

Jul 26 2023

SC Court of Appeals



South Carolina Judicial Branch

TRANSCRIPT REQUEST FORM

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter/Transcriptionist and to South Carolina Court Administration at transcripts@sccourts.org. If WebEx or DCRP were used to capture the record, please indicate below and send the form to transcripts@sccourts.org.

Requestor's Information			
Full Name	Law Firm/Agency	Phone Number	
Charles C Foster	Foster Law Office	803 400 1921	
Email Address	Mailing Address		
Cartzon@FosterSC.com	3100 Devine St Columbia, SC 29205		
Is the requestor a party in the case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If no, does the requestor represent a party? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, name of party			
Rosa DeVeaux + Virginia Patterson			
Transcript Information			
Docket Number	Full Case Caption (i.e. State v. John Doe or John Smith v. Jane Smith)	Circuit	<input checked="" type="checkbox"/>
2022-CP-28-00229	Jasmine Gibson v. Rosa DeVeaux + Virginia Patterson	Family	<input type="checkbox"/>
Date(s) of Proceeding	County	Appeal pending	Death Penalty
3/1/2023	Kershaw	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Presiding Judge	Special Circumstances		
Alison Renee Lee	Is the hearing to be transcribed one of the following:		
Opposing Counsel(s) (name and email address)	<input type="checkbox"/> Termination of parental rights		
Drew@harrisonfirm.com	<input type="checkbox"/> Adoption		
Andrew S. Radeker	<input type="checkbox"/> Any actions involving child custody/visitation.		
Court Reporter(s)	<input type="checkbox"/> WebEx	Delivery Timeframe	
	<input type="checkbox"/> DCRP	(check Rule 607 for current page rates)	
Portion of proceeding to be transcribed		<input type="checkbox"/> Quote	
<input checked="" type="checkbox"/> Entire hearing		<input type="checkbox"/> Rough Draft	
<input type="checkbox"/> Voir dire by juror		<input type="checkbox"/> Overnight delivery	
<input type="checkbox"/> Jury selection		<input type="checkbox"/> Daily delivery	
<input type="checkbox"/> Plaintiff's opening statement		<input type="checkbox"/> Expedited delivery (7 days) Due on/before:	
<input type="checkbox"/> Defendant's opening statement		<input checked="" type="checkbox"/> Regular delivery (60 days)	
<input type="checkbox"/> Plaintiff's closing arguments		Delivery Method (additional fees may apply)	
<input type="checkbox"/> Defendant's closing arguments		<input type="checkbox"/> PDF / Email	
<input type="checkbox"/> Entire direct examination		<input type="checkbox"/> Hard Copy/Priority Mail (\$50 + shipping)	
<input type="checkbox"/> Entire cross examination		<input checked="" type="checkbox"/> PDF & Hard Copy/Priority Mail (\$50 + shipping)	
<input type="checkbox"/> Entire redirect		Responsible Payor	
<input type="checkbox"/> Examination of witness (W) by attorney (A)		<input checked="" type="checkbox"/> Private / Self	
W: _____		<input type="checkbox"/> Court Appointed Counsel	
A: _____		Appeals Attorney	
<input type="checkbox"/> Ruling of the court		Email	
Next Hearing Date		<input type="checkbox"/> Other	

Requestor's Signature: [Signature] Date: 7/26/2023

NOTE: Requests will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party, regardless of indigent status. Please promptly submit your payment in the method of payment requested, in order for the transcript to be produced. In some cases, a deposit may be required before the transcript can be placed in the production queue. You may also request a quote before deciding to order. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter or transcriptionist.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Jasmine Gibson,

Plaintiff,

vs.

Rosa DeVeaux and Virginia Patterson,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2022-CP-28-00229

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff's motion for partial summary judgment seeking a declaratory judgment on her claim regarding a valid lease of certain property and her abuse of process cause of action. This case came before the court at a non-jury trial roster meeting for the trial week of February 27, 2023. Notice of the non-jury term was provided by Plaintiff to the Defendants. The notice indicated that Plaintiff's motion for summary judgment may be heard at or after that roster meeting at any time during the trial week that the court designated. At the trial roster meeting, the Court designated that the motion would be heard with motions in other cases at the in-person motion hearings at 9:30 a.m. on March 1, 2023. Notice was provided to Defendants' counsel that the motion would be heard at that time by both Plaintiff's counsel and the Clerk of Court.

