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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran Jr. Circuit Court Judge

Case No. 2024-CP-43-00366

Randal K. Freeman,

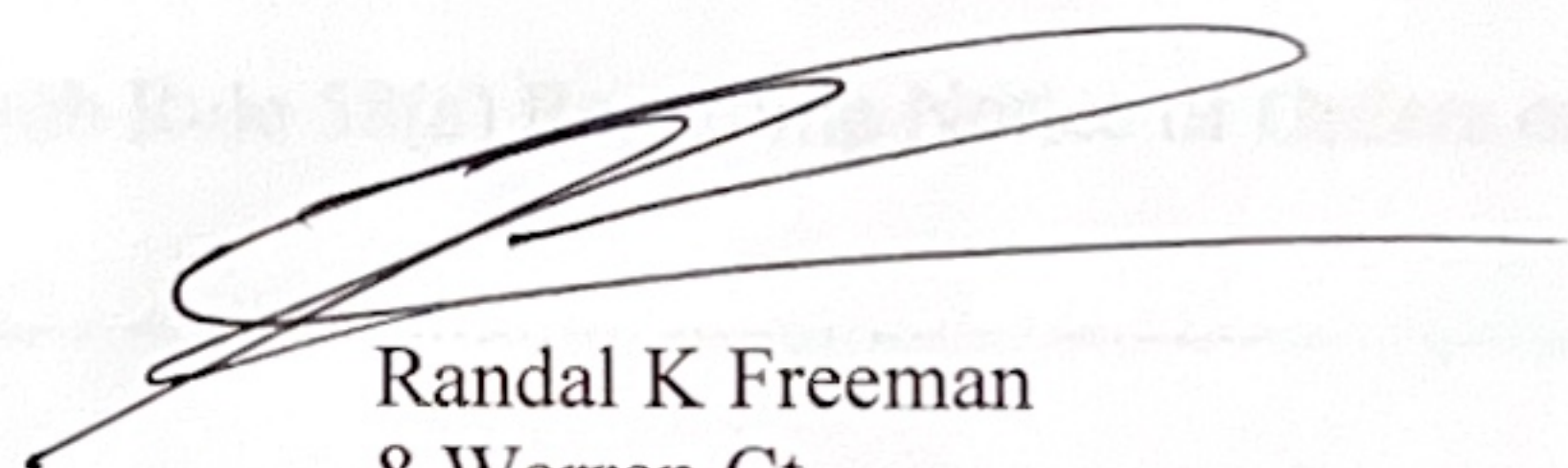
Appellant,

v.

David Bryan Trapp,

Respondent.

INITIAL BRIEF OF APPELLANT



Randal K Freeman
8 Warren Ct
Sumter, SC 29150
(224) 407-1660
Appellant

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STATEMENT OF THE CASE ON APPEAL

TABLE OF AUTHORITIES

Cases:

- *Bowers v. Thomas*, 373 S.C. 240, 245, 644 S.E.2d 751, 753 (Ct. App. 2007) 5
- *Bowman*, 335 S.C. at 92, 515 S.E.2d at 2616
- *Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) ... 7
- *Koon v. Fares*, 379 S.C. 150 (2008)5

Rules:

- Rule 58(a), South Carolina Rules of Civil Procedure (SCRCP) 4, 9
- Rule 77, South Carolina Rules of Civil Procedure (SCRCP) 5

STATEMENT OF THE CASE

Statutes:

- S.C. Code Ann. § 27-37-604,7, 8,9
- S.C. Code Ann. § 27-37-1604, 6, 7
- S.C. Code Ann. § 27-40-7904,7
- S.C. Code Ann. § 18-7-1308,9

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in issuing a writ of ejectment pursuant to *S.C. Code Ann. § 27-37-160* when the appellant was never formally ordered to pay the rent in question?
2. Did the Trial Court fail to comply with *Rule 58(a)* by not serving notice of any order or judgment after the August 8, 2023, hearing, indicating that no formal order was ever issued?
3. Did the Trial Court's actions violate the appellant's right to a jury trial, as demanded in his answer and pursuant to *S.C. Code Ann. § 27-37-60* and *S.C. Code Ann. § 27-40-790*?
4. Did the Trial Court's actions contravene the statutory requirements outlined in *S.C. Code Ann. § 27-37-60* for the proper adjudication of an ejectment case where the tenant contests the matter?

STATEMENT OF THE CASE

This appeal arises from an eviction proceeding initiated by the respondent, David Bryan Trapp, against the appellant, Randal K. Freeman. On April 3, 2023, the respondent filed an Application for Ejectment with the Sumter Summary Court. The appellant responded on April 27, 2023, demanding a jury trial and a pre-trial hearing pursuant to *S.C. Code Ann. § 27-40-790*, which provides for the determination of rent/bond to be paid into the court pending case resolution.

