

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

Robert H. Breakfield, as attorney in fact Respondent,

v.

Mell Woods Appellant.

Respondent's Brief

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SC Court of Appeals

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Statement of Issues on Appeal Re Appellant's Amended Initial Brief

1. The Circuit Court correctly affirmed the Magistrate's Court's Order and denied Appellant's Rule 59(e) motion, thereby ruling that a defendant-tenant in a statutory ejectment proceeding (S.C. Code Ann. §27-37-10 et seq.) cannot oust the Magistrate's Court of jurisdiction by alleging affirmative defenses and counterclaims purporting to challenge the plaintiff-owner-landlord's title. (Appellant's Issue on Appeal no. 1.)
2. Appellant's Issue on Appeal No. 1, on the question of posting bond pursuant to S.C. Code Ann. §22-3-1130, was not and is not preserved for appellate review. (Appellant's Issue on Appeal no. 1.)
3. The Circuit Court correctly affirmed the Magistrate's Court's Order and denied the Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a defendant -tenant in a statutory ejectment proceeding cannot oust the Magistrate's Court of jurisdiction by alleging counterclaims for money damages. (Appellant's Issue on Appeal no. 1.)
4. The Circuit Court correctly affirmed the Magistrate's Court's Order and denied Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a Summons is not required for Magistrate's Court jurisdiction in a statutory ejectment proceeding. (Appellant's Issue on Appeal no. 2.)

5. Appellant's Issue on Appeal No. 3, in which Appellant appears to challenge the constitutionality of the summary ejectment statutes on the ground that they create two classes of litigants, has not been preserved for review in this Court. (Appellant's Issue on Appeal no. 3.)

Respondent's Objection to Appellant's Excessive Designations for the Record on Appeal

Appellant has designated the entire circuit court record and magistrate's court record in this case. He has designated the entire probate court and circuit court records in two other cases. He has designated a plat that was not presented to the magistrate's court or to the circuit court in this case. He has designated an agreement that was not presented to the magistrate's court or to the circuit court in this case. From these thousands of pages, Appellant cited to the following in his Amended Initial Brief:

- Appellant's verified Answer in the above-captioned case (p. 2, l. 12 and p. 4, l. 6-8;)
- #300 Document (p. 2, l. 16 and 20;) this document is a stranger to the proceedings in this appeal;
- Interrogatory 7 (p. 4, l. 8); there was no discovery conducted in this case, and the source of Interrogatory 7 is unknown;
- money order and bond attached to verified Answer (p. 4, l. 11;)
- page 23, lines 16-19 from the transcript of the circuit court appeal hearing in this case. (p. 3, l. 4-6) having nothing to do with any of Appellant's Issues on Appeal.

The transcript of the circuit court appeal hearing is 31 pages in length. The hearing proper starts on page 9. The only materials/documents/submissions made to the Court by

Appellant or referred to by Appellant in his argument were: his pleadings (R. p. 730, l. 10-11.) He did not submit to the circuit court as a part of his appeal in this case a “ #300 Document,” an “Interrogatory 7,” a plat or an agreement. Respondent incorporates herein by reference pages 3-5 from his Motion to Dismiss and to Strike that was filed in this Court on November 20, 2012.

Respondent’s Objection to Appellant’s Statement of the Case

Respondent objects to Appellant’s Statement of the Case on the ground that it is a flagrant violation of Rule 208(b)(1)(C), SCACR, in that it is an argumentative narrative of contested and irrelevant matters. In his Notice of Appeal to the Supreme Court, Appellant likewise included an argumentative narrative. Respondent moved to have the narrative portion of the Notice of Appeal stricken. The Supreme Court agreed and granted the motion in its July 16, 2012 Order in which the appeal was transferred to this Court. (R. p. 787.)

In addition to the bare argument in Appellant’s Statement of the Case, he refers to a “#300 Document” that was never before the court in this proceeding.

Appellant has again included an improper argumentative narrative where argument and contested matters are disallowed by court rule, and said narrative in its entirety should be disregarded by the Court.

Respondent’s Statement of the Case

On or about March 11, 2011 Respondent commenced an eviction action in the Chester County Magistrate’s Court to evict Appellant by filing a verified Complaint for

Possession of Real Property/ Application for Ejectment. (R. p. 591-599.)

On March 16, 2011 the Magistrate's Court issued a Rule to Vacate or Show Cause. (R. p. 590.)

The verified Complaint and Rule to Vacate or Show Cause were served on the Appellant on March 16, 2011. (R. p. 625.)

