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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
Appellate Case No. 2023-001032**

Hugh Parks Price, Appellant

v.

Sarah Filler, Respondent

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. 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?

- II. 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

This action was commenced by the filing and service of an action for claim and delivery in the Saluda County Magistrate Court for which the Respondent, Sarah E. Filler, sought possession of certain livestock. In the Complaint, Respondent alleged that the livestock was being wrongfully withheld by the Appellant, Hugh P. Price. [Affidavit and Complaint, with Exhibits, filed by Respondent in the Magistrate Court for Saluda County on August 8, 2022].

As the result of the filing of claim and delivery action, the Magistrate, the Honorable William R. Freeman, issued that certain Order Restraining Damage or Concealing Property dated August 8, 2022. [Order Restraining Damage or Concealing Property issued by the Hon. William R. Freeman, Magistrate for Saluda County on August 8, 2022]. A jury trial was demanded and the trial occurred on January 27, 2023, in the Magistrate's courtroom in Saluda County lasting several hours. There was no court reporter present and the Magistrate did have audio recording capabilities. Current counsel for Appellant represented Appellant and Respondent appeared *pro se*. After the jury verdict, the judgment was entered by the Magistrate.

Appellant filed a Notice of Civil Appeal on January 27, 2023, with two exceptions listed. [Notice of Civil Appeal filed January 27, 2023]. The exceptions were as follows:

1. The court failed to properly charge the jury the following: "One in possession of personal property is presumably the owner." *Jackson v. Frier*, 146 S.C. 322, 144 S.E. 66 (S.C. 1928).
2. The case in controversy exceeds the \$7,500 subject matter jurisdiction of the Magistrate's Court as proffered.

On March 14, 2023, Respondent filed a Motion to Compel and Imposition of Monetary Fine or Imprisonment alleging a violation of the Order issued by the Magistrate on August 8, 2022. [Motion to Compel and Imposition of Monetary Fine or Imprisonment, with Exhibits, filed March 14, 2023] and [Order Restraining Damage or Concealing Property issued by the Hon. William R. Freeman, Magistrate for Saluda County on August 8, 2022].

The hearing on the Motion to Compel was held before the Honorable Debra R. McCaslin on May 30, 2023. Judge McCaslin entertained arguments from both attorneys for the parties, but she stated that she would take the motion under advisement. However, since Judge McCaslin was able to schedule a hearing or argument on the merits of the appeal for later that week, she obviously did not need to issue a ruling on the Motion to Compel since the affirming of the lower court's verdict would make any ruling on the Motion moot.

The hearing on the appeal was held before Judge McCaslin on June 2, 2023 at 11:00 AM. Judge McCaslin issued the Order Denying Appeal on June 6, 2023. [Order Denying Appeal, filed June 6, 2023.] Appellant did not file a Motion for Reconsideration.

The Notice of Appeal was filed by Appellant on June 26, 2023.

STATEMENT OF THE FACTS

It is important to note that Appellant does not present any argument or issues dealing with the two grounds set forth in the Notice of Civil Appeal during the hearing before Judge McCaslin. [Notice of Civil Appeal filed January 27, 2023.] He does not argue in the alternative that if the court does not think that he should have had some

opportunity to get the transcript prior to the hearing before Judge McCaslin, he has lost his right to any appeal dealing with the actual merits of the case. But, the merits of the appeal are adequately discussed and reviewed in her Order. [Order Denying Appeal filed June 6, 2023.]

On February 14, 2023, counsel for Appellant requested information about how to obtain the “transcript” of the hearing on January 27, 2023. [Fax dated Feb. 14, 2023 from Rolf M. Baghdady to Chief Magistrate Robin Freeman.] For clarity purposes, Respondent will assume that any references to “transcript” and references to “audio recording” are the same. The normal meaning of transcript is a written production of the testimony, but the arguments made by Appellant indicate that he wanted a copy of the audio recording which could have been supplied by a thumb drive or some other medium to contain the audio file in whatever format.

A review of the email communication between William Arnold, the law clerk for Judge McCaslin, and counsel for Appellant shows the following: The email communication with William Arnold, the law clerk for Judge McCaslin (“Law Clerk Arnold”), shows that Appellant never objected to having the merits hearing on the appeal on Friday, June 2, 2023, beginning at 11:00 AM in the form of a virtual courtroom. [E-mail from Judge Debra R. McCaslin’s Law Clerk, William Arnold, dated May 31, 2023 at 2:06 PM; Email from Rolf M. Baghdady, dated May 31, 2023 at 3:10 PM; Email from Judge Debra R. McCaslin’s Law Clerk, William Arnold, dated May 31, 2023 at 3:15 PM; and Email from Rolf M. Baghdady, dated May 31, 2023 at 3:25 PM.] Instead, counsel for Appellant states that he “would prefer oral argument” but only mentioned as a “note” that he had not seen a “recording of this trial to transcribe”. [Email from Rolf M. Baghdady,

dated May 31, 2023 at 3:10 PM.] This is not an objection to having the hearing, but only as information for the court.

