

**FORM 13
BRIEF OF APPELLANT**

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SC Court of Appeals

THE STATE OF SOUTH
CAROLINA
In The Court of
Appeals [In The
Supreme Court]

APPEAL FROM CHARLESTON
COUNTY Court of
Common Pleas

Circuit Court Judge Hon. R.

Markley Dennis, Jr.,

Case No. 2021-CP-10-03684 4/26/22
(Audio recording of the hearing could not be located)
Currently case No. 2022-000622

Russell Crawford, Appellant

v.

Raymond Babich, Respondent

Russell Crawford
4683 W Montague Ave Lot 3
N. Charleston, S. C. 29418
Appearing as the Appellant pro ce
in this current case No. 2022-
000622

[INITIAL] BRIEF OF
APPELLANT

Motion for appeal to reverse the order of eviction.

FACTUAL BACKGROUND

Respondent is the owner of a mobile home park. Appellant has lived at the mobile home park at issue in this case since 1988, and on the current lot since 1998. Appellant owns his mobile home that was manufactured in 1975.

In order to get a permit to move a mobile home, it must be wind zone II certified. Mobile homes manufactured before 1976 are not rated for wind zone II, and is therefore unable to be legally transported over South Carolina roads for safety reasons.

Therefore, no permit can be obtained to move Appellant's mobile home in Charleston or the surrounding counties.

Respondent presented a lease for Appellant's current lot from 1998 signed only by the Appellant and in a printing style closely resembling the Respondent's printing style found in his petitions to the court for eviction.

There is no separate lease signed between Respondent and Appellant as the respondent did not see it necessary as the appellant had a month to month tenancy. Respondent sent Appellant an email with a 30-day notice to terminate the tenancy on March 17, 2020.

Respondent filed this action on July 15, 2020, alleging that Defendant's lease has ended and seeking ejectment of Appellant and his mobile home.

The 'lease' in question is a standard agreement form that states no termination date and Appellant has been a month to month holdover tenant from the start, subject to the standard terms for home owning tenants in a mobile home park.

Appellant filed a motion for summary judgment, with Magistrate Amy Mikkell and was denied.

Respondent filed his motion for summary judgment, which the Magistrate heard on July 14, 2021, and granted, leaving the court less than two hours to contact the 50 summoned jurors for the jury trial the Appellant requested and was denied seventeen hours before jury selection.

It is the Appellant's belief that no potential jurors were summoned because the Magistrate originally suggested to Respondent that he file for eviction using the thirty day notice clause at the conclusion of the first eviction hearing in which the Magistrate denied the Respondent's first eviction request for lack of merit. The Appellant believes that he was treated unfairly by the court and the respondent.

STANDARD OF REVIEW

Magistrate's Court judgments are effectively subject to a de novo standard of review in Circuit Court. S.C. Code Ann. § 18-7-170 provides that:

"[u]pon hearing the appeal the [Circuit Court] shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

In addition to correcting errors of law, this statute gives the Circuit Court authority to reverse a Magistrate's findings of fact. *Burns v. Wannamaker*, 281 S.C. 352; 315 S.E.2d 179 (Ct. App., 1984); *Parks v. Characters Night Club*, 345 S.C. 484; 548 S.E.2d 605 (Ct. App. 2001).

The Circuit Court has the same power in an appeal from Magistrate's Court as the Circuit Court in trials without a jury and may draw factual conclusions different from those of the Magistrate when considering the same evidence. See *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232; 312 S.E.2d 20 (S.C. App, 1984).

ARGUMENT

Appellant submits that, for the reasons that follow, the Magistrates court, and Magistrate in the court of Common Pleas erred in holding that an eviction is proper in this case. The appellant believes that there was no end date to the tenancy and therefore cannot be evicted without one.

Appellant requests that this Court reverse the judgment of the court below granting an eviction for the following reasons.

Magistrate Dennis in the Court of Common Pleas allowed defense counsel only two minutes to speak before he was interrupted by the late arrival of the Respondent, whereupon after speaking with him for a couple of minutes, then made his ruling. There was not due process in the Magistrate making his ruling.

Request for the court transcript of this meeting was met with the admission by the Clerk of the court that no such recording of this five minute session could be located.

The arguments for dismissal by the Magistrate were never allowed to be made by the attorney for the Appellant, and they are as follows:

The Manufactured Home Park Tenancy Act, and specifically S.C. Code §27-47-530 does not provide for an eviction from a mobile home park for end of lease term.

This tenancy is subject to the Manufactured Home Park Tenancy Act, hereinafter MHPTA. S.C. Code §27-47-530 sets out the grounds for an eviction of a mobile home from a lot such as in this case.

Absent from this list is the end of lease term. S.C. Code §27-47-20 describes the purpose of the MHPTA.

The purpose and policy is to clarify the law, rights, and obligations of the owner and tenant, and it is to be applied to promote the statutes purpose and policy.

The MHPTA does not list end of lease term as a ground allowed for eviction. Although it lists a general provision for “other reason sufficient under common law,” this provision must be construed to promote the policy of clarifying the law related to these tenancies. S.C. Code §27-47-530 (A) (8).

