

STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 21 2022

SC Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Circuit Court Judge

Case Number: 2022-000626

Tamara Gaylord Appellant,

v.

Ronnie Gainey Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the Circuit Court properly affirm the Eviction Order issued by the Magistrates Court on August 25, 2021?

STATEMENT OF THE CASE

The Appellant and Respondent were formerly boyfriend and girlfriend; however, their relationship deteriorated, and the Respondent hired the undersigned to send a letter on January 10, 2020, requesting that the Appellant vacate the Respondant's home by January 31, 2020. (January 1, 2020, Letter to Appellant). The Defendant did not vacate the home; therefore, the Respondent filed an eviction action on January 31, 2020. (Application for Ejectment). The Respondent filed a "Return to Notice to Quit Premises" on February 14, 2020, claiming the parties were common law husband and wife. The Magistrates Court scheduled a hearing on March 19, 2020, but the Attorney for the Appellant argued that because common law marriage was being alleged that Family Court had exclusive jurisdiction over the parties. The Magistrates Court agreed that the common law marriage issue must be resolved before the eviction action could proceed.

The Respondent filed an action in Family Court on May 15, 2020, to resolve the claim of common law marriage. A hearing was held on June 8, 2021, before Family Court Judge Thomas M. Bultman on the issue of the existence of a common law marriage and Judge Bultman ruled that a common law marriage did not exist between the parties. (July 8, 2021, Order of Judge Bultman).

Following Judge Bultman's Order the Eviction action proceeded to a hearing in Magistrates Court on August 21, 2021. Judge Marcia N. Frye issued her Order

on August 25, 2021, finding that the Respondent was entitled to a Writ of Ejectment and ordered the Appellant to vacate the home within 24 hours. (August 25, 2021, Order of Judge Frye). The Appellant filed a Motion to Reconsider, and it was denied. The Appellant appealed the Order of Judge Frye to the Circuit Court on September 16, 2021. Judge Frye filed the Return for the Magistrates Court on September 20, 2021. (Return). The appeal was heard by Judge R. Ferrell Cothran, Jr. on November 4, 2021, and Judge Cothran issued his Order on December 7, 2021, affirming the Order of Judge Frye. (December 7, 2021, Order of Judge Cothran). This appeal followed.

STANDARD OF REVIEW

Whereas the circuit court maintains a broad scope of review in deciding an appeal of a magistrate's order, this court, when reviewing the circuit court's adjudication of an appeal of an ejectment proceeding in magistrate's court, does so under a more limited standard, under which (1) findings of fact are to be upheld if there is any supporting evidence and (2) absent an error of law, the circuit court's holding is to be affirmed. Moreover, as with any other appeal before this court, the respondent may argue any additional reasons why we should affirm the appealed ruling, 'regardless of whether those reasons have been presented to or ruled on by the lower court.' This court may in its discretion review the additional reasons presented by the respondent and 'if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.' McNair v. United Energy Distributors, 390 S.C. 44, 699 S.E.2d 723, 726 (S.C. App. 2010) (citations omitted).

ARGUMENT

I. THE APPELLANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED.

(a) The Appellant argues that the "Notice to Quit was not acted on within the 120-day timeline as stated in Rule 6 of SC Rules of Magistrate (sic) Courts". (Brief P. 2). The Circuit Order does not address a claim related to the 120-day timeline in Rule 6 of South Carolina Rules of Magistrates Court; therefore, any issue with Rule 6 has not been preserved for appeal. However, for the sake of

argument Rule 6(k) contains the “120-day timeline” that the Appellant is referencing and states: “a magistrate may dismiss a summons and complaint against any or all defendants without prejudice to the plaintiff if service of process cannot be obtained within one hundred twenty (120) days of the filing of the complaint.” In the present case the Application for Ejectment was filed on January 31, 2020, and thirteen days later the Appellant’s first attorney, Steven S. McKenzie, accepted service of the Application for Ejectment on February 13, 2020, and the acceptance was filed with the Magistrates Court. (Acceptance of Service).

