

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-40-06087

Colie Slice,
PLAINTIFF-APPELLANT,
vs.
David Troy Slice and Kayla Slice,
DEFENDANTS-RESPONDENTS.

ORDER REVERSING
MAGISTRATE’S DECISION

RECEIVED
Sep 29 2023
SC Court of Appeals

The above-captioned case is before the Court upon appeal from the decision of the Dutch Fork Magistrate. The matter came on for a hearing held via WebEx on June 30, 2023. Appellant’s counsel, Jeffrey F. Peil was present, along with Defendants’ counsel, Drew Radeker. For the reasons stated herein, the order of the Dutch Fork Magistrate is reversed.

Case History¹

Plaintiff-Appellant Colie Slice filed an Application for Ejectment in the Dutch Fork Magistrate (case number 2022-CV-40-10502370). On September 2, 2022, the Dutch Fork Magistrate issued a “Rule to Vacate or Show Cause (Eviction)” to David Troy Slice and Kayla Slice. The Rule to Show Cause states that the Defendants are to vacate the premises immediately “OR contact the Dutch Fork Magistrate . . . within ten (10) days of receiving this notice for the purpose of scheduling a hearing to show why you should not be evicted from the premises.”

The Defendants contacted the Magistrate via telephone and requested a hearing. On September 29, 2022, Defendants filed a motion to dismiss pursuant to SCRCP Rule 12(b)(1), (b)(6), and (b)(8). That same day, Defendants filed an action in Common Pleas Court (case number

¹ These facts are drawn from the Return of the Civil Appeal filed by the Dutch Fork Magistrate, Hon. M. David Scott, on January 4, 2023.

2022-CP-40-05096) against Plaintiff Colie Slice, and non-party to this case, Jean Slice, seeking specific performance for breach of an alleged sales contract.

The Plaintiff responded to the motion to dismiss in the Magistrate's Court, arguing that Defendants had not complied with the statutes for asserting a title defense in their answer. The Magistrate held a hearing on Defendants' motion to dismiss, and dismissed the action pursuant to SCRCF 12(b)(1) determining it lacked subject matter jurisdiction. Plaintiff appealed, citing as an enumeration of error the Magistrate's granting of the Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction.

Issue for Appeal

Plaintiff contends that the Magistrate Court erred when it granted Defendant's Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction.

Legal Standard

"Upon hearing the appeal the appellate 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." S.C. Code Ann. § 18-7-170. However, "[t]he circuit court, acting as an appellate court in a case heard by the magistrate, cannot consider questions that have not been presented to the magistrate." Indigo Assocs. v. Ryan Inv. Co., 314 S.C. 519, 523, 431 S.E.2d 271, 273 (Ct. App. 1993).

"The question of subject matter jurisdiction is a question of law." Porter v. Labor Depot, 372 S.C. 560, 567, 643 S.E.2d 96, 100 (Ct. App. 2007). The defense of lack of subject matter jurisdiction "may at the option of the pleader be made by motion." SCRCF 12(b). "A motion making any of these defenses shall be made before pleading **if a further pleading is permitted.**"

Id. However, the rules of civil procedure apply in magistrate’s courts “insofar as practicable” and only “to the extent they are not inconsistent with the statutes and rules governing those courts.” SCRCP 81. Evictions, or actions for ejection, are special statutory proceedings in this state governed by S.C. Code § 27-37-20. “Any tenant may be ejected in the following manner, to wit: Upon application by the landlord or his agent or attorney any magistrate having jurisdiction shall issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.” S.C. Code § 27-37-20.

Analysis

The magistrate court erred by granting Defendants’ motion to dismiss based upon subject matter jurisdiction. Based upon the return provided by the magistrate, and filed of record in this case, the Magistrate’s ruling was based entirely upon averments made in Defendants’ motion to dismiss, rather than compliance with the relevant statutes.

S.C. Code § 22-3-20 states: “No magistrate shall have cognizance of a civil action . . . [w]hen the title to real property shall come in question, *except as provided in Article 11 of this chapter.*” (emphasis added). The relevant portions of Article 11 of Chapter 3 of Title 22 are copied in full below:

Article 11 Proceedings When Title to Real Estate is Involved

SECTION 22-3-1110. Defense of questionable title in defendant’s answer.

When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, *set forth in his answer any matter showing that such title will come in question.* Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.

SECTION 22-3-1120. Written undertaking by defendant in cases where title to real property will come in question.

At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

...

SECTION 22-3-1140. Procedure if undertaking not delivered.

If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.

S.C. Code §§ 22-3-1110, 22-3-1120, 22-3-1140. (emphasis added).

The magistrate's return indicates that Plaintiff directly raised in the Magistrate Court the exceptions contained in "Article 11 of Title 27 [sic]," but that the Magistrate could not locate anything in that section that "displaced the general magistrates' jurisdiction statute." This indicates that the magistrate acknowledged that SC Code §§ 22-3-1110, 22-3-1120, and 22-3-1140 were directly applicable, and could serve as a basis for proceeding to trial. The record is devoid of any indication that the Defendants delivered the necessary bond and undertaking which would allow them to raise the defense of superior title to the property in the proceeding.

Under a statute similar to the ejectment statute, the South Carolina Supreme Court has stated:

[T]he statute gives the [trespasser] the privilege within five days of making such showing and executing the bond which shall operate to prevent the issuing of the warrant. But it does not follow from this that it is the imperative duty of a magistrate to issue his warrant of ejectment in all cases where the party in possession fails within five days to satisfy him that he has a bona fide color of claim, and to execute the bond. If the defendant in possession does not see fit to avail himself of the privilege of executing the bond within five days after notice to quit, and thereby preventing the warrant of ejectment, but should appear and demand a hearing as to whether the case is one falling within the statute, it is the duty of the magistrate to accord such hearing, and it would then be incumbent on plaintiff to show, at least

prima facie, that he is owner of the premises, and that defendant is a trespasser. Richland Drug Co. v. Moorman, 71 S.C. 236, 50 S.E. 792, 794 (1905).

