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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

The Honorable Daniel Coble
Circuit Court Judge

Case No.: 2024-001226

Ernest McKnight, Jr..... Appellant,

v.

Home River Group Respondents,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- A. Did the Circuit Court err in denying Appellant's motion for reconsideration of relief from judgement?

TABLE OF AUTHORITIES

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<i>Cambell v Life Insurance & Casualty Ins. Co.</i> , 155 S.C. 63 (S.C.1930) , 152 S.E. 792 2,3	
<i>Gainey v Gainey</i> , 382 S.C. 414 423, 675 S.E.2 nd 792, 797 (Ct App 309)	2,3
<i>Hutchinson v Staten</i> , 994 F 2 nd 1076, 1081 (4 th Circuit 1993)	2,3

OTHER AUTHORITIES

South Carolina Rules of Civil Procedure Rule 59(e)	3
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STATEMENT

The Appellant was served an Application of Ejectment filed by the Respondent in the Richland County Magistrate County on December 28, 2023. An Order was entered on April 5, 2024, in which the Appellant agreed to vacate the subject premises on or before 5:00 p.m. on Friday, April 19, 2024. Prior to Appellant's removal from the subject premises, Appellant filed an Appeal on May 21, 2024, of the Magistrate's Order. On May 3, 2024, the Richland County Magistrate Court issued a bond finding the Appellant obligated to pay \$5,090.00 by May 6, 2024, and then the monthly rent due on the 5th of each month before 3:00 p.m. each day. The bond further stated that if Appellant fails to make any rental payment within five days of the due date, upon application of the landlord the stay of execution shall dissolve the appeal by the Appeal by the Appellant to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Appellant. The Appellant paid the rent payment at 3:05 p.m. on June 5, 2024, and the Magistrate would not take the rent because it had not been paid by 3:00 p.m. of the month. The Magistrate then, of its own volition, filed the disposition to remove the Appellant from the property. The Appellant then filed a Notice of Motion and Motion to reconsider the Magistrate's ruling. The Circuit Court denied the Appellant's motion to reconsider. From that Order, the Appellant made a timely Appellant.

ARGUMENT

I

The Circuit Court erred in denying Appellant's Motion for Reconsideration of relief from judgment.

Courts have recognized three circumstances in which a Court should grant a Rule 59(e) motion:

- (1) To accommodate an intervening change in controlling law;
- (2) To account for new evidence not available at trial; or
- (3) To correct a clear error of law or prevent manifest injustice. *Hutchinson v*

Staten, 994 F.2d 1076, 1081 (4th Circuit 1993). A Rule 60(b) motion is within the sound discretion of the trial judge. The appellate standard of review is limited to determine whether there is an abuse of discretion. An abuse of discretion occurs when the Order of the Court is controlled by error of law where the Order is based on factual findings that are without evidentiary support. *Gainey v Gainey*, 382 S.C. 414, 423, 675 S.E.2d 792, 797 (Ct App 2009)

The bond signed by the Magistrate clearly states as follows:

“Upon execution of the above bond, execution on the judgment of ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If tenant fails to make rental payment within five days of the due date upon application of the landlord, the stay of execution shall dissolve the appeal by the tenant to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the tenant.”

The due date as set forth in the bond by the Magistrate was to be paid on the 5th day of each month before 3:00 p.m. of each day beginning June 5, 2024. That on June 5, 2024, the Defendant tendered the payment rent five minutes after 3:00 p.m. and the Magistrate did not accept the payment. The Appellant would show the Court that based on the construction of the bond issued by the Magistrate that he had five (5) days after the due

date of the 5th day of each month at 3:00 p.m. to tender the rent payment. If the language used by a bond is plain and unambiguous, the bond should be interpreted by the ordinary meaning of the terms. *Cambell v Life Insurance & Casualty Ins. Co.*, 155 S.C. 63 (S.C.1930) , 152 S.E. 792.

The simple language in the bond issued by the Magistrate states that the Appellant has five days of the due date, to pay the rent payment according to the bond. The Appellant would show that he tendered the payment five minutes after 3:00 p.m. on June 5th but had up to five days from June 5th at 3:00 p.m. to tender that payment. Appellant would show that the Circuit Court erred in not granting the Appellant's motion for reconsideration. The Appellant clearly could show under Rule 59(e) and Rule 60(b) that the Circuit Judge committed a clear error of law and abused his discretion on his factual findings that are without evidentiary support. *Gainey v Gainey*, 382 S.C. 414 423, 675 S.E.2nd 792, 797 (Ct App 309). *Hutchinson v Staten*, 994 F 2nd 1076, 1081 (4th Circuit 1993).

II

CONCLUSION

For reasons heretofore set forth, Appellant respectfully submits that the order of the Circuit Court denying the Appellant's motion for reconsideration be reversed and the action remanded for the Appellant's appeal in Circuit Court.

Respectfully submitted,

s/G. Robin Alley

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November 25, 2024

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The Honorable Daniel Coble
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Ernest McKnight, Jr. Appellant,

v.

Home River Group Respondents,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by e-mail to their attorney of record, Jason Mark Hunter, Esquire.

s/G. Robin Alley
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SC Court of Appeals

December 2, 2024

Catherine Harrison, Deputy Clerk
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1220 Senate Street
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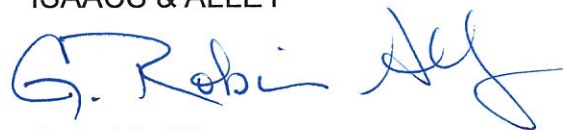
**Re: Ernest McKnight Jr. v Home River Group
Appellate Case No. 2024-001226**

Dear Ms. Harrison:

Please find attached our Initial Brief and Proof of Service for filing. If you require anything further, please let me know.

With Kind Regards,

Sincerely,
ISAACS & ALLEY



G. Robin Alley

GRA/dlw

Enclosures

cc: Jason Mark Hunter, Esq. (w/enclosure)