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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
CHARLESTON COUNTY

R. Markley Dennis, Jr., Presiding Judge

Circuit Case No.:2021-CP-10-10-03684

Appellate Case No.: 2022-000622

Russell Crawford, Appellant

v.

Raymond Babich, Respondent.

William B. Jung, Esq.
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APPELLANT'S FINAL BRIEF

TABLE OF CONTENTS AND CASES

Arguments

STATEMENT OF THE ISSUES ON APPEAL

1. MAY THE OWNER OF A TRAILER PARK WHO HAS ACTED IN BAD FAITH AND STANDS TO GAIN AN UNJUST ENRICHMENT FROM AN UNCONSCIONABLE VERDICT OF EVICTING, WITHOUT CAUSE, A 72 YEAR OLD, DISABLED MINISTER, A CIVIL SERVICE RETIREE, WHO HAS HARMED NO ONE DURING THE 24 YEARS HE HAS OWNED HIS LEGALLY UNMOVABLE HOME?

2. ARE THERE ANY LEGITIMATE REASONS WHY THE SUBMITTED EMAILS SUPPORTING THE APPELLANT'S CLAIMS OF BAD FAITH ACTIONS BY THE RESPONDENT WERE NOT READ BY THE MAGISTRATE AND JUDGE WHO RULED ON THE CASE AND CONSIDERED AS SUBSTANITIVE EVIDENCE OF MALICE AND FORETHOUGHT FROM THE RESPONDENT?

STATEMENT OF THE CASE

This is an appeal from an April 26, 2022 Order of Circuit Court Judge R. Markley Dennis, Jr., presiding judge in the Charleston County Court of Common Pleas, which denied Appellant Crawford's ("Crawford" or "Appellant") Appeal of an August 10, 2021 Writ of Ejectment issued by Charleston County

Magistrate Amy Mikell following July 19, 2021 Order granting of a Motion for Summary Judgment filed by Respondent Raymond Babich ("Babich" or "Respondent") for such ejectment relief.

Application for the Appellant's Ejectment

From emails between the parties submitted by the Appellant, it appears that the Appellant had a history of requesting assistance through emails from the Respondent (beginning on April 17, 2019) to make attempts to keep the park quiet from the unlawful noises emanating from the nearby Bar and Dance Hall located 365 feet from Appellant's bedroom window.

Respondent refused to assist the Appellant in violation of his contractual obligation to do so. The MHPTA, SECTION 27-40-610 requires landlords to provide a safe environment in the park. Being subjected to sleep depriving sounds is not a safe environment to live in. Instead of assisting Respondent and fellow tenants living closest to the source of the 8 pm to 2 am, 5 nights a week subsonic noises he chose instead to respond with his August 2, 2019, emailed threat:

"I intend to ask the police department if your repeated calling activity could ever have an impact on them responding to a real emergency at this address. If the answer is yes, I have a hard decision to make regarding how to stop you from doing it." Eviction would seem to be a logical step in accomplishing this goal.

This was preceded by an unconscionable action by Respondent when he and the rear neighbor erected an illegal 10 foot tall, 100 foot

long, flimsy, noisy plastic barrier outside my bedroom window in response to my letter offering the neighbor a new dog training collar and instructional DVDs to help quiet their yelping, screaming dog.

When I contacted the Zoning Department to inspect the barrier Respondent called my actions "hostile" and sent the following email on 8/2/2019 11:45 AM, Respondent Ray Babich wrote:

> Mr. Crawford,

> This is relating to the rent increase. It will be minor in my eyes because further hostile activity by you will involve much higher rent increases until your activity changes. I have no problem adding another hundred per month to the one coming, so please don't force the issue...

There may be further rent increases, which I have a history of doing when a tenant refuses to change the activity that caused the increase. You probably know better than I if you will get more increases. A case in point follows. You must stop annoying the next door neighbors at 4675 Montague. He is a valued neighbor to this trailer park...

This was in direct violation of the MHPTA SECTION 27-40-910. Retaliatory conduct prohibited.

(a) Except as provided in this section, a landlord shall not retaliate by increasing rent to an amount in excess of fair-market value 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.

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 27-40-660 as a defense in any retaliatory action against him for possession. If the defense by the tenant is without merit, the landlord is entitled to reasonable attorney's fees. If the defense is raised in bad faith, the landlord may recover up to three month's periodic rent or treble the actual damages, whichever is greater. If the landlord recovers damages under this section, he may not also recover damages under Section 27-40-760.

(h) Any landlord who acts in retaliation against the tenant for engaging in protected conduct is liable for damages up to three month's rent or treble the actual damages sustained by the tenant, whichever is greater, and reasonable attorney's fees. Nothing in this section may be construed to prohibit an action for damages after a landlord has recovered possession of the dwelling unit in subsection (c), provided the ejectment was primarily in retaliation against the tenant's protected conduct.

This email was soon followed by one the Respondent sent on November 17, 2019, that read:

"Please see the attached, which is your reply to my request and or demand that you do not involve 4675 Montague in any of your activities, whatever they are. You received this warning, and then it appears you called city officials regarding their fence line. I first demand that you immediately cease annoying neighbors in the trailer park and the neighbor at 4675.

I have absolutely no problem raising your rent to $300 plus water and if that does not fix the situation, maybe 350 or 400 will. You need to understand there are limits to what you can get away with at the detriment of your neighbors.

