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**Feb 29 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

Alison Renee Lee  
Circuit Court Judge

Case No. 2022-CP-28-00229  
Appellate Case No. 2023-001119

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Jasmine Gibson,

Respondent,

v.

Rosa Deveaux and Virginia Patterson,

Appellants.

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INITIAL BRIEF OF APPELLANTS

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February 28, 2024

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ERR IN GRANTING PARTIAL SUMMARY JUDGMENT AND DAMAGES WHEN APPELLANTS DID NOT HAVE TEN DAYS NOTICE OF THE TIME, DATE AND PLACE FOR THE MOTION FOR SUMMARY JUDGMENT OR DAMAGES HEARING TO BE HEARD?

STATEMENT OF THE  
 CASE/RELEVANT FACTS

On March 17, 2022, Plaintiff Jasmine Gibson (hereinafter “Jasmine”) brought this action alleging that her Aunt Rosa DeVeaux (hereinafter “Rosa”) and her Grandmother Virginia Patterson (hereinafter “Virginia”) leased their home without a requirement to pay rent to Jasmine for the duration of Jasmine’s life and that Jasmine was entitled to a declaratory judgment that her lease was valid for the duration of her life. Jasmine also sued her Grandmother and Aunt for damages for Abuse of Process. Virginia and Rosa filed an Answer on April 26, 2023 denying that there is a valid lease to Jasmine and denying that she was entitled to the relief she requested in her complaint. Virginia and Rose have consistently denied that they leased their property in perpetuity to Jasmine or that she has complied with the terms of the lease agreement that she contends was executed by Rosa and Virginia. See Answer and Discovery Responses.

Jasmine filed a motion for summary judgment on April 27, 2022, which was denied by Order dated June 20, 2022. Jasmine filed a subsequent motion for partial summary judgment after discovery on February 15, 2022 seeking a determination that Jasmine had a valid lease. Jasmine’s motion did not set forth a specific date or time for her motion to be heard only had an open-ended

notice that stated in relevant part “. . . this motion may be heard at the non-jury trial roster meeting on February 27, 2023, at any time during the week that the court selects, or at such other time as the court selects.” See Motion For Partial Summary Judgment 2-15-2023.

Unbeknownst to the Defendants’ counsel, the case came up on the nonjury trial roster for the week of February 27, 2023. Defendants’ counsel was not present for the roster hearing because he had not received notice and was not aware that the case was on the nonjury trial roster. See Affidavit June 2m, 2023. The case was not called for trial during the week of February 27, 2023, however, at the roster hearing the Plaintiff’s counsel was able to get their motion for summary partial judgment and also a damages hearing scheduled for March 1, 2023. Defendants’ counsel is not aware of receiving notice for either hearing, did not know the motion for Partial Summary Judgment had been scheduled to be heard on March 1, 2023, did not know that a damages hearing had been requested or scheduled for March 1, 2023, and was not present for either hearing.

Judge Alision Lee granted the Plaintiff’s motion for Partial Summary Judgment at the March 1, 2023 hearing and held a subsequent damages hearing held on March 1, 2023 granting Jasmine \$6,000 in attorney fees and \$20,000 for psychological damages. Upon learning of the Court’s ruling, Defendants filed a motion to reconsider on April 14, 2023. Plaintiff filed an affidavit in opposition to the Defendants motion on May 17, 2023. No hearing was held but Judge Alision Lee by email to counsel gave the parties until June 2, 2023 to provide information pertaining to their position. Despite the June 2, 2023 deadline to provide her information, Judge Lee filed an order denying Defendants’ motion to reconsider on May 31, 2023. Defendants submitted the information requested by Judge Lee via a letter and affidavit on June 2, 2023.

## STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. When reviewing the grant of a summary judgment motion, an appellate court applies the same standard that governs the trial court under S.C. R. Civ. P. 56(c); summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. Watson v. Underwood, 407 S.C. 443, 453, 756 S.E.2d 155 (Ct. App. 2014).

S.C. R. Civ. P. 60(b)(1) applies to any final judgment. Relief under this section is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of that discretion. Such an abuse arises when the judge issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support. Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 401, 368 S.E.2d 687, 688 (Ct. App. 1988).

