

RECEIVED

Aug 02 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

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

Magistrate

- Case No. 2022CV1610401203
- Case No. 2022CV1610401204
- Case No. 2022CV1610401205
- Case No. 2022CV1610401206

Appellate Case No. 2023-000546

Stephanie McAnuff,Appellant,

v.

ASIP Town Park, LLC,Respondent.

INITIAL BRIEF OF RESPONDENT

August 2, 2023

/s/ Edward A. Love
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

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal.....1

Statement of the Case.....1

Statement of Facts.....2

Standard of Review.....3

Argument.....4

 I. The South Carolina Court of Appeals lacks appellate jurisdiction over this matter as the magistrate order(s) at issue are not directly appealable to the South Carolina Court of Appeals......4

 II. If the Court of Appeals exercises jurisdiction, Appellant failed to timely appeal issues raised in the Orders of Ejectment and is limited to issues concerning the Order(s) of Dismissal assuming that issue has been preserved for appeal......5

 III. The Magistrate Judge appropriately dismissed the Circuit Court Appeals because Appellant failed to timely post a bond and still, to this day, has not posted a bond......7

Conclusion.....9

TABLE OF AUTHORITIES

CASES

Blackwell v. Woodard, 2021 S.C. App. Unpub. LEXIS 44, *26
Bowers v. Thomas, 373 S.C. 240, 244-245, 644 S.E.2d 751, 753 (Ct. App. 2007)4
Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984)4
Hadfield v. Gilchrist, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000)4
Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 233,4
312 S.E.2d 20, 21 (Ct. App. 1984)

STATUTES

S.C. Code Ann. § 27-37-130.....2,3,5,7,8
S.C. Code Ann. § 18-7-170.....3
S.C. Code Ann. § 27-40-800.....7
S.C. Code Ann. § 18-7-10.....7

OTHER AUTHORITIES

South Carolina Constitution, in Article V Section 115
Rule 202, SCACR.....4
Rule 203, SCACR.....4,6
Rule 18, MCR5,7

STATEMENT OF ISSUES ON APPEAL

- I. **WHETHER THE SOUTH CAROLINA COURT OF APPEALS LACKS APPELLATE JURISDICTION OVER THIS MATTER AS THE MAGISTRATE ORDER(S) AT ISSUE ARE NOT DIRECTLY APPELABLE TO THE SOUTH CAROLINA COURT OF APPEALS.**

- II. **WHETHER THE APPELLANT FAILED TO TIMELY APPEAL ISSUES CONCERNING THE ORDERS OF EJECTMENT AND IS THEREFORE LIMITED TO ISSUES CONCERNING THE ORDERS OF DISMISSAL ASSUMING THAT ISSUE HAS BEEN PRESERVED FOR APPEAL.**

- III. **WHETHER THE MAGISTRATE JUDGE ERRED IN DISMISSING THE CIRCUIT COURT APPEALS FOR APPELLANT’S FAILURE TO TIMELY POST BOND.**

STATEMENT OF THE CASE

This appeal stems from four separate ejectment/eviction actions filed by Respondent in the Magistrate Court of Darlington County wherein, Magistrate Judge Craig L. LaCross granted the applications for ejectment. Subsequently, Appellant filed notices of appeal with the Circuit Court of Darlington County. Those appeals were subsequently dismissed by Judge LaCross because Appellant failed to post bond within the statutorily mandated timeframe. Appellant now appeals the Order of Ejectment and/or the Orders Dismissing the Appeals to this Honorable Court.