A hearing was held on August 8, 2023, before The Honorable Judge Bryan K. Griffin. At that time, Judge Griffin stated that he would not issue a ruling immediately and would provide a decision and order at a later date. However, no official order was presented to the clerk, as confirmed during a later review. On November 21, 2023, a Writ of Ejectment was issued and executed pursuant to *S.C. Code Ann. § 27-37-160*. The appellant challenged the validity of the writ and filed an appeal in the

Sumter County Court of Common Pleas on November 29, 2023. Subsequently, Magistrate Judge Bryan K. Griffin issued an Order and Return on December 7, 2023. On January 30, 2024, after holding a hearing to hear the appellant's appeal, Judge R. Ferrell Cothran Jr. made findings and remanded the case back to the magistrate court to be heard within 15 days. On February 14, 2024, a hearing was held before Judge Griffin to determine if the Writ of Ejectment complied with statutory requirements. At this hearing, the appellant's attorney provided documentation that a valid lease was still in effect and that no order had been issued by Judge Griffin for November 2023 or February 2024. Judge Griffin stated that he would review the matter and issue his findings. On February 22, 2024, Judge Griffin ordered the Writ of Ejectment reissued, stating that the appellant failed to post bond for November 2023 and February 2024.

The appellant filed another appeal on February 22, 2024. Judge Cothran dismissed this appeal on February 29, 2024, without holding a hearing. The appellant subsequently filed a notice of appeal on February 29, 2024. Finally, an order issuing a bond to stay the eviction on appeal was signed and entered by Magistrate Judge Larry Blanding on March 1, 2024.

STANDARD OF REVIEW

The standard of review for this appeal is de novo. Questions of law are subject to independent review, meaning that the appellate court can interpret legal issues without deference to the lower court's ruling. *Koon v. Fares* (379 S.C. 150, 2008) underscores this standard. Additionally, *Bowers v. Thomas* (373 S.C. 240, 245, 644 S.E.2d 751, 753, Ct. App. 2007) clarifies that appellate courts retain de novo review to determine whether the facts demonstrate that the circuit court's decision was influenced by errors of law

ARGUMENT

I. The Trial Court's Issuance of a Writ of Ejectment Without a Formal Order Violated

Procedural and Substantive Fairness

The certified transcript clearly establishes that no formal order requiring rent payment was issued, as mandated by S.C. Code Ann. § 27-37-160.

- On page 6, lines 9-25 of the transcript, it is evident that no formal order was presented to the clerk; instead, only an email draft was provided. (Transcript, p. 6, ll. 9-25; p. 7, ll. 18-21).
- On page 7, lines 18-21, Mr. Cahill acknowledged that the "order" referenced was merely an email communication. (Transcript, p. 7, ll. 18-25).
- Furthermore, on page 8, lines 13-19, Judge Cothran confirmed that no formal order had been entered as of December 7, 2023. (Transcript, p. 8, ll. 13-20).

Without the issuance of a formal order for rent payment, the writ of ejectment was procedurally defective. The Magistrate failed to provide any order until the return upon appeal dated December 7, 2024. Under S.C. Code Ann. § 27-37-160, tenants must be formally ordered to pay rent before a writ can be lawfully issued. The trial court's failure to comply with this statutory requirement constitutes a violation of due process, thereby undermining the validity of the proceedings.

This procedural flaw is further illuminated by *Bowman v. Bowman*, where the South Carolina Supreme Court held that principles of fairness and equity required a finding of timeliness because "parties to an action are not provided notice of a judge's ruling at the time the judge signs an order. Rather, only after the order is filed with the clerk of court are the parties given notice of the order." *Bowman*, 335 S.C. at 92, 515 S.E.2d at 261. Just as in *Bowman*, where procedural fairness

was paramount, the lack of a formal and properly filed order in this case violated the basic tenets of fairness and due process, rendering the issuance of the writ of ejectment improper.

II. The Trial Court Failed to Comply with Rule 58(a) Regarding Notice of Orders or Judgments

The trial court's reliance on informal email communications, rather than entering a formal order into the court record, violates *Rule 58(a)* of the South Carolina Rules of Civil Procedure. This rule stipulates that a judgment becomes effective only when it is officially entered into the court record.