The MHPTA set out in Chapter 47 of title 27 came to be after the Residential Landlord Tenant Act (RLTA) in Chapter 40 and the ejectment of tenants set out in Chapter 37. S.C. Code §27-37-10 specifically sets out three reasons a tenant can generally be evicted.

The MHPTA came out much later and is specific to situations such as this case. It specifically does not list end of the lease term.

The legislature clearly knew and could have listed end of the lease term as a reason for eviction if they intended that to be available to owners.

Included in the MHPTA is failure to pay rent and lease violations, both of which are also listed in S.C. Code §27-37-10.

S.C. Code §27-47-530 sets out the reasons that a mobile home park owner may bring an eviction action.

It does not reference other sections within the MHPTA or set out additional grounds for eviction in other sections. S.C. Code §27-47-530(8) notes “other reason under common law,” however a reference to common law does not draw in another statute.

It would reference causes of action available to owners of mobile home parks under common law.

Magistrate Mikell’s decision and order and subsequent confirmation by Magistrate Dennis do not specify that Respondent’s cause of action arises from common law, but rather through the above referenced statutes.

The South Carolina Supreme Court addressed an issue involving a landlord and tenant lease in *Koon v. Fares* 379 S.C. 150 (2008).

The case reviewed the meaning of a contract term and found that the ability to terminate and evict based on an end of lease term was available to the landlord despite the contract only noting the tenant's ability to terminate the tenancy.

The Residential Landlord Tenant Act applied in that case and contains a provision in the statute to allow such termination by the landlord.

The current action is different as it involves the Manufactured Home Park Tenancy Act that contains a specific statute for eviction grounds. S.C. Code §2747-530 uses the term "may" in stating the reasons for an eviction.

That term is referring to the landlord's discretion to evict for one of those reasons or to not evict the tenant. In *Prevatte v. Asbury Farms*, 302 S.C. 413 (1990) the SC Court of Appeals looked at the meaning of "may" as it related to acclaim for attorney fees related to the return of a security deposit.

The Court found that "may" referred to the discretion of the tenant to request the fees rather than the discretion of the lower court to grant the fees.

Other provisions of the MHPTA do not state a separate ground for eviction. S.C. Code §27-47-310 discusses what is required to be in a written lease to be provided by the owner.

It states that terms of the lease should include notice period to terminate the tenancy, which the preferred document does not.

It does not state that end of tenancy is a ground for eviction. In this case, as long as the Plaintiff operates the mobile home park, he does not have a statutory right of eviction based on end of the lease term, as this would be tantamount to discrimination against a tenant.

While rules of statutory construction look to interpret the words of a particular statute, they do not add terms to the statute.

A decision in favor of Respondent would be to add a number 10 to the grounds for eviction in S.C. Code §27-47-530 which the legislature failed to do.

S.C. Code §27-47-440 sets out the right of a mobile home park owner to approve someone purchasing a mobile home located within the park.

However, the owner cannot unreasonably withhold his approval. An eviction based on end of the lease term would render S.C. Code §27-47-440 useless. A tenant with a month-to-month lease or agreement could sell a mobile home to another with the reluctant approval of the mobile home park owner.

The new buyer could then be immediately given a notice of end of the lease term in 30 days requiring the home to be moved. This goes against the intent and purpose of the statute.

B. An act of bad faith in violation of S.C. Code §27-47-220 could act as a defense to the eviction based on end of lease term.

S.C. Code §27-47-220 imposes a duty of good faith in any duty or act under the MHPTA for owners and tenants. The nineteen emails from the Respondent, submitted to the court as evidence, reveal that the respondent has not operated in good faith towards the Appellant in this matter.

Further, it is not a lease per se, but rather a general agreement for a month to month holdover tenant stating no term limit or date of expiration.

Although the laws are silent as to what an appropriate remedy would be, it could act as a defense to the eviction filed in this case.

The obligation of good faith includes actions as "...a condition precedent to the exercise of a right or remedy..." This could include the notice of end of lease term.

While the statute appears to be ambiguous as to whether this includes the motivation of the owner to terminate the lease, a motive rooted in bad faith has an unjust and unconscionable result.

In this case Appellant has an old mobile home that has impediments to move based on its age and inability to get a permit as well as the prohibitive cost or the willingness of a mobile home mover to take on the task even if allowed to by a county.

Effectively, the result is that Appellant loses his home without fault on his part.

If the eviction is enforced by this court it will establish a precedent that any unscrupulous owner of any of the 80,000+ mobile home parks in the State of South Carolina could use as settled law to evict and acquire any home owned by any tenant in their park who is unable to afford to move their home elsewhere.

THEREFORE, Appellant hereby respectfully requests that the court's ejectment be stayed, and the judgment for eviction be reversed.

Respectfully Submitted on June 22, 2022 for Case No. 2022-000622 by

Russell Thomas Crawford - Appellant, Pro ce

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Russell Crawford
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