

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

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MAR 20 2023

SC Court of Appeals

Jackie G. Jenkins, Chief Magistrate

Appellate Case No. 2023-000376
Case No. 2022-CP-18-01902

Rebecca Kane,

Appellant,

v.

Triangle Westcott, LLC,

Respondent.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR CIVIL APPEAL

Respondent, Triangle Westcott, LLC, hereby submits this Respondent's Return to Appellant's Petition for Civil Appeal and requests that said Petition be denied.

South Carolina Court of Appeals does not have jurisdiction over this appeal pursuant to the Appellant's failure to appear at the Magistrate Court Bond to Stay Execution on Appeal hearing on December 28, 2022.

Respondent was awarded possession of that certain real property located at 4830 Wescott Boulevard, Apartment 3302, Summerville, South Carolina 29485 (hereinafter "Premises") in Magistrate Civil Case No. 2022-CV-18-010304998 due to nonpayment of monthly rent. Appellant filed a Notice of Civil Appeal on December 9, 2022, in the Court of Common Pleas, Civil Case No. 2022-CP-18-01902, in Dorchester County, alleging that Appellant had not been properly served with the Application of Ejectment.

On March 2, 2023, Chief Magistrate Jackie G. Jenkins signed an Order Dismissing Appeal, and a Form 4 Judgment in a Civil Case was filed on March 6, 2023, due to the Appellant's failure to appear at the Bond to Stay Execution on Appeal hearing held on December 28, 2022. Bond was set at \$1,805.00 per month, due on the first (1st) day of each month beginning January 1, 2023, until the matter could be heard on appeal and decided by the Circuit Court. The Appellant failed to pay the bond set by the court, and the Order Dismissing Appeal was filed, dissolving the stay of execution as to the Premises. On March 6, 2023, the Summerville Magistrate issued a Writ of Ejectment to the Magistrate's Constable against the Appellant to effectuate ejectment.

On March 7, 2023, the Appellant filed a Notice of Civil Appeal, again alleging failure of service of process, and Appellant was granted Appeal in Forma Pauperis. Respondent believes that Appellant's appeal was properly dismissed for failure to appear at the Bond to Stay Execution on Appeal hearing. South Carolina Code Ann. Section 27-40-800(e) asserts that if a tenant fails to make a payment within five (5) days of the due date according to the undertaking and order staying execution, the clerk shall issue a warrant of ejectment to be executed pursuant to Section 27-37-40 of the 1976 Code. S.C. Code Ann. § 27-37-40 states that if the tenant fails to appear and show cause within ten days, the magistrate may issue a warrant of ejectment and tenant shall be ejected by his regular constable or by the sheriff of the county. S.C. Code Ann. § 27-37-130 further states that:

[A]n appeal in ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby. In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate.

Moreover, S.C. Code Ann. § 27-40-800(f)(2) states that the tenant's failure to comply with the terms of the undertaking entitles the landlord to execution of the judgment for possession.

In Edith v. State, the Supreme Court of South Carolina opined that the issuance of a default judgment based on the failure of a party to file a response pleading or to appear is not appealable. 369 S.C. 408, 408. Rule 241 of the South Carolina Appellate Court Rules further provides that "the lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal."

Respondent contends that the Appellant's failure to appear at the Bond to Stay Execution on Appeal hearing in Magistrate Court renders the Order filed on March 6, 2023, not appealable and therefore not in the jurisdiction of this Court.

In light of the foregoing, Respondent objects to Appellant's Petition and requests that the Court's Order filed on March 6, 2023, dismissing the appeal be upheld and the remittitur be sent as provided by Rule 221(b), SCACR.

BROWNLEE WHITLOW & PRAET, PLLC



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Attorney for Respondent

March 17, 2023
Charlotte, North Carolina

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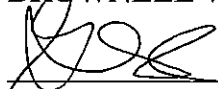
Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Return to Appellant's Petition for Civil Appeal on Rebecca Kane by depositing a copy of it in the United States Mail, Postage Prepaid, on March 17, 2023, addressed to her at :

Rebecca Kane
4830 Westcott Boulevard, Apartment 3302
Summerville, South Carolina 29485

BROWNLEE WHITLOW & PRAET, PLLC



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March 17, 2023

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

VIA FEDERAL EXPRESS

Re: Respondent's Return to Appellant's Petition for Civil Appeal
Rebecca Kane v Triangle Westcott, LLC
Appellate Case No. 2023-000376

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SC Court of Appeals

Dear Ms. Kitchings,

Enclosed, please find one original and six copies of Respondent's Return to Appellant's Petition for Civil Appeal in the above-referenced matter.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

BROWNLEE WHITLOW & PRAET, PLLC



Gentry Collins

GC/
Enclosures as stated above

CC: Rebecca Kane - letter only (via First Class Mail)
Respondents (via email)

Charlotte Location:
1850 E. Third Street, Suite 100
Charlotte, NC 28204

Contact: 704.247.4998
BWPF-Law.com

ORIGIN ID: QWGA (704) 832-6600
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UNITED STATES US

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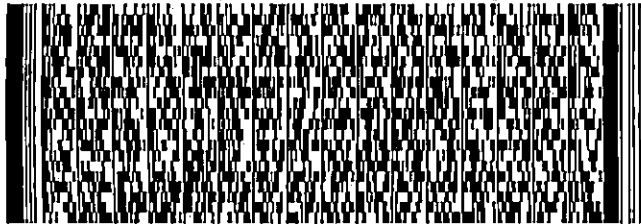
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