

With the Name of Allah, Most Merciful, Most Gracious

STATE OF SOUTH CAROLINA)

IN THE COURT OF APPEALS

RECEIVED

Dec 07 2021

SC Court of Appeals

Regina M. Hunter El)
1165 Broad St. #16)
Sumter, S.C. 29150)

Appellant(s))

v.)

Elijah Hunter)
3400 Hwy. 261 North)
Rembert, S.C. 29128)

Respondent (s))

Revised

AMENDED MOTION AND AFFIDAVIT
TO PROCEED WITHOUT
PREPAYMENT OF COSTS
(Fundamental Right)

Appeal from
Court of Common Pleas, Sumter County
Case No. 2021-CP-43-1534
Hon. Ferrell R. Cothran

Appeal from
Summary Court, Sumter County
Case No. 2021CV4310102733
Fred H. Gordon, Jr., Magistrate

**AMENDED MOTION AND AFFIDIVAT
TO PROCEED WITHOUT PREPAYMENT OF COSTS**

NOW COMES, the Appellant, Regina M. Hunter El to move the Court to proceed with her appeal without prepayment of costs ~~and states~~, pursuant to her fundamental right to privacy, and states the following in support:

FUNDAMENTAL RIGHT TO PRIVACY

1. The Appellant is a fourth generation Hunter, the great granddaughter of the late Sarah B. Hunter (deceased, 29 April 1959, S.C. Probate Estate Bundle 249, Pkg. #71).
2. The Appellant is the daughter of Samuel Hunter and Barbara A. Mack and was born in Brooklyn, New York. Her parents were born in 1942, in Sumter and Charleston, S.C. respectively and moved to Rembert, S.C. after their retirement.
3. Samuel Hunter is an immediate heir of James Hunter, the Appellant's late grandfather, who died intestate on 10 July 1988.

4. James Hunter was domiciled in Sumter County, South Carolina and married to [Burnetta] Cole Hunter (deceased 19 October 2001) at the time of death.
5. The Appellant received permission to reside on the Hunter Estate in August 2010 from her father, Samuel Hunter. Then, she obtained permits and commenced repairs on her grandfather's house severely damaged after Hurricane Hugo in 1989 [FEMA DR-843-SC].
6. The Appellant, her father and uncle (Willie James Hunter, deceased) file a *Petition for an Order for Determination of Heirs* in the Probate Court ~~in~~ [on] ~~September~~ [4 August] 2011 since more than 10 years had elapsed since James Hunter's death (S.C. Code of Laws §62-3-108) (S.C. Probate Court Case No. 2011ES4300446).
7. The said petition was also filed after Elijah Hunter filed his first *Application to Quit Premises* in the Summary Court (see Case No. 2011CV431012009) to end further unwarranted aggression. Elijah Hunter's case was dismissed then and the Heirs of James Hunter took action to secure their interest in the estate.
8. Since a final order was not entered in the Estate of James Hunter, the Appellant submitted a handwritten petition to reopen the case on 18 October 2021, but needs to amend the petition to include summonses; proof of service and the necessary filing fee or file a motion to proceed without prepayments of costs and fees.
9. The record on appeal will show Elijah Hunter wrote a letter to Chief Magistrate William M. Gamble and Magistrate Fred H. Gordon, Jr. on 26 August 2021 in support of [his] affidavit that the Appellant was trespassing. He also ~~argues~~ [argued] against her request for extension of time to show cause why the ejectment should not occur. He copied his letter to two State officials, the Hon. Governor Henry McMaster, Attorney General Alan Wilson, and Dale Atkinson, Probate Judge for Sumter County. In his letter, Elijah Hunter alleged that '*Regina*

Mack was ‘so angry that she was born out wedlock and not given the Hunter lineage name’. His writing makes an unwarranted intrusion into the private affairs of the Appellant and her parents. There is an implied right to privacy in the U.S. Constitution which the U.S. Supreme Court held in *Griswold v. Connecticut* (1965) and extended to the individual in *Eisenstadt v Baird* (1971), *Roe v. Wade* (1972), and *Lawrence v. Texas* (2003).