Several things are of note in this opinion. First, the Court determined that if no bond was posted, the matter had to proceed to a hearing on the merits. Second, the decision comports with later decisional case law that holds, “as the ejectment proceedings are applicable only to a case where the relationship of landlord and tenant exists, the preliminary question of the existence of that relation is one of fact for the determination of the magistrate, when either party raises the question of title dependent upon such preliminary inquiry.” Bamberg Banking Co. v. Matthews, 132 S.C. 130, 128 S.E. 718, 719 (1925). Third, and most important, it appears that the statute at issue had different remedies. Under Civ. Code 1902, § 297, which the Moorman court was analyzing, if bond was posted, the remedy was that “the said magistrate shall not issue his warrant...” Moorman, 71 S.C. at 236. It was silent as to what the magistrate was to decide if no bond was posted. It appears the South Carolina General Assembly corrected that oversight when it passed S.C. Code § 22-3-1140, in that it clarified that the failure to post the bond and undertaking (1) vests the magistrate with jurisdiction to hear the claim, whether a title claim exists or not; and (2) states “*the defendant shall be precluded, in his defense, from drawing the title in question.*”

The takeaway from Moorman is that the magistrate should have denied the motion to dismiss as the matter was called for a hearing and no bond or undertaking was presented, and allowed the matter to proceed to trial with the evidentiary limiting instruction provided for by law. Rule 12 allows a party asserting a 12(b)(1) defense to make it by motion, but it allows them to make these defenses “before pleading *if a further pleading is permitted.*” A rule to show cause, which is what a rule to vacate proceeding is, does not permit further pleadings, or pleadings of any kind, for that matter. It is a summary proceeding where the magistrate makes a *prima facie* finding, based upon a sworn application, that cause exists for a writ to issue, and orders the other party to

either vacate or appear in court for trial on the merits. 56 AM. JUR. 2D MOTIONS, RULES, AND ORDERS § 46 (“A rule to show cause is not an original process with which to initiate resolution of a dispute”). In a civil action, a court summons is issued with the complaint that specifically directs the opposing party to serve an answer to the complaint. In a rule to show cause, no such summons is issued. And indeed, in this proceeding, there was no summons requesting a written answer. Instead, the magistrate court issued an order, consistent with the statute, that said “the defendant and lessee of the premises listed above, and all others are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 OR to contact [the Magistrate’s Office] within ten (10) days of receiving this notice, *for the purpose of scheduling a hearing* to show why you should not be evicted from these premises.” Nowhere in that order was there any indication that the Defendants had a right to file a written answer, let alone move to dismiss the magistrate’s order.

As the magistrate’s court instead failed to have an evidentiary hearing, took only argument on the motion to dismiss, and determined it lacked subject matter jurisdiction when no bond and undertaking had been filed, the magistrate erred as a matter of law. The magistrate court was vested with subject matter jurisdiction by S.C. Code § 22-3-1140, and should have proceeded to trial on the merits.

At the hearing on the appeal, Defendants cited to the case of Rivers v. Smith, No. 2020-000451, 2023 WL 4096019, at *1 (S.C. Ct. App. June 21, 2023) for the proposition that their filing of a separate common pleas action served as the necessary bond and undertaking required by the statute. However, that case is clearly distinguishable. In that case, the tenants sued the landlord in the Orangeburg Court of Common Pleas for fraud and challenged the landlord’s ownership of the property. Id. at *1. Shortly *thereafter*, the landlord turned around and sought to evict the tenant in the magistrate court. Id. The Court of Appeals confronted S.C. Code Ann. § 22-3-1120 head on,

and held that the undertaking was not necessary because the Common Pleas action predated the eviction action:

A different statute required them to file an undertaking as assurance that the defendant will promptly file an action in circuit court over title to the property, see S.C. Code Ann. § 22-3-1120 (2007), but the Rivers cleared this bar with room to spare—*they filed their circuit court suit before Smith filed his case to evict them*. They gave the magistrate and Smith copies of the summons and complaint at the hearing. Rivers v. Smith, No. 2020-000451, 2023 WL 4096019, at *3 (S.C. Ct. App. June 21, 2023). (emphasis added).

However, Rivers is easily distinguishable, as that is not what occurred here. In this case, landlord filed an eviction action requiring the tenants to show cause why they should not be ejected, and ten days later the tenants filed a common pleas action, essentially as a defense to the eviction.

At this point, the Court notes only that the magistrate committed error by granting the motion to dismiss. It therefore reverses the finding, and remands to the magistrate for further proceedings, as no trial occurred. The magistrate has the authority to authorize the Defendants to file an answer, and the Defendants may yet file the appropriate bond and undertaking in compliance with the statute. As the Court of Appeals noted in Rivers, in Rivers: “This case may well end in a second but successful eviction, but we cannot say that outcome is certain.” Id. at *3.

It is therefore ORDERED that the magistrate’s dismissal of the action is reversed, and this case is remanded to the magistrate for further proceedings consistent with this order.

And IT IS SO ORDERED.

The Honorable Maite Murphy
Circuit Judge



Richland Common Pleas

Case Caption: Colie Slice VS David Troy Slice , defendant, et al

Case Number: 2022CP4006087

Type: Order/Other

AND THIS ORDER IS RESPECTFULLY
DENIED.

s/Maite Murphy 2166