On or about March 24, 2011 Appellant filed a verified Answer that included a Motion to Dismiss and a counterclaim. (R. p. 601-612.)

On or about March 28, 2011 Respondent filed and served a Motion to Dismiss Appellant's counterclaim. (R. p. 620-622.)

On or about May 2, 2011 Appellant filed and served an Amendment of Counterclaim. (R. p. 626-630.)

The Magistrate's Court held a pretrial hearing on May 12, 2011 at which pending motions were heard. The Magistrate's Court issued its Order On Motions dated June 2, 2011. (R. p. 710-713.)

On or about June 13, 2011 Appellant filed and served his Notice of Appeal and Grounds of Appeal to appeal the Magistrate's Court's June 2, 2011 Order to the Circuit Court. (R. p. 714-716.)

The appeal was argued in the Circuit Court on January 4, 2012, and by Order dated January 16, 2012, the Circuit Court affirmed the Magistrate's Court's June 2, 2011 Order. (R. p. 752-757.)

On or about February 11, 2012 Appellant filed and served a Rule 59(e) Motion for

Reconsideration. (R. p. 758-770.)

On or about March 5, 2012 Respondent filed and served his Return to Appellant's Rule 59(e) motion.

By Order dated April 23, 2012, the Circuit Court denied Appellant's Rule 59(e) Motion. (R. p. 771.)

On June 21, 2012 Appellant served his Notice of Appeal to the South Carolina Supreme Court.

By Order of the South Carolina Supreme Court dated July 16, 2012 Appellant's appeal was transferred to the South Carolina Court of Appeals.

Argument

- 1. The Circuit Court correctly affirmed the Magistrate's Court's Order and denied Appellant's Rule 59(e), SCRCP, motion, thereby ruling that a defendant-tenant in a statutory ejectment proceeding (S.C. Code Ann. §27-37-10 et seq.) cannot oust the Magistrate's Court of jurisdiction by alleging affirmative defenses and counterclaims purporting to challenge the plaintiff-owner-landlord's title. (Appellant's Issue on Appeal no. 1.)**

Appellant's Issue on Appeal No. 1 is ambiguous. It questions whether it is lawful for a magistrate "to proceed with an eviction action" where title issues are alleged by the defendant-tenant. It is unclear if Appellant is arguing that the Magistrate's Court must dismiss the eviction outright or remove the proceeding to circuit court. Statements of Issues on Appeal must be "concise," and no point will be considered on appeal which is not set

forth in a proper and sufficient statement of issues on appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 209 (2d ed.2002) and cases cited therein. Reserving this objection, the ambiguity should make no difference with respect to the ejectment proceeding.

Appellant's argument on this issue consists of one paragraph, 14 lines of text, citing only S.C. Code Ann. §22-3-1130 to support his argument that the Magistrates Court has no jurisdiction to hear a summary ejectment proceeding if the Defendant-tenant (1) questions the Plaintiff's title, S.C. Code Ann. §22-3-1110, and (2) delivers a written undertaking to the magistrate. S.C. Code Ann. §22-3-1120 and 1130. Appellant argues that his allegation of questionable title and his delivery of the undertaking "should have been the end of the magistrate [sic] case." (Appellant's argument as to Issue no. 1.)

The Magistrate's Court held that the governing statutes for the summary ejectment proceeding do not permit a tenant to raise affirmative defenses or counterclaims to a statutory eviction proceeding. (R. p. 712, l. 3-10.) Citing Nesbitt v. Marshall, 24 S. C. 507 (1884) and Sywgert v. Goodwin, 32 S.C. 146, 10 S.E. 933 (1890), the Circuit Court affirmed the Magistrate's Court on that point by ruling that "summary eviction proceedings are not proceedings involving title to land." (R. p. 755, l. 3-10.) Statutory summary possession remedies involve, not title, but the landlord-tenant relationship and are intended to provide landlords with a quick and simple procedure to recover possession of property while still affording basic procedural protections to tenants. 5 Thompson on Real Property, Second Thomas Edition §40.09(c)(1) (2007). Historically, summary eviction proceedings do not allow a tenant to assert defenses other than the payment of the rent. Id. at §40.09(c)(3). At

common law, the only defense to a petition to remove a tenant for nonpayment of rent was by proof of payment of rent. Id. While some statutes in other jurisdictions enable tenants to assert affirmative defenses in summary eviction proceedings, South Carolina's statutes do not.

