency was apparently delivered without incident, the subsequent notice mailed by certified mail, return receipt, restricted delivery, as required by S.C. Code § 12-51-40, was returned to the Delinquent Tax Collector unclaimed. As a result, a notice of delinquency and sale was posted at the property pursuant to S.C. Code § 12-51-40. Because the taxes remained unpaid, the tax sale of the subject property was advertised in the Newberry Observer and thereafter sold at a public auction on November 7th, 2016 in accordance with South Carolina Code § 12-51-50. Joy Antley was the successful bidder at the sale and was, therefore, issued a tax sale receipt after full compliance with her bid pursuant to S.C. Code § 12-51-60.

Following the sale, the notice required by S.C. Code § 12-51-120 was attempted by the Delinquent Tax Collector. Ms. Wise described the lengths she went to in order to ascertain the addresses of all parties having an interest in the subject property. All of her certified mailings to the various addresses obtained during this process were all returned as "unclaimed" or "undeliverable". None of the county records available to Ms. Wise disclosed that Mr. Perry was incarcerated at the time. Given that the return of these certified mailings "is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record", I find that Ms. Wise strictly complied with all provisions of the law.

No persons with any interest therein redeemed the subject property by paying the outstanding taxes, penalties and interest as would have been their right under South Carolina Code Ann. § 12-51-90. Accordingly, by virtue of the issuance of the tax title dated March 6th, 2018, and recorded in the Office of the Clerk of Court in Book 2032 at Page 95, by the Newberry County Delinquent Tax Collector, title to the subject property was then vested in the said Joy Antley, who then conveyed title to Plaintiff by deed recorded in the said office in Book 2179 at Page 199.

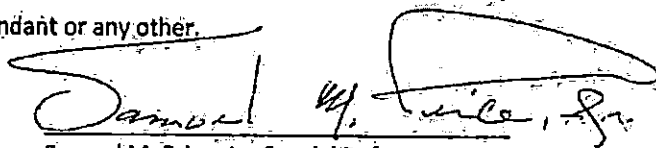
The Newberry County Delinquent Tax Collector further testified that her office was unable to find any instrument of record subsequent to the tax sale whereby any person or entity acquired any claim to the subject property other than that of the defendants. She also testified that she gave all required notice to all persons entitled to such notice of their right to redeem the subject property prior to the conclusion of the redemption period in the manner and at the addresses required by law. Despite such

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efforts, the unpaid taxes interest and penalties remained unpaid. What is more, the Court takes judicial notice of the fact that, as of the date of the hearing, no such instrument indicating any claim in or to the subject property other than that of Plaintiff appears of record since that time. Thus, there is no other instrument of record or any other legitimate basis upon which defendants or any other person or entity might base a claim to an interest in the subject property adverse to Plaintiff. Fee simple, marketable title to the subject property is, therefore, now vested in Plaintiff free clear of any lien, interest, or legitimate claim thereto of defendants or any other. Plaintiff, as a result, is entitled to an order quieting title to the subject property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, any and all notice requirements set forth in Chapter 51 of Title 12 of the South Carolina Code were duly and strictly complied with by the Newberry County Delinquent Tax Collector, and title to the subject property is vested in Plaintiff, free and clear of any lien, interest or legitimate claim thereof in Defendant or any other.

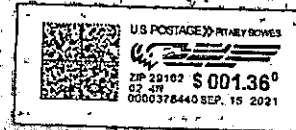
AND, IT IS SO ORDERED.


Samuel M. Price, Jr., Special Referee

Newberry, South Carolina
August 3, 2021



Ernest Perry 281290
Turbeville, S.C. RA-256
1578 Clarence E. Coker Hwy
Turbeville, S.C. 29162



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South Carolina Court of Appeals
Clerk of Court
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Perry 281290
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