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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2022-000513

Kevin Penland,

Appellant,

v.

Key Largo Mobile Home Park,

Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. The lower court did not err in affirming the magistrate's Order for Eviction, as supporting evidence was provided to justify Appellant's eviction.

2. The lower court did not fail to follow the Manufactured Home Park Tenant Act, as it does not apply to Appellant's tenancy.

STATEMENT OF THE CASE

This Appeal originates from a magistrate action, in which the Respondent sought to evict Appellant Penland (hereinafter, "Appellant") from its property upon the termination of a month-to-month lot lease. After back and forth between the Parties, including two court appearances before Judge Guiles, Respondent filed a Motion for Writ of Ejectment, which was ultimately granted. Appellant then appealed to the Georgetown County Court of Common Pleas, which affirmed the Order for Eviction. This appeal followed.

STANDARD OF REVIEW

In an ejectment proceeding first heard by the magistrate and affirmed by the circuit court, the Court of Appeals is "without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence." Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984). However, the Court of Appeals does retain "de novo review of whether the facts show the circuit court's affirmance was controlled or affected by errors of law." Bowers v. Thomas, 373 S.C. 240, 245, 644 S.E.2d 751, 753 (Ct. App. 2007). Without an error of law, the Court of Appeals will affirm the decision rendered by the circuit court so long as there are facts to support the decision. Hadfield v. Gilchrist, 343 S.C. 88, 94, 538 S.E.2d 268, 271 (Ct. App. 2000).

Further, the South Carolina Supreme Court has previously held that where "testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the circuit court, this court will assume the circuit court affirmed the judgment on the merits, in the absence

of facts showing the affirmance was controlled or affected by errors of law." Stanford v. Cudd, 93 S.C. 367, 370, 76 S.E. 986, 987 (1913).

FACTS

Background Information

On approximately April 1, 2021, the Appellant, Kevin Penland, and his spouse, Tayler Keefer, entered into a rental agreement (hereinafter, the "Agreement") for a lot in the Key Largo Mobile Home Park. R. pp. 23 –28. The agreement was for a month-to-month lot tenancy, beginning April 1, 2021, with a provision that either the Landlord or Tenant could terminate at the end of any month by giving the other party thirty (30) days' notice. Id. The Agreement also expressly provided that the Landlord could terminate upon the happening of any of the following events: (1) violation of any rule or regulation of Key Largo Mobile Home Park as amended from time to time; (2) failure to pay rent when due; or (3) violation of any terms or conditions of this rental agreement. Id. A copy of the Rules and Regulations for the Key Largo Mobile Home Park were attached to the Agreement and signed by Appellant and his spouse. R. pp. 25–28.

On August 20, 2021, Respondent sent Appellant a letter via Certified Mail exercising its right to terminate the rental agreement and providing the requisite thirty (30) days' notice for Appellant to vacate the premises. R. pp. 30–31. The letter stated Appellant had until September 20, 2021, to vacate the premises. Though this date came and went, Appellant did not vacate the premises, and in fact, has not vacated to this day.[1]

On November 21, 2021, Respondent, through its counsel, filed an Application for Ejectment citing (1) Appellant's failure to pay rent and (2) the expiration of the term of the lease per Respondent's previous thirty (30) day letter. R. pp. 19–21. No responsive pleadings were ever

[1] As a note for transparency's sake, Appellant filed a Petition for Supersedeas to stay his ejectment during the pendency of his appeal to the circuit court, which was granted by Order of this Court on May 6, 2022.

filed by Appellant. *See generally* R. pp. 16–54. At some unknown point between Respondent's filing of the action in magistrate court and the Writ of Ejectment being issued, Appellant requested a jury trial.[2]

Scheduled Jury Trial and Settlement

A jury trial was subsequently scheduled for February 18, 2022, though the Parties advised Judge Guiles at the call of the case that the matter had been resolved. R. p. 57, 00:00.0–00:44.6. The terms of said resolution are outlined as follows:

1. Appellant would vacate the property the following day, February 19, 2022;
2. Respondent would do a walk-through of the mobile home at 9:00 a.m. with the sales agent to determine the amount of any repairs that needed to be done, in order to list the property;
3. As long as the value of repairs was less than $500.00, Respondent would deliver to Appellant a check in the amount of $44,500.00;[3] and
4. Appellant would give up any interest and/or claim he might have in the Respondent property.

