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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

Case No. 2022-CP-22-00176

Kevin Penland, …………………………………... APPELLANT

V.

Key Largo Mobile Home Park, LLC, ………………. RESPONDENT

Appellant's Final Brief

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

Respondents filed an action to evict Appellant from the Key Largo Mobile Home Park. The Magistrate granted the eviction and Appellant appealed to the Circuit Court. The Circuit Court affirmed the conviction and this appeal followed. This appeal was timely filed and served.

STATEMENT OF THE FACTS

Respondent filed a Rule to Vacate Summons, and Application for Ejectment (Eviction), bearing Magistrate's Court Case No. 2021CV221060104, on November 24, 2021. **R.18**. This action was filed approximately three (3) weeks after a previous eviction action that had been filed against Appellant by Respondent's Principal/Manager, Charlene Ware, was dismissed without prejudice on October 28, 2021. The dismissal of that action was based on the Presiding Judge finding that the "*case was not filed in the proper court.*"

Appellant requested a jury trial in the present case, and the jury was seated on February 18, 2022, by Judge Jonathan D. Guiles. When the case was called for trial, the parties informed the court that the case had been settled. The terms of settlement were that Respondent's realtor was to conduct a walk-through of the mobile home the following morning at 9:00 a.m.; if the realtor confirmed that there were no more than $500.00 in repairs remaining to be performed to the Home, she would deliver the Respondent's check to Appellant in the sum of $44,500,00, as full and final payment for all interest that he ". . . *may have in any mobile home or any claim he may have against Key Largo Mobile Home Park, or his family, Charlene Wier or Britt Wier"* [sic]. **R.58**. Upon receipt of this payment, Appellant was to immediately move out of the home, and the mobile home park, and release any and all claims that he may have otherwise had against the Respondent, and its principals, Charlene Ware and Britt Ware.[1]

The settlement envisioned on February 18, 2022, failed, ostensibly because Appellant was unable to complete the remaining repairs by 9:00 a.m. the next morning. Upon discovering this, Respondent's realtor agreed to return to the Home the next day. When she had not come

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[1] *Id.*, pp.3-4, of 8.

back to conduct the inspection by the following Thursday, however, Appellant returned to the Court, where he discovered that a Writ of Ejectment had already been executed by the Chief Administrative Magistrate, Isaac L. Pyatt. When Appellant informed Judge Pyatt's Assistant of the above facts and history of the case, Judge Pyatt withdrew the Writ he had signed, and, after discussing the matter with Judge Guiles, scheduled a second hearing to be conducted by Judge Guiles on the following Monday, February 28, 2022. **R.65**

Further, Judge Guiles stated on three separate occasions during this hearing, that if the parties were unable to settle their differences, they would return to the Court for a jury trial, or a hearing:

R. 65

(Judge Guiles): ***On the 18th we had a jury trial scheduled and ready to go…***
(Emphasis added)

R.69:

(Judge Guiles): *Was that, upon the completion of a walk-through, if it was nothing more than $500, or $500 less [sic], I think that would have been okay, am I correct? Anything above $500 would be unsatisfactory to the Plaintiff. You would receive a check for whatever amount, I think it was $44,500, or $44,000-some odd dollars, and then that would make everything okay with you, am I correct?*
Kevin Penland: *Yes, your Honor.*
Judge Guiles: *And that work has been done?*
Kevin Penland: *That work has been done.*[2]
Judge Guiles: *. . . I am going to, umm, allow this, this to take place, Mr. Boan, and if it's completed* (Transcript, p. 8) *let us know, if not,* ***reschedule a date and come back and have a hearing to make a decision . . .*** (Emphasis added.)

[2] Appellant hereby confirmed that the remaining repairs would cost less than $500.00 to complete. Appellant knew that the only repair work remaining to be done was the installation of a new shower head fixture in the Master Bedroom. This fixture had already been purchased, and Appellant subsequently paid $100.00 to have it installed and connected.

