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MAY 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas/Magistrate
Craig L. LaCross, Magistrate Judge

Appellate Case No. 2023-000546

Stephanie McAnuff,Appellant,

v.

ASIP Town Park, LLC,Respondent.

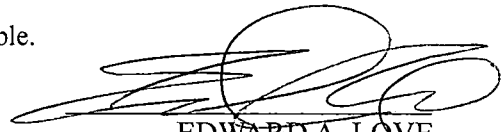
MOTION TO DISMISS

The Respondent, by and through the undersigned, respectfully moves, pursuant to Rule 240 of the South Carolina Appellate Court Rules, this Honorable Court for an order dismissing appeal. The grounds therefor are as follows:

1. The South Carolina Court of Appeals lacks jurisdiction over the matters asserted in the Notice of Appeal.
2. Appellant's Notice of Appeal fails to substantially comply with the requirements of SCACR 203 and therefore, must be dismissed.

WHEREFORE, the Respondent respectfully prays that this Honorable Court grant its Motion to Dismiss and grant any further relief the court deems just and equitable.

May 9, 2023



EDWARD A. LOVE
Post Office Box 1764
135 South Dargan Street, Suite 201
Florence, SC 29503
(843) 407-5525 – Tel
Attorney for Respondent

**MEMORANDUM IN SUPPORT OF RESPONDENT'S
MOTION TO DISMISS**

I. INTRODUCTION

This matter involves an action for eviction/ejectment filed by Respondent with the Magistrate Court of Darlington County. Petitioner, a tenant of Respondent who rents four lots upon which she has placed four mobile homes, has filed this Appeal contesting Darlington County Magistrate Craig L. LaCross's Order of Eviction/Ejectment but under the guise of appealing an Order Dismissing her appeal to the Circuit Court for failure to post the required bond.

II. STATEMENT OF FACTS

Respondent filed four separate actions for eviction/ejectment with the Darlington County Magistrate on December 9, 2022. (See Affidavit of Edward A. Love, counsel for Respondent at ¶ 3.) The matter came before the Magistrate Court for hearing on December 27, 2022. (Id. at ¶ 4.) Subsequently, the Magistrate court, on January 12, 2023, entered an Order and filed same granting the eviction/ejectment. (Id. at ¶ 5.) Appellant then filed four separate Notices of Appeal with the Darlington County Court of Common Pleas. (Id. at ¶ 6.) On February 21, 2023, the Magistrate Court held a hearing, where Appellant was represented by counsel regarding the issue of Appellant's need to post a bond pursuant to S.C. Code Ann. § 27-37-130; the only issue over which the Magistrate Court retained jurisdiction upon the filing of the notices of appeal. (Id. at ¶ 7.) At the bond hearing, Respondent argued that, as a result of Appellant's failure to post the requisite bond within five (5) days of serving the Notices of Appeal, the appeals to the Court of Common Pleas must be dismissed pursuant to S.C. Code Ann. § 27-37-130. (Id. at ¶ 8.) Appellant's then counsel agreed that the court had no choice under the statute. (Id. at ¶ 9.) The Order Dismissing the Appeals was filed March 6, 2023. (Id. at ¶ 10.) Appellant failed to timely appeal the March 6,

2023 Order to the Circuit Court for Darlington County. (Id. at ¶ 11.) Instead, Appellant then filed a Notice of Appeal with this Court on April 4, 2023.

III. ARGUMENT AND CITATION OF AUTHORITY

A. The South Carolina Court of Appeals lacks appellate jurisdiction over the matters asserted in the Notice of Appeal.

The S.C. Court of Appeals lacks appellate jurisdiction over this matter as there is no appealable order from a “lower court” as that term is defined by Rule 202, SCACR. Furthermore, even if the Court of Appeals were to decline dismissal based on procedural arguments; substantively, the issues raised by Appellant in her Notice of Appeal are not properly before this Court.

1. There is no order from the circuit court, family court, or probate court triggering appellate jurisdiction.

Rule 18 of the South Carolina Rules of Magistrates Court provides that “all appeals of judgments rendered by the magistrate’s court shall be to the circuit court of the county where the judgment was rendered.” SCACR 201 provides “appeal may be taken, as provided by law, from any final judgment, appealable order or decision.” SCACR 202, in conjunction with 203, does not contemplate the ability to appeal to this Court an Order issued by a magistrate judge but filed in the circuit court. As such, the Court of Appeals lacks appellate jurisdiction over such order and/or appeal.