See generally R. p. 57–58, 01:03.9–02:47.4. When the walk-through was done the following morning, at the agreed upon time, the Parties' agent found several areas of the home in disrepair, tile work that was not done, tools laying around, cabinets missing, paint not done. R. p. 65 at 02:24.7. It was estimated that there were "several thousands of dollars [sic] worth of work still left to be done." R. p. 65 at 03:07.7.

Due in part to this failure to adhere to the agreed upon terms, the court was notified, and on February 28, 2022, the parties reconvened before Judge Guiles. Judge Guiles introduced this matter as "a rule to vacate and show case," and wanted to know what went wrong. Id. at 00:05.3.

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[2] From the Magistrate's Return, it does not appear this request was made in writing, as no such document is included. *See generally* R. pp. 16–54. However, it is clear from the Transcript of February 18, 2022 that the Parties were gathered for a jury trial. *See generally* R. p. 57.

[3] Respondent would note that there is nothing in the record that suggests Appellant owned this mobile home. Moreover, it was said on the record that "[t]he money came out of the goodwill of this grandmom." *See* R. p. 70 at 0:12:15.2. In fact, the title holder of said mobile home is (and was) Charlene Ware, Appellant's grandmother, and Respondent's proprietor.

Respondent's counsel went through numerous items (mentioned just above) that were still at issue in the mobile home, whether due to damage, disrepair, or still under construction within the home. Id. at 02:24.7–03:07.7. On top of that, Appellant had not vacated in the time agreed to. Id. Appellant was given a chance to respond, and by his own accord admitted to the court he had neither vacated the property nor finished the repair work on the home. R. p. 66 at 04:24.0–05:17.1. He then represented to the court that any such repair work had been completed and he could be out that day for the Parties' agent to do a walk-through. R. p. 67 at 06:52.3. He cited several photographs he had taken of what he claimed to be the completed work. Id. at 06:52.3–07:02.8. Judge Guiles again gave Appellant the opportunity to vacate the property and have the agent do a walk-through. R. p. 73 at 16:14.0. He also told the parties that "[w]e've gotta move forward with an eviction if this is not, uh, settled by the both of you..." R. p. 72 at 14:32.2.

On March 1, 2022, Respondent notified the court the property still had not been repaired and Appellant was refusing to leave the property. R. p. 54. Respondent filed a Motion for Writ of Ejectment, accompanied by an Affidavit from the agent, which stated that "the plumbing in the shower has not been connected and the shower head was held up by a nail. It appears to me that the photographs that I had been sent which were shown to the Court were staged." R. pp. 39–42.[4] The Motion for Writ of Ejectment was granted by Judge Guiles on March 1, 2022. R. p. 53.

Summary of Relevant Information

It is important to note here that the facts regarding the Parties' agreement are provided here for clarity and this Court's understanding as to how this case ultimately got before the Court, but at the end of the day, this is an eviction action. This case can be boiled down to a few straightforward facts, which can be summed up as previously stated by Respondent's counsel:

[4] These photographs were incorporated and made part of the Affidavit of Dawn Holland.

"This isn't a civil case about ownership interest in a mobile home ... this is an eviction off of a lot. And a defendant was given a specific time to vacate and he failed to do so." R. p. 65 at 01:13.4. Appellant acknowledged he had a lease agreement for a lot with Respondent. R. p. 54. Respondent provided 30-days' notice of its desire to terminate the month-to-month lot lease, per the terms of the Agreement. R. pp. 30–31. Appellant failed to vacate the property at the expiration of this time period. R. p. 54. Appellant then made unsubstantiated claims, which were not properly before the magistrate court, as no responsive pleadings arguing any sort of counterclaims or crossclaims were filed, and the amount in controversy exceeded the jurisdiction of the magistrate's court. Id. Finally, Appellant was more than five (5) days behind in rent when Respondent filed its Motion and Judge Guiles ultimately granted it. Id.

Appellant appealed and the circuit court affirmed the magistrate's Order for Eviction via a Form 4 Order after a brief hearing on the matter. R. pp. 13–15. Appellant then timely appealed to this Court. R. p. 8.

