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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000133

Donald Eaton, Kristy Drees, and Logan Drees……..Plaintiffs,

v.

DBC Anderson Cove LP……Respondent,

Of Whom Donald Eaton is the Appellant.

INITIAL BRIEF OF RESPONDENT

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June 16, 2023

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

This appeal arises out of an eviction proceeding for a written lease that expired in 2020. On May 23, 2022, Respondent (landlord) filed an Application for Ejectment against Kristy Drees, Logan Drees, and Donald Eaton (collectively, the "Tenants") which initiated Summary Court proceedings styled *DBC Anderson Cove LP v. Kristy Drees, Logan Drees, and Donald Eaton*, 2022-CV-04-10101574. The basis for Respondent's eviction claim was that the "term of tenancy or occupancy has ended[.]" (Magistrate's Return, filed Dec. 7, 2022, 2022-CP-04-02285, p. 13).

On June 3, 2022, Tenants filed an Answer to the Complaint that included counterclaims. (*Id.*, p. 16–26). Tenants subsequently amended their pleading to assert three counterclaims: (1) Civil Conspiracy; (2) Breach of Contract; and (3) Fraud. (*Id.*, p. 27–31). Tenants also filed a motion to dismiss Respondent's eviction claim and a motion for summary judgment. (*Id.*, p. 49–74). In response, Respondent filed a motion for judgment on the pleadings as to the counterclaims and a motion for summary judgment with respect to the eviction claim. (*Id.*, p. 75–90).

On September 29, 2022, a hearing was held before the Honorable Carey B. Murphy to consider the parties' dispositive motions. As a result of that hearing, Judge Murphy issued an order which denied the Tenants' motions, granted the Respondent's motions, and entered judgment as a matter of law in favor of Respondent with respect to all claims. (*Id.*, p. 5–7).

On November 4, 2022, Tenants appealed Judge Murphy's ruling to the Circuit Court. *See generally Donald Eaton, et. al. v. DBC Anderson Cove LP*, 2022-CP-04-02885. In their Circuit Court appeal filing, Tenants contended that Judge Murphy committed an error "in finding that there was not consideration to constitute a contract that included terms for tenancy and a covenant not to sue." (Appeal / Notice of Civil Appeal, filed Nov. 4, 2022, 2022-CP-04-02285, p. 2).

On January 18, 2023, a hearing to consider Tenants' appeal was held before the Honorable R. Lawton McIntosh. As stated in the transcript from said hearing, Tenants argued that Judge Murphy's ruling was incorrect "as far as what constitutes consideration, as well as a failure to consider all evidence in light of the non-moving party[.]" (Jan. 18, 2023 Tr. p. 4, lines 13–18).

Tenants claim that a verbal discussion occurred in March 2022 between Tenants and a property manager of Respondent wherein Tenants agreed to "make reasonable efforts to secure a grant from a charitable organization" to pay rent in exchange for Respondent's agreement to refrain from filing an eviction and to "establish a new written lease." (Tr. p. 8, lines 1–2, 12–13). According to Tenants, this verbal commitment to make reasonable efforts to ask charitable organizations for rental assistance constituted sufficient consideration to bind Respondent to a "covenant not to sue" for an eviction. (Tr. p. 8, line 20).

Respondent contends that, even if Tenants' allegations were true, the Tenants "made a promise to try to pay rent when they were already obligated to pay rent" at the time of the verbal agreement. (Tr. p. 7, lines 9–10). Per Respondent, since Tenants had an existing obligation to pay rent, the Tenants' promise to find new ways to pay their rent was insufficient consideration to bind Respondent to purported "covenant not to sue" for an eviction. (Tr. p. 8, line 20). Respondent contends that there was no consideration as a matter of law, "there is no basis for a breach of contract claim, no detrimental reliance in support of a fraud claim," and the Tenants had already withdrawn their civil conspiracy claim at the hearing with Judge Murphy. (Tr. p. 7, lines 13–17).

On January 23, 2023, Judge McIntosh issued a Form 4 order that affirmed Judge Murphy's order with respect to the parties' dispositive motions in the Summary Court proceedings.

On January 27, 2023, Donald Eaton filed a Notice of Appeal to challenge Judge McIntosh's ruling. Kristy Drees and Logan Drees have not filed appeals to challenge Judge McIntosh's order.