The sole Order in this matter filed with the Court of Common Pleas is the Order Dismissing Appellant’s appeals which was signed by the Honorable Craig L. LaCross, Judge of the Darlington County Magistrate Court. Judge LaCross was authorized to enter the Order dismissing the appeals

pursuant to S.C. Code Ann. § 27-37-130. Any redress Appellant may have from said Order does not lie with the Court of Appeals and therefore, this matter must be dismissed.

2. Even if this Court finds the magistrate's Order of Dismissal appealable to the Court of Appeals, the issues raised in Appellant's Notice of Appeal were not adjudicated by the Order of Dismissal; but rather, a prior order of the magistrate court.

The purpose of a Notice of Appeal is to provide notice to all parties involved in a matter that Appellant wishes to challenge specific issues raised and ruled upon by a lower court. Here, reviewing Appellant's Notice of Appeal (and supporting documentation) proves difficult in determining the purpose and intent behind the appeal.

What does seem apparent is that Appellant fails to address/raise any issue regarding the Order of Dismissal or the grounds supporting the Order of Dismissal. Rather, the Appellant raises issues that were determined (or not) by the Magistrate's Order dated January 12, 2023, which are not properly before the Court of Appeals. As such, Appellant's Appeal to this Court must be dismissed.

- B. Appellant's Notice of Appeal fails to substantially comply with the requirements of SCACR 203 and therefore, must be dismissed.**

Appellant's Notice of Appeal (using Form SCCA-720) fails to comply with Rule 203, in that same:

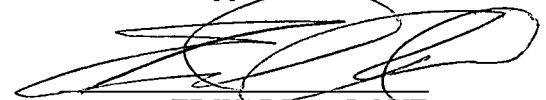
- a) fails to name the court, judge and county from which the appeal is taken;
- b) fails to include the docket number for the lower court;
- c) fails to include the date of the order or judgment from which the appeal is taken nor the date same was received by Appellant;

- d) fails to include the names, mailing address and phone number for the Respondent's attorney of record; and
- e) fails to raise grounds for appeal from the March 6, 2023 Order; but rather, the Notice of Appeal appears to be based on substantive grounds relating to the Magistrate's January 12, 2023 Order; which would be untimely.

Furthermore, the Appellant filed with the Court a Certificate of Service indicating personal service without perfecting same and without indicating upon whom the personal service was obtained. Lastly, the Appellant filed with this Court an unnotarized Affidavit of Service using an arbitration form indicating service by mail to a) a property manager which is not the Respondent and b) counsel for Respondent, which was never received. In fact, at no point has counsel for Respondent nor the Respondent been properly served with notice of the pending appeal despite the Appellant's "Certificate of Service" and/or "Affidavit of Service." (Aff. Of Edward A. Love at ¶ 12.) Lastly, Appellant has never posted a bond, yet continues to occupy the lots at issue some almost four (4) months after having been Ordered to vacate. (Id. at ¶ 11.)

IV. CONCLUSION

This appeal must be dismissed as the Court of Appeals lacks jurisdiction over both the March 6, 2023 order and January 12, 2023 order of Magistrate LaCross. Furthermore, though Appellant appears to be proceeding *pro se*, her appeal remains ripe for dismissal due to a failure to adhere to procedural rules of this court regarding the filing and service of her appeal documents.



EDWARD A. LOVE
I.D. No.: 75118
Post Office Box 1764
135 South Dargan Street, Suite 201
Florence, SC 29503
(843) 407-5525 – Tel
Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)

AFFIDAVIT OF EDWARD A. LOVE

Personally appeared before me, Edward A. Love, who first being duly sworn, deposes and says as follows:

1. I am over the age of eighteen years, and am personally familiar with the facts stated herein.

2. I am a Partner with the law firm of King, Love, Hupfer & Nance, LLC in Florence, South Carolina. I have been licensed to practice law in the state of South Carolina since 2006, and am a member in good standing with the South Carolina Bar association. I am licensed to practice law not only before the state courts of South Carolina and Georgia, but also before the Federal District Courts of South Carolina and Georgia as well as the Fourth and Eleventh Circuit Court of Appeals. I am an active member of numerous professional organizations, including both the South Carolina Bar Association and the Florence County Bar Association.