STATEMENT OF FACTS

Appellant owns four separate mobile homes located at ASIP Mobile Home Park in Darlington County, South Carolina. The Appellant was required to pay lot rental fees to Respondent per their lease agreement. Appellant failed to pay the lot rental fees as required. On August 22, 2022, Respondent gave notice to Appellant that failure to bring her balance current would result in an action for eviction and lease termination. Having not received payment of the balance, on December 9, 2022, Respondent filed four separate Applications for Ejectment along with four separate Rules to Show Cause with the Darlington County Magistrate Court. The matter

came before the Magistrate Court for hearing on December 27, 2022. That day, the Magistrate Court pronounced an Order of Eviction and granted the relief sought by Respondent. Subsequently, on January 12, 2023, the Magistrate court signed and filed its written Order granting the eviction/ejectment. Appellant then filed four separate Notices of Appeal with the Darlington County Court of Common Pleas. There is no evidence in the record that Appellant filed those Notices of Appeal with the Magistrate Court. Appellant cited as her reason for appeal:

The defendant, Stephanie McAnuff did show proof that rent was paid and did not violate any terms and conditions of the lease between parties. In addition, plaintiff did not file for defendant to vacate the property, only for her failure to pay rent in the amount of \$6,150, which was not proven.

At a hearing on February 21, 2023, the Magistrate Court, which retained jurisdiction over the issue of posting a bond, found that dismissal of the appeals was appropriate as Appellant failed to post a bond within five days of filing her Notices of Appeal to Circuit Court as required by S.C. Code Ann. § 27-37-130. The Order Dismissing the Appeals was filed March 6, 2023. Appellant did not appeal the March 6, 2023 Order to the Circuit Court for Darlington County. Instead, Appellant filed a Notice of Appeal with this Court on April 4, 2023. In her Notice of Appeal to this Court, Appellant: 1) uses Form SCCA/720 for an appeal from magistrate court to circuit court; 2) indicates she is appealing from Richland County; 3) fails to include the case caption/numbers; 4) attaches the magistrate court Order Dismissing Appeals filed March 6, 2023; but 5) identified the issues to which she takes exception as:

The defendant, Stephanie McAnuff, showed proof rent was paid per the plaintiff's ledger statements and worked to communicate with plaintiff's management company to update records if they were incorrect. In addition, the Plaintiff filed for a money judgment and not for as order to vacate on the paper submitted to the court for their judgment. The magistrate in open court agreed that the defendant did not meet their burden of proof of money owed. However, the magistrate's office has stated they are unable to provide me with a recording nor a transcript of the proceedings. Neither was the request for these items given to my attorney Parker Howle, Esq.

Appellant's Notice of Appeal was purportedly served by certified mail on counsel for Respondent on April 5, 2023 according to the Certificate of Service filed by Appellant which was dated February 5, 2023; some two months prior to the date of service. On a separate Certificate of Service signed on April 9, 2023, Appellant indicates she served her Notice of Appeal but does not include upon whom it was served. Finally, on an Affidavit of Service for Arbitration and Claim for Property Damage, Appellant indicates she served Respondent by sending the Notice of Appeal to a post office box for its property manager; who is not authorized to accept service of civil pleadings. The Affidavit of Service is not notarized. All of these refer to an appeal from Richland County.

Respondent would take issue with Appellant's Statement of Facts pertaining to any prior corporate, financial or other arrangement between the Appellant and the Respondent as same is outside the scope of the record/action below and is therefore irrelevant to her appeal to this Court. Respondent was not awarded a monetary judgment for breach of contract but rather, this matter involves the eviction/ejectment of Appellant. Once, and if, the Respondent seeks a monetary judgment from Appellant because of her breach of contract, then consideration of the parties' past business/financial association becomes relevant.

STANDARD OF REVIEW

Because there is no direct appeal of an order issued by a Magistrate Judge to the Court of Appeals, there is no applicable standard of review defined in South Carolina case law governing this matter. There is no caselaw precedent for an appeal to this Court pursuant to a dismissal under S.C. Code Ann. Section 27-37-130 nor is there caselaw precedent governing the appeal of an order of dismissal by a magistrate court for matters pending in Circuit Court.