STANDARD OF REVIEW

"[W]hen reviewing the circuit court's adjudication of an appeal of an ejectment proceeding in magistrate's court," the Court of Appeals uses a limited standard of review, "under which (1) findings of fact are to be upheld if there is any supporting evidence and (2) absent an error of law, the circuit court's holding is to be affirmed." *McNair v. United Energy Distribs.*, 390 S.C. 44, 699 S.E.2d 721, 726 (Ct. App. 2010) (citation omitted). On appeal, the respondent may raise new arguments and the Court of Appeals may "rely on *any other reason appearing in the record* to affirm the lower court's judgment." *Id.* (emphasis original) (citation omitted).

In reviewing the grant of summary judgment, the appellate court "applies the same standard as the trial court under Rule 56(c), SCRCP[.]" *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433 (2003). Summary judgment is appropriate when "there is no genuine issue as to any material fact" and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. Even if there are some disputed facts about collateral matters, summary judgment must "be granted where there is no *genuine* issue of *material* fact and the moving party is entitled to judgment *as a matter of law*." *George v. Fabri*, 345 S.C. 440, 453, 548 S.E.2d 868 (2001) (emphasis original).

Judgment on the pleadings is proper when, even if the facts alleged by the non-moving party were true as pleaded, "the moving party would be entitled to judgment on the merits[.]" *Brown v. United Ins. Co. of America*, 268 S.C. 254, 233 S.E.2d 298, 300 (1977) (citations omitted). On appeal, the standard of review with respect to judgment on the pleadings is whether the trial judge made an error of law, such as considering "facts not appearing in the complaint." *Id.*

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731, 733 (1997) (citations omitted).

ARGUMENTS

I. The Circuit Court properly affirmed the Magistrate's order.

Donald Eaton ("Appellant") is appealing a Circuit Court order that affirmed a Magistrate's order that granted two dispositive motions: (1) Respondent's motion for judgment on the pleadings with respect to Appellant's counterclaims; and (2) Respondent's motion for summary judgment with respect to Respondent's eviction claim. For the reasons discussed below, the Circuit Court properly affirmed the Magistrate and the Magistrate's order was consistent with applicable law.

A. Judgment on the pleadings was properly granted for the counterclaims.

Appellant asserted three counterclaims: (1) Civil Conspiracy; (2) Breach of Contract; and (3) Fraud. (Magistrate's Return, filed Dec. 7, 2022, 2022-CP-04-02285, p. 27–31). Appellant subsequently withdrew his civil conspiracy claim and the Magistrate granted judgment on the pleadings in favor of Respondent with respect to the breach of contract and fraud claims pursuant to Rule 12, SCRCP. (*Id.* at pages 5–11). As discussed below, this was a proper ruling.

i. Appellant abandoned his counterclaim for civil conspiracy.

Respondent challenged Appellant's civil conspiracy claim under *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 599, 6282 S.E.2d 884 (2006). In response, Appellant withdrew his civil conspiracy claim at the Magistrate hearing. (Magistrate's Return, p. 7).

Appellant did not raise the civil conspiracy claim at the Circuit Court hearing. *See generally* Jan. 18, 2023 Tr. As such, Appellant has abandoned his civil conspiracy claim. *See Indigo Assoc. v. Ryan Inv. Co.*, 314 S.C. 519, 431 S.E.2d 271, 273 (Ct. App. 1993) (discussing the failure to renew magistrate arguments on appeal to the circuit court); *see also Wilder Corp.*, 497 S.E.2d at 733 (holding that an issue "must have been raised and ruled upon by the trial judge to be preserved for appellate review") (citations omitted).

ii. There was no consideration to support a claim for breach of contract.

The crux of this appeal is whether a verbal discussion that allegedly took place between Respondent and Tenants in March 2023 created a binding contract that included a "covenant not to sue" for an eviction. (Jan. 18, 2023 Tr. p. 8, line 20). Assuming that the factual allegations in Appellant's pleadings are true (for Rule 12 purposes), Appellant claims that the parties "established a verbal contract during their discussion on March 9, 2022, that [Tenants] would make a reasonable attempt to secure rental payment on their behalf from charitable organizations" and that Respondent "would not begin any further legal proceedings in the matter of eviction." (Magistrate's Return, filed Dec. 7, 2022, 2022-CP-04-02285, p. 7–8).

