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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge

Case No. 2023-CP-41-00015

Hugh Parks Price,

Appellant,

v.

Sarah Filler,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. IS AN APPELLANT FROM THE MAGISTRATE’S COURT TO THE CIRCUIT COURT ENTITLED TO HAVE A COPY OF THE RECORDING OF A MAGISTRATE COURT’S PROCEEDINGS AVAILABLE IN ORDER FOR APPELLANT TO BRIEF THE APPEAL TO THE CIRCUIT COURT?
2. WHAT IS THE VALIDITY OF A CIRCUIT COURT’S AFFIRMANCE OF AN APPEAL OVER APPELLANT’S OBJECTION THAT AN APPELLANT REQUESTED A RECORDING OF THE MAGISTRATE COURT’S PROCEEDINGS IN ORDER FOR APPELLANT TO PRESENT HIS OBJECTIONS TO THE REVIEWING CIRCUIT COURT’S ORDER?

STATEMENT OF THE CASE

On January 27, 2023, Appellant filed a Notice of Appeal from a Magistrate Court’s entry of judgement after a jury verdict on Claim and Delivery. [Notice of Appeal.]

On February 14, 2023, Appellant faxed the Magistrate Court to inquire about the procedure for obtaining a transcript. [Fax request for transcript to Magistrate Court.]

Respondent’s counsel filed a Motion to Compel with exhibits in Circuit Court on March 14, 2023 [Motion and exhibits]. The Motion to Compel was noticed for May 30, 2023 at 10:00 AM [Notice of hearing on motion]. No ruling was issued on the Motion.

On May 31, 2023 at 2:06 PM, the Circuit Court’s law clerk e-mailed the counsel for both parties: “If the parties are available and ready, Judge McCaslin would like to hear this appeal on Friday via the virtual courtroom at 11:00 AM. If not, she will likely issue a decision based on the record of the case below which has been provided already. Since this case involves livestock...” [E-mail May 31, 2023 at 2:06 PM].

On May 31, 2023 at 3:10 PM, Appellant replied to the e-mail: “Good Afternoon, I would

prefer oral argument, and note that I have not seen a recording of this trial to transcribe, although the Magistrate has provided paper copies of all the cases that I requested.”

On May 31, 2023 at 3:15 PM, the Circuit Court’s law clerk e-mailed again: “Are you available for oral argument on Friday at 11 virtually?”

On May 31, 2023 at 3:25 PM, Appellant responded: “Good Afternoon William Arnold, yes, that will trump what else I have scheduled that day.”

On June 6, 2023, the Circuit Court filed its Order dismissing the Appeal.

On June 26, 2023, Appellant served a Notice of Appeal on Respondent’s counsel.

STANDARD OF REVIEW

At issue in this case is the procedural due process of the Circuit Court’s appellate review of a jury trial in the Magistrate’s Court.

A court acting without procedural due process is without jurisdiction. *Webster v. Clanton*, 259 S.C. 387, 192 S.E.2d 214 (1972).

The question of jurisdiction is a matter of law. *Knight v. Kelly*, 289 S.C. 318, 345 S.E.2d 490 (1986).

When deciding a jurisdictional issue based on facts, a reviewing Court has the power and the duty to review the entire record, find the jurisdictional facts within the record, and decide the jurisdictional question in accordance with the preponderance of evidence. *Canady v. Charleston County School Dist.*, 216 S.E.2d 755, 265 S.C. 21 (1975).

FACTS

On May 31, 2023 at 2:06 PM, the Circuit Court’s law clerk e-mailed the counsel for both

parties: “If the parties are available and ready, Judge McCaslin would like to hear this appeal on Friday via the virtual courtroom at 11:00 AM. If not, she will likely issue a decision based on the record of the case below which has been provided already. Since this case involves livestock...”
[E-mail May 31, 2023 at 2:06 PM].

On May 31, 2023 at 3:10 PM, Appellant replied to the e-mail: “Good Afternoon, I would prefer oral argument, and note that I have not seen a recording of this trial to transcribe, although the Magistrate has provided paper copies of all the cases that I requested.”

The Circuit Court held a virtual hearing at 11:00 AM on Friday, June 2, 2023 without a transcript of the Magistrate Court’s proceedings available to Appellant. [No record notice of this hearing exists apart from the Circuit Court’s law clerk’s e-mails.]

ARGUMENTS

- I. BECAUSE THE DUE PROCESS CLAUSE OF THE U.S. AND S.C. CONSTITUTIONS REQUIRES THAT A PARTY HAVE A REASONABLE OPPORTUNITY TO PRESENT OBJECTIONS AT A HEARING, A MAGISTRATE’S COURT MUST MAKE AVAILABLE TO AN APPELLANT A COPY OF THE RECORDING OF THE MAGISTRATE COURT’S PROCEEDINGS IN ORDER FOR APPELLANT TO PRESENT HIS OBJECTIONS TO THE REVIEWING CIRCUIT COURT.