3. In this matter, Respondent filed four separate actions for eviction/ejectment with the Darlington County Magistrate on December 9, 2022.

4. The matter came before the Magistrate Court for hearing on December 27, 2022.

5. The Magistrate court, on January 12, 2023, entered an Order and filed same granting the eviction/ejectment. (See Exhibit A.)

6. Appellant then filed four separate Notices of Appeal with the Darlington County Court of Common Pleas.

7. On February 21, 2023, the Magistrate Court held a hearing, where Appellant was represented by counsel regarding the issue of Appellant's need to post a bond pursuant to S.C. Code Ann. § 27-37-130; the only issue over which the Magistrate Court retained jurisdiction upon the filing of the notices of appeal.

8. At the bond hearing, Respondent argued that, because of Appellant's failure to post the requisite bond within five (5) days of serving the Notices of Appeal, the appeals to the Darlington County Circuit Court must be dismissed pursuant to S.C. Code Ann. § 27-37-130.

9. Appellant's then counsel agreed that the court had no choice under the statute.

10. The Order Dismissing the Appeals was filed March 6, 2023. (See Exhibit B.)

11. Appellant did not appeal the March 6, 2023 Order to the Circuit Court for Darlington County.

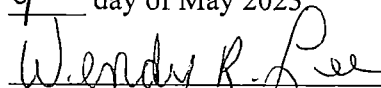
12. Counsel for Respondent nor the Respondent itself have ever been properly served with notice of the pending appeal despite the Appellant's "Certificate of Service" and/or "Affidavit of Service."

13. Appellant has never posted a bond, yet continues to occupy the lots at issue some almost four (4) months after having been Ordered to vacate.

FURTHER YOUR AFFIANT SAITH NOT.


EDWARD A. LOVE

SWORN to before me this
9th day of May 2023


Notary Public for South Carolina
My Commission Expires: 10/25/2028

and to provide lease agreements, names, and contact information for all occupants of the homes on the lots 4, 10, 11, and 26 of Town Park Mobile Home Park. On this same date, Plaintiff advised Defendant that rent due for the four lots above referenced would be raised to \$600.00 from \$300.00.

Defendant would not execute the requested lease agreements, nor would Defendant provide the contact information for the occupants of the above referenced lots. Accordingly, because Defendant would not execute a lease agreement, Plaintiff notified Defendant on August 29, 2022 that the lot rent would be month-to-month beginning October 1, 2022. I find that in accordance with these facts, a landlord-tenant relationship existed between Plaintiff and Defendant. I further find that Plaintiff properly notified Defendant that the tenancy had transitioned to an automatically renewable periodic term (month-to-month).

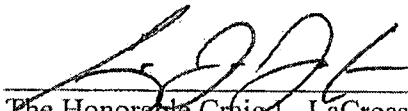
When Defendant failed to comply with these requests and failed to pay the new rent amount, Plaintiff notified Defendant on October 20, 2022 via certified mail that she was to immediately vacate the above lots. Defendant admitted to receiving this correspondence. Furthermore, despite this notification, Defendant did not follow the instructions to vacate these premises. This too was admitted by Defendant.

Due to Defendant's refusal to vacate, Plaintiff subsequently filed the above referenced four Rules to Vacate or Show Cause regarding the subject lots on December 9, 2022.

IT IS THEREFORE ORDERED THAT:

In accordance with the testimony described above, Plaintiff's Rule to Vacate is **GRANTED**. Defendant has 45 days to vacate the premises. If Defendant has failed to vacate the premises 21 days after 45th day, Plaintiff may again petition this Court for sale of the mobile homes located on lots 4, 10, 11, and 26 of the Town Park Mobile Home Park.