By Appellant's own allegations, the parties executed a written lease in 2019, the original term of the lease expired in 2020, and Respondent refused to sign a new lease. (*Id.* at p 8). At the time the verbal agreement was allegedly entered into in 2022, Tenants had an existing obligation to pay rent. *See* S.C. Code Ann. §§ 27-40-310(b) and –770 (1986) (requiring holdover tenants to pay rent on a monthly basis). Because there was an existing obligation to pay rent, any subsequent modification of the parties' existing rights and obligations "must be supported by" separate consideration. *Mathis v. Brown & Brown of South Carolina, Inc.* 389 S.C. 299, 698 S.E.2d 773, 779 (2010).

"The required elements of a contract are an offer, acceptance, and valuable consideration." *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368, 377 (2005) (citation omitted). Appellant has not expressly challenged the Magistrate's finding that the Tenants' "factual allegations do not specify the terms of a binding offer which was accepted by" Respondent. (Magistrate's Return, p. 9).[1] Instead, the Appellant's argument is focused on the issue of consideration.

[1] That alone could be sufficient grounds to affirm the Circuit Court order. *See Indigo Assoc.*, 431 S.E.2d at 273 (discussing the failure to renew magistrate arguments on appeal to the circuit court).

Even if the Appellant's allegations regarding the alleged verbal agreement were true, there is no "valuable consideration" to bind the Respondent to a covenant not to sue for an eviction. *Armstrong*, 621 S.E.2d at 377. The reason there is no valid consideration is that the Tenants were already obligated to pay rent as of March 2022. Tenants' promise to find new ways to pay their rent is neither valuable nor sufficient consideration to bind Respondent to an agreement to refrain from enforcing their legal rights as a landlord. *See Seven Lakes Inv. Group, Inc. v. Crowe*, 297 S.C. 534, 536, 377 S.E.2d 576, 577 (1988) ("In this case, Ms. Crowe's $10,000 payment did not constitute new consideration since she was already legally bound to pay the note.") *citing Rabon v. State Finance Corp.*, 203 S.C. 183, 187, 26 S.E.2d 501 (1943) (reasoning that there is no consideration when the debtor only "agreed to do something that he was legally bound to do").

Taking Appellant's argument to the logical extreme, whenever a tenant offers to make "reasonable efforts" to ask somebody else to help them pay rent in exchange for a landlord's verbal statement that they will hold off on pursuing an eviction, that landlord would be prohibited from pursuing an eviction regardless of whether and when these "reasonable efforts" are successful. That would be "an absurd result that could not have possibly have been intended by Landlord when she agreed to rent the residence." *Koon v. Fares*, 379 S.C. 149, 666 S.E. 230, 233 (2008).

There is no consideration to modify an existing contract when the debtor only agrees to do something they were already "legally bound to do." *Rabon*, 203 S.C. at 187. Because there was no consideration to form a binding contract regarding the alleged March 2022 verbal agreement, Respondent was entitled to judgment on the pleadings with respect to Appellant's counterclaim for breach of contract. *See Brown*, 233 S.E.2d at 300 (reasoning that judgment on the pleadings is proper when, even if the facts alleged by the non-moving party were true as pleaded, "the moving party would be entitled to judgment on the merits[.]") (citations omitted).

iii. Appellant's counterclaim for fraud was properly dismissed.

The Magistrate dismissed Tenants' fraud claim due to a lack of detrimental reliance. (Magistrate's Return, filed Dec. 7, 2022, 2022-CP-04-02285, p. 9). Appellant did not reference the fraud claim at the Circuit Court hearing. *See generally* Jan. 18, 2023 Tr. As such, Appellant has not preserved any objections regarding the dismissal of the fraud claim. *See Indigo Assoc.*, 431 S.E.2d at 273 (discussing the failure to renew magistrate arguments on appeal to circuit court).

If, *arguendo*, Appellant has preserved the fraud claim for appellate review, the lower court should be affirmed because the allegations in Appellant's counterclaims did not state a viable cause of action for fraud. Per Appellant's pleading, Respondent breached the alleged verbal agreement and Respondent "intended for [Tenants] to follow through with attempts to secure payment to [Respondent] with no intent to sign a new lease agreement." (Magistrate's Return, p. 9).