There are, however, cases regarding appeals from the Magistrate Court to the Circuit Court. S.C. Code Ann. Section 18-7-170 provides that, in reviewing judgments from the Magistrate Court,

the Circuit Court “shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.” “The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law.” Bowers v. Thomas, 373 S.C. 240, 244-245, 644 S.E.2d 751, 753 (Ct. App. 2007) (quoting Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984)). “In ejectment proceedings first heard in magistrate's court, the Court of Appeals is without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence.” Bowers v. Thomas, *Id.* at 245 (quoting 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 has *de novo* review of any errors of law by the Circuit Court in affirming/reversing a Magistrate Court ruling. See Hadfield v. Gilchrist, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000).

ARGUMENT AND CITATION OF AUTHORITY

I. The South Carolina Court of Appeals lacks appellate jurisdiction over this matter as the magistrate order(s) at issue are not directly appealable to the South Carolina Court of Appeals.

The South Carolina Court of Appeals is a court of limited jurisdiction. Rule 202(b) of the South Carolina Appellate Court Rules provides the courts from which an appeal may be taken and to which the Appellate Court Rules (Part II) apply to include: “(1) Lower Court: the circuit court (including masters-in-equity), family court or probate court from which the appeal is taken. (2) Administrative Tribunal: the administrative law court or agency from which the appeal is taken.” Furthermore, Rule 203, based on the definitions found in Rule 202(b), outlines the appeal process from each of those courts listed.

In contrast, the South Carolina Constitution, in Article V Section 11, provides “the Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.” Further, “when a judgment is rendered by a magistrates court ... the appeal shall be to the circuit court of the county wherein the judgment was rendered” Lastly, 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.”

Here, the Circuit Court has never reviewed this matter nor rendered an opinion, judgment or order. It is undisputed that the only orders concerned were issued by the Magistrate Court of Darlington County. First, is an Order of Ejectment, which as a threshold matter should be time-barred. In her Notice of Appeal and her Initial Brief, Appellant raises issues concerning the Order of Ejectment. Second, is the magistrate’s Order Dismissing the Appeals to Circuit Court pursuant to S.C. Code Ann. Section 27-37-130 which is the order Appellant attaches to her Notice of Appeal. S.C. Code Ann. Section 27-37-130. Neither Order is an Order of the Circuit Court and therefore, is unreviewable by this Court unless and until a circuit court order is issued. Allowing review of a magistrate order, even if filed in the Circuit Court, would be extra-jurisdictional and would lead to litigants appealing any order issued by a magistrate and filed with the circuit court (i.e. judgments).

II. If the Court of Appeals exercises jurisdiction, Appellant failed to timely appeal issues raised in the Orders of Ejectment and is limited to issues concerning the Order(s) of Dismissal assuming that issue has been preserved for appeal.

Rule 203 governs the form, substance and timing for a notice of appeal to this Court. It requires that first, in pertinent part, the appeal must be taken from the Court of Common Pleas. The rule requires service of the notice of appeal upon the Respondent within thirty (30) days of the entry of

the order appealed. Rule 203(e) provides that the notice of appeal shall include: (A) the name of the court, the judge, and county from which the appeal is taken. (B) the docket number of the case in the lower court; (c) the date of the order ... from which the appeal is taken; (E) the names, mailing addresses and telephone numbers of all attorneys of record and the names of the party or parties represented by each. A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law. Blackwell v. Woodard, 2021 S.C. App. Unpub. LEXIS 44, *2.

Appellant filed her Notice of Appeal with this Court on April 4, 2023, though it was apparently signed on April 3, 2023. In her Notice of Appeal, contained on a form for appeals to Circuit Court, she does not have the proper county, does not have the docket number, and fails to identify by name address and telephone number for the attorneys of record nor the parties represented by each.

Additionally, Appellant's "exceptions to the judgement of the magistrate" include issues regarding the granting of eviction and not the Order Dismissing the Appeals, which was the only order arguably entered within the thirty-day period preceding the Notice of Appeal. The only potential order appealable within the time frame established by Rule 203 is the Order Dismissing Appeals filed on March 6, 2022.