R.73

(Judge Guiles):	*. . . And I'm hoping that you all could resolve this. You can call and let us know if they resolve and then we move forward from there.* ***If you guys need to come back and we resolve it, we'll get it taken care of, okay? . . .*** (Emphasis added.)

R.74

(Judge Guiles)	*No.* ***We've got to move forward with an eviction if this is not, uh, settled by the both of you, okay?*** *So at this time I am going to ask that you allow these folks to go ahead and look through whatever they need to look through at the property and make it, uh, make a decision as to how they want to move forward, right? (Emphasis added)*
Kevin Penland:	*Yeah. And, what if they decide they just don't want to move forward? Then how . . . Then . . .*
(Judge Guiles):	***Then we come back and we go through whatever needs to be done with the eviction, is that alright?*** (Emphasis added.)

Despite these three separate statements and assurances by the Court, Judge Guiles subsequently issued a writ of ejectment without a further hearing of any kind.

Respondent filed its Reply to Appellant's Notice of Appeal on March 10, 2022 Appellant thereafter filed an Amended Notice of Civil Appeal on March 31, 2022. Appellant's Appeal was heard by Judge Culbertson on April 22, 2022, on which date Judge Culbertson affirmed Judge Guiles' Writ of Ejectment. Appellant thereafter filed an Undertaking with the Court of Common Pleas on April 27, 2022.

Appellant filed a Petition for Supersedeas with this Court on May 6, 2022, setting forth a history of Appellant's efforts to obtain a stay of execution of the lower court's Writ of Ejectment, with supporting exhibits. This Court granted a temporary stay on May 6, 2022, pending receipt of Respondent's Return. Following the filing and service of Respondent's Return on May 17, 2022, and Appellant's Reply to Respondent's Return on May 23, 2022, this Court issued its

Order granting Appellant's Petition for Supersedeas on May 26, 2022. Appellant has complied fully with the terms of the undertaking, and this Court's Supersedeas remains in effect, pending the outcome of this Appeal.

ARGUMENTS

I. THE LOWER COURT ERRED IN NOT REMANDING THIS MATTER TO THE LOWER COURT FOR A JURY TRIAL

B. Appellants' right to a jury trial.

The Georgetown County Magistrates issue standard *"INSTRUCTIONS FOR EVICTION HEARING."* **R.34.** Paragraph 2 of the Instructions for Eviction Hearings states: "*If either party desires a jury trial, s/he must request one in writing at least five (5) business days before the date originally scheduled for the hearing."* The first sentence of Judge Guiles' summary letter specifically states that "*…the Defendant (Kevin Penland) requested a jury trial to be heard on this date. The jury were all selected and present along with court personnel."* Although Appellant followed the court's instructions and attempted to settle the action in good faith, he did not waive his request and right to a jury trial by doing so. Indeed, as documented above, when court convened for the second time on February 28, 2022, Judge Guiles made it clear on three (3) separate occasions that, if the parties were unable to resolve the case by settlement, they would return to court for a hearing on the eviction issue (for which Appellant had requested a jury trial).

Rule 13, SCRMC, provides that:

> *Either party to a civil suit in Magistrate's Court is entitled to a trial by a jury. A party desiring a jury trial in a civil case must make a written request at least five (5) working days prior to the original date set for trial. Upon the proper demand for a jury trial by either party, the Magistrate* ***must*** *impanel a jury of six (6) people, following the procedure in* §22-2-80 through §22-2-140, *who will*

> *determine the outcome of the case. If neither party requests a jury trial, the Magistrate may hear and decide the case himself. (Emphasis added.)*

Despite the three (3) separate statements made by Judge Guiles confirming Appellants' right to a jury trial/hearing if the parties settlement attempt failed, Judge Guiles issued his Writ of Ejectment without any such further hearing. The Court's failure to provide a hearing with a proper forum deprived Appellant of his right to a trial by jury, and his right to due process in this case.