A mere breach of contract does not constitute fraud unless it was part of a general scheme to induce the victim to act "as he otherwise would not have acted, to his injury." *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 455 S.E.2d 183, 187 (Ct. App. 1994). Per Appellant, Respondent made misrepresentations to induce Tenants to request rental assistance from charities. (Magistrate's Return, p. 9). Since Tenants were already obligated to pay rent, asking charities for help with rent was not something the Tenants would not have otherwise done which caused them "injury." *Bishop Logging Co.*, 455 S.E.2d at 187. As such, even if the allegations in Appellant's pleading were true, Respondent would be entitled "to judgment on the merits" with respect to the fraud claim. *Brown*, 233 S.E.2d at 300.

B. Summary Judgment was appropriate for the eviction claim.

Summary judgment is appropriate when "there is no genuine issue as to any material fact" and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In this

case, there was no genuine issue of material fact with respect to Respondent's eviction claim and Respondent was entitled to judgment as a matter of law.

i. There was no genuine issue of material fact.

Respondent is seeking to evict Tenants because the "term of tenancy or occupancy has ended[.]" (Magistrate's Return, filed Dec. 7, 2022, 2022-CP-04-02285, p. 13).

There are at least three undisputed facts in this case: (1) Tenants' written lease expired in 2020; (2) Respondent provided thirty days written notice to Tenants to vacate the premises in April 2022; and (3) Tenants still reside at the premises without Respondent's consent. (*Id.*, p. 10).

The parties disagree about many things, but there is no genuine dispute regarding these material facts. *See George*, 345 S.C. at 452 (reasoning that summary judgment must "be granted where there is no *genuine* issue of *material* fact") (emphasis original). In the absence of a disagreement, there was no need for a jury to act as a fact finder to determine these three facts. *See id.* ("The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.") (citation omitted).

ii. Respondent was entitled to judgment as a matter of law.

Once the original term of the written lease expired, Tenants became "month-to-month" tenants. *See Koon*, 666 S.E.2d at 233 (discussing the creation and termination of a month-to-month tenancy after the original term of a written lease). Under the South Carolina Residential Landlord and Tenant Act, Respondent could terminate the "month-to-month tenancy by a written notice given to the [tenant] at least thirty days before the termination date specified in the notice." S.C. Code Ann. § 27-40-770(b) (1986). When the Tenants continued to reside at the premises "without the landlord's consent after the expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession." S.C. Code Ann. § 27-40-770(c).

Based on Appellant's own allegations, Respondent posted a "30-Day Notice to Vacate" on the Appellant's door on April 21, 2022. (Magistrate's Return, filed Dec. 7, 2022, 2022-CP-04-02285, p. 10). Respondent subsequently initiated these eviction proceedings on May 23, 2022 on the basis that the "term of tenancy or occupancy has ended[.]" (*Id.*, p. 13).

In determining whether summary judgment was appropriate, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Dawkins*, 354 S.C. at 69 (citations omitted). Even when reviewing the evidence in the light most favorable to Appellant, there is no question that the Appellant's tenancy had expired and Respondent provided Appellant with thirty (30) days written notice to vacate prior to initiating the eviction. Based on the allegations in the pleadings and the affidavit that was presented to the Magistrate, there was "no genuine issue as to any material fact" and Respondent was entitled to judgment as a matter of law with respect to their eviction claim. Rule 56(c), SCRCP.

II. Under the limited standard of appellate review, the lower court's orders should be affirmed.

"Whereas the circuit court maintains a broad scope of review in deciding an appeal of a magistrate's order, this court, when reviewing the circuit court's adjudication of an appeal of an ejectment proceeding in magistrate's court, does so under a more limited standard, under which (1) findings of fact are to be upheld if there is any supporting evidence and (2) absent an error of law, the circuit court's holding is to be affirmed." *McNair*, 699 S.E.2d at 726 (citations omitted).

A. There is supporting evidence to uphold the lower court's findings.

A copy of the Respondent's "30-Day Notice to Vacate" was included in the Magistrate's Return. (Magistrate's Return, p. 14). Respondent also presented an affidavit from a property manager which stated: (i) Tenants' lease expired prior to the initiation of this action; (ii)

Respondent provided written notice that the tenancy had expired; and (iii) Tenants refused to vacate the premises. *Id.*, p. 85. Taken together with the statements in Tenants' pleadings, there is supporting evidence to affirm the lower court's finding that "there at least three undisputed facts: (1) the written lease expired before March 2022; (2) Plaintiff provided Defendants 30-days written notice to vacate the premises in April 2022; and (3) Defendants are still residing in the premises without Plaintiff's consent as of September 2022." *Id.*, p. 10.

