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Apr 08 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge


Appellate Case No. 2024-000557

Roberta Moore, Appellant,

v.

Rebecca Giesler, Respondent.

**RESPONSE TO RESPONDENT'S MOTION TO DISMISS
OR, IN THE ALTERNATIVE, RESPONDENT'S MOTION TO
STRIKE AND CORRECT RECORD OF APPEAL**



Roberta Moore
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(803) 524-1842

NOW COMES the Appellant, Roberta Moore, in response to the Respondent's Motion Dismiss or, in the Alternative, Respondent's Motion to strike and correct the Record On Appeal. The Respondent states the grounds for dismissal based on South Carolina Appellate Court Rules ("SCACR" or the "Rules") 210, 240, and 260 and the Respondent also gives an alternative motion to strike the irrelevant matters and/or those matters not presented to the Circuit Court as listed on the Appellant's Record on Appeal.

RESPONSE TO INTRODUCTION

Appellant filed with the court on April 2, 2024 and April 19, 2024, the court sent a deficiency letter and the deficiency was corrected and submitted on April 26, 2024. As indicated by the Respondent, the notice of appeal could not be considered at the time because it had to be reformatted and it was not until the deficiency corrected was submitted that it was considered. The Notice of Deficiency for the expired transcripts was sent to the Appellant on April 29, 2024 based on the April 2, 2024 filing and not the date of April 26, 2024 and the Appellant submitted a Motion to Allow Late Ordering of Transcript on May 8, 2024. On June 5, 2024, the Court documented that there was No Return from the Respondent in reply to the Motion to Allow Late Ordering of Transcript. On June 6, 2024, the Court made a Non-Dispositional Decision and granted the Motion to allow the late ordering of transcript.

On July 5, 2024, the Appellant filed Initial Brief. On July 17, 2024 a Notice of Deficiency was sent to the Appellant which was corrected and filed on July 26, 2024. On July 19, 2024 the Respondent filed a Motion To Dismiss. On July 23, 2024, the Respondent was sent a Notice of Deficiency which was corrected and filed on July 25, 2024.

On July 29, 2024, the Appellant filed a Return to the Respondent's Motion to Dismiss. On July 29, 2024, the Appellant filed correspondence to the Court regarding Respondent's ex parte communications as noted in Respondent's Initial Brief, Page 12, "...after realizing a formal order had not been signed, counsel forwarded the proposed orders to the Clerk of Court, at which point counsel was instructed to file the proposed orders...". At no point was the Appellant ever included in "proposed" orders that were filed. The Respondent admits to "proposing" orders, whereby presenting "options" for consideration to the Honorable Judge Brian Gibbons which directly affects the disposition of the case.

On August 19, 2024 the Appellant filed Motions to Accept Amended Initial Brief and Designation of Matter, along with A Motion To Deny Respondent's Motion to Dismiss and Overturn Lower Court Decision. On August 20, 2024, a Deficiency Letter was sent because court filing fees had not been received. On August 26, 2024 the Deficiency was corrected. On August 27, 2024, the Court recorded that there was No Reply from the Respondent to the Appellant's Return to Motion to Dismiss. On September 24, 2024, the Court Recorded that there was No Return from the Respondent to the Appellants Motion to Accept Amended Initial Brief, Motion to Accept Designated Matter, or to Deny Motion to Dismiss and Overturn Lower Court Decision. On January 28, 2025, the Court filed a Non-Dispositional Decision – Order to deny the Motion to Dismiss filed by the Respondent and to accept the Amended Initial Brief from the Appellant and the Designation of Matter.

On February 27, 2025, the Respondent filed her Initial Brief and Designation of Matter. On March 10, 2025, the Appellant filed her reply to the Respondent's Initial Brief. On March 31, 2025, the Appellant filed Final Brief and Record on Appeal. On March 31, 2025 the Respondent filed a Motion To Dismiss.

ARGUMENT

Respondent's argues that the appeal should be dismissed because Appellant has continued to consistently and materially fail to comply with South Carolina Appellate Court Rules, specifically now, with Appellant's Inadequate and erroneous Record on Appeal. As note previously, the Respondent chose not to reply to the aforesaid Motions indicating any objections at that time of the acceptance and correction of deficiencies.