Respondents' attorney made several unsupported arguments to the court at the hearing before Judge Culbertson on April 22, 2022, **R.90-91**, including his argument that Appellant had "*…absolutely waived his jury trial right. He was about to be put out with the jury sitting in there and we were going to go forward and he said I will agree to leave and he did not leave. At some point in time the Judge says I'm putting you out."* As the transcript of the hearings before Judge Guiles clearly establish, Mr. Boan's argument is not supported by the record. Mr. Boan was present for the arguments and discussions before Judge Guiles on February 18 and 28, 2022.

Significantly, the terms of the parties' proposed agreement required Respondent to pay Appellant $44,500.00, in exchange and consideration for him vacating the park and leaving the members of his family in peace. Mr. Boan's argument before Judge Culbertson bore little resemblance to the actual record of what transpired during the hearing before Judge Guiles. As Appellant's attorney argued before Judge Culbertson:

> *Additionally, I believe that Mr. Boan is mischaracterizing or mis-stating the… the terms that were put on the record… there was no 'are you sure that you understand that you have to be out by 9 o'clock and that you're losing your case.' Mr. Penland didn't settle this because he knew he was being evicted, he settled this because they offered him…. Or $44,500.00 to move and he was taking that, and they didn't… they didn't pay up.*
> **R.93**.

C. Respondent was improperly excused from being required to sustain its burden of proof regarding its entitlement to evict/eject Appellant.

The Rule is well settled that the burden of proof is upon the party who makes an allegation of fact. The converse of the proposition is likewise true. He upon whom rests the burden of proof must make the necessary allegation. Heiden vs. Atlantic Coastline R.Co., 84.S.C.117, 65 S.E. 987 (1908). Respondent initiated this action for the eviction and ejectment of Appellant and his fiancé, Taylor Kiefer. The burden was clearly upon Respondent to allege and prove his entitlement to evict Appellant from its lot. Respondent alleged that it was… entitled to eviction and ejectment of the Defendants for the following reasons:

> A. Defendants had failed to pay any lot rent since March 13, 2021, and currently owe $955.00.
> B. The Lease Agreement specifies that the lease is on a month to month basis and Plaintiff terminated this lease on August 20, 2021 in a certified letter, a copy of which is attached as Exhibit "B."

Respondent could not have sustained its burden of proof on these issues, for the following reasons: (1) Appellant's lease did not commence until April 1, 2021, as Respondent itself acknowledged by attaching a copy of the lease to its Complaint as Exhibit "A." Thus, Appellants could not have "failed to pay any lot rent since March 13, 2021, "since that date was prior to the effective date of the lease. (2) As argued above, Respondent failed to give Appellant the required notice of alleged violation, and fourteen (14) day right to cure any such alleged violation, and should have therefore been estopped to proceed with the eviction/ejectment action. As of the date of Respondent's commencement of its first and second actions for eviction/ejectment of Appellant, Appellant had more than paid for the mobile home in full, and had prepaid rent for Lot 27 through December 31, 2021. Thus, Appellant was not in default of

the terms of the lease, had not violated any terms of the Park Rules and Regulations, and had not been provided notice of any such alleged rent default or rules violation, with a corresponding right to cure, at any time prior to commencement of either eviction action by Respondent and its Principal, Charlene Ware. (4) Appellant was prepared to file an appropriate Answer and Counterclaim and to show his payments for the mobile home and prepaid lot rent, had the court not deprived him of his right to a jury trial on these issues.

In the very least, Appellant was entitled to a jury trial on these issues of fact, which he had timely requested, which the court had acknowledged and reassured Appellant of in three (3) separate statements on February 28, 2022, and which Appellant had not waived in any manner.

