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**Dec 16 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CALHOUN COUNTY  
Court of Common Pleas  
The Honorable Heath P. Taylor, Circuit Court Judge

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Case No. 2023-CP-09-00171  
Appellate Case No. 2024-000195

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Shaneeeka Stroman,.....Appellant

vs.

Carol B. Fischer, Emily Marie Fischer-Bunker, Attorney for Carol B. Fischer (Banks Neumeister Attys at Law), Town of Saint Matthews (Chief Executive Officer) Helen Carson-Peterson, and St. Matthews Police Department (Chief) Michael Smalls, ..... Defendants,

Of Which

Carol B. Fischer, Emily Marie Fischer-Bunker, St. Matthews Police Department, and Town of Saint Matthews are the ..... Respondents.

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**INITIAL BRIEF OF RESPONDENTS ST. MATTHEWS  
POLICE DEPARTMENT AND TOWN OF SAINT MATTHEWS**

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**CALLISON TIGHE & ROBINSON, LLC**

*s/ Harry A. Dixon*

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**ATTORNEYS FOR RESPONDENTS  
ST. MATTHEWS POLICE DEPARTMENT  
AND TOWN OF ST. MATTHEWS**

December 16, 2024

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## STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court properly dismissed with prejudice Appellant's complaint against the Town of St. Matthews and the St. Matthews Police Department pursuant to Rule 12(b)(6), SCRPC, where Appellant conceded she was a trespasser and failed to allege forced removal or deprivation of possession to support a claim for forcible entry and detainer.

## STATEMENT OF THE CASE

Appellant Shaneeka Stroman (“Appellant”) filed this action *pro se* in the Calhoun County Court of Common Pleas, vaguely asserting a single claim of forcible entry and detainer against a variety of defendants, including Respondents Town of Saint Matthews and the St. Matthews Police Department (“St. Matthews Respondents”). Appellant later filed an amended complaint with additional allegations.

The St. Matthews Respondents then moved to dismiss. Other parties filed additional motions to dismiss and for summary judgment.

On November 30, 2023, the Court heard argument on all motions. At the hearing, Appellant, proceeding *pro se* and placed under oath, acknowledged she was a trespasser.

On January 30, 2024, the trial court granted a motion to dismiss the St. Matthews Respondents and dismissed the case with prejudice. Appellant did not file a motion to reconsider the dismissal order.

On February 4, 2024, Appellant timely filed a notice of appeal.

## STATEMENT OF FACTS

Appellant alleges she was in possession of a house at 307 Church Street in St. Matthews, South Carolina. *Complaint*, ¶ 3. In June 2023, Appellant filed or attempted to file a “Notice of Adverse Claim Affidavit” stating that she intended to take 307 Church Street by adverse possession. *Complaint, Ex. J.*<sup>1</sup> Among other statements, Appellant claimed:

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<sup>1</sup> “A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading.” *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (citing Rule 10(c), SCRCF); *see also Santos v. Harris Inv. Holdings, LLC*, 439 S.C. 214, 221, 886 S.E.2d 483, 486 (Ct. App. 2023) (considering material attached to complaint on a Rule 12(b)(6) motion) (citing *Brazell*, 384 S.C. at 512, 682 S.E.2d at 824).

**My claim is based upon my actual visible appropriation and possession of the above-mentioned property here by being open and Notorious and peaceful possessing it due to abandonment, neglect or those who personal represented have vacate the above described property also whereby I intend to continue to enjoy and make further improvement as this is my personal dwelling by adverse possession.**

*Id.*

307 Church Street was a vacant home owned by Carol B. Fischer. *Complaint, Ex. H* (vacant home); *Amended Complaint*, ¶ 2. Emily Marie Fischer-Bunker holds a Power of Attorney for Carol B. Fischer. *Complaint, Ex. M* at 1 (St. Matthews Police Incident Report).

On September 25, 2023, Ms. Fischer-Bunker reported Appellant to the St. Matthews Police department for trespassing at 307 Church Street. *Complaint, Ex. M* at 1 (St. Matthews Police Incident Report).

On September 26, 2023, an officer with the St. Matthews Police Department, apparently responding to a call from Appellant about stolen property, served Appellant with a trespassing notice and warned her that she would be arrested if she returned to the Property. *Complaint*, ¶¶ 4–5; *Ex. M* at 2:

INCIDENT REPORT SUPPLEMENTAL		Page #: 1
Case Number: 23-260		
Officer: SMALLS SMALLS, MICHAEL	Date Entered/Changed: 09/26/2023	Reviewer: Review Date:
DETAILED STATEMENT OF INVESTIGATION: ON SEPTEMBER 26, 2023 AT 1000 HRS. CHIEF SMALLS WAS DISPATCHED TO 307 CHURCH ST. IN THE TOWN OF ST. MATTHEWS SC ON A CALL ABOUT THIEF FROM THE ABOVE INCIDENT LOCATION. ONCE AT THE ABOVE LOCATION CHIEF SMALLS SEVERED A TRESPASS NOTICED ON ONE MS. SHANEEKA M. STROMAN OF 335 HORSES NECK RD SWANSEA SC. MR. & MS. STROMAN AS ADVISED BY CHIEF SMALLS NOT TO RETURN TO THE ABOVE INCIDENT LOCATION. MR. STROMAN TOLD CHIEF SMALLS THAT HE HAD A BAWN MORE ON THE PROPERTY AND NEED TO COME BACK FOR IT AT A LATER DATE. CHIEF SMALLS ADVISED MR. STROMAN TO CALL THE POLICE DEPT. WHEN HE WAS IN THE AREA AND AN OFFICER WILL ESCORT HIM ON THE PROPERTY TO OBTAIN HIS ITEMS. MR. STROMAN WAS ADVISED THAT IF THEY ARE FOUND ON THE PROPERTY OF 307 CHURCH ST. THEY WOULD BE ARRESTED, AND CHARGED WITH TRESPASSING.		

At the hearing on the motion to dismiss by the St. Matthews Respondents, Appellant, proceeding *pro se* and having been sworn, conceded that she was trespassing at 307 Church Street:

2 THE COURT: Okay. But I'm just asking  
3 you, what, if anything, the town or in your  
4 complaint you allege the town or the chief or the  
5 mayor has done wrong?

6 MS. STROMAN: Well, the police officer,  
7 first of all, he told me to leave and don't come  
8 back. I feel like I had, you know, the right to be  
9 there because I had my documentation, you know, and  
10 I was improving the place. You know, I did know  
11 that if the owner came and told me, you know, gave  
12 me eviction notice that, you know, I would have to  
13 leave. But I'm not aware of them making me leave  
14 and saying if I come back that, you know, I would  
15 be on trespassing. And I never got to see the  
16 owner. No one ever approached me. The owner never  
17 approached me. Carol B. Fischer from my  
18 understanding is incompetent. So, you know, I just  
19 didn't think that I needed -- I was trespassing,  
20 but I thought that it probably be another way they  
21 would go about it as far as like eviction process  
22 and so forth.

*See 11/30/2023 Hearing Transcript, p. 43.*<sup>2</sup>

### **STANDARD OF REVIEW**

“On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the circuit court.” *Kelaher, Connell & Connor, P.C. v. S.C.*

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<sup>2</sup> Appellant was later charged criminally based on these facts. *See Stroman v. State*, Case No. 2024-CP-09-00151 (Calhoun Comm. Pl. 2024) (magistrate’s appeal); *State v. Stroman*, Case Nos. 2024A0910100025, -26 (St. Matthews Magistrate 2024).

*Workers' Comp. Comm'n*, 435 S.C. 55, 60, 863 S.E.2d 842, 844 (Ct. App. 2021) (quoting *Grimsley v. S.C. Law Enf't Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012) (internal punctuation omitted). “That standard requires the court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Id.* (internal punctuation omitted). “If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) is improper.” *Id.*

### ARGUMENT

**A. APPELLANT FAILED TO STATE A CLAIM AGAINST THE ST. MATTHEWS RESPONDENTS BECAUSE SHE DID NOT ALLEGE ANY FORCE TO REMOVE HER OR TO RESTRAIN HER FROM THE PROPERTY BY THE ST. MATTHEWS RESPONDENTS.**

Appellant’s claim for forcible entry and detainer against the St. Matthews Respondents was properly dismissed because she alleged only that a St. Matthews Police Officer served her with a trespassing notice and stated she could be arrested. She did not allege that the St. Matthews Respondents forcibly removed her or took possession of 307 Church Street.

S.C. Code Ann. § 15-67-410 creates a cause of action for “forcible entry and detainer,” and provides:

If any person be put out or disseized of any lands or tenements in forcible manner or put out peaceably and be afterwards holden out with strong hand, or, after such entry, any feoffment or discontinuance in any wise thereof be made to defraud and take away the right of the possessor, the party grieved in this behalf shall have an action against such disseizor.

S.C. Code Ann. § 15-67-410; *see also* § 15-67-420 (providing treble damages if lands taken or held “with force”). “These statutes apply in circumstances in which one has forcibly entered and ‘disseized’ property.” *Parker v. Shecut*, 359 S.C. 143, 150, 597 S.E.2d 793, 797 (2004). An entry “must be accompanied with circumstances tending to excite terror in the occupant, and to prevent

him from maintaining his rights.” *Barbee v. Winnsboro Granite Corp.*, 190 S.C. 245, 2 S.E.2d 737, 739 (1939). “An entry which has no other force than such as is implied in every trespass is not within the statute.” *Id.* There must be some allegation of force used to deny possession. *See Frederick v. Chapman*, 144 S.C. 137, 142 S.E. 247, 249 (1928) (the complaint contains no allegation of, nor is there any testimony tending to show, forcible entry and detainer of the premises by the defendants.); *see also Du Pre v. Tilghman Lumber Co.*, 114 S.C. 269, 103 S.E. 526, 527 (1920) (“the evidence in the case does not show any force used for entry and detainer, and there is no allegation in the complaint to that effect”).

