THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr.
Circuit Court Judge

Case No.: 2022-000644

Nicole Qunita Murray ..... Appellant,

v.

Linda P. Smith ..... Respondent.

INITIAL BRIEF OF RESPONDENT

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I. In an ejectment action where the tenant abandoned a questionable title defense, was the Magistrate's decision unsupported by evidence or controlled by an error of law when she refused to stay the ejectment while title was tested in a separate action in the Circuit Court?

II. Does a letter stating: "…Your lease agreement ends, 31 January, 2021 and it will not be renewed…" terminate a lease, and was a Magistrate's award of summary judgment based on said letter unsupported by evidence or controlled by an error of law?

COUNTER-STATEMENT OF THE FACTS

On January 21, 2005, Respondent Linda P. Smith purchased the real property located at 4357 Cheviot Drive, North Charleston, SC 29418 (Premises) from Appellant Nicole Qunita Murray (then Pringle). (Ex.D to Am. Compl.). Appellant contends prior to this purchase the parties also signed a "Letter of Agreement". (Am. Ans. Ex. A). Viewing this document in a light most favorable to the Appellant, it could be construed, at best, as an option contract for 4357 Cheviot Drive. After this purchase, Respondent and Appellant entered into a lease agreement allowing Appellant to reside on the Premises. (¤ MSJ memo. p. 2). This lease agreement has gone through several iterations, though only the two most recent iterations are relevant to this appeal. (¤ MSJ memo. p. 2). The second most recent iteration of the lease between the parties regarding the Premises (Am. Compl. Ex. A) (2019 Lease) was executed by both parties on January 29, 2019 and the term of that lease ran from January 31, 2019 through January 31, 2020 at a monthly rental rate of $1,095.00. This lease was renewed for a one year term on January 30, 2020 with the one year term running from February 1, 2020 through January 31, 2021 as evidenced by the lease renewal executed by the parties (Am. Compl. Ex. B) (Lease Renewal). Shortly after signing the Lease Renewal, Appellant stopped paying her rent, despite her family having the means to pay rent. (Smith Aff. p. 2). On November 10, 2020, Respondent sent written notice to Appellant demanding she pay her unpaid rent or face eviction, and also terminating her lease as of January 31, 2021 (when her lease

expired). (Smith Aff. p.2; Am. Compl. Ex. C,D; π MSJ memo. p. 3). Appellant did not pay, and litigation commenced.

COUNTER-STATEMENT OF THE CASE

The Return of Magistrate Amy Mikell ably sets forth the procedural history of this matter before her:

> Plaintiff/Respondent filed an Application for Ejectment on January 6, 2021, pro se, based on failure to pay rent when due or demanded. After personal service of the Rule to Vacate or Show Cause by the court's constable on or about January 14, 2021, Defendant/Appellant requested a jury trial on January 25, 2021…[At this time, jury trials were suspended due to COVID-19.]
>
> The court conducted a pre-trial conference on February 3, 2021. [Respondent] appeared, *pro se*, and [Appellant] was represented by attorney Jeffrey Kuykendall…
>
> On May 18, 2021, the court held a second pre-trial conference. Plaintiff/Respondent was represented by Attorney Adam Howell, and [Appellant] was represented by Attorney Kuykendall. Pursuant to the pre-trial conference, [Appellant] was informed by the court that if she wanted to assert a title interest in the subject property, she must file an Answer asserting the defense of questionable title and file a written undertaking with the court pursuant to section 22-3-1120. [Appellant did not do so.]
>
> [Respondent] filed a Motion to Amend her pleadings on May 13, 2021, which the court heard and granted at the May 18, 2021 hearing. [Respondent's] Amended Complaint asserts end of term of occupancy or tenancy as an additional ground for the eviction based on a letter sent to [Appellant] by [Respondent] via certified mail on November 10, 2020.
>
> On June 8, 2021, [Appellant] filed an Answer and Affirmative Defenses… [Respondent] filed a Motion for Summary Judgment on June 24, 2021. The court scheduled a hearing on [Respondent's] Motion for Summary Judgment on July 21, 2021. On July 21, 2021, [Appellant] filed a Motion to Amend Answer and Affirmative Defenses and a Motion to Stay this matter pending resolution of a Court of Common Pleas action filed on July 20, 2021. With the consent of both parties, the court heard both of [Appellant's] motions on July 21, 2021. In separate written