South Carolina Rules of Appellate Procedure, inclusive of Rule 203 and Rule 208 identify and determine the timelines of the appeal. As documented prior the Appellate has not failed to comply with the South Carolina Rules of Appellate Court. All paperwork has been submitted in accordance with the Rules and all deficiencies have been corrected by the deadlines specified by the Court. A Motion has been filed by the Appellant to correct the Record on Appeal to include matter designated by the Respondent and to include court pleadings and other material from lower court. The alternative to correct the Record on Appeal was given by the Respondent as well in this Motion To Dismiss. The Appellant has complied to all of the directives of the Court and corrected all aforesaid deficiencies in accordance with the South Carolina Rules of the Appellate Court and according to the deadlines within the specified timeframes as dictated by the Court and therefore Rule 260a does not apply. The Appellant has met those timelines along with complying with the deadlines issued by the Court. All deficiencies identified by the Court have been corrected, reviewed, and motions ruled upon.

The Respondent claims that the Appellant has included correspondence that is irrelevant to the Appeal in the Record on Appeal. The Respondent identifies the correspondence in the Record of Appeal as pages 139-144 and page 164. Said correspondence with the exception of the notarized statement dated April 9, 2024 (page 144) and the letter on page 164 to the SC

Court of Appeals was given to the Honorable Judge Brian Gibbons during the initial court proceedings and are relevant to the issue on appeal in regards to Breach of Contract Accompanied by a Fraudulent Act. Copies of text messages and all e-mails were given to the were submitted to the Honorable Judge Brian Gibbons in the lower court during initial court proceedings. (Transcript – July 24, 2023, p. 11, lines 22-25 and p. 12, lines 1-13, Attachment “A”) All documents were handed to the Courtroom Deputy Clerk and given to the Honorable Judge Brian Gibbons.

The correspondence from the Respondent’s Attorney of Record was discussed in the lower court (Transcript – July 24, 2023, p 9, lines 24-25 and p. 10, lines 1-6, Attachment A) The Respondent notes that the correspondence dated April 8, 2024 (ROA, p. 144) is dated after the date of the order but fails to note the correspondence dated February 25, 2023 indicating all the mortgage payments were up to date (ROA, p. 141), As well as the correspondence dated April 10, 2023 (ROA, p. 143) which addresses the e-mail from the Respondent, dated March 5, 2023 confirming that all mortgage payments were up to date and there were no mortgage arrears. These documents are relevant in that the Respondent has mentioned in her Request To Dismiss eviction proceedings. Although eviction is not allowed in the State of South Carolina on a mortgaged property without following the proper Judicial Process, the Appellant feels it necessary to include these documents which were a part of the documents submitted to the Honorable Judge Brian Gibbons on July 24, 2023 (Transcript – July 24, 2023 p. 11, lines 20-25 and p. 12, Lines 1-13 (Attachment “A”))

The Respondent’s admittance in her Request For Dismissal of reaching out to the Clerk of the Lower Court, as well as, the Judge, The Honorable Brian Gibbons without the presence and without notifying the Appellant are according to Rule 12(b)(3) is considered misconduct by

the Respondent and should therefore cause her motion to dismiss to be denied and the prior judgment to be overturned in that it is believed that by the Counsel for the Respondent reaching out multiple times to the above parties without the knowledge of the Appellant, it is believed that she has compromised and swayed the outcome of the proceedings. At no point before or after was the Appellant advised of the ex parte communications that took place with the Respondent's counsel, as she communicated with the Clerk of the Lower Court, as well as, The Honorable Judge Brian Gibbons. The Appellant did not find out about these ex parte communications until the Appeal proceedings based on documents filed in the Appellate Court that the Respondent had participated in ex parte communications and at that point the Appellant immediately notified the Clerk of the Appellate Court in writing regarding those communications (ROA, p. 164) to notify the court of these actions. Based on the Respondent's failure to not only file the required paperwork by the Court mandated deadline but also because the Respondent broke SC Code of Laws Section 58-3-260 by participating in ex parte communications as confirmed in writing in the Respondent's Motion For Dismissal submitted to the Court of Appeals on July 19th, 2024, the communications from the Appellate to the Court should be admitted to the Record on Appeal.

