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Subject: Initial Brief, Designation of Matter, and Proof of Service
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Following are the documents from Graham and Felicia Underwood, Appellants, Case No. 2024-001696:

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2024-001696

Heartland Realty,

Respondent

vs.

Graham Underwood and Felicia Underwood,

Appellant

[INITIAL] BRIEF OF APPELLANT

Felicia Underwood
Graham Underwood
Pro Se
Appellants
1722 Baskins Hill Road
Heath Springs, SC 29058
803-283-2524

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Nov 12 2024
SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

Did the Circuit Court err in dismissing this appeal of an eviction by the magistrate's court without receiving the Return of the magistrate's court as required by Section 18-7-30, Code of Laws, 1976, and without affording the Appellants a hearing on the appeal?

STATEMENT OF THE CASE

On June 6, 2024, Heartland filed an Application for Ejectment with the Magistrate's Court, and the Magistrate's Court issued a Rule to Vacate or Show Cause. The Underwoods timely filed an Answer on July 1, 2024, alleging, among other things, that the home was to be Felicia Underwood's. This was not as clearly stated as it could have been, but it raised the promise that the owner Hall had made before they entered the most recent lease. After a hearing before the Magistrate, a Writ of Ejectment was issued on July 19, 2024, and served on the Underwoods on July 22, 2024. On August 1, 2024, the Underwoods timely appealed the judgment of the Magistrate.

The Notice of Civil Appeal took exception to the ruling by the magistrate. When the Appellants filed the appeal to the Court of Common Pleas, Appellants delivered a copy to the Magistrate's office. The magistrate's court failed to file a return within thirty days as required by S.C. Code Ann. § 18-7-30 (2023).

After no return was filed, Judge Gibbons did not seek to compel the Magistrate to comply with S.C. Code Ann. § 18-7-30 (2023). The Court did not afford the Underwoods a hearing on the merits. Instead the Court on October 8, 2024, entered a Form 4 checking a box saying "This action came to a trial or hearing before the court. The issues have been tried and a decision rendered." The Form 4 dismissal also said, "Dismissed due to failure to prosecute." On October 8, 2024 the dismissal was electronically signed by Judge Gibbons. This appeal followed.

STATEMENT OF FACTS

The Appellants, Felicia and Graham Underwood, live in a house at 1722 Baskins Hill Road in Heath Springs, South Carolina. When Appellant Felicia Underwood (Felicia), and her two young boys moved into the house in 2020 it was owned by Bonnie Bailey Jones, the grandmother of Felicia. Bonnie Bailey Jones had promised Felicia that when she died she would leave the house to Felicia. Jones died April 27, 2023, leaving a will dated March 31, 2014, leaving all of her property to her son, Clayton Lamar Hall (Hall). The estate of Jones was probated in Lancaster County and was closed February 19, 2024.

The Appellant, Felicia Underwood, and her two sons have lived in the house since 2020. Appellant Graham Underwood, Felicia's husband, moved into the house in 2022. The Appellants have had a series of conversations with Hall about how to resolve their ability to stay in the house. After much discussion the Appellants and Hall entered into a month to month lease agreement on January 20, 2024. The Appellants were to pay \$300 per month as rent. Only eleven days later, Hall filed an Application for Ejectment on January 31, 2024, claiming they owed \$968 in rent. Appellants obtained legal counsel and on February 28, 2024, the Magistrate's Court held a hearing. After taking testimony the Magistrate dismissed the case.

Following the hearing the Underwoods understood Hall to say that if they paid rent for two years, he would convey the house to them on favorable terms. Thereafter, Hall retained Heartland Realty. In reliance upon the promise of Hall to convey the house to them if they paid rent for two years, the Underwoods entered a lease with Heartland Realty to pay \$600 per month. In spite of the promises made by Hall, Heartland Realty on April 5, 2024, sent the Underwoods a letter saying that Hall intended to sell the property and that they must vacate the property by May 31, 2024. The Underwoods protested this decision and refused to vacate.

On June 6, 2024, Heartland filed an Application for Ejectment with the Magistrate's Court, and the Magistrate's Court issued a Rule to Vacate or Show Cause. The Underwoods timely filed an Answer on July 1, 2024, alleging, among other things, that the home was to be Felicia Underwood's. This was not as clearly stated as it could have been, but it raised the promise that the owner Hall had made before they entered the most recent lease. After a hearing before the Magistrate, a Writ of Ejectment was issued on July 19, 2024, and served on the Underwoods on July 22, 2024. On August 1, 2024, the Underwoods timely appealed the judgment of the Magistrate. The Underwoods continued to pay rent so long as the appeal was pending in the Court of Common Pleas.