(b) The Appellant argues that she is entitled to a jury trial pursuant to S.C. Code Ann. § 27-37-60. (Brief P. 2). The Circuit Order does not address a claim related to a jury trial request; therefore, a jury trial request is not preserved for appeal. However, the Order of Judge Frye found “Pursuant to Magistrate Court Rule 13 the request for a jury trial must have occurred five days prior to the original date set for the trial, in this case the original trial date was set for March 19, 2020.” (Order of Frye P. 1). This finding by Judge Frye is not addressed by the Circuit Court Order; therefore, is not preserved for appeal.

(c) The Appellant argues that she was “denied her right to due process by the court refusing to allow her to present evidence . . .” (Brief P. 2). The Circuit Court Order found that the:

Appellant was represented at the hearing on August 19, 2021, by Ken H. Lester, Esq. The Appellant and her attorney had the right to call witnesses, cross-examine witnesses called by the Respondent, and present evidence. The Appellant and her attorney elected to cross-examine the Respondent but did not call any witnesses or present any evidence. There was nothing done by the Magistrate Court that violated the Appellant’s right to due process. (Order of Judge Cothran, P. 2).

This finding by the Circuit Court correlates to the Return filed by the Magistrates Court that states:

The case began at 9:05 a.m. Mr. Land and Gaaney, and Gaylord were in attendance. Gaaney and Gaylord were sworn in. The case began and Gaylord exited the Courtroom in apparent anger. Mr. Lester arrived late, at approximately 9:15 a.m., and he and Gaylord came into the courtroom. Mr. Land and Mr. Lester asked for a recess to discuss the case. When they returned both attorneys spoke with their clients. Gaylord again exited the courtroom in apparent anger. The case proceeded and was completed. (Return P. 1-2).

The Appellant and her attorney were present for the hearing and the Appellant elected to leave during the hearing. Mr. Lester remained during the entire hearing and elected not to call any witnesses. The Appellant's right to due process was not violated by her decision to leave during the hearing and the decision by her attorney to not call any witnesses.

(d) The Appellant argues that she was "denied her right to due process by the court starting before her counsel arrived." (Brief P. 2). The Circuit Order does not address a claim related to the Attorney for the Appellant arriving late to the hearing; therefore, the issue is not preserved for appeal. However, for the sake of argument, the Magistrates Court Return states:

[Judge Frye] called Mr. Lester, notified him of these calls from his paralegal, and alerted him that the case would proceed at 9:00 a.m. on Thursday, August 19, 2021. Mr. Lester was unaware of the court date but agreed to be here. (Return P. 1).

The Magistrates Court started on time and the Attorney for the Appellant was aware of the date and time for hearing but arrived late. The Attorney for the Appellant offered no excuse for his tardiness and the hearing proceeded after his arrival. The Circuit Court Order states: "The Appellant and her attorney had the right to call witnesses, cross-examine witnesses called by the Respondent, and

present evidence. The Appellant and her attorney elected to cross-examine the Respondent but did not call any witnesses or present any evidence. There was nothing done by the Magistrates Court that violated the Appellant's right to due process." (Order of Judge Cothran, P. 2). Appellant has failed to prove that her attorney's tardiness prevented her from presenting witnesses or evidence and did not violate her due process rights.

(e) The Appellant argues that she was "never sworn in as required by Magistrate Rule 13(d)." (Brief P. 2). The Circuit Court Order does not address the issue of the Appellant being sworn in; therefore, the issue is not preserved for appeal. However, the Magistrates Court Return states: "Gainey and Gaylord were sworn in." (Return P. 1). Even if the Return is incorrect and the Appellant was not sworn in, she has not alleged any prejudice by not being sworn in. Furthermore, the Appellant did not offer any unsworn testimony.