B. The Circuit Court did not commit an error of law.

For the reasons discussed *supra* pages 10–15, the lower court did not commit an "error of law" when they determined that the alleged verbal agreement was not an enforceable contract. *McNair*, 699 S.E.2d at 726. Because there is evidence to support Judge Murphy's findings and Judge McIntosh did not commit an error of law, "the circuit court's holding is to be affirmed." *Id.*

III. Appellants have failed to preserve any other defenses.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp.*, 497 S.E.2d at 733 (citations omitted). To the extent Appellant is raising new issues on appeal that were not "raised and ruled upon" by Judge McIntosh, those arguments are not preserved for appeal. *Bowers v. Thomas*, 373 S.C. 240, 644 S.E.2d 751, 754 (Ct. App. 2007).

A. The prior proceedings which predate this eviction action are irrelevant.

Appellant's brief references prior eviction proceedings dating back to 2020. (App. Br. p. 3–4). While it is true that Respondent has filed multiple evictions against these Tenants over the years, any filings which predate the action that pertains to this appeal are neither relevant nor preserved for appellate review. *See Wilder Corp.*, 497 S.E.2d at 733 (holding that an issue must have been raised and ruled upon by the trial judge to be preserved for appellate review).

B. Any dispute regarding past due rent is neither relevant nor preserved.

The basis for Respondent's eviction claim is that the Appellant's "term of tenancy or occupancy has ended[.]" (Magistrate's Return, filed Dec. 7, 2022, 2022-CP-04-02285, p. 13). Since Respondent chose to pursue an eviction based on the expiration of Tenants' tenancy (as opposed to pursuing an eviction based on a sum of delinquent rent), the Respondent did not have to prove a past due rental obligation in support of their eviction claim. *See* S.C. Code Ann. § 27-40-770(c) (1986) ("If the tenant remains in possession without the landlord's consent after the expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession."). As such, whether and to what extent the Tenants owed any past due rent was not a genuinely disputed "issue of *material* fact[.]" *George*, 345 S.C. at 453 (emphasis original).

Even if the alleged disputes regarding past due rent were relevant to this appeal, Appellant has failed to preserve this issue for appellate review. *See Bowers*, 644 S.E.2d at 754 ("An issue not raised to and ruled upon by the court is not preserved for appeal.") (citation omitted).

C. Some of the materials cited in Appellant's brief should be disregarded.

Appellant's brief refers to an audio recording that was not presented at the Magistrate hearing. App. Br., p. 6. Appellant's contention that Judge Murphy improperly disregarded the audio recording and other materials is incorrect for at least two reasons.

First, Respondent challenged Appellant's counterclaims under Rule 12(c), SCRCP. For Rule 12(c) purposes, Judge Murphy was obligated to disregard matters outside the pleadings. *See Brown*, 233 S.E.2d at 300 ("We need only decide whether the judge improperly considered facts not appearing in the complaint.") (emphasis added). As such, Judge Murphy's alleged failure to consider anything outside of the pleadings was not an "error of law" with respect to granting Respondent's motion for judgment on the pleadings. *McNair*, 699 S.E.2d at 726.

Secondly, with respect to summary judgment on the eviction claim pursuant to Rule 56, SCRCP, Judge Murphy did weigh "all reasonable inferences in favor of the Defendants." Magistrate's Return, p. 11. "Even when weighing all reasonable inferences in favor of the" Tenants, Judge Murphy found that the undisputed facts regarding the expiration of the lease, the thirty days' notice to vacate, and the Tenants' refusal to vacate the premises demonstrated that Respondent was "entitled to judgment as a matter of law with respect to their eviction claim." *Id.*

The court is obligated to review the record in the light most favorable to the Appellant, but the "court cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Dawkins*, 354 S.C. at 70 (citations omitted). Because further discovery was unlikely to "uncover additional relevant evidence" as to any genuinely disputed material facts, summary judgment should be affirmed. *Id.* at 69.