> orders dated July 22, 2021, the court denied [Appellant's] Motion to Stay and granted [Appellant's] Motion to Amend. The court granted [Respondent] additional time to restyle her Motion for Summary Judgment. [Respondent] timely submitted a Memorandum of Law in Support of her Motion for Summary Judgment, and [Appellant] timely submitted her Memorandum of Law in Opposition to [Respondent's] Motion for Summary Judgment. [Respondent's] Motion for Summary Judgment came before the court for hearing on August 24, 2021, with both parties represented by their respective counsel.
>
> After hearing the arguments of the parties and reviewing the documentary evidence submitted by the parties, [Respondent's] Memorandum of Law in Support of [Respondent's] Motion for Summary Judgment, and [Appellant's] Memorandum of Law in Opposition to [Appellant's] Motion for Summary Judgment, the court issued a written Order Granting [Respondent's] Motion for Summary Judgment on September 7, 2021.
>
> [Respondent] filed for a Writ of Ejectment on September 7, 2021 (the Writ of Ejectment has not been served by the court's constable), and Defendant/Appellant filed a Notice of Civil Appeal with the Court of Common Pleas on September 8, 2021, serving the magistrate court on the same day.
>
> The court held a hearing on the Bond to Stay Execution of Judgment on Appeal on September 14, 2021, taking testimony from both parties and documentary evidence submitted by [Appellant's] expert witness. Pursuant to section 27-40-790(a), the court set the monthly bond amount at $1,095.00.

(Return pp. 1-3).

On April 19, 2022, Appellant filed before the Circuit Court a Motion to Continue and a Motion to Stay and Consolidate. (Mtn. to Continue; Mtn. to Consol.). The bases of these motions were largely the same as Appellant's Motion to Stay before the Magistrate: the case should be continued or stayed until the resolution of *Nicole Qunita Murray v. Linda P. Smith*, 2021-CP-10-003327 (Circuit Court Case), or consolidated with that case.

According to Appellant, the Circuit Court Case contained "common questions of law or fact, specifically regarding the ownership, equitable ownership, lease or mortgage terms, and payment history regarding the subject matter property." (Cir. Ct. Mtn. to Consol.). This action asserted claims under a number of theories requesting reimbursement for alleged overpayment of rent and equitable relief justified by the purported 2005 "Letter of Agreement". (Circuit Court Case complaint).

On April 20, 2022, the Circuit Court heard the appeal and pending motions. After reviewing and considering the Magistrate Court record, the Circuit Court affirmed. (Trans. pp. 3-4; May 11, 2022 Order). On May 12, 2022, Appellant filed and served her Notice of Appeal to this Court. After several extensions to obtain a transcript of the appeal hearing, Appellant moved on December 16, 2022, to remand this matter to the Circuit Court to reconstruct the record. This Court remanded this matter to the Circuit Court on February 2, 2023.

On October 21, 2022, Appellant's bond payment posted after the five day "grace period" specified in the "Bond to Stay Execution on Appeal Order". (Appl. & Aff. to Dissolve Stay, Dismiss Appeal, & Evict). Respondent has sought to have the Circuit Court dissolve this bond and issue an order evicting Appellant, and Appellant has responded. (Id.;Return;Am. Return). As of the date of the Initial Brief of Respondent in this matter, the Circuit Court has not ruled on this application.

Briefing finally commenced in this appeal on August 7, 2023.

STANDARD OF REVIEW

This action involves the review of the Circuit Court's decision on a civil magistrate's court appeal. "Unless we find an error of law, we will affirm the [circuit court's] holding if there are any facts supporting [its] decision." *Bowers v. Thomas*, 373 S.C. 240, 244, 644 S.E.2d 751, 753 (Ct. App. 2007) (quotations omitted).