10. In addition, Elijah Hunter’s letter alleged that the Appellant “*did recently purchase our Hunter Family name*” which is factually incorrect. On 21 May 2012, the Family Court entered a legal name change order that granted the Appellant the right to change her name from ‘*Regina Michelle Mack*’ to ‘*Regina Michelle Hunter*’. The order stated “*that the applicable provisions of S.C. Code of Laws §15-49-10 as amended have been complied with*”. Here, Elijah Hunter’s statement implied that the State of South Carolina judiciary acted without integrity and did not adhere to statutory requirements. His statements to the Court and State officials also implied that Appellant was not entitled to reside on the family estate because of her status as a child born out of wedlock. In this cause of action, the record will show that the Respondent raised the issue of the Appellant’s illegitimacy. The Appellant has a fundamental right to privacy and to inherit from her father’s estate under intestate succession. Therefore, the filing fee should be waived because the action concern[s] the fundamental right to privacy and without a fee waiver would restrict her right to liberty under the equal protection of [the] laws clause in the Fourteenth Amendment.

11. Furthermore, the State of South Carolina judiciary has a responsibility to treat this unique class fairly—to wit, to ensure illegitimate children have equal protection of the laws regardless of the fact they are born out of wedlock. The State has a fundamental interest in ensuring that children born out of wedlock are not denied their inheritance rights as defined

by intestate succession, but are entitled to the same rights as issue born in matrimony. The S.C. Probate Code §62-2-109 holds that a person born out of wedlock is also the child of the father with “*clear and convincing proof*” and if “*...the father has openly treated the child as his and has not refused to support the child.*” Here, the Appellant’s father has always acknowledged her as his daughter, raised and lived with his family, and supported her throughout life. The Respondent’s letter intended to buttress his affidavit for ejectment held that the Appellant rights before the court should be limited because of her illegitimacy. Yet, illegitimate children are not barred from inheriting under the State’s intestacy laws.

12. On the appeal, Appellant will provide evidence that Samuel Hunter signed a *Petition for an Order for Determination of Heirs* with the Appellant in 2011 which shows he openly treated her as his child. Under the S.C. Const. art 1, §3, the Appellant shall not “*be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.*” However, *Boddie v. Connecticut* (401 US 371, 1971) held that the due process clause was not enough to assert a fee waiver ~~based~~ unless it pertained to a fundamental right—*Boddie* pertained to a marriage dissolution. Thus, the Appellant should be allowed to proceed without prepayment of costs and fees because her right to privacy in familial affairs was ~~[violated and]~~ used to support the grounds for her ejectment.

13. In addition, S.C. Probate Code §62-2-609 labeled “*Construction of generic terms to accord with relationships as defined for intestate succession*” ~~states~~ “*Half bloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.*” In this action, Elijah Hunter’s

Application for Notice to Quit Premises had the name ‘*Regina Mack alias (Hunter)*’. Elijah Hunter used the word *alias* to imply the Appellant was using a false or assumed identity. Again, he did believe the Appellant was a kin to ‘*Hunter*’ by degree of consanguinity but rather ‘*purchased the Hunter family name.*’ As such, Elijah Hunter denied that the Appellant and her father were joint tenants residing on heir [property]. The fact that the Respondent excluded Samuel Hunter from the ejectment proceeding shows his intent was to sever her lineage. Moreover, by filing his application using the Appellant’s mother maiden name he implied that an illegitimate child should be treated as a ‘*trespasser*’ with no entitlement to inheritance.

14. Here, the S.C. Const. art. XVII, §15 does not allow the State or any of its political subdivisions to “...*recognize or give effect to a legal status, right, or claim created by another jurisdiction respecting any other domestic union, however denominated.*” Thus, the fact that Samuel Hunter and Barbara Ann Mack cohabited and share life together in the same dwelling for more than 50 years is insufficient to evoke a legally recognized domestic union. Again, S.C. Const. art. XVII §15 states “*A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State.* “ So although the Appellant’s parents were not married, the Appellant [is still] entitled to inherit from both her mother and father under intestate succession.