II. THE LOWER COURT FAILED TO APPLY THE MOBILE HOME PARK TENANCY ACT [MHPTA]

The MHPTA governs landlord/tenant relationships in mobile home parks containing more than 5 lots for rent, in circumstances where the tenants own or are purchasing their homes. (27-47-20(B)(1), and 27-47-120(3)). §27-47-110 provides that:

> This chapter applies to, regulates, and determines the rights, obligations, and remedies under a rental agreement for a residential manufactured home park lot located within this State. The provisions of the Residential Landlord and Tenant Act in Chapter 40 of Title 27 shall apply to tenancies in manufactured home parks if such application is not inconsistent with or contrary to the provisions of this Chapter

§27-40-710 (B) of the Residential Landlord and Tenant Act ("RLTA") excuses a Landlord from providing written notice of violation and a right to cure if the parties' lease agreement contains a conspicuous provision that no such additional notice will be provided, and that the Landlord will proceed with termination of the rental agreement of the rent is not paid within five (5) days from the due date. There is no such provision excusing written notice in Section 27-47-520 of the MHPTA. This language of §27-40-710 is inconsistent with the language of §27-47-530 and is

therefore inapplicable to this case. The consequences that follow a mobile home owner's eviction are more severe than evictions from leasehold estates, and justify requiring that proper written notice and right to cure be provided before initiating an eviction/ejection case.

§27-46-530 of the MHPTA provides in relevant part as follows:

(A) An owner may evict a resident for one or more of the following reasons:

(1) failure to comply with local, state, or federal laws governing manufactured homes after he receives written notice of noncompliance and has had a reasonable opportunity to remedy the violation;

(2) engaging in repeated conduct that interferes with the quiet enjoyment of the park by other residents;

(3) noncompliance with a provision of the rental agreement or park regulations and failure to remedy the violation within fourteen days after written notice by the owner If the remedy requires longer than fourteen days, the owner may allow the resident in good faith to extend the time to a specified date;

(4) not paying rent within five days of its due date;

(5) noncompliance with a law or a provision in the rental agreement or park regulations affecting the health, safety, or welfare of other residents in the park or affecting the physical condition of the park;

(6) willfully and knowingly making a false or misleading statement in the rental agreement or application;

(7) taking of the park or the part of it affecting the resident's lot by eminent domain;

(8) other reason sufficient under common law.

Pursuant to South Carolina laws of statutory construction, the principle of *expressio unius est exclusio alterius* applies to Section (A). *Riverwoods, LLC v. Cty. of Charleston*, 349 S.C. 378, 563 S.E.2d 651 (2002) Thus, this list constitutes all of the reasons for which a landlord may evict a resident from a manufactured home lot and any alternative reasons are presumed prohibited due to their absence from the 8 subsections provided in the statute. None of these grounds existed in the present case. Subsection (3) clearly requires written notice to the tenant of

any violation of the rental agreement or park regulations, and also requires that the tenant be given fourteen (14) days after written notice to remedy any such violation. Appellant submits that subsection (4), not paying rent within five (5) days of its due date, while constituting grounds for eviction, would also be included in the language of subsection (3) non-compliance with a provision of the rental agreement…, and require written notice and a 14-day right to cure. Subsection (8) leaves great discretion and latitude for a trial court in otherwise determining whether sufficient grounds exist for eviction.

In the present case, Respondent gave Appellant no notice of any violation of the Lease, or of the Park Rules, or any other grounds for eviction, and therefore gave Appellant no opportunity to cure any such alleged violation, prior to filing and serving its eviction case. Respondent and its principal, Charlene Ware, completely disregarded the notice requirement of §27-47-530, in both cases. A lease can not be terminated under the MHPTA by simply giving the tenant a 30 day notice to quit; the exclusive grounds for eviction are identified in §27-47-530(A)(1-8). Respondent's Principals, in other words, are not entitled to evict one of their tenants simply because they don't like them, or for any reason not identified in §27-40-530(A)(1-8). Therefore, the lower court must be reversed.

CONCLUSION

Respondent's attempts to evict and eject appellant from its mobile home park were in violation of South Carolina law. Appellant therefore moves that Respondent's eviction and ejectment action be reversed and remanded.

Respectfully submitted,

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CERTIFICATION OF COUNSEL

Counsel for appellant hereby certifies that Appellant's Final Brief complies with Rule 211(b), SCACR.

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June 23, 2023