As further confirmation that counsel for Appellant did not object to the oral argument on June 2, 2023, at 11:00 AM, is a second email communication where Law Clerk Arnold asked counsel to confirm that he is available for that Friday at 11:00 AM for oral argument. [Email from Judge Debra R. McCaslin's Law Clerk, William Arnold, dated May 31, 2023 at 3:15 PM.] His response confirms that he is available and will participate in that argument on June 2, 2023, at 11:00 AM without any objection dealing with the transcript or recording not being available. [Email from Rolf M. Baghdady, dated May 31, 2023 at 3:25 PM.]

It is important to note that Judge McCaslin took it upon herself to obtain the "recording" of the entire trial directly from the Magistrate's office. Furthermore, she confirms in her order that she listened to the recording and was able to transcribe the entire contents of the jury charge. [Order Denying Appeal, pages 3 and 4, filed June 6, 2023.]

STANDARD OF REVIEW

On appeal from a circuit court's affirmance of a Magistrate's court order, the appellate court will presume that the affirmance was made upon the merits where the testimony is sufficient to sustain the Magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law. Hadford v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (Ct.App. 2000). The appellate court therefore looks to whether the circuit

court is controlled by an error of law or is unsupported by the facts. Parks v. Characters Night Club, 345 S.C. 484, 548 S.E.2d 605 (Ct.App. 2001).

There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court (Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E. 2d 731 (1998)), (2) raised by the Appellant (Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997); State v. Carriker, 269 S.C. 553, 238 S.E.2d 678 (1977)), (3) raised in a timely manner (State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999); Medlock v. One 1985 Jeep Cherokee, 322 S.C. 127, 470 S.E.2d 373 (1996)), and (4) raised to the trial court with sufficient specificity (Wilder Corp.).

ARGUMENT

- I. APPELLANT WAS AWARE OF AND HAD THE BURDEN TO OBTAIN ANY AUDIO RECORDING THAT WAS MADE BY THE MAGISTRATE'S COURT IF AVAILABLE AFTER PAYING THE APPLICABLE FEE FOR OBTAINING THE AUDIO RECORDING.

The timeline in the case shows that the request for information about obtaining the transcript started on February 14, 2023, and the hearing on the merits of the appeal was held on June 2, 2023. [Fax dated Feb. 14, 2023 from Rolf M. Baghdady to Chief Magistrate Robin Freeman]. Appellant does not present any evidence that the Magistrate's court ignored his request for information on how to obtain the transcript or if the word "transcript" was meant to be the written transcript of the entire trial, which lasted several hours.

There is no evidence that counsel for Appellant did any type of follow-up even if the Magistrate's office did not respond to this letter sent by facsimile.

Obviously, counsel for Appellant does not give any further response by the Magistrate's court or any follow-up by counsel to obtain the transcript as requested. Obviously, there is some uncertainty about what he was requesting as he is now saying that he really meant just to get an audio recording, presumably on some type of thumb drive. So, Appellant's argument that he was prejudiced by not having either the transcript or audio recording to prepare and present arguments has no merit. In other words, it is Appellant's fault that he did not have either the transcript or audio recording prior to the hearing before Judge McCaslin which took place approximately four months after the correspondence sent my facsimile to the Magistrate.

The only requirement of a Magistrate for keeping a record of a proceeding is set forth in the Summary Court Judges Bench Book. The requirements from the Summary Court Judges Bench Book are as follows:

While there is no specific provision requiring magistrates to take down or record the testimony of witnesses or the proceedings on civil matters as exists for criminal actions (§ 22-3-790), since the return of the magistrate to the higher court on appeal includes "the testimony, proceedings and judgment," a requirement of a certain degree of recordation is implied. Magistrates should take down a general outline of the proceedings, as well as a substantive, but not necessarily verbatim, description of the testimony (Op. Att'y Gen. No. 3206 dated 1970-71) and have it signed by the witnesses. Ideally, a court reporter, stenographer or a mechanical device should be used to preserve the proceedings.

In any case in magistrate's court, in which the magistrate takes down the substance of a witness' testimony, it should be signed by the witness and then filed in the civil docket book.

In a case before a magistrate in which a stenographer is present and takes down the testimony, or it is electronically recorded, the transcription need not be read over and signed by the witnesses, but only filed as usual, and may in the discretion of the magistrate upon determining its accuracy be authorized as the official trial record.

See Summary Court Judges Bench Book, Civil, Item F, Section 9.

II. THERE WAS NO OBJECTION MADE BY APPELLANT THAT THE HEARING BEFORE THE CIRCUIT COURT SHOULD NOT GO FORWARD.

Counsel for Appellant had the burden of protecting his client's rights if counsel thought that he would be ineffective or unable to make the arguments he wanted to make because he did not have the recording of the trial. But, with the burden of counsel to obtain the audio recording, then this court should not give him a second chance.

CONCLUSION

For the reasons stated, this Court should affirm the decision of the circuit court in denying the appeal from the Magistrate's Court.

January 5, 2024

Respectfully submitted,



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