Lastly, in her Initial Brief, Appellant's first Issue on Appeal concerns the corporate and/or financial arrangement of the parties predating the landlord/tenant relationship. This issue is both irrelevant and outside the record on appeal. Appellant's designation of matters to be included in the record fails to even identify documents or trial exhibits concerning this issue and the Initial Brief also fails to raise any legal argument or citation concerning this issue.

Therefore, given the deficiencies of Appellant's Notice of Appeal, this matter should not be considered by the Court. If the Court is to consider the appeal, the only issue timely raised would be concerning the Order Dismissing Appeals.

III. The Magistrate Judge appropriately dismissed the Circuit Court Appeals because Appellant failed to timely post a bond and still, to this day, has not posted a bond.

The Appellant's second Issue on Appeal concerns whether the magistrate court erred in adjudicating the issue of Appellant's bond thus prejudicing the Appellant.

S.C. Code Ann. Section 27-37-130 provides:

An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby. In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate.

The aggrieved tenant in an ejectment action is responsible for signing the undertaking/bond. See S.C. Code Ann. Section 27-40-800 (providing the form by which the undertaking requirement is met and signed by tenant). The tenant has five days within which to accomplish paying the requisite bond and a failure to do so results in both/either: a) execution of the ejectment and/or b) the dismissal of the appeal to circuit court by the magistrate judge. See S.C. Code Ann. Section 27-37-130 and S.C. Code Ann. Section 27-40-800(e) and (f)(2). See also S.C. Code Ann. § 18-7-10 ("the party against whom judgment is rendered shall execute a good and sufficient bond").

Respondent's understanding of the process for establishing and paying bond is as follows (pardon the informality):

1) Rule 18, Magistrate Court Rules which provides:

Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered. If the judgment is announced at the trial in the presence of the parties or their attorneys, the notice of appeal shall be served and filed within thirty (30) days of the date the judgment is announced.

- 2) A hearing to establish bond and payment of the bond must occur within five days of filing the notice of appeal. S.C. Code Ann. Section 27-37-130
- 3) Failure to have the bond established and paid within the five (5) days results in
 - a. The landlord being able to move forward with the ejection and
 - b. The appeal being dismissed by the magistrate court. Id.

Here, the Appellant blames the magistrate court. However, the following deficiencies on the part of Appellant exist:

- 1) Appellant filed her Notice of Appeal in the Circuit Court but failed to file it in the Magistrate's Court as required by Rule 18 which would have been the "triggering" event for the bond-setting process.
- 2) No hearing to set bond was scheduled within the five (5) days as required by S.C. Code Ann. Section 27-37-130.
- 3) No bond was paid within the five (5) days required by S.C. Code Ann. Section 27-37-130 and has still not been paid.

Ultimately, the Appellant is responsible for ensuring she is following the statutes and rules governing her appeal rights. But rather than establishing and paying bond, Appellant's goal was to tie up the matter and further damage the Respondent.¹

¹ The Darlington County Magistrate Court, despite the failure of Appellant to pay bond, has declined to move forward with the ejection. Appellant has now sold the inhabitable mobile homes at issue but they remain on the property. The sale occurred without notice to Respondent who, as landlord, requires background checks on owners, but had no

CONCLUSION

Appellant raises two issues on appeal. Appellant fails to argue the first issue, which was also not timely or substantively preserved for appeal. This leaves the second issue raised by Appellant: “was the lower [Magistrate] court’s failure to set a bond in this appeal a statutory violation, which was prejudicial to appellant.” This Court cannot decide this issue because a magistrate court order is not appealable to the Court of Appeals. In the event the Court decides Appellant’s second issue on appeal, it should affirm the magistrate’s dismissal of the appeals to the circuit court and allow for the ejectment to move forward.

August 2, 2023

/s/ Edward A. Love
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

opportunity to do so for these homes. Appellant continues to not pay any lot rentals and has not posted bond all to Respondent’s detriment.