I again urge you to consider moving to a rural area where the problems you have with neighbors will not occur.

If I have to force the issue to 500 a month or eviction, I will, and I have done so in the past when I cannot reason with people...

This is your final warning. Do not annoy any neighbor."

Thirty days later I appeared in court in an eviction procedure where I spent the full 30 minutes allotted to me reading the harassing emails the Respondent sent to me. Magistrate Mikell ruled in my favor but recommended to the Respondent that he try again using the 30-day written notice clause as his reason for eviction.

Why would she later not rule in his favor?

On August 7, 2020, after a hearing before Magistrate Mikell where I was not allowed to defend my actions for not paying the punitive

rent increases, she gave an order that I should, adding: "After hearing the testimony of the parties and reviewing the documentary evidence submitted by the parties, the court orders Defendant to pay..." This statement was patently false, and I have an audio recording of the session as proof as well as the courts' recording.

To reiterate, she was well aware of the contents of the emails Respondent sent to me read to her during the December 17, 2019, first eviction hearing, showing he was in direct violation of MHPTA SECTION 27-40-910.

Counsel for the Respondent stated in his reply to my initial brief, "In granting leave to seek a Writ of Ejectment, the Magistrate also considered that Crawford's second argument that under MHPTA Section 27-47-220, a manufactured home park owner was obligated to act in good faith and that certain emails between the parties allegedly showed Babich's repeated bad faith actions over the course of Appellant Crawford's tenancy. *id.* The Magistrate ruled that she was not making any finding as to whether Babich had shown bad faith in seeking an ejectment.

This, of course, was willful negligence in not choosing to recall all the email evidence read during open court during the first December 17, 2019, eviction hearing.

The Circuit Court Appeal

After the Writ of Ejectment was issued on August 10, 2021, Appellant filed an appeal that was heard on April 19, 2022, a scant 6 months later, after a huge backlog of cases was created due to the pandemic

shutdown. Appellant never located the scheduled listing of this hearing on the Court's website which seemed awfully suspicious, as though someone tried to fast track this case.

The hearing lasted a scant 5 minutes where my attorney had barely begun to speak before late-arriving Respondent appeared, engaged the Judge in pleasantries after which he made his ruling to uphold the eviction order.

It was of little wonder to the Appellant that no recording of the session could be located by the clerk. *

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* The Designation of Matters to be included in the Record on Appeal submitted by Appellant does not list the transcript from the appeal hearing before Judge Dennis due to the Clerk's repeated inability to locate it. Emails will be provided as proof.

DISPUTE OF RESPONDENT'S STATEMENT OF FACTS

Appellant does not admit and disputes the Respondent's following contentions:

1. That Appellant can move his mobile home without a governmental permit.

2. That Appellant can obtain a permit to move his manufactured home if a governmental permit to move said property is required.

3. That prohibitive moving costs would not allow Appellant to afford the unnecessary moving of the manufactured home; and

4. All the allegations Appellant made doubting a pool of 50 potential jurors had been summoned to appear before the verdict was rendered, some 16 hours before the scheduled jury trial were quite likely true.

Although proof cannot be supplied by the Appellant regarding this belief, a thorough investigation by SLED agents should be able to reveal the truth of the matter, if it is deemed necessary in reaching a determination of Magisterial misconduct while in Office.

STANDARD OF REVIEW

The standard of review will rest upon commonsense reasoning based upon the evidence presented and the moral conscience of the Justices, and not on a narrow interpretation of an insufficiently addressed technicality in law that cannot be applied in this case. What is morally wrong and ethically unconscionable cannot stand as being legally right.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Index and Contents of Emails previously submitted as evidence
2. Index and Contents of Judicial Rulings in Chronological Order.
3. Index and Contents of Appellant's Counsel's Relevant Emails regarding his incompetence in oral argument and giving legal advice over an illegal lease.

4. Index and Contents of Respondent's Relevant Emails prior to the July 17, 2021, eviction order.
5. Index and Contents of Respondent's Relevant Emails since the July 17, 2021, eviction order was issued.
6. Appellant's' Exhibits 1-7 of Photos of Home and Illegal Fence.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 16, 2022 /s/ Russell T. Crawford

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CONCLUSION

The preponderance of the submitted email evidence will show Respondent has not acted in good faith towards Appellant with his sending repeated, harassing emails, refusing to assist in preventing unnecessary, unlawful and disturbing outside noises from entering the park, constructing an illegal, freedom denying, noise producing bedroom window barrier to the sun, and penalizing Appellant with multiple punitive rent increases for the Appellant seeking legally approved remedies for these denials of his Constitutionally protected Freedoms which resulted in the two attempts at eviction.

The forty-three-month history of Respondents illegal actions towards Appellant have proved most harmful to the Appellants mental, emotional, physical, and psychological well-being resulting in the formation of recently discovered painful stomach ulcers.

For the foregoing reasons, it is respectfully submitted that the decision of the Circuit Court should be annulled.

Dated: North Charleston, S. C.

November 16, 2022

Respectfully submitted

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Appellant

Proof of Service

I, Russell T. Crawford, certify under penalty of perjury that on November 16, 2022, I served a copy of Respondent's Final Brief upon the Respondent by mailing and emailing a true and complete copy thereto to Respondent's counsel William B. Jung, Esq.

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