Certified True Copy 708
1-12-2023
Darlington Magistrate's Office


The Honorable Craig L. LaCross
Judge of the Magistrate's Court
Darlington County

Jan 12th, 2022

Darlington, South Carolina

Certified True Copy 708
Darlington Magistrate's Office 1-12-2023

DARLINGTON MAGISTRATE
2023 JAN 12 A 9:52

FILED

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Stephanie McAnuff,)
)
 Plaintiff,)
)
 vs.)
)
 Asip Town Park, LLC,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2023-CP-16-00070
 CASE NO.: 2023-CP-16-00071
 CASE NO.: 2023-CP-16-00072
 CASE NO.: 2023-CP-16-00073

ORDER DISMISSING APPEALS

FILED
 2023 MAR -3 P 3
 DARLINGTON MAGISTRATE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 ASIP Town Park, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Stephanie McAnuff and all others,)
)
 Defendant.)

IN THE MAGISTRATE'S COURT

Civil Case No.: 2022CV1610401203
 Civil Case No.: 2022CV1610401204
 Civil Case No.: 2022CV1610401205
 Civil Case No.: 2022CV1610401206

ORDER DISMISSING APPEALS

DATE OF HEARING:
 PRESIDING JUDGE:
 PLAINTIFF'S ATTORNEY:
 DEFENDANT'S ATTORNEY:

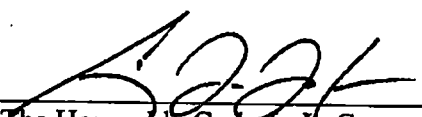
February 21, 2023
 The Honorable Craig L. LaCross
 Edward A. Love
 Parker E. Howle

This matter came before the Court on the above-referenced date for a hearing. On January 27, 2023, Plaintiff filed Notices of Appeal from this Court to the Darlington County Circuit Court contesting this Court's ruling in favor of ASIP Town Park, LLC and granting its requested relief

Certified True Copy 708
 3-2-2023
 Darlington Magistrate's Office

of eviction/ejectment. Upon filing the Notices of Appeal, this Court is without jurisdiction over the matters except for determining whether a bond has been sought and/or established pursuant to S.C. Code Ann. § 27-37-130. Upon hearing the matter, the Court became aware that Ms. McAnuff failed to post bond within five (5) days of service of the Notices of Appeal.

THEREFORE, this Court must **DISMISS** Ms. McAnuff's appeals pursuant to S.C. Code Ann § 27-37-130. The Clerk of Court for Darlington County Circuit Court is instructed to dismiss the above matters thus ending the matters in their entirety with reference to the eviction/ejectment action.


The Honorable Craig L. LaCross
Judge of the Magistrate's Court
Darlington County

3/21, 2023

Darlington, South Carolina

FILED
2023 MAR -3 P 3:18
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3-2-2023
DARLINGTON MAGISTRATE
Darlington Magistrate's Office

Certified True Copy

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Stephanie McAnuff,)

Plaintiff,)

vs.)

Asip Town Park, LLC,)

Defendant.)

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

ASIP Town Park, LLC,)

Plaintiff,)

vs.)

Stephanie McAnuff and all others,)

Defendant.)

IN THE COURT OF COMMON PLEAS

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CASE NO.: 2023-CP-16-00071

CASE NO.: 2023-CP-16-00072

CASE NO.: 2023-CP-16-00073

ORDER DISMISSING APPEALS

DARLINGTON MAGISTRATE

2023 MAR -3 P 3

FILED

IN THE MAGISTRATE COURT

Civil Case No.: 2022CV1610401203

Civil Case No.: 2022CV1610401204

Civil Case No.: 2022CV1610401205

Civil Case No.: 2022CV1610401206

ORDER DISMISSING APPEALS

DATE OF HEARING:

February 21, 2023

PRESIDING JUDGE:

The Honorable Craig L. LaCross

PLAINTIFF'S ATTORNEY:

Edward A. Love

DEFENDANT'S ATTORNEY:

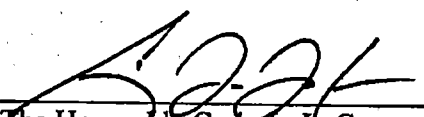
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The Honorable Craig L. LaCross
Judge of the Magistrate's Court
Darlington County

3/21, 2023

Darlington, South Carolina

DARLINGTON MAGISTRATE

2023 MAR - 3 P 3:18

FILED

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Darlington Magistrate's Office 3-2-2023

STATE OF SOUTH CAROLINA)
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COUNTY OF DARLINGTON)
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Plaintiff,)
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vs.)
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Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
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CASE NO.: 2023-CP-16-00071
CASE NO.: 2023-CP-16-00072
CASE NO.: 2023-CP-16-00073