## ARGUMENTS

- I. BECAUSE RESPONDENT DID NOT PROVIDE APPELLANTS WITH TEN DAYS SPECIFIC NOTICE OF THE TIME, DATE AND PLACE FOR THE PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT, THE SUMMARY JUDGMENT ORDER AND DAMAGES ORDER SHOULD BE SET ASIDE.

The Plaintiff's Motion for Partial Summary Judgment did not contain a specific notice provision pertaining to the date, place and time for the motion to be heard. See Motion for Partial Summary Judgment. Defendants were never provided with ten days written notice of the date, time and place for the motion to be heard. The South Carolina Rules of Civil Procedure require that a

motion for summary judgment “shall be served at least 10 days before the time fixed for the hearing”. In reversing the granting of a motion for summary judgment where 10 notice of the hearing was not provided, our Supreme Court found that Rule 56(c), SCRCP. S.C. R. Civ. P. 6 **requires** that specific **notice** of the day certain fixed for the hearing must be furnished not later than 10 days prior to such hearing unless the exceptions stated in Rule 6(d) apply. Dedes v. Strickland, 307 S.C. 152, 153, 414 S.E.2d 132, 133 (1992).

The time, date and place for the March 1, 2023 Motion for Partial Summary Judgment was first scheduled to be heard on February 27, 2023. See Summary Judgment Order. The Defendants never received notice of this hearing from either the Defendant or the Court. See June 2, 2023 Letter and Affidavit. No notice of the Damages hearing was ever served on the Appellants as that hearing apparently was not scheduled until after the Motion for Partial Summary Judgment hearing concluded. In Respondent’s counsel’s affidavit filed May 17, 2023, he indicates that he first sent notice of the specific time date for his motion for Summary Judgment to be heard on February 27, 2023 via email. This email was not received by Appellants’ counsel and even if it were, it would not have been sufficient notice.

The record is clear that neither the Court nor the Respondent served Appellants with 10 days written notice of the time, date and place of the hearing for the motion for summary judgment or the hearing for the damages hearing. The Order for Summary judgment indicates that the hearing date was first set at the February 27, 2023 roster hearing. Appellants’ counsel is not aware of receiving any notice of this roster hearing otherwise Appellants would have been at the roster hearing. See June 2, 2023 affidavit. If a roster hearing notice was sent to the Appellants, it was not received. SCRCP, Rule 60 (b)(1) provides a mechanism for a party to receive relief from a judgment where

there has been a “mistake, inadvertence, surprise or excusable neglect.” Plaintiffs motion to reconsider sought to bring these issues to the Court’s attention but instead of allowing the Appellants to be heard, the Court requested information from the parties and gave a June 2, 2023 deadline to provide information and then denied the Appellants’ motion to reconsider before the deadline.(see letter dated May 26, 2023, Order dated May 31, 2023, June 2, 2023 email and Affidavit. There has been a mistake, inadvertence, surprise and excusable neglect on the Appellants part for not participating in the February 27, 2023 roster hearing and that is that the Appellants’ counsel was not aware of the hearing and because he was not aware of the hearing he did not attend, which is the same reason that he did not attend the March 1, 2023 summary judgment hearing.

"It is a fundamental doctrine of law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be **heard**, and that without due notice and opportunity to be **heard** a court has no jurisdiction to adjudicate such personal rights." Sabella v. S.C. Alcoholic Beverage Control Com., 289 S.C. 400, 402, 346 S.E.2d 530, 531 (Ct. App. 1986). The fundamental requisite of due process of law is the opportunity to be **heard**. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002). Appellants never had notice of the date, time and place that the Respondent’s motion for Partial Summary Judgment or Damages hearing was to be heard and were therefore denied their day in court. They have a valid and substantive defense, which is they did not sign a lease agreement with Jasmine and are not contractually bound to allow her to remain in their home, rent free.

CONCLUSION

For the reasons stated, this Court should reverse the judgments of the circuit court.

Respectfully submitted

February 28, 2024

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