The Due Process Clause of the U.S. and S.C. Constitutions requires the Magistrate’s Court to make available to an Appellant to the Circuit Court a copy of the recording of the Magistrate Court’s proceedings in order for Appellant to present his objections to the reviewing Circuit Court.

The facts in this case show that the Circuit Court, *sua sponte*, noticed a hearing without affording the Appellant the opportunity to present objections and argument from

a previously requested transcript. [Fax request for transcript to Magistrate Court.]

On May 31, 2023 at 2:06 PM, the Court's law clerk e-mailed counsel for both parties: "If the parties are available and ready, Judge McCaslin would like to hear this appeal on Friday via the virtual courtroom at 11:00 AM. If not, she will likely issue a decision based on the record of the case below which has been provided already. Since this case involves livestock..." [E-mail May 31, 2023 at 2:06 PM].

On May 31, 2023 at 3:10 PM, Appellant's counsel replied to the e-mail: "Good Afternoon, I would prefer oral argument, and note that I have not seen a recording of this trial to transcribe, although the Magistrate has provided paper copies of all the cases that I requested."

The Circuit Court held a virtual hearing at 11:00 AM on Friday June 2, 2023 without a transcript of the prior Magistrate Court's proceedings available to Appellant. [No record notice of this hearing exists apart from the Court's law clerk's e-mails.]

The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *Murdock*, 338 S.C. at 334, 526 S.E.2d at 248. *Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565 (S.C. App. 2002).

II. BECAUSE THE REVIEWING CIRCUIT COURT AFFIRMED THE MAGISTRATE COURT'S ORDER WITHOUT AFFORDING THE APPELLANT THE OPPORTUNITY TO PRESENT APPELLANT'S OBJECTIONS BY REFERENCE TO A TRANSCRIPT FROM THE PRIOR MAGISTRATE COURT'S PROCEEDINGS, THE REVIEWING CIRCUIT COURT'S ORDER IS A NULLITY.

A Circuit Court's affirmance of a Magistrate's Order over Appellant's objection

that a recording has been requested by the Appellant from the Magistrate Court, but not provided by the Magistrate Court to the Appellant in order for Appellant to present his objections to the Magistrate's Court's Order, is a nullity.

It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. *Murdock*, 338 S.C. at 334, 526 S.E.2d at 248. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on. *Id.*

Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363 (1914); *Cameron & Barkley Co. v. South Carolina Procurement Review Panel*, 317 S.C. 437, 454 S.E.2d 892 (1995); *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct.App.2002). *Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565 (S.C. App. 2002).

The facts in this case show that the Circuit Court, *sua sponte*, noticed a hearing without affording the Appellant the opportunity to present objections and argument from a previously requested transcript from the Magistrate Court. [Fax request for transcript to Magistrate Court.]

On May 31, 2023 at 2:06 PM, the Circuit Court's law clerk e-mailed counsel of both parties: "If the parties are available and ready, Judge McCaslin would like to hear this appeal on Friday via the virtual courtroom at 11:00 AM. If not, she will likely issue a decision based on the record of the case below which has been provided already. Since this case involves livestock..." [E-mail May 31, 2023 at 2:06 PM].

On May 31, 2023 at 3:10 PM, Appellant replied to the e-mail: “Good Afternoon, I would prefer oral argument, and note that I have not seen a recording of this trial to transcribe, although the Magistrate has provided paper copies of all the cases that I requested.”

The Circuit Court held a virtual hearing at 11:00 AM on Friday June 2, 2023 without a transcript of the Magistrate Court’s proceedings available to Appellant. [No record notice of this hearing exists apart from the Court’s law clerk’s e-mails.]

Because the Circuit Court affirmed the Magistrate Court’s Order without affording the Appellant the opportunity to present Appellant’s objections by reference to a transcript of the prior Magistrate Court’s proceedings available to Appellant, the Circuit Court’s Order is a nullity.

CONCLUSION

Wherefore, the Circuit Court’s Order affirming the Magistrate’s Order should be reversed and remanded to the Circuit Court for further proceedings after the recording of the hearing is made available to Appellant and Appellant has had an opportunity to make objections and argument in accordance with the recording of the proceedings.

Respectfully submitted,

July 26, 2023

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NOTICE OF APPEAL IN A CIVIL CASE

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Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on Sara Filler by depositing a copy of it in the United States mail, postage prepaid, on July 26, 2023, addressed to her counsel, William E. Booth III at 3231 Sunset Blvd., Suite A, West Columbia, SC 29169.

July 26, 2023

/s/ Rolf M. Baghdady

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