The Notice of Civil Appeal took exception to the ruling by the Magistrate and stated that Hall had promised to convey the property to Felicia Underwood and that in reliance on that promise they paid rent to Heartland and Hall.

When the Appellants filed the appeal to the Court of Common Pleas, Felicia delivered a copy to the Magistrate's office and was told that was all she needed to do concerning the appeal. The Magistrate's Court had a duty under S.C. Code Ann. § 18-7-30 (2023) to within thirty days after the service of the notice of appeal to make a return of the testimony, proceedings and judgment and file it with the Court of Common Pleas for Lancaster County. ¹The Magistrate's Court failed in this duty and no return was filed with thirty days as required by § 18-7-30.

After no return was filed, Judge Gibbons did not seek to compel the Magistrate to comply with § 18-7-30. The Court did not afford the Underwoods a hearing on the merits. Instead, the Court on October 8, 2024, entered a Form 4 dismissal checking a box saying "This action came to a trial or hearing before the court. The issues have been tried and a decision rendered." The Form 4 dismissal also said, "Dismissed due to failure to prosecute." On October 8, 2024 the dismissal was electronically signed by Judge Gibbons. This appeal followed.

¹Rule 75 of the South Carolina Rules of Civil Procedure has a similar requirement.

STANDARD OF REVIEW

A dismissal for failure to prosecute should be made only when there is some showing of indifference on the part of the party bringing the appeal. The Supreme Court has affirmed dismissals for failure to prosecute in the face of repeated warnings. See: *McComas v. Ross*, 626 SE2d 902 (Ct of Appeals 2006). Unless there was a failure of the Appellants that showed indifference to the progress of the appeal the Court of Common Pleas should consider the appeal on its merits.

ARGUMENT

The Court erred in dismissing the appeal without a hearing and without a return from the magistrate's court.

The *pro se* Appellants should not be penalized for the failure of the magistrate's court to file the record as required by Section 18-7-30, Code of Laws, 1976. The magistrate's duty to make a return in appeals to the Court of Common Pleas is set forth in S.C. Code Ann. § 18-7-30 (2023) as follows:

The court below shall thereupon, after ten days and within thirty days after service of the notice of appeal, make a return to the appellate court of the testimony, proceedings and judgment and file it in the appellate court.

The Underwoods filed their notice of appeal on August 1, 2024, and provided a copy of the notice of appeal to the magistrate's court the same day. No return was filed by the magistrate's court. The Court of Common Pleas thereafter, without notice to the Underwoods, dismissed their appeal on October 8, 2024, only 68 days after it was filed.

The Form 4 dismissal checks a form box that says, "This action came to a trial or hearing before the court. The issues have been tried and a decision rendered." This appears to be a clerical error as no hearing was noticed or heard in the case. The Form 4 dismissal also said, "Dismissed due to failure to prosecute." This is an erroneous finding because there was no failure to prosecute in the part of the Appellants. The only failure in this case was the failure of the magistrate's court to make a return as required by § 18-70-30.

Appellants found no cases directly on point. *Laughlin v. Livingston*, 233 S.C. 82, 103 SE2d 741 (1958) is an ejectment action in which the appellants argued that the trial magistrate had not filed a return and therefore the Court of Common Pleas could not exercise appellate jurisdiction. The South Carolina Supreme Court rejected this argument, not because the premise was not sound, but because the Court of Common Pleas had a transcript of the trial before the magistrate and the parties were fully heard in a hearing before the Common Pleas Court. Here the Court had no record of the testimony or the proceedings in the magistrate's court, and dismissed the appeal with no notice to Appellants and without affording them a hearing.

S.C. Code Ann. § 14-5-340 (2023), provides, "Circuit judges may hear appeals from magistrate's courts . . . and the court of common pleas, upon notice as required by law for the hearing of such appeals." Having not having given notice of a hearing of the appeal, the Court erred in dismissing the appeal.

If magistrates are not required to file a return after an appeal of their rulings, this would thwart the administration of justice. The ruling by the court below actually rewarded the failure to follow the statutory duty of the magistrate. If magistrates are not required to file a return, they are not subject to appellate review. They would thus make themselves a court of last resort and not subject to review. In times of economic uncertainty and widespread homelessness ensuring justice in eviction proceedings should be of paramount importance.

CONCLUSION

The failure of the magistrate's court to file a return is not a sufficient reason to dismiss Appellants' appeal. The Circuit Court erred in dismissing this Appeal without receiving the Return from the magistrate's court as required by S.C. Code Ann. § 18-7-30 (2023), and without providing Appellants a hearing on the Appeal.

Respectfully submitted,

November 12, 2024

/s/Felicia Underwood and Graham Underwood

Felicia Underwood and Graham Underwood

Pro Se

Appellants

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