- Following the August 8, 2023, hearing, no formal order or judgment was entered into the record. As shown clearly in *Archer v. Long*, 46 S.C. 292, 295, 24 S.E. 83, 84 (1896) “However, “the moment ... [the order] is filed by the clerk of court, it becomes the judgment of the court, and fixes the rights of the parties.”
- Informal emails do not satisfy the requirements of *Rule 58(a)*. As clarified in *Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 515 S.E.2d 259 (Ct. App. 1999), “The effective date of an order is not when it is signed by the judge but when it is entered by the clerk of court.”

The court's failure to properly follow these procedures casts serious doubt on the legality of the writ of ejectment issued in this case.

III. The Trial Court's Dismissal of the Case and Issuance of the Writ of Ejectment Violated the Appellant's Right to a Jury Trial

The appellant explicitly requested a jury trial in his answer to the complaint under *S.C. Code Ann. § 27-37-60* and *S.C. Code Ann. § 27-40-790*, which protect a tenant's right to contest an ejectment

action and demand a jury trial. The trial court's dismissal of the case and the issuance of the writ of ejectment, without honoring this right, violated both statutory and constitutional rights.

- *S.C. Code Ann. § 27-37-60* requires that when a tenant contests an ejectment, the magistrate must treat the case as any other civil matter, with the tenant being entitled to a jury trial upon request.
- The court's issuance of the writ without conducting a jury trial directly violated the appellant's right, as clearly outlined by law.

IV. The Court Contravened Statutory Requirements in Ejectment Cases

In ejectment actions, *S.C. Code Ann. § 27-37-60* mandates that contested cases be adjudicated with the same legal safeguards as any civil case, including the right to a jury trial if requested.

Additionally, *S.C. Code Ann. § 18-7-130* requires that appeals be heard based solely on the original papers and testimony, without the introduction of new evidence.

The trial court's issuance of the writ of ejectment, without adhering to these statutory mandates, was a clear procedural error that violated the appellant's rights.

- The order issued by Judge Cothran on January 30, 2024, remanding the case to the magistrate, failed to state the grounds for remand, thus violating procedural norms.
- During the subsequent hearing on February 14, 2024, presided over by Magistrate Griffin, additional testimony was allowed on appeal, including calling the clerk as a witness—despite no prior order authorizing this. This action contravened *S.C. Code Ann. § 18-7-130*, which explicitly prohibits the introduction of new evidence at the appellate stage.

These procedural missteps undermine the integrity of the appellate process and violate the

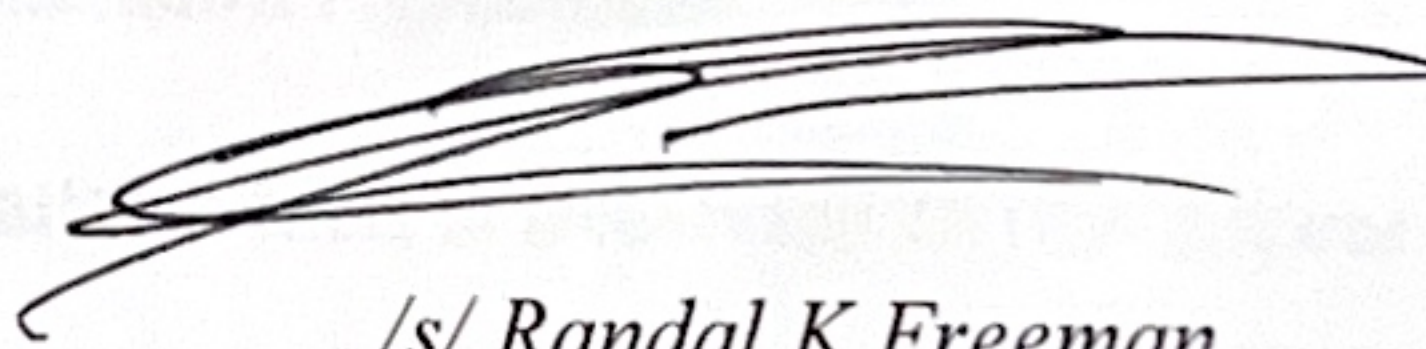
appellant's statutory rights. The trial court's failure to adhere to the statutory requirements has resulted in an unfair proceeding, infringing upon the appellant's rights under South Carolina law.

CONCLUSION

In light of the procedural missteps—namely, the lack of a formal order for rent payment, the violation of *Rule 58(a)*, the denial of the appellant's right to a jury trial under *S.C. Code Ann. § 27-37-60*, and the failure to adhere to the appeal requirements under *S.C. Code Ann. § 18-7-130* the appellant respectfully requests that this Court find the Trial Court's issuance of the Writ of Ejectment in error. The case should be remanded for proceedings consistent with the Court's findings, and the statutory rights to a jury trial should be upheld.

September 27th, 2024

Respectfully submitted,



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