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Oct 25 2024

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

David Bryan Trapp,

Respondent.

v.

Randal K. Freeman and Jenna B. Freeman, Defendants,

Of Whom Randal K. Freeman is the Appellant.

INITIAL BRIEF OF RESPONDENT

/s Christopher R. Jay
Christopher R. Jay, Esq
S.C. Bar No.: 100313
chris@curtisandcroft.com

/s J. Benjamin Cahill
J. Benjamin Cahill, Esq
S.C. Bar No.: 102437
ben@curtisandcroft.com

Curtis & Croft, LLC
325 W. Calhoun St
Sumter, SC 29150
Tel. (803) 778-7404

Attorneys for Respondent David Bryan Trapp

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- *Stanford v. Cudd*, 93 S.C. 367, 370, 76 S.E. 986, 987 (1913).....3

- *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.* 280 S.C. 232, 233, 312 S.E.2d
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Statutes:

- S.C. Code Ann. §27-40-790
- S.C. Code Ann. §27-40-800
- S.C. Code Ann. §27-37-150
- S.C. Code Ann. §27-37-160

STATEMENT OF ISSUES

1. Whether the Appellant paid all rent owed prior and after the issuance of a written rule requiring the tenant to vacate or show cause as required under S.C. Code §27-40-790(a-b)?
2. Whether the Appellant has complied with the requirements of S.C. Code Ann. §27-40-800 to stay execution for undertaking this appeal?
3. Whether the trial Court erred in re-issuing a *Writ of Ejectment*?

STATEMENT OF THE CASE

This appeal arises from an Application for Ejectment filed on April 3, 2023. (Application for Ejectment). In response, the Appellant filed an Answer demanding a jury trial and a pre-trial hearing pursuant to S.C. Code Ann. §27-40-790. (Appellant's Answer). On August 8, 2023, the Summary Court held the preliminary hearing, setting the bond amount at \$1,750.00 with each subsequent month to have periodic payments set at \$1,600.00, due on the first of each month and no later than the 10th. (Order and Return). Present at this hearing were the Appellant, his counsel, Willie H. Brunson, Esq., as well as the Respondent and his undersigned counsel. *Id.* After non-payment for November 2023 bond, a *Writ of Ejectment* was issued and executed pursuant to S.C. Code Ann. §27-37-160. (Writ of Ejectment). The Appellant appealed.

The appeal was heard on January 30, 2024, by the circuit court who remanded the case for a hearing to determine a finding of fact. (Form 4, dated February 5, 2024). The finding of fact hearing was held on February 14, 2024, during which the Summary Court concluded that the Appellant had not been wrongfully denied access to pay the November 2023 bond payment and

that the Appellant had also failed to timely pay the bond for February 2024, leading to the re-issuance of the *Writ of Ejectment*. (Order, dated February 22, 2024). The Appellant once again appealed the ejectment, and on February 29, 2024, Judge Cothran affirmed the Magistrate's ruling. (Form 4 Order, dated February 29, 2024). This appeal then followed.

STATEMENT OF FACTS

The original lease expired after a one-year term ending on February 1, 2023, which was signed between the respective parties. (Application for Ejectment Exhibit A). The Respondent opted not to renew the lease and sent a Notice to Terminate Tenancy once the Appellant became a month-to-month tenant (Application for Ejectment Exhibit A). An Application of Ejectment was filed to remove the Appellant from possession of the premises. *Id.*

The Appellant filed an Answer, asserting defenses and a preliminary hearing to determine bond. (Appellant's Answer). The Sumter Summary Court ordered the Appellant to make a payment of \$1,750.00, as well as periodic subsequent payments in the amount of \$1,600.00 due on the 1st of every month and late after the 10th of every month. (Order and Return, dated December 7, 2023). The Appellant then timely made payments for both September 2023 and October 2023; however, the Appellant failed to timely remit payment for November 2023. *Id.* The initial *Writ of Ejectment* was then issued on November 21st by the Summary Court. (*Writ of Ejectment*)

The Appellant subsequently filed an appeal *pro se*, not alleging the absence of a written Order as Appellant currently disputes, but rather that the Appellant attempted to make payment of the November 2023 bond and was intentionally refused by the Clerk. The appeal was heard on January 30, 2024, by the circuit court who remanded the case for a hearing to determine a finding

of fact as to whether the Appellant had been prevented from paying the bond by the Clerk. (Form 4 Order, dated February 5, 2024).