Accordingly, whatever defenses or claims the tenant might have against the landlord would have to be asserted in a separate action. Otherwise, the very purpose for the summary eviction proceeding could be defeated by allowing the tenant to bring all manner of issues before the magistrate's court and delaying the ultimate resolution of the central question, namely gaining possession of the premises. **The statutory summary ejectment proceeding, and the above-cited authorities, assume the existence in fact of a landlord-tenant relationship.**

The case of Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924) is dispositive. It addresses the Magistrate's Court's jurisdiction in a summary ejectment proceeding when the Defendant-alleged tenant denies that the plaintiff is the owner of the premises and denies that the relation of landlord and tenant exists.

The relevant holdings of the Stewart-Jones Co. opinion are:

- the issue of the plaintiff's title cannot properly arise in a summary ejectment proceeding because a summary ejectment proceeding is one that requires a landlord and tenant relationship, and a tenant is estopped by the relationship to deny his landlord's title;
- it is essential to a summary ejectment proceeding that the relation of landlord and tenant exist, and the existence of the conventional relation of landlord and tenant is

a prerequisite to the assumption and exercise of jurisdiction by the magistrate;

- therefore, the magistrate must first determine its jurisdiction by determining as a fact whether the relation of landlord and tenant exists;
- if the relation of landlord and tenant exists, the tenant is estopped to deny plaintiff-landlord's title and may not inject that issue to deprive the magistrate of jurisdiction;
- if the relation of landlord and tenant does not exist, the Magistrate Court has no jurisdiction to proceed with an ejectment action.

Therefore, had the Appellant chosen to proceed in Magistrate's Court rather than pursuing an appeal, the Magistrate's Court would first have been required to determine if the relationship of landlord and tenant exists between the parties, which itself, would determine the Magistrate's Court's jurisdiction.

Consequently, the mere questioning of Respondent's title and the delivery of the written undertaking do not in and of themselves oust the Magistrate's Court of jurisdiction to determine the existence of a landlord and tenant relationship within the scope of a summary ejectment proceeding.

2. Appellant's Issue on Appeal No. 1, on the question of posting bond pursuant to S.C. Code Ann. §22-3-1130, was not and is not preserved for appellate review.

The Magistrate's Court's Order on Motions dated June 2, 2011 did not address or rule on the posting of bond pursuant to S.C. Code Ann. §22-3-1130. (R. p. 710-713.)

Appellant's Notice and Grounds of Appeal to Circuit Court did not identify the posting of bond pursuant to S.C. Code Ann. §22-3-1130 as an issue on appeal. (R. p. 714-

716.)

The Circuit Court's Order Affirming Magistrate Court dated January 16, 2012 noted in its review of the history of the proceeding that Appellant's Motion to Dismiss included allegations of superior title and bond. (R. p. 753, l. 1-9). However, the Circuit Court's Order did not consider bond pursuant to S.C. Code Ann. §22-3-1130 as an issue on appeal, and the Order did not address or decide anything related to the posting of bond pursuant to S.C. Code Ann. §22-3-1130. (R. p. 752-757.)

Appellant's Rule 59(e) motion to the Circuit Court mentioned, for the first time in the appeal, the operation of S.C. Code Ann. §22-3-1130. (R. p. 761, ¶ 7.) By then, it was too late to make that subject an issue in the appeal.

3. The Circuit Court correctly affirmed the Magistrate's Court's Order and Denied the Appellant's Rule 59(e), SCRCF, motion, thereby ruling that a defendant -tenant in a statutory ejectment proceeding cannot oust the Magistrate's Court of jurisdiction by alleging counterclaims for money damages. (Appellant's Issue on Appeal no. 1.)

On a related note, the Magistrate's Court and Circuit Court also ruled that the Appellant-tenant cannot allege counterclaims for money damages in defense of a summary ejectment proceeding and cannot oust the Magistrate's Court of jurisdiction by such counterclaims. For the same reasons set out above, those conclusions are sound and should be affirmed.

4. The Circuit Court correctly affirmed the Magistrate’s Court’s Order and denied Appellant’s Rule 59(e), SCRCP, motion, thereby ruling that a Summons is not required for Magistrate’s Court jurisdiction in a statutory ejectment proceeding. (Appellant’s Issue on Appeal no. 2.)

A. Procedural Argument - Constitutional Challenge Not Preserved for Appellate Court Review

Appellant’s Issue on Appeal no. 2 identifies the issue as whether the use of a rule to show cause with a 10-day response period rather than a summons with a 30-day response period is “lawful.” The actual argument offered by Appellant on this issue in his Brief is that S.C. Code Ann. §27-37-20 and 27-37-40 are unconstitutional.