ARGUMENT

Magistrate Amy Mikell's decision is detailed, supported by the record, and contains no errors of law. A stay would have further delayed an eviction that should have taken place well over two years ago, and reasonable minds cannot differ on the fact that Respondent terminated Appellant's lease long ago. Resolution of this matter has been delayed for years, and this Court must affirm forthwith.

I. The Magistrate's denial of Appellant's Motion to Stay was appropriate in light of Appellant's choice to litigate issues in another court.

Appellant argues the Magistrate (and, to the extent it is before[1] this Court, the Circuit Court) erred in failing to stay this case while the Circuit Court Case was litigated. (App. Brief pp. 7-8). It appears Appellant believes a recently-discovered "Letter of Agreement" from 2005 (Am. Ans. Ex. A) gives her some legal or equitable

[1] Respondent would note that Appellant's Issue I references the decision of the Magistrate on the Motion to Stay before her, but not the decision of the Circuit Court on the separate Motion to Stay filed there. According to our appellate court rules, this would mean the decision of the Circuit Court on its motion to stay is not to be considered. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). This would also mean the Circuit Court's decision would be the law of the case. *See e.g. Charleston Lumber Co. v. Miller Housing Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (unappealed ruling, right or wrong, is the law of the case and requires affirmance).

property interest in 4537 Cheviot Drive. (App. Brief pp. 7-8). According to the Appellant, the interpretation of this purported "Letter of Agreement" would have an effect on this case. (App. Brief p. 7). Assuming this "Letter of Agreement" is authentic, it cannot serve as the basis of further delays to Appellant's eviction.

Appellant neglects to inform this Court that she was given the opportunity to contest ownership of 4537 Cheviot Drive in this action, but chose not to. At a May 18, 2021, pre-trial conference, Appellant was informed that if she wished to assert a defense of questionable title, she must file a written undertaking with the court, pursuant to S.C. Code § 22-3-1120. (Ret. pp. 1-2). Appellant chose not to assert this defense. (Ret. p. 2). Appellant's motion to stay before the Magistrate Court represents a back-door attempt to assert questionable title without posting bond, and the Magistrate was correct to deny it.

Because title is not at issue before the Magistrate Court, it was empowered, and required, to swiftly decide this matter and issue a Writ of Ejectment. *E.g.* S.C. Code § 27-37-20 (ten days to respond to Rule to Vacate); S.C. Code § 27-37-160 (twenty-four hours to vacate when presented with Writ of Ejectment).

Finally, Appellant's supposed concern over overpayment of rent, "fraud", &c. asserted in her Amended Answer and Affirmative Defenses[2] is no reason to delay

[2] Appellant describes her Amended Answer and Affirmative Defenses as her "Amended Answer and Counterclaims" in her brief. (App Brief p. 7). The "counterclaims" in that document are presented as affirmative defenses. (Am. Ans.). To the extent these defenses were counterclaims, their dismissal is appropriate due to the pending Circuit Court Case. *See* Rule 12(b)(8), SCRCP (dismissal of action when another action is pending between the same parties for the same claim); *see*

eviction. Appellant has raised all of these issues in the Circuit Court Case, where they can be disposed of without further burdening the Respondent with her involuntary tenant.

II. The Magistrate's conclusion that the Respondent's November 10, 2020, Letter terminated the parties' month-to-month lease was neither unsupported by evidence nor controlled by an error of law.

The story of the various and sundry agreements and purported agreements between the parties in this appeal is complex; thankfully, the Appellant's brief presents a simple issue in her appeal of the Magistrate's grant of summary judgment. According to the Appellant:

> …[T]he Magistrate correctly found that, in the light most favorable to the Appellant, Appellant resided at [4537 Cheviot Drive] under a month-to-month lease, pursuant to S.C. Code Ann. §27-40-310(d)." The Magistrate also correctly stated that a month-to-month lease may be terminated by a written notice given at least 30 days before the termination date specified in the notice. The Magistrate erred, however, in concluding that there was no issue of fact that the November 10, 2020 certified letter provided that required written notice.