The finding of fact hearing was held on February 14, 2024, during which Judge Griffin concluded that the Appellant was not a credible witness given to the character evidence submitted along with direct testimony by the Clerk against the Appellant. (Order, dated February 22, 2024). A finding of fact was made that the Appellant had failed to timely pay the bond for both November 2023 and February 2024, leading to the re-issuance of the *Writ of Ejectment*. The Appellant once again appealed the ejectment, and on February 29, 2024, Judge Cothran affirmed the Magistrate's ruling. (Form 4 Order, dated February 29, 2024).

STANDARD OF REVIEW

The following standard governs this appeal.

“The Court of Appeal will presume that an affirmance by a Circuit Court of a magistrate’s judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts to show the affirmance was influenced by an error of law.” *Hadfield v. Gilchrist* citing *Burns v. Wannamaker*, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984) The Court goes on to confirm that the South Carolina Supreme Court held that “where testimony is sufficient to sustain a judgment of the magistrate’s court, and it is affirmed on appeal to the Circuit Court, this Court will assume the Circuit Court affirmed the judgment on the merits, in the absence of facts showing affirmance was controlled or affected by errors of law.”

Hadfield v. Gilchrist citing *Stanford v. Cudd*, 93 S.C. 367, 369-70, 76 S.E. 986, 986-87.

ARGUMENT

This appeal is marred with the Appellant failing to adhere to the statutory framework from the outset for an Application for Ejectment, failing to timely post bond to stay the *Writ of Ejectment* throughout appeals, as well as blatant ignorance of direct, clear, and repetitive Orders from the presiding judge to timely pay and remit bond.

I

THE APPELLANT HAS FAILED TO PAY ALL RENT DUE PRIOR AND AFTER THE ISSUANCE OF A WRITTEN RULE REQUIRING THE TENANT TO VACATE OR SHOW CAUSE

In any action where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement:

The tenant is required to pay the landlord *all rent which becomes due after the issuance of a written rule* [emphasis added] requiring the tenant to vacate or show cause as rent becomes due and the landlord is required to provide the tenant with a written receipt for each payment except when the tenant pays by check.

The tenant is required to pay the landlord *all rent allegedly owed prior to the issuance of the rule* [emphasis added], provided, however, that in lieu of the payment the tenant may be allowed to submit to the court a receipt and cancelled check, or both, indicating that payment has been made to the landlord. S.C. Code §27-40-790(a-b).

A written rule to vacate or show cause was filed on April 13, 2023, and served on the Appellate on April 20, 2023. (Rule to Vacate or Show Cause (Eviction), filed April 13, 2023). The Appellant acknowledged receipt in his Answer. (Appellant's Answer and Exhibits, dated April 20, 2023). There is no record of any rent payments as required by the statute have been received by the landlord or the court for April – July of 2023. (Respondent's Affidavit, dated December 5, 2023). Accordingly, this action should have been dismissed *ab initio*; however, this Court should dismiss this appeal as required by the statutory framework during any action where the landlord sues for possession and the tenant raises defenses.

II

THE APPELLANT HAS FAILED TO COMPLY WITH THE REQUIREMENTS UNDER S.C. CODE ANN. §27-40-800 TO STAY EXECUTION WHILE UNDERTAKING THIS APPEAL

It is sufficient to stay execution of a judgment for ejection that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the magistrate in accordance with Section 27-40-780, as it becomes due periodically after the

judgment was entered. Any magistrate, clerk, or circuit court judge shall order a stay of execution upon the undertaking . . . If the tenant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the landlord, shall issue a warrant of ejectment to be executed pursuant to Section 27-37-40 of the 1976 Code. S.C. Code §27-40-800(b, e).