In his Second Defense, among the various ambiguous and rambling allegations, Appellant alleged that “. . . 27-37-20, which purports to sanction summary eviction, defendant, here and now, attacks the cited statute on federal constitutional grounds, and insists on being properly served . . .” (R. p. 602, l. 11 to 603, l. 20.)

The Magistrate’s Court denied Appellant’s constitutional challenge. (R. p. 711, l. 19 to 712, l. 1.)

Appellant’s Grounds of Appeal to the Circuit Court did not raise the issue of the alleged unconstitutionality of S.C. Code §27-37-20 and/or 27-37-40, and that issue is no longer preserved for further appellate court review. Appellant’s Ground of Appeal no. 2 to the Circuit Court identified error only on the basis that the failure to serve a Summons in a summary ejectment proceeding is inconsistent with South Carolina Supreme Court precedent. (R. p. 715, l. 1-9.) In fact, neither the word “constitutional” nor the word

“unconstitutional” appears in Appellant’s Notice and Grounds of Appeal to the Circuit Court. Likewise, the statutes at issue (S.C. Code §27-37-20 and/or 27-37-40) are not cited and do not appear anywhere in the Appellant’s Notice and Grounds of Appeal to Circuit Court. (R. p. 715, l. 1-9.)

To preserve an issue for appellate review, the issue must be raised to and ruled upon by the lower court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002) and cases cited therein, including Hubbard v. Rowe, 192 S.C. 12, 5 S.E.2d 187 (1939).(questions presented for appellate review must first have been fairly and properly raised in the lower court and passed upon by that court.) Having not preserved the issue for appellate review in the Circuit Court, the issue is also not preserved for review in this Court. Having not appealed the Magistrate’s Court’s ruling denying the constitutional challenge to the absence of a summons, that ruling is now the law of the case. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 80 (2d ed.2002) and cases cited therein.

B. Substantive Argument

The ejectment proceeding herein was commenced pursuant to S.C. Code Ann. §27-37-10 et seq. (rev. 2007) by a verified document titled as a “Complaint for Possession of Real Property / Application for Ejectment.” (R. p. 591-599.) That document led the Magistrate’s Court to issue its Rule to Vacate or Show Cause. (R. p. 590.) After service of the Complaint/Application and the Rule to Vacate or Show Cause, the Appellant filed and served a verified Answer that included a Motion to Dismiss and a counterclaim. (R. p. 601-

612.)

Appellant challenged the Magistrate's Court's exercise of subject matter and personal jurisdiction over the Appellant because the ejectment proceeding had not been commenced with a Summons. (R. p. 602, l. 11 to 603, l. 20.) The Magistrate's Court denied relief to Appellant on that ground. (R. p. 711, l. 7-11.) The Circuit Court affirmed. (R. p. 756, l. 2-7.)

Appellant argues that the Rules of Civil Procedure require the service of a Summons in an ejectment proceeding notwithstanding that the procedure set out in S.C. Code Ann. §27-37-20 (rev. 2007) does not require a summons. The proceeding authorized by §27-37-20 is a "summary proceeding" designed to protect the interests of both landlords and tenants. The pleading and procedural requirements of §27-37-20 were followed in this case.

It is instructive that the Summary Court Judges Bench Book, created and distributed by the office of South Carolina Court Administration as the administrative arm of the Chief Justice, (Civil Law Chapter; section N-3, Eviction or Ejectment, sub-sections a and b) sets out the procedural requirements for a summary ejectment proceeding. According to the Summary Court Judges Bench Book, a summons is not required.

Rule 81, SCRPC, provides that the Rules of Civil Procedure shall apply "insofar as practicable in magistrate's courts, . . . to the extent they are not inconsistent with the statutes and rules governing those courts." The requirement for a Summons in the Rules of Civil Procedure is inconsistent with the statutes governing summary ejectment proceedings in magistrate's courts, and therefore do not apply to summary ejectment proceedings in magistrate's courts.

5. **Appellant's Issue on Appeal No. 3, in which Appellant appears to challenge the constitutionality of the summary ejectment statutes on the ground that they create two classes of litigants, has not been preserved for review in this Court.**
(Appellant's Issue on Appeal no. 3.)

Issue on Appeal no. 3. Appellant's Issue on Appeal no. 3 is in substance a restatement of Issue on Appeal no. 2 in which, as addressed above, Appellant purports to challenge the constitutionality of the summary ejectment statutes. In Issue no. 3 Appellant appears to assert that it is unconstitutional in an ejectment context, to have parties who are alleged to be landlords and parties who are alleged or labeled to be tenants. What does this mean? If an Issue on Appeal cannot be deciphered or decoded, it should be found insufficient for appellate review.