At the hearing on March 1, 2023, neither Defendants' counsel nor Defendants appeared. Attempts were made to contact Defendants' attorney without success. The Court heard the motion at that time. For the reasons discussed below, this Court grants the motion that the Plaintiff has a valid lease of the Defendants' interests in the subject real estate, and that the Defendants are liable to the Plaintiff for abuse of process. An evidentiary hearing was held to determine damages on Plaintiff's abuse of process claim. Judgment on the damages is addressed in a separate order.

7. Jasmine is not in breach of any lease agreement concerning the property involved in this case.

By failing to respond to those discovery requests within the required time period the Requests to Admit are admitted. Rule 36, SCRCP. The Defendants eventually served late responses to the discovery requests, but no extension of their time to respond to the requests to admit was ever sought by or granted to the Defendants. Additionally, DeVeaux and Patterson did not oppose the motion for summary judgment with affidavits or any other filings.

FINDINGS OF FACT

The document attached to Gibson's affidavit, and her discovery requests, is a lease agreement signed by Gibson, Patterson, and DeVeaux, dated August 12, 2019, and reads as follows:

We Rosa Deveaux and Virginia Patterson declare that as of March 2019 Jasmine Denise Gibson along with her two children, Shazzaria Layvella Bennett and Jymerelle King Jazharie Gilmore, are the sole occupants of the following residence: 866 Watts Hill Road, Lugoff, SC 29078 (Family Estate). Jasmine has agreed to take FULL responsibility of the residence as follows for as long as she lives: complete the remaining mortgage, pay residential taxes and insurance yearly, ensure all utilities remain active, ensure the land is maintained and undamaged, No Illegal activity of any kind is to be conducted at any time on nor around the property, and lastly completely renovate the property as needed and see fit to not only restore value but to ensure the residence remains livable. The following list not only the terms but the complete agreement between the listed individuals above. Any and all changes will be made as needed along with as situations change but until then this is permanent residential agreement for the property.

Gibson entered into the agreement with Patterson and DeVeaux after they asked her to "take over" the mortgage and tax payments for the property. Gibson's affidavit notes that she is still alive and has made all payments required under the lease, performed all duties required by the lease, and has not violated any restrictive terms of the lease. This is borne out by and conclusively established by the Defendants' admissions under Rule 36, SCRCP. No evidence has been

S.E.2d 20, 28 (2008). “The party opposing a motion for summary judgment need not come forward in any way. Where, however, the record is devoid of any allegation or evidence tending to show there is a material fact in issue, the moving party is entitled to summary judgment as a matter of law.” *Milligan v. Liberty Life Ins. Co.*, 313 S.C. 478, 443 S.E.2d 381, 382 (1994). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

CONCLUSIONS OF LAW

Here, the record is subject to only one conclusion with regard to the question raised by this motion. Gibson holds a valid lease of Patterson and DeVeaux’s interests in the subject real property and is entitled to summary judgment on her declaratory judgment cause of action.

South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Hughes v. Edwards*, 265 S.C. 529, 220 S.E.2d 231 (1975). The essential terms and conditions of a lease agreement include a definite agreement as to the extent and boundary of the property to be leased, the term of the lease, the rental as well as the time and manner of payment.

Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893-94 (1989).

“[T]he essential elements of a binding lease agreement were said to be the grant of possession and exclusive use and enjoyment of the property, definite consideration or rent, and a certain term.” *B-L-S Const. Co., Inc. v. St. Stephen Knitwear, Inc.*, 276 S.C. 612, 614, 281 S.E.2d 129, 130 (1981). The essential terms to create a lease agreement are present here. The lease identifies the specific property being rented as “866 Watts Hill Road, Lugoff, SC 29078”; the term of the lease states “Jasmine has agreed to take FULL responsibility of the residence . . . *for as long as she lives*” (emphasis added); and the rent to be paid as well as the terms of how and when the rent is paid (“complete the remaining mortgage, pay residential taxes and insurance yearly”). The agreement is a valid lease executed by the parties. Gibson is a tenant for a term

evidence here that the parties have entered into any modification to change the lease's terms. Gibson holds a valid lease of Patterson and DeVaux's interests in the subject real property and is entitled to a declaratory judgment to that effect.

