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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Court Of Common Pleas

Honorable G.D. Morgan Jr.

Appellate Case No. 2022-001472

Erica Bradley..... Appellant,

v.

Ahf Shemwood Crossing..... Respondent.

**PETITION FOR WRIT OF EJECTMENT OR
FOR REMAND TO MAGISTRATE COURT
AND DISMISSAL OF APPEAL**

Respondent, AHF-Shemwood Crossing, LLC¹ (“Landlord”) hereby moves this Court pursuant to Rules 240 and 241(b) of the South Carolina Appellate Court Rules, S.C. Code § 27-40-800 and S.C. Code § 27-40-800, S.C. Code § 27-37-130 for a Writ of Ejectment against Appellant Erica Bradley (“Tenant”) or for remand to the magistrate court to enter a writ of ejectment, as well as dismissing the above-captioned appeal.

Introduction

In this eviction action, the magistrate court entered a Writ of Ejectment, which was appealed by Tenant to the circuit court. The circuit court affirmed the magistrate court. The

¹ Although the magistrate court docket properly included “LLC” in the caption, the circuit court indexed Respondent as Ahf Shemwood Crossing.

tenant has now appealed to this Court but has failed to file the bond required to stay execution of the underlying judgment for ejectment. Therefore, this Court should either directly enter a Writ of Ejectment or, alternatively, remand to the magistrate court for the purpose of entering a writ of ejectment.

Procedural History

1. Landlord operates a Section 8 housing project apartment complex in which tenants reside in subsidized housing, wherein tenants' rent is subsidized by the federal government with the amount of subsidy being determined by the amount of the tenant's income.

2. Landlord commenced this eviction action by filing its Application for Ejectment on May 27, 2022 in the magistrate court in Greenville County.

3. The grounds for the eviction action were illegal drug activity on the property.

4. Tenant was served with the Rule to Show Cause and timely requested a hearing.

5. The magistrate court held a bench trial on June 15, 2022.

6. Ultimately, Tenant was evicted due to illegal drug use.

7. At the trial, the magistrate court reviewed a police incident report stating she had "smoked a large amount of methamphetamine" and that she had to be given substantial treatment by paramedics at the scene.

8. Although Tenant claimed that she had actually taken the drugs at her uncle's house before driving home, the magistrate court found the weight of the evidence found she had violated the lease terms prohibiting illegal activity, and the court ordered ejectment.²

² The magistrate court's return is unclear whether the illegal activity was taking drugs on the property or driving through the property while under the influence, but Landlord submits that either activity would be sufficient.

9. Landlord did not request that Tenant post a bond prior to the appeal hearing at the circuit court level because, at that time, Tenant remained a “\$0 renter” meaning that the entirety of her rent was subsidized.

10. However, Tenant’s subsidy was terminated on September 1, 2022.

11. Tenant filed this appeal with this Court prior to October 20, 2022.

12. Tenant has not filed any bond pursuant to S.C. Code § 27-40-800.

ARGUMENT

Rule 241 of the South Carolina Rules of Appellate Procedure establishes that generally, serving a notice of appeal automatically stays the relief ordered in the appealed order. Rule 241(a) SCRAP. Nevertheless, the Rules acknowledge certain exceptions to the general rule found in statutes and elsewhere, including “(10) Ejectment orders as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800.” Because this matter is a residential matter, Section 27-40-800 controls and sets forth the procedure which should be undertaken upon appeal of an eviction action.

Section 27-40-800(f)(1) provides:

Upon appeal to the Supreme Court or to the court of appeals, it is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking.

Therefore, the Tenant is required to sign a new undertaking, as determined by the circuit court, upon an appeal to this Court. However, Tenant has failed and refused to post any bond. Although Landlord did not insist upon a bond when Tenant was a \$0 renter, her subsidy has now

been terminated, and she must be required to pay market value rent as required by the Residential Landlord Tenant Act, Section 27-40-800(f)(1).

WHEREFORE, Landlord requests that this Court either issue a direct Writ of Ejectment or remand to the magistrate court for issuance of a Writ of Ejectment, as well as dismiss this appeal as moot.

Respectfully submitted,

/s/ Harriet Pollitt Wallace

Harriet P. Wallace, SC Bar #69454

M. Kevin McCarrell, S.C. Bar #76255

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Attorneys for Respondent

November 28, 2022

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PROOF OF SERVICE

The undersigned employee of the law offices of Fox Rothschild LLP, attorneys for Respondent, do hereby certify that service of the Petition for Writ of Ejectment or for Remand to Magistrate Court and Dismissal of Appeal was made on Appellant, specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses on November 28, 2022:

Erica Bradley
100 Shemwood Lane Apt 9E
Greenville SC 29605

Erin J. Accetta

Legal Assistant to Harriet Wallace

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SC Court of Appeals



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November 28, 2022

Sent via E-mail (ctappfilings@sccourts.org) & US Mail
The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: *Erica Bradley v. Ahf Shemwood Crossing*
Case No. 2022-CP-23-03187
Appellate Case No. 2022-001472

Dear Ms. Kitchings:

Enclosed for filing is the original and copy of our Petition for Writ of Ejectment or for Remand to Magistrate Court and Dismissal of Appeal regarding the above referenced matters.

Thank you for your assistance in this matter.

Sincerely,

FOX ROTHSCHILD LLP

A handwritten signature in cursive script that reads 'Harriet P. Wallace'.

Harriet P. Wallace

HPW/ela

cc: Erica Bradley, 100 Shemwood Lane Apt 9E, Greenville SC 29605

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