15. In *Ex parte Martin v. the State*, the S.C. Supreme Court held that if the cause of action involved a fundamental right such as the dissolution of marriage a fee waiver could be granted. Here, the Appellant asserts her right to privacy and argues U.S. Supreme Court precedents control whether the Appellant should be allowed to have costs waived to proceed on appeal. Again, in the lower trial court[, the] Respondent sought [to] criminalize the

Appellant as a ‘trespasser’ based on [her] status as a illegitimate child—to wit, the absence of marriage between the Appellant’s parents. There was no compelling public interest that required intrusion into the Appellant’s private affairs.

WHEREFORE, the Appellant prays the Court will grant her amended motion to proceed without prepayment of costs and fees since her right to privacy is a Constitutional right.

Respectfully,

A handwritten signature in cursive script, appearing to read "Regina M. Hunter El".

I Am: Regina M. Hunter El
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A Natural Person, In Full Life, In Propria Persona, Sui Juris

With the Name of Allah, Most Merciful, Most Gracious

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Sumter, S.C. 29150)

Plaintiff(s))

vs.)

Elijah Hunter)
3400 Hwy. 261 North)
Rembert, S.C. 29128)

Defendant(s))

MEMORANDUM OF AUTHORITIES

APPELLANT’S MOTION FOR LEAVE
TO FILE AN AMENDED MOTION
TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AMENDED MOTION

Appeal from
Court of Common Pleas, Sumter County
Case No. 2021-CP-43-1534
Hon. Ferrell R. Cothran

Appeal from
Summary Court, Sumter County
Case No. 2021CV4310102733
Fred H. Gordon, Jr., Magistrate

MEMORANDUM OF POINTS AND AUTHORITES

1. South Carolina Rules of Civil Procedure (SCRCP), Rule 15(b)
2. *Ex parte Martin v. the State* 321 S.C. 533 (1995)
3. *Griswold v. Connecticut* , 381 US 479 (1965)
4. *Boddie v. Connecticut* 401 US 371 (1971)
5. *Eisenstadt v Baird*, 405 US 438 (1972)
6. *Roe v. Wade*, 410 US 113 (1973)
7. *Lawrence v. Texas*, 539 US 558 (2003)
8. S.C. Const. art. XVII, §15
9. S.C. Const. art 1, §3
10. S.C. Probate Code of Laws §62-3-108
11. S.C. Probate Code of Laws §62-2-109
12. S.C. Probate Code of Laws §62-2-609
13. S.C. Code of Laws §15-49-10

Revised
VERIFICATION
AFFIDAVIT

Executed this ~~3rd day of October 2021~~ [7 December 2021, 3 Jumada I] 1443 A.H. under penalty of perjury that the statements and facts contained in the *Motion for Leave to File an Amended Motion* and Affidavit to Proceed without Prepayment of Costs and Fees and *Motion and Affidavit to Proceed without Prepayment of Costs* are true and correct to the best of my knowledge and belief as to these matters.

 El

I Am: Regina M. Hunter El
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Revised

PROOF OF SERVICE

I, Regina M. Hunter El, certify that I served a copy of this *Motion for Leave to File an Amended Motion* and Affidavit to Proceed without Prepayment of Costs and Fees and *Motion and Affidavit to Proceed without Prepayment of Costs* on Elijah Hunter, Sumter County Court of Common Pleas, and the Sumter County Magistrate Court by depositing a copy of the same with the United States Postal Service, with first class mail postage, to the parties in the attached service list.

Executed this 7th day of December 2021 C.E., 3 Jumada I 1443A.H.

Respectfully,



I Am: Regina M. Hunter El
All Rights Reserved
A Natural Person, In Full Life, In Propria Persona, Sui Juris

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c/o Brenda F. Shealy, Deputy Clerk of Court
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