II. THE MAGISTRATES COURT DID NOT VIOLATE FEDERAL LAW BY HOLDING THE EVICTION HEARING.

(a) The Appellant argues that a continuance should have been granted due to "her recent cancer diagnosis." (Brief P. 2). The Circuit Court Order does not address the issue of the Appellant's request for a continuance; therefore, the issue is not preserved for appeal. The Appellant does not state in her brief the "Federal Law" that was violated by the hearing being held.

(b) The Appellant argues that she "had direct exposure to covid-19 (sic)" and "Federal law mandates quarantine for individuals with close-contact exposure to COVID-19." (Brief P. 2). The Circuit Court Order does not address the issue of the Appellant's exposure to COVID-19; therefore, the issue is not preserved for

appeal. Furthermore, the Appellant's argument that "Federal law mandates quarantine for individuals with close-contact to COVID-19" is not accurate. There is not any federal law that mandates quarantine. There certainly are guidelines from the CDC, but there is not a "Federal law" that mandates quarantine.

III. THE ISSUE OF RETALIATORY EVICTION WAS NOT ADDRESSED IN THIS CASE.

The Appellant argues that S.C. Code Ann. § 27-40-910, "Retaliatory Conduct Prohibited", under the South Carolina Residential Landlord and Tenant Act applies to this case. (Brief P. 3). The Circuit Court Order does not address the issue of "retaliatory eviction"; therefore, the issue is not preserved for appeal.

The South Carolina Residential Landlord and Tenant Act, hereinafter "Act", does not apply to the Appellant and Respondent. The Act applies to a "tenant" defined as "a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others." S.C. Code Ann § 27-40-210(15). The "tenant" must pay "rent" as defined as "the consideration payable for use of the premises . . . payable in lump sum or periodic payments." S.C. Code §27-40-210(11). The relationship between the Appellant and Respondent was that of a girlfriend and boyfriend, not that of a tenant and landlord. The Appellant never paid rent to the Respondent. Furthermore, the protection provided by S.C. Code Ann. § 27-40-910, "Retaliatory Conduct Prohibited" is limited in its application. The Section states:

[A] landlord shall not retaliate by increasing rent to an amount in excess of fair-market or decreasing essential services or by bringing an action for possession after: (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or (2) the tenant has complained to the landlord of a violation of this chapter. S.C. Code § 27-40-910(a)(1-2).

The Appellant does not allege that she "complained to a government agency charged with responsibility for enforcement of building or housing code" or "complained to the landlord of a violation of this chapter." The Appellant only argues that she "confronted the Respondent about his participation in questionable real estate transactions." (Brief P. 3).

CONCLUSION

The Appellant has failed to demonstrate that the Order by the Circuit Court contains any findings of fact that are not supported by evidence in the record and has failed to demonstrate an error of law; therefore, the Circuit Court's Order should be affirmed.

Respectfully submitted,



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June 16, 2022

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Tamara Gaylord Appellant,

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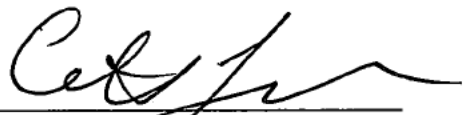
Ronnie Gainey Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal by depositing a copy of both in the United States Mail, postage pre-paid, on June 16, 2022, addressed to the Appellant; Tamara Gaylord, c/o Brent Lyons, 2330 Addison St., Sumter SC 29153.

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BY:



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June 16, 2022

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
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RE: Tamara Gaylord v. Ronnie Gainey
Case No: 2022-000626

Dear Ms. Kitchings:

Please find enclosed for filing the Initial Brief of Respondent and Designation of Matter To Be Included In The Record On Appeal in regard to the above matter. I am by copy of this letter serving the same on Tamara Gaylord, c/o Brent Lyons 2330 Addison St., Sumter, SC 29153.

If further information is needed, please advise.

With warm regards, I am

Sincerely,



William Ceth Land

WCL/sr

Encls.

Cc: Tamara Gaylord

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