Although the Appeal has experienced multiple delays in order to correct deficiencies, the Appellant has acted in a bona fide manner without any intention to deceive. The Appellant has responded to all of the Court's requests within specified timelines. The Respondent is not prejudiced by the delay in that the Respondent has no right to evict the Appellant from the home based on South Carolina law. The home is a mortgaged property and all mortgage payments are up-to-date. There are no mortgage arrears. In South Carolina, you cannot be evicted from a mortgaged property without following the proper procedures for foreclosure. South Carolina is a judicial foreclosure state. As confirmed by the Honorable Judge Brian Gibbons in the

transcript from July 24, 2023 proceedings p. 15, lines 7-9 (Attachment “B”), the home is under a legal and binding mortgage contract with an Addendum (ROA, p. 145-162) that outlines the process of foreclosure. The home does not qualify for foreclosure proceedings because there are no arrears in the mortgage payment and based on the Promissory Note (ROA, p. 150-153), the Appellant is currently in a 35-year mortgage agreement until the house is either refinanced or final closing with no specified dates as to when the house would have to be refinanced or when closing must take place. Therefore, there are no unjust delays in the proceedings because all mortgage payments are up-to-date according to the signed contracts and eviction is not imminent because there are no arrears in mortgage payments. All timelines specified in all signed contracts, agreements, and agreements have been met.

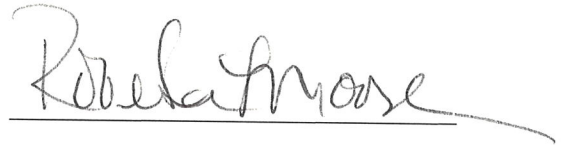
The Appellant has complied to all of the court orders to correct deficiencies as identified by the court and has submitted all paperwork by the court mandated deadlines.

CONCLUSION

Based on SC Code of Laws Section 58-3-260, the Appellant hereby requests that the Respondent's Request for Dismissal be denied and respectfully requests that the Appellant be allowed to correct the Record on Appeal based on the Motion previously submitted to the Court on April 8, 2025.

April 8, 2025

Respectfully Submitted,

A handwritten signature in cursive script that reads "Roberta Moore". The signature is written in black ink and is positioned above a horizontal line.

Roberta Moore
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Indian Land, South Carolina 29707
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ATTACHMENT "A" PAGE 1

1 MS. MOORE: But I also had it -- did a market analysis
2 on it as well. So in her motion to dismiss I notice she
3 didn't put a lot of it in the memorandum of law, which I
4 didn't get a chance to respond to because it came late and I
5 didn't have the time to respond before coming here.

6 THE COURT: Yes, ma'am.

7 MS. MOORE: But she had put on there the court is the
8 wrong jurisdiction, but it is the right jurisdiction. And
9 based on further research it's now understandable that the
10 defendant should have been -- should not have entered into
11 the bank, which I just told you about, nevermind that. What
12 she omitted in the memorandum of law was where she had said
13 in her pleading -- in her argument that there was no
14 contract -- well, that she alleged that I committed fraud by
15 signing the defendant's name to this addendum that they're
16 trying not to acknowledge, she included all of the contracts
17 but not the addendum in her paperwork, and there was a
18 verbiage in there that sounded like they were trying to
19 accuse me of fraudulently signing this document. So this is
20 another thing -- I'll give you all of these things --

21 THE COURT: Okay.

22 MS. MOORE: -- that I want to submit. But this is the
23 paperwork. Her husband is deceased now and that's who we
24 did all of the paperwork through. But this is the paperwork
25 inclusive --

ATTACHMENT "A" PG 2

1 THE COURT: Whose husband is deceased?

2 MS. MOORE: The -- Ms. Giesler's husband is deceased.

3 THE COURT: Okay. Got it. Okay.

4 MS. MOORE: And everything initially went through him,
5 all contracts. We were trying to get a bond for title but
6 the county said that we couldn't do it unless -- well, it's
7 all in here.

8 THE COURT: I'll look at all of that stuff.

9 MS. MOORE: Okay. As well as there was a portion in
10 there that was talking about where she had given out my
11 personal information, and then they came back and said that
12 I was aware of who Mike Furlick (phonetically) was. But in
13 the communications that I initially got from her --

14 THE COURT: Thank you, ma'am.

15 MS. MOORE: -- in the communications that I initially
16 got from her she said that she had talked with her real
17 estate attorney, and it was my assumption when I responded
18 that I was responding to her attorney, not to just some
19 strange person that she had given -- or now I know it's her
20 dad, that she had given all of my personal information about
21 the contract to. So I don't want to waste your time,
22 because I know this has been --

23 THE COURT: You're not wasting my time, ma'am. This