Appellant's audio recording and some of the other materials cited in Appellant's brief should be disregarded because they would not alter the three undisputed material facts: (1) Appellant's lease had expired; (2) Respondent provided Appellant thirty days' notice to vacate the premises; and (3) Appellant refused to vacate the premises. Moreover, because these materials were not raised and ruled upon by the Circuit Court, they have not been "preserved for appellate review[.]" *Wilder Corp.*, 497 S.E.2d at 733. Even if those materials were subject to appellate review, there is "supporting evidence" to uphold the lower court's findings and the Circuit Court did not commit an error of law. *McNair,* 699 S.E.2d 726.

IV. Some of the cases cited in Appellant's brief do not support his position.

Of the twelve cases that Appellant cited *en masse* in support of his position that "this very Court" disfavors summary judgment (App. Br., p. 6–7), six of those cases affirmed the granting of

summary judgment. *See Mosteller v. County of Lexington*, 336 S.C. 360, 361, 520 S.E.2d 620 (1999) ("Summary judgment was granted for the defendants. […] We affirm."); *Hall v. Fedor*, 349 S.C. 169, 172, 561 S.E.2d 654 (Ct. App. 2002) ("Hall appeals the Circuit Court's grant of summary judgment. We affirm."); *Bayle v. South Carolina Dept. of Transp.*, 344 S.C. 115, 129, 542 S.E.2d 736 (Ct. App. 2001) ("Accordingly, the order of the Circuit Order granting summary judgment is hereby AFFIRMED."); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 367, 559 S.E.2d 327 (Ct. App. 2001) (affirming one summary judgment ruling and declining to consider cross-appeals of summary judgment); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper*, 336 S.C. 53, 72, 518 S.E.2d 301 (Ct. App. 1999) ("Accordingly, the order of the trial court granting summary judgment to Wood/Chuck is AFFIRMED."); *Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 478, 465 S.E.2d 765, 771 (Ct. App. 1995) ("We therefore affirm the trial court's grant of partial summary judgment[.]")

The other cases cited on pages 6–7 of Appellant's brief are factually and legally distinguishable from this lawsuit. *See Lanham v. Blue Cross and Blue Shield*, 349 S.C. 356, 366, 563 S.E.2d 331 (2002) (affirming the reversal of summary judgment regarding an insured's deceptive statements to an insurer); *Moriarty v. Garden Sanctuary Church*, 341 S.C. 320, 340, 534 S.E.2d 672 (2000) (reversing summary judgment on a statute of limitations defense involving "repressed memory" of a sexual assault); *Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 478, 581 S.E.2d 496 (Ct. App. 2003) (reversing summary judgment based on a misapplication of the parol evidence rule); *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326, 327 (Ct. App. 2003) (reversing summary judgment in a negligence action regarding "duty" and "proximate cause" issues); *Baril v. Aiken Regional Medical Centers*, 352 S.C. 271, 283–285, 573 S.E.2d 830 (Ct. App. 2002) (reversing summary judgment in an employment discrimination case); *Trivelas v.*

South Carolina Dept. of Transp., 348 S.C. 125, 128, 558 S.E.2d 271 (Ct. App. 2001) (reversing summary judgment in favor of the plaintiffs in an automobile accident negligence case).

To the extent Appellant is raising new legal defenses that were not "raised and ruled upon" by Judge McIntosh, those arguments are not preserved for appeal. *Bowers*, 644 S.E.2d at 754. Moreover, because there is evidence to support the lower court's findings and McIntosh did not commit an error of law, "the circuit court's holding is to be affirmed." *McNair*, 699 S.E.2d at 726.

V. Eaton cannot pursue this appeal on behalf of Kristy Drees or Logan Drees.

Donald Eaton is a *pro se* Appellant. As a non-lawyer, Eaton cannot file pleadings or appellate briefs on behalf of Kristy Drees or Logan Drees. *See Medlock v. University Health Services, Inc.*, 404 S.C. 25, 27, 743 S.E.2d 830, 831 (2013) ("The generally understood definition of the practice of law embraces the preparation of pleadings and other papers[.]")

Kristy Drees and Logan Dress did not file notices of appeal within "thirty (30) days after receipt of written notice" of Judge McIntosh's order. Rule 203(b)(1), SCACR. As such, McIntosh's order is valid and enforceable with respect to Drees, regardless of the language in Eaton's brief that implies this appeal is on behalf of "Eaton and his family[.]" App. Br. p. 6.

CONCLUSION

For the reasons stated above, the Circuit Court order should be affirmed and this matter should be remanded to the lower courts so that Respondent can obtain a writ of ejectment.

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