Argument on Issue on Appeal no. 3. The repetitive nature of this issue and argument is evident when one reads how Appellant addresses Issue on Appeal No. 3 in his brief. He has three paragraphs, only two of which are relevant to the alleged constitutional issue:

Constitutional argument - three sentences.

"A defendant has thirty days from the date of service of the complaint to serve his answer." (Citation omitted.) This relates to the Summons issue addressed in Issue on Appeal no. 2.

" 'A summons requiring an appearance in less than the statutory time is fatally and jurisdictionally defective.' Rule 12 entitles a defendant to thirty days to respond." (Citation omitted.) This also relates to the Summons issue addressed in Issue on Appeal no. 2.

These two paragraphs, three sentences, constitute the entirety of Appellant's

argument on the “constitutional” issue of creating two classes of litigants. Having already responded to this constitutional issue and argument, the material hereinabove addressing Respondent’s position on Issue on Appeal no. 2 is incorporated herein by reference.

Respondent submits that Appellant has failed to make a proper and sufficient argument on the constitutionality component of his Issue on Appeal no. 3, which is an abandonment of the issue. An appellate court will decline to consider an argument that is so conclusory as to be an abandonment of the particular issue on appeal. S. C. Dept. of Probation, Parole & Pardon Servs. v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999) (conclusory arguments constitute an abandonment of the issue on appeal.) Two paragraphs; eight lines; no citation to anything in the record. This violates the letter and the spirit of Rules 208(b)(1)(D) and 208(b)(4), SCACR.

Jury Trial.

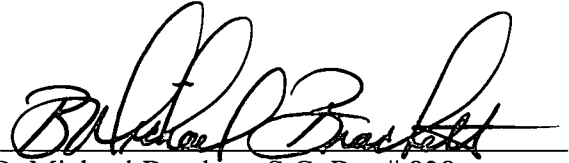
The third paragraph under Appellant’s Issue on Appeal no. 3 relates to the right to a jury trial in circuit court when title to land is involved in a case. It reads: “An issue affecting title to land is a substantial right and should be tried in front of a jury in common pleas court.” (Citation omitted.) None of Appellant’s issues on appeal identify a right to jury trial as an issue involved in this appeal. Appellant does not explain how the subject of a right to jury trial relates to his constitutionality argument that is based on the absence of a summons. Statements of Issues on Appeal must be “concise,” and no point will be considered on appeal which is not set forth in a proper and sufficient statement of issues on appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in

South Carolina 209 (2d ed.2002) and cases cited therein.

Additionally, the argument, if it can be called that, on the jury trial issue is insufficient to preserve the issue for review. An appellate court will decline to consider an argument that is so conclusory as to be an abandonment of the particular issue on appeal. S. C. Dept. of Probation, Parole & Pardon Servs. v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999) (conclusory arguments constitute an abandonment of the issue on appeal.) Two paragraphs; eight lines; no citation to anything in the record. This violates the letter and the spirit of Rules 208(b)(1)(D) and 208(b)(4), SCACR.

Conclusion

The Circuit Court's Order Affirming Magistrate [sic] Court should be affirmed.

A handwritten signature in black ink, appearing to read "B. Michael Brackett", written over a horizontal line.

B. Michael Brackett, S.C. Bar # 838

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Attorney for Respondent

May 22, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

2011-CP-12-0291

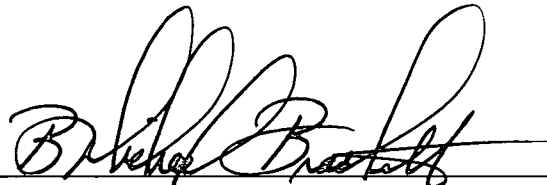
Robert H. Breakfield, as attorney in fact Respondent,

v.

Mell Woods Appellant.

RULE 211(a)
CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.



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Mell Woods Appellant.

Respondent's Certificate of Service

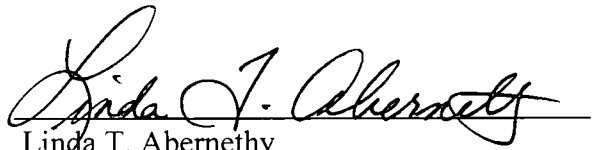
I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondent's Final Brief and Certificate of Counsel** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 22nd day of May, 2013 at the following address:

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Plaintiff, pro se

RECEIVED

MAY 22 2013

SC Court of Appeals


Linda T. Abernethy