When the Appellant filed his appeal of the initial *Writ of Ejectment*, he was required under S.C. Code Ann. §27-40-800 to post bond. By failing to pay bond for February 2024, his stay should have been immediately dissolved, and the appeal dismissed. The Appellant contends that S.C. Code Ann. §27-37-160 requires a tenant to be formally ordered to pay rent before a writ can be lawfully issued. However, this interpretation is incorrect; such a requirement is not stipulated in S.C. Code Ann. §27-37-160. During the hearing on February 14, 2024, the Summary Court found sufficient evidence to support the claim that the Appellant failed to make his February 2024 payment. Therefore, the Summary Court was justified in re-issuing the *Writ of Ejectment*. The Circuit Court was likewise justified in relying on this finding when affirming the lower court's ruling under *Hadfield v. Gilchrist*, 343 S.C. 88, 94, 538 S.E.2d 268, 271 (Ct. App 2000).

III

THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE SUMMARY COURT'S RE-ISSUANCE OF THE WRIT OF EJECTMENT

Appellant suggests there was no Order in place; however, after the preliminary hearing on August 8, 2023, the Appellant submitted bond payments for \$1,750 and \$1,600.00 for the subsequent months of September 2023 and October 2023. By voluntarily making these payments, Appellant was patently aware of the ruling, which had been provided from the bench to both counsel of record after deliberation by the Court. Appellant's counsel had been tasked with drafting the Order, which said counsel failed to properly draft in a timely manner. However, the Appellant

failed to make the required bond payment on or before November 10, 2023, resulting in the issuance of a *Writ of Ejectment*.

In the Appellant's appeal to the Circuit Court, the Appellant asserted a single defense: that he was not permitted by the Clerk to pay the bond for November 2023. (Appellant's Appeal, dated November 29, 2023). During the remanded Hearing, the Summary Court heard testimony from both the Appellant and the Court Clerk regarding these allegations. The Summary Court ultimately found that the Appellant was not prevented from making his required bond payment and had indeed failed to pay the bond for November 2023 on time. (Order, dated February 22, 2024). The Court found the Appellant's assertions that the Clerk had intentionally rejected his attempted payment for November 2023 to be without merit and noncredible given the character witness submitted against the Appellant. *Id.*

Furthermore, the Summary Court determined that the Appellant had not paid the bond for February 2024, which served as an additional basis for the reissuance of a *Writ of Ejectment*. *Id.* By referencing *Bowers v. Thomas*, the Appellant attempts to draw parallels between that case and his own, despite the significant differences in their fact patterns. In *Bowers*, neither party was aware of the court's order, and attorneys for both sides submitted their own proposed orders without knowing which one the judge had accepted. In contrast, the Appellant acknowledges that he was present at the hearing and heard the Summary Court require monthly bond payments. Additionally, in his initial appeal, he confirmed that his Counsel instructed him to make these monthly payments. For the Appellant to now claim that it is procedurally unfair to issue a writ contradicts his own actions.

In ejectment proceedings initially heard in the magistrate's court, the Court of Appeals lacks jurisdiction to reverse the circuit court's findings of fact if there is any supporting evidence.

As stated in *Bowers*, citing *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984), the Court of Appeals retains de novo review regarding whether the facts indicate that the circuit court's affirmance was influenced by legal errors. However, the South Carolina Supreme Court has held that "where the testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the circuit court, ... the court will assume the circuit court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law" (*Stanford v. Cudd*, 93 S.C. 367, 370, 76 S.E. 986, 987 (1913)).

CONCLUSION

Appellate has now changed his argument and appeal multiple times to fit his ever-changing narrative. However, the record is clear, and Appellant has no proof, that payment of November 2023 bond was timely, and that February 2024 bond was never paid, and that the months of April-July 2023 are still unpaid after a written rule to vacate or show cause was served on the Appellant. S.C. Code Ann. §27-40-790 and S.C. Code Ann. §27-40-800 are very clear, all rent must be paid for the Appellant to even continue his appeal and possess the property. For these reasons and the others discussed above, this appeal should be dismissed and the *Writ of Ejectment* promptly enforced to allow Respondent to regain control of his property rights.

Respectfully submitted,

/s Christopher R. Jay
Christopher R. Jay, Esq
S.C. Bar No.: 100313
chris@curtisandcroft.com

/s J. Benjamin Cahill
J. Benjamin Cahill, Esq

S.C. Bar No.: 102437
ben@curtisandcroft.com

Curtis & Croft, LLC
325 W. Calhoun St
Sumter, SC 29150
Tel. (803) 778-7404

Attorneys for Respondent David Bryan Trapp

Sumter, South Carolina

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