

BRIEF OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
In the Court of Common Pleas

Shannon M. Phillips, Special Circuit Court Judge

Case No. 2023-000852

Chris Klein,

Appellant,

v.

Kay Family Investments LLC,

Respondent.

FINAL BRIEF OF RESPONDENT

Hub City Law, LLC
Tatyana S. Ustimchuk
496 W Main St
Spartanburg, SC 29301
(864) 727-0117
Attorney for Respondent

RECEIVED

JAN 31 2024
SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities..... ii

Statement of Issues on Appeal..... 1

Statement of the Case..... 1

Standard of Review..... 1

Facts.....2

Arguments

1. BECAUSE APPELLANT WAS A MONTH-TO-MONTH TENANT AND PROPER NOTICE OF TERMINATION OF TENANCY WAS GIVEN, THE CIRCUIT COURT PROPERLY AFFIRMED THE GRANT OF EJECTMENT OF THE MAGISTRATE COURT2

2. SOUTH CAROLINA COURT OF APPEALS DOES NOT HAVE JURISDICTION TO REVERSE THE FINDINGS OF FACT OF THE CIRCUIT COURT WHERE EJECTMENT PROCEEDINGS WERE FIRST HEARD IN MAGISTRATE COURT.....3

Conclusion.....3

TABLE OF AUTHORITIES

CASES

Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 312 S.E.2d 20, 21 (S.C. App. 1984).....3

Hart v. Cook Brokerage Co, 135 S.C. 335, 133 S.E. 822 (S.C. 1926).....3

STATUTES

S.C. Code Ann. Section 27-40-770(b)3

STATEMENT OF ISSUE ON APPEAL

1. DID THE CIRCUIT COURT ERR IN AFFIRMING THE GRANT OF EJECTMENT OF THE MAGISTRATE COURT WHERE APPELLANT WAS A MONTH-TO-MONTH TENANT AND PROPER NOTICE OF TERMINATION OF TENANCY WAS GIVEN?
2. DOES SOUTH CAROLINA COURT OF APPEALS HAVE JURISDICTION TO REVERSE THE FINDINGS OF FACT OF THE CIRCUIT COURT WHERE EJECTMENT PROCEEDINGS WERE FIRST HEARD IN MAGISTRATE COURT?

STATEMENT OF THE CASE

On March 7, 2023 Kay Family Investments LLC (Respondent) filed an eviction action against Chris Klein (Appellant) based on termination of month-to-month tenancy (R. p. 9). The Appellant requested a hearing which was held on March 30, 2023, before Magistrate Judge, James D. Willingham II. The judgement was entered in favor of Respondent on March 30, 2023 and a Writ of Ejectment was issued (R. pp. 6-8).

On April 5, 2023 Appellant filed an appeal of the Magistrate Judge's decision to the Court of Common Pleas, asserting that the Magistrate Judge ruled in an arbitrary and capricious manner. The motion hearing was heard on May 15, 2023 by Judge Phillips. Judgment was entered on May 17, 2023 in favor of Respondent, affirming the decision of the Magistrate Judge (R. pp. 2-5).

On May 24, 2023 Appellant filed his Notice of Appeal.

STANDARD OF REVIEW

After an exhausting review of the statutes applicable to ejectment proceedings first heard in Magistrate's Court and the cases interpreting those statutes, we conclude that this court is without jurisdiction to reverse the findings of fact of the Circuit Court if there is any supporting evidence. *Wright v. Ritz Theatre*, 211 S.C. 161, 44 S.E.2d 308 (1947); *Hart v. Cook Brokerage*, 135 S.C. 335, 133 S.E. 822 (1926); *Dingle v. Northwestern R. Co.*, 112 S.C. 390, 99 S.E. 828 (1919); *Redfern v. Douglas*, 35 S.C. 569, 15 S.E. 244 (1892). *Vacation-Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 312 S.E.2d 20, 21 (S.C. App. 1984)

The findings of fact by the magistrate, concurred in by the circuit judge, are not reviewable here. Indeed, if the magistrate had found one way and the circuit judge had reversed those findings, the findings of the circuit judge could not be reviewed by this court. *Dingle v. Northwestern Railway Co. of South Carolina*, 112 S. C. 390, 99 S. E. 828; *Harrison v. Cotton Ginning Co.*, 124 S. C. 134, 117 S. E. 349. *Hart v. Cook Brokerage Co*, 135 S.C. 335, 133 S.E. 822 (S.C. 1926)

FACTS

On February 3, 2022, Appellant and Respondent entered into a residential lease agreement for the term of one year, with the expiration date of January 31, 2023.