(App. Brief pp. 8-9). Reproduced below, verbatim, is the letter that the Appellant references:

> Mrs. Murray, the last time you paid your monthly rent of $1,095.00, for 4357 Cheviot Dr., was February 2020. You have been asked repeatedly about the past overdue rent with no resolution. Each rental payment of $1,095.00 is due by the 5th of each month plus a late fee of $10.00 if paid after the 10th of each month.
>
> As of today, 10 November 2020, your past rent due (for eight months) is, $8,760.00 plus a late fee of $80.00. Total amount due is, $8,840.00.

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also Rule 220(c), SCACR (appellate court may affirm for any reason appearing in the record).

> Because of your abusive and vile language via in-person and by cell phone in the past several months, I request your payment in-full be made in one of the following way: A cashier check to, Linda P. Smith, or a transfer to my account at the Naval Federal Credit Union (NFCU). Your last two payments were submitted by transfer to my NFCU account.
>
> Mail check to: Linda P. Smith, 113 Jillian Circle, Goose Creek, SC 29445
>
> If payment in-full ($8,840.00) is not paid within 14 days of this notice, you are given notice to [vacate] the rental property at 4357 Cheviot Dr, North Charleston, SC 29418.
>
> If you don't [vacate] the property the next step will be through the Magistrate office, and all fees as stated in your rental agreement will be assessed to the tenant.
>
> PS Your lease agreement ends, 31 January, 2021 and it will not be renewed.

(Am. Compl. Ex. C). Appellant's contention this letter did not terminate a lease is disingenuous at best. The South Carolina Residential Landlord-Tenant Act (SCRLTA) provides: "The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the termination date specified in the notice." S.C. Code § 27-40-770(b).[3] Reasonable minds cannot differ on the fact the November 10, 2020, letter constituted a termination under the SCRLTA. *See Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997) (When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.).

[3] If the parties operated under a written lease, this letter also provided the 14 days' notice required under S.C. Code § 27-40-710.

Appellant also asserts her alleged overpayment of rent as a defense to summary judgment (App. Brief p. 9); this argument fails as a matter of law. Under the SCRLTA, a tenant must pay the rent due under the rental agreement. S.C. Code § 27-40-310. The SCRLTA recognizes only one circumstance where a tenant may unilaterally reduce his rent: when the landlord fails to provide essential services, and then only after written notice to the landlord. *See* S.C. Code § 27-40-630(a)(1). Overpayment of rent is not an "essential service" under the SCRLTA. *See* S.C. Code § 27-40-210(17).

III. Appellant has abandoned her appellate arguments.

Appellant's initial brief contains no citations to the record, though it does cite six cases. Appellant's case citations, however, only set forth her proposed standard of review, and they do not support her arguments on the merits. If an argument is raised in a brief but not supported by authority, this Court will deem the argument abandoned and will not consider it on appeal. *Historic Charleston Holdings, L.L.C. v. Mallon*, 365 S.C. 524, 533 n. 7, 617 S.E.2d 388, 393 n. 7 (Ct.App. 2005); *see also* Rule 208(b)(2)(E), SCACR (requiring references to record on appeal). Accordingly, Appellant has abandoned both her arguments in this appeal and this Court must affirm.

IV. To the extent the Circuit Court erred, any error was harmless.

Assuming, *arguendo*, the Circuit Court erred in affirming the Magistrate, any error was harmless. "Appellate courts recognize – or at least they should recognize – an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter." *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App.

1987); *see also* Rule 61, SCRCP (harmless error). If any of Appellant's defenses before the Magistrate Court had any merit whatsoever (they do not), they will be considered in the Circuit Court Case. This renders any error on the part of the Circuit Court related to Appellant's defenses harmless, and this Court must affirm.

CONCLUSION

For the reasons above, and any argument present in the record, the Circuit Court should be affirmed.

Dated: 08/23/2023

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