ORDER DISMISSING APPEALS

FILED
2023 MAR -3 P 3:30
DARLINGTON MAGISTRATE

STATE OF SOUTH CAROLINA)
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COUNTY OF DARLINGTON)
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ASIP Town Park, LLC,)
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Plaintiff,)
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Defendant.)
_____)

IN THE MAGISTRATE COURT

Civil Case No.: 2022CV1610401203
Civil Case No.: 2022CV1610401204
Civil Case No.: 2022CV1610401205
Civil Case No.: 2022CV1610401206

ORDER DISMISSING APPEALS

DATE OF HEARING:
PRESIDING JUDGE:
PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:

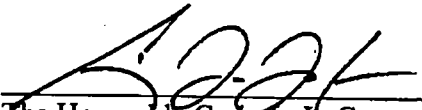
February 21, 2023
The Honorable Craig L. LaCross
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The Honorable Craig L. LaCross
Judge of the Magistrate's Court
Darlington County

3/21, 2023

Darlington, South Carolina

DARLINGTON MAGISTRATE

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Certified True Copy

Darlington Magistrate's Office 3-2-2023

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The Honorable Craig L. LaCross
Judge of the Magistrate's Court
Darlington County

3/21, 2023

Darlington, South Carolina

Certified True Copy

Darlington Magistrate's Office

DARLINGTON MAGISTRATE

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3-2-2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAY 11 2023

SC Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas/Magistrate
Craig L. LaCross, Magistrate Judge

Appellate Case No. 2023-000546

Stephanie McAnuff,Appellant,

v.

ASIP Town Park, LLC,Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on May 9, 2023, Respondent's Motion to Dismiss, Memorandum in Support and supporting documentation were served on Appellant by mailing a copy of same by United States Mail, postage prepaid, to the following address:

STEPHANIE MCANUFF
PO BOX 691228
MINT HILL, NC 28227

May 9, 2023



EDWARD A. LOVE
Post Office Box 1764
135 South Dargan Street, Suite 201
Florence, SC 29503
(843) 407-5525 – Tel
Attorney for Respondent

KING & LOVE

ATTORNEYS AT LAW

Robert T. King †**
Edward A. Love **
Charles J. Hupfer, Jr.
Ashley B. Nance
R. Edward Henderson, Jr.

Tel: 843-407-5525
Fax: 843-407-5782

King, Love, Hupfer & Nance, LLC
135 South Dargan Street, Suite 201, Florence, SC 29506
PO Box 1764, Florence, SC 29503-1764

† CERTIFIED MEDIATOR
* ALSO ADMITTED IN NC
** ALSO ADMITTED IN GA

www.kingandlove.com

May 9, 2023

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
120 Senate Street
Columbia, SC 29201

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MAY 11 2023

SC Court of Appeals

Re: Stephanie McAnuff v. ASIP Town Park, LLC
Appellate Case No.: 2023-000546
Our File No.: 50102.04844

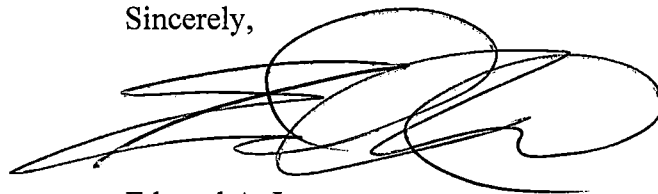
Dear Ms. Kitchings:

Please find enclosed the original and six copies of Respondent's Motion to Dismiss Appeal in regard to the above-referenced matter. Please file the original in your office and return a stamped copy to me in the enclosed envelope. We have also enclosed our firm's check in the amount of \$50 which represents the filing fee.

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

Thank you. I am

Sincerely,



Edward A. Love
ELove@kingandlove.com

EAL/wl
Enclosures
cc: Ms. Stephanie McAnuff

NET WEIGHT \$9.95
US POSTAGE
PREPAID
LOW PRICED
FIRST CLASS PERM
MAY 11 2023



**KING &
LOVE &**
ATTORNEYS AT LAW King, Love, Hupfer & Nance, LLC
PO Box 1764
Florence, SC 29503

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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120 Senate Street
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