The only allegation against the St. Matthews Respondents is that a police officer served Appellant with a trespass notice and stated to Appellant that she would be arrested if she returned to the property. Appellant does not allege a use of force at all. There is no allegation that the St. Matthews Respondents removed her or held her out of the 307 Church Street Property in either the Complaint or Amended Complaint. Accordingly, any claim for forcible entry and detainer against the St. Matthews Respondents must fail.

Moreover, the only claim appealed—and the only claim apparently alleged—is “forcible entry detainer.” Appellant characterized her action as one for “forcible entry and detainer.” *See Appellant’s Brief*, 4 (Statement of the Case) (“On September 29, 2023, Shaneeka Stroman brought this action alleging Forceful Entry and detainer.”). The only claim asserted or claimed to be asserted is one for “forcible entry and detainer.”

Accordingly, there is no plausible claim alleged, and dismissal was appropriate under Rule 12(b)(6), SCRPC.

**B. THE TRIAL COURT PROPERLY DISMISSED APPELLANT’S ACTION WITH PREJUDICE AND WITHOUT LEAVE TO AMEND BECAUSE AMENDMENT WOULD BE FUTILE.**

Dismissal with prejudice was appropriate because Appellant admitted she was a trespasser,

did not allege use of force by the St. Matthews Respondents, and the police report was attached to the Complaint. No additional facts could plausibly be alleged that would make out a claim for forcible entry and detainer, and allowing amendment would be futile. Accordingly, dismissal with prejudice and without leave to amend was proper.

Amendment is futile where appellant does not identify additional facts that if alleged would state a plausible claim. *See Santos v. Harris Inv. Holdings, LLC*, 439 S.C. 214, 221, 886 S.E.2d 483, 486 (Ct. App. 2023); *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 185, 192, 826 S.E.2d 585, 590, 594 (2019) (providing a circuit court does not err in granting a Rule 12(b)(6) motion without granting leave to amend the complaint if such an amendment would be futile). Even if the Court assumed a hypothetical error in dismissal with prejudice, the Appellant has not identified additional facts that would state a plausible claim, and the Court should affirm on this basis alone. *See Spence v. Spence*, 368 S.C. 106, 130–31, 628 S.E.2d 869, 882 (2006) (“On the other hand, when a complaint is dismissed with prejudice and the plaintiff erroneously is denied the opportunity to file and serve an amended complaint, but the plaintiff fails to present additional factual allegations or a different theory of recovery which may give rise to a claim upon which relief may be granted, the appellate court may in its discretion affirm the dismissal of the complaint with prejudice.”).

Amendment is futile here where Appellant has not identified additional facts, force was not alleged, and the police report is attached to the complaint. A St. Matthews police officer served a trespass notice without force. No additional facts could create a plausible claim for Appellant against the St. Matthews Respondents. Accordingly, the trial court properly dismissed this matter with prejudice and without leave to amend, and this Court should affirm.

**C. APPELLANT DID NOT PRESERVE THE ISSUES RAISED ON APPEAL BECAUSE THE TRIAL COURT DID NOT RULE ON HER APPEAL ARGUMENTS AND SHE FAILED TO FILE A MOTION TO RECONSIDER THE TRIAL COURT’S ORDER.**

This Court can affirm without reaching the merits because Appellant failed to preserve any arguments on appeal by failing to move for reconsideration before the trial court.

“When an issue is raised to but not ruled upon by the trial court, the issue is preserved for appeal only if the party raises the same issue in a Rule 59(e) motion.” *Chastain v. Hiltabidle*, 381 S.C. 508, 515, 673 S.E.2d 826, 829 (Ct. App. 2009).

Appellant asserts two arguments on appeal to justify reversing the trial court’s order dismissing her action—that “Because Respondent Is Not The Owner Of The Property, She Has No Right To Enforce Trespassing [sic] Or Harassment Against Stroman” and “Because Possession Is 9/10ths Of The Law, And Forced Entry And Detainer Existed And Is The Law, The Defendants Should Have Been Held Liabile.” See *Appellant’s Initial Brief*, pp. 4–5 (Arguments). However, the trial court did not address these arguments in its order. See *1/30/2024 Order Dismissing St. Matthews Respondents*. Appellant did not file a motion to reconsider, or any motion, but instead immediately appealed. See *2/9/2024 Notice of Appeal*. Accordingly, Appellant has failed to preserve the issues raised on appeal for appellate review, and the Court may affirm on this basis alone.

**CONCLUSION**

For these reasons, the St. Matthews Respondents ask that this Court affirm the trial court’s order dismissing Appellant’s claims with prejudice.

Respectfully submitted,

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