Sometime in the beginning of November of 2022, Appellant attempted to make a partial rent payment and Respondent refused to accept the partial rent payment. On November 14, 2022 Respondent filed for eviction based on nonpayment of rent in another case, case number 2022CV421017516 (2023CP42360). That matter has been resolved between the parties by a settlement wherein Appellant agreed to pay all rent past due and vacate the premises by February 28, 2023 (Appellant's Final Brief, p. 3.)

Appellant failed to vacate the premises on February 28, 2023 and continues to occupy the premises as of the date of this brief.

On March 7, 2023 Respondent brought an eviction action against Appellant alleging that the term of tenancy has ended due to the expiration of the lease agreement between the parties (R. p. 9). The eviction action on this ground was heard on March 30, 2023 by Magistrate Judge, James D. Willingham II. The judgement was entered in favor of Respondent on March 30, 2023 and a Writ of Ejectment was issued (R. pp. 6-8). The Magistrate Judge wrote that at the time of the hearing Respondent acknowledged that he was a month-to-month tenant and that the Appellant had given him the proper thirty-day notice of nonrenewal and the notice to vacate the premises (R. p. 6).

On April 5, 2023 Appellant filed an appeal of the Magistrate Judge's decision to the Court of Common Pleas, asserting that the Judge ruled in an arbitrary and capricious manner. The motion hearing was heard on May 15, 2023 by Judge Phillips. Judgment was entered on May 17, 2023 in favor of Respondent, affirming the decision of the Magistrate Court Judge (R. pp. 2-5).

On May 24, 2023 Appellant filed his Notice of Appeal.

ARGUMENTS

BECAUSE APPELLANT WAS A MONTH-TO-MONTH TENANT AND PROPER NOTICE OF TERMINATION OF TENANCY WAS GIVEN, THE CIRCUIT COURT PROPERLY AFFIRMED THE GRANT OF EJECTMENT OF THE MAGISTRATE COURT.

Appellant erroneously argues that Respondent filed this action for ejection to enforce the settlement in another case, 2023CV4210102606 (Appellant's Final Brief, p. 4). Appellant's allegation is incorrect. This action was filed on a different ground of eviction, termination of tenancy based on month-to-month tenancy. This action does not seek to enforce the settlement of case 2023CV4210102606.

Section 27-40-770(b) of the South Carolina Landlord Tenant Act requires a thirty-day written notice of nonrenewal to terminate a month-to-month tenancy. Here, Appellant admitted

that he was a month-to-month tenant and that he received the required notice of nonrenewal (R. p. 6.). Therefore, because Appellant was a month-to-month tenant and proper notice of termination of tenancy was received, the circuit court properly affirmed the grant of ejection of the Magistrate Court. Therefore, this Court should affirm the judgement of the Circuit Court.

SOUTH CAROLINA COURT OF APPEALS DOES NOT HAVE JURISDICTION TO REVERSE THE FINDINGS OF FACT OF THE CIRCUIT COURT WHERE EJECTION PROCEEDINGS WERE FIRST HEARD IN MAGISTRATE COURT.

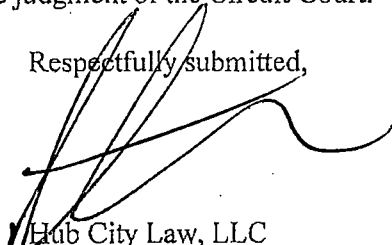
In *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, this Court ruled that it does not have jurisdiction to reverse the findings of fact of the Circuit Court in ejection proceedings first heard in Magistrate's Court. Further, in *Hart v. Cook Brokerage Co*, this Court held that the findings of fact by the magistrate, concurred in by the circuit judge, are not reviewable here. Because this action for ejection was first heard in Magistrate Court, and the findings of the Magistrate Court were affirmed by the Circuit Court, this Court does not have jurisdiction to reverse the findings of the Circuit Court. Therefore, this Court should affirm the judgement of the Circuit Court.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Circuit Court.

January 25, 2024

Respectfully submitted,



Hub City Law, LLC
Tatyana S. Ustimchuk
496 W Main St
Spartanburg, SC 29301
(864) 727-0117
Attorney for Respondent

BRIEF OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JAN 31 2024

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
In the Court of Common Pleas

Shannon M. Phillips, Special Circuit Court Judge

Case No. 2023-000852

Chris Klein,

Appellant,

v.

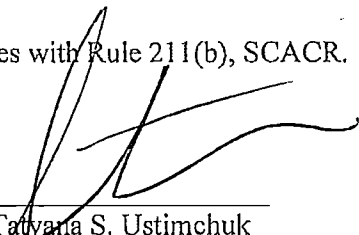
Kay Family Investments LLC,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

January 25, 2024



Tatyana S. Ustimchuk
496 W Main St
Spartanburg, SC 29301
(864) 727-0117
Attorney for Respondent