As to the second cause of action for abuse of process, the elements of abuse of process are: (1) an ulterior or improper purpose, and (2) a willful act in the use of legal process that is not proper in the regular conduct of the proceeding. *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128, 134 (2014); *Broadmoor Apts. of Charleston v. Horwitz*, 306 S.C. 482, 486, 413 S.E.2d 9, 11 (1991). “[C]ourts have noted that an abuse of process action may lie if a party prosecutes an entire lawsuit for collateral purposes.” *D.R. Horton, Inc. v. Wescott Land Co., LLC.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App. 2002) (citing *Food Lion, Inc. v. United Food & Commercial Workers Int’l. Union*, 351 S.C. 65, 73, 567 S.E.2d 251, 255 (Ct. App. 2002)).

Acts furthering the lawsuit satisfy the “willful act” requirement. *See Broadmoor Apts.*, 306 S.C. at 487. Here, Patterson and DeVaux prosecuted the eviction proceedings against Gibson in an attempt to get Gibson out of the property to make it easier for DeVaux and Patterson to sell the property. Their doing so was a willful act in the use of legal process that was not proper in the regular conduct of the eviction proceedings. They also did so with an ulterior or improper purpose. DeVaux and Patterson are liable to Gibson for abuse of process. The only fact issue that remains is the amount of the damages award to which Gibson is entitled as a result of this abuse of process.

ORDER

Accordingly, it is therefore hereby ORDERED that Gibson's motion for partial summary judgment is granted and

- 1) The court hereby declares judgment that Gibson holds a valid lease of Patterson and DeVaux's interests in the real property subject of this action, and the term of that lease ends when Gibson dies or breaches her obligations under the lease; and



Kershaw Common Pleas

Case Caption: Jasmine Gibson VS Rosa Deveaux , defendant, et al
Case Number: 2022CP2800229
Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

CASE NO. 2022-CP-28-00229

Jasmine Gibson,

Plaintiff,

vs.

Rosa DeVeaux and Virginia Patterson,

Defendants.

ORDER OF JUDGMENT
FOR DAMAGES

This matter comes before the Court for a damages hearing the trial week of February 27, 2023. The Order on Summary Judgment issued a declaratory judgment in Plaintiff's favor that she has a valid lease of the property subject of this action and adjudged liability in the Plaintiff's favor on the abuse of process cause of action.

FINDINGS OF FACT

As a result of the Defendants' abuse of process, Plaintiff has experienced significant stress and anxiety. She also incurred \$6,000.00 in attorneys' fees to combat the improper use of the process by the Defendants. The Court finds that the amount of \$20,000.00 is sufficient to compensate the Plaintiff for the substantial psychological injury caused by the abuse of process by the Defendants, who are the Plaintiff's aunt and grandmother.

CONCLUSIONS OF LAW

"Damages recoverable for abuse of process are compensatory for the natural results of the wrong, and may include recompense for physical or mental injury; expenses; loss of time; and injury to business, property or financial standing." Huggins v. Winn-Dixie Greenville, Inc., 252 S.C. 353, 362, 166 S.E.2d 297, 301 (1969). The tort of abuse of process is intended to compensate a party for harm resulting from another party's misuse of the legal system, and attorney's fees incurred for combating the improper process are recoverable as damages for abuse of process.

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO. 2022-CP-28-00229

Jasmine Gibson

Rosa DeVeaux

PLAINTIFF(S)

Virginia Patterson
 DEFENDANT(S)

Submitted by: Andrew S. Radeker	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Jasmine Gibson	Rosa DeVeaux	\$ 26,000.00
Jasmine Gibson	Virginia Patterson	\$26,000.00
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest



Kershaw Common Pleas

Case Caption: Jasmine Gibson VS Rosa Deveaux , defendant, et al

Case Number: 2022CP2800229

Type: Order/Damages

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2023-04-04 08:54:29 page 5 of 5