

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2023-001519

James Reid and Sarania Reid, Respondents,

v.

Carrie Gaston Henderson

Appellant.

Return to Appellant's Emergency Motion

RECEIVED
May 15 2024
SC Court of Appeals

COME NOW Respondents, by and through the undersigned, in return to Appellant's motion requesting "Immediate Relief and Emergency Release for Motion to Stay or Halt."

Upon review, the motion is interpreted as requesting two forms of relief: (1) the imposition of a supersedeas regarding the underlying judgment on appeal; and (2) the imposition of a lien on Respondents' money. For the reasons stated below, Appellant's motion should be denied.

1. **This Court should deny the request for supersedeas because the requirements for this relief have not been met.**

This appeal arises from a judgment directing the delivery of possession of real property, granting injunction, and concerning ejectment from the real property. Therefore, the judgment was not stayed by Appellant's commencing of this appeal. *See* Rule 241(b)(4), SCACR (excluding judgments regarding possession of real property from the automatic stay); Rule 241(b)(8), SCACR (excluding judgments regarding injunctive relief from the automatic stay); and Rule 241(b)(11),

SCACR (excluding judgments regarding ejectment orders from the automatic stay).

Rule 241(d), SCACR sets out the required procedure for seeking supersedeas. The instant petition fails to meet several of these requirements.

First, in the absence of extraordinary circumstances a petition for supersedeas must be made with the trial court first. Here, no such petition has been made with the circuit court. *See* Rule 241(d)(1), SCACR (“Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.”). Appellant/Petitioner does not set out the extraordinary circumstances that excuse this failure as required by the Rule. *See* Rule 241(d)(4)(C), SCACR (requiring that “If no application was made to the lower court or administrative tribunal, then the petition shall state the extraordinary circumstances which made it impracticable to make such an application.”).

Second, a petition seeking supersedeas with this Court must be verified and accompanied by a certified copy of the judgment on appeal. The subject petition does not meet these requirements. *See* Rule 241(d)(3), SCACR (“A person seeking . . . a writ of supersedeas must file a written petition verified by the client. [And] In addition to the petition and verification, the moving party must contemporaneously file a certified copy of the order, judgment, decree or decision of the lower court or administrative tribunal and a copy of the notice of appeal with its proof of service.”),

Additionally, the petition does not set forth a factual basis establishing the necessity of supersedeas, nor does it contain legal argument or authority in support of such relief. *Contra* Rule

241(d)(4)(A), SCACR (providing the petition shall contain “the factual background necessary for an understanding of the petition. If the facts are subject to dispute, the petition shall be supported by affidavits or other sworn statements.”); *and* Rule 241(d)(4)(A), SCACR (providing the petition shall contain “the grounds for the petition, and legal arguments with supporting points and authority.”).

Further, even assuming (for the sake of argument only) that the instant petition complies with the requirements of Rule 241(d), SCACR, it fails to establish that supersedeas is necessary to preserve jurisdiction over the appeal or prevent the issue from becoming moot. *See* Rule 241(c)(2), SCACR (requiring that “In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.”).

Having failed to satisfy the necessary burden for supersedeas, this Court should deny the instant motion.

Finally, and even if this Court were inclined to grant supersedeas—which would be improper—it should require Appellant to post a bond. Specifically, the Court’s order directed that Appellant remove her mobile home (which is not her primary residence) from Respondents’ property. The Order also directs that Appellant pay Respondents a storage fee of \$25.00 per day plus all after-incurred attorney fees. This amount began to accrue on September 25, 2023—30 days after the denial of Appellant’s motion to reconsider—plus all after incurred legal fees and costs. *See Order* p. 7-8. As of May 13, 2024, Appellant owes 231 days of storage fees (totaling

\$5,875.00) not including attorney fees. Further, Appellant's continued trespass substantially impairs Respondents' use of the property, and while the trespass persists, it effectively reduces the value of the property to \$0.00.

Therefore, to the extent this Court is to entertain a supersedes (which it should not) it should require Appellant to post a bond in an amount sufficient to protect Respondents' damage if the appeal fails. Respondents propose such bond should not be less than \$350,000.00 which is based on 133% of the fair market value of the property (without Appellant's trespass) which is estimated to be in excess of \$250,000.00, PLUS treble the amount of storage fees currently incurred (*i.e.*, $(133\% * \$250,000.00) + \$17,625.00 = \$350,125.00$).

2. This Court should deny the request for the imposition of a lien because the law recognizes such relief.

In her motion Appellant makes passing reference to having this Court impose a lien upon proceeds allegedly generated by the use of Respondent's property. However, Appellant fails to identify these proceeds or articulate the basis, or authority for this relief. Regardless, this relief was neither plead, nor proper. And Respondents do not concede that this Court has jurisdiction to issue such relief where it has never been plead or requested.

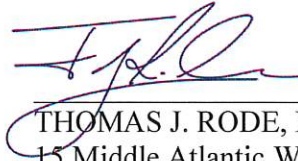
Appellant cites no statute or provision of law that gives rise to a lien by operation of law. Moreover, because Appellant has failed to identify any debt owing there is no basis for an equitable lien (to the extent the lien referenced is claimed to be equitable). *See Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 145, 337 S.E.2d 244, 247 (Ct. App. 1985) ("For an equitable lien to arise as to specific property, there must be a debt, a duty or obligation owing from one person to another,

a *res* to which the obligation attaches, which can be described with reasonable certainty, and an intent, expressed or implied that the property serve as security for the payment or obligation.”) *citing* 51 Am. Jur. (2d) *Liens* Section 24 (1970); and *Harnsberger v. Wright*, 185 Va. 586, 39 S.E. (2d) 737, 738 (1946) (Equitable liens must rest on an expressed or implied contract. Moral obligations do not sustain equitable liens).

Because Appellant failed to pursue her purported lien in the underlying case and has failed to identify the factual or legal basis for such a lien, Appellant’s motion should be denied.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



THOMAS J. RODE, Bar No. 77480
15 Middle Atlantic Wharf
Charleston, South Carolina 29401
Phone: 843-937-8000
Fax: 843-937-4200
Email: thomas@tktlawyers.com
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

May 15 2024

APPEAL FROM THE BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2023-001519

James Reid and Sarania Reid, Plaintiff/Respondents,

v.

Carrie Gaston Henderson

Defendants/Appellant.

PROOF OF SERVICE

I, hereby certify that the enclosed was served on the parties stated below by depositing a copy of the same in the U.S. Mail:

Carrie G. Henderson *pro se*
316 East 35th St.
Savannah, GA 31401

This 15 day of May, 2024.

THURMOND KIRCHNER & TIMBES, P.A.

BY: Kaitlyn Nobles
Kaitlyn Nobles
paralegal