ARGUMENTS

I. THIS COURT SHOULD AFFIRM THE RULING OF THE LOWER COURT, AS THE ISSUES RAISED BY APPELLANT ARE UNPRESERVED FOR APPEAL.

It is an axiomatic rule of law that issues may not be raised for the first time on appeal. Talley v. S.C. Higher Educ. Tuition Grants Comm., 289 S.C. 483, 487, 347 S.E.2d 99, 101 (1986) (citing American Hardware Supply Co., Inc. v. Whitmire, 278 S.C. 607, 300 S.E.2d 289 (1983). At a very minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011). This Court has held that where "a trial court makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule

on the issue in order to preserve it for appeal." Cowburn v. Leventis, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005). "[T]he circuit court has the authority to hear motions to alter or amend when it sits in an appellate capacity and such motions are required to preserve it for appeal." Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22 n. 11, 698 S.E.2d 612, 623 n. 11 (2010). Further, in Cullen v. McNeal, this Court ruled that where the circuit court did not rule on the argument raised, and no Rule 59(e), SCRCP, motion was filed, the arguments were not preserved for appellate review. 390 S.C. 473, 490, 702 S.E.2d 378, 390 (Ct. App. 2010). Likewise, where "the circuit court's Form 4 did not address any of these arguments and Appellants failed to file a Rule 59(e), SCRCP, motion and request a ruling on these issues," the arguments were unpreserved for appeal. Hayes v. Stroud, 2022 WL 1102139.[5]

Here, the Order being appealed is the Form 4 issued by Judge Culbertson on April 22, 2022, which states that the "Magistrate's Order for Eviction is affirmed." R. pp. 8–9. This is specifically evidenced by Appellant's Notice of Appeal, in which he states, "Kevin Penland appeals the order on form four affirmed of [sic] disposition of magistrate order for eviction." Id. Further, in reviewing the case history and filings under the circuit court appeal,[6] it becomes apparent that no Rule 59(e) motion was filed after the issuance of the Form 4. As Judge Culbertson issued his ruling by way of a Form 4 Order in this matter, and no Motions to Reconsider were filed, the issues presented by Appellant were not properly raised and ruled upon, and thus have not been preserved for appeal. On this basis, this Court should affirm the Order of Eviction.

II. THE CIRCUIT COURT DID NOT ERR IN ITS DECISION TO AFFIRM THE RULING OF THE MAGISTRATE COURT, AS THERE WAS EVIDENCE TO SUPPORT APPELLANT'S EVICTION.

As previously stated, in an ejectment proceeding first heard by the magistrate and affirmed

[5] As a note, though this is an opinion from this Court, it is an unpublished opinion.
[6] This case history can be found under Georgetown County Case No. 2022-CP-22-00176.

by the circuit court, the Court of Appeals is "without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence." Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp, 280 S.C. at 233, 312 S.E.2d at 21.

Further, under S.C. Code Ann. § 27-37-10(A), "[t]he tenant may be ejected upon application of the landlord or his agent when (1) the tenant fails or refuses to pay the rent when due or when demanded, (2) *the term of tenancy or occupancy has ended*, or (3) the terms or conditions of the lease have been violated" (emphasis added).

Here, the rental agreement between the Parties provided under Paragraph 7 that:

> Either the Landlord or the tenant may terminate this rental at the end of any month, by giving the other notice of such intent, which notice must be given thirty (30) days prior to the date of termination. Neither the mobile home nor the personal property of the tenant shall be moved from the premises until all unpaid rent and damages due by the tenant to the Landlord have been paid in full.

R. p. 24. Utilizing this provision, Respondent provided notice on August 20, 2021 via certified letter that the lease would be terminated, effective September 20, 2021, and that Appellant and his spouse should vacate the premises by this date. R. pp. 30–31. However, Appellant did not vacate the premises and Respondent was forced to file an Application for Ejectment in the matter on November 21, 2021. R. pp. 19–31. When settlement efforts between the Parties failed, Respondent then petitioned the magistrate court for a Writ of Ejectment, on the grounds that the term of occupancy had ended, and Appellant should have vacated the property in September. R. pp. 37–38. This alone is evidence to support an eviction and the magistrate was proper in granting Respondent's Writ.

III. THE LOWER COURT DID NOT ERR WHEN IT DID NOT APPLY THE MANUFACTURED HOME PARK TENANCY ACT

A. This issue was not raised and ruled upon by the lower court and is unpreserved for appeal.

This issue appears to have been raised for the first time on appeal to this Court, and as such was not raised to the lower court, and is thus unpreserved for appeal.

"On appeal, a corollary rule limits the appealing party to the same theory or argument presented to the trial court." 15 S.C. Jur. Appeal and Error § 71. A matter may not be presented for the first time on appeal; rather, it must have been both raised to and ruled upon by the court below. Pikaart v. A&A Taxi, Inc., 393 S.C. 312, 713 S.E.2d 267 (2011).

Respondent can find no mention of the Manufactured Home Park Tenancy Act ("MHPTA") prior to Appellant's Initial Brief. This was clearly not cited as a basis in Judge Culbertson's Form 4 Order when the Order of Eviction was affirmed. R. pp. 13–15. Further, in analyzing the Motion for Writ of Ejectment and the Writ of Ejectment issued by Judge Guiles, neither makes any mention of the MHPTA. R. pp. 37–46; R. p. 12. Similarly, in reviewing Appellant's Notice of Appeal and Amended Notice of Appeal, neither raise this argument. *See* R. pp. 1–9. And, finally, Appellant did not raise this issue during the hearing before Judge Culbertson. *See generally* R. pp. 79–96. No indication is found anywhere in the hearing transcript that Judge Culbertson's Order was based on the MHPTA. R. p. 95, lines 12–15; R. p. 95, line 25–R. p. 96, line 5.

It would appear that Appellant has raised this issue for the first time during the pendency of this appeal. In presenting this issue to the Court, Appellant has introduced a different argument than that which was presented to the circuit court on appeal, and as such, has submitted an issue which was neither raised or ruled upon by the trial court. Respondent respectfully requests that

this Court find this issue is unpreserved for appeal.

B. In the alternative, the Manufactured Home Park Tenancy Act does not apply here, as Appellant's tenancy does not fall within its scope.

If this Court disagrees with the reasoning presented above, Respondent puts forth that the Manufactured Home Park Tenancy Act does not apply to the situation at hand.

Under S.C. Code Ann. § 27-47-120, the Manufactured Home Park Tenancy Act describes the tenancies that are not governed by this chapter of laws. Per this Section, there are three tenancies which do not fall within the scope of the MHPTA, though we are only concerned with the first: (1) where both a manufactured home and a manufactured home lot are rented or leased by the resident. S.C. Code Ann. § 27-47-120(1).

In the present case, it is well established that Appellant was renting or leasing a manufactured home lot from Respondent. R. pp. 23–24. Further, this lot lease was the only right that Appellant had associated with the property—the lot lease did not pass or possess any right associated with the mobile home. Id. There is no evidence in the record that Appellant has any ownership interest in the manufactured home itself. In fact, this is a repeated throughout the court transcripts:

R. p. 67 at 0:07:29.4

(Attorney Boan): *Grandmother's sitting over here in the corner*
(Judge Guiles): *Okay.*
(Attorney Boan): *She's the title holder to the mobile home...*

R. p. 68 at 0:07:41.3

(Attorney Boan): *This is dirt we're talking about and his right to be associated with that dirt. He does not hold the title to the mobile home; he does not own the mobile home.*

R. p. 85, line 18

(Attorney Boan): *My client, behind me, who owns the mobile home park...*

R p. 90, lines 16-21

(Attorney Boan): *This is an eviction that is solely based on a lot. The title to the mobile home is not in the defendant's name, there is no mortgage on the mobile home in the defendant's name or the appellant's name. He has no rights whatsoever to the mobile home.*

No evidence was presented showing that Appellant held title to the mobile home, nor was anything along those lines plead in responsive pleadings, either in the magistrate action or in the circuit court appeal. In fact, by prior-counsel for Appellant's own admission, "Mr. Penland is agreeing to buy this home," not that he owned the home. R. p. 84, lines 21–22. Based upon the foregoing, as neither the lot nor the mobile home were owned by Appellant, the MHPTA does not apply and the lower court judge was correct to not apply same.

CONCLUSION

Respondent was well within its right to evict Appellant from its property, as the tenancy term was over, but Appellant failed to vacate the premises in a timely manner. For the reasons articulated above, Respondent respectfully requests that this Court affirm the judgment of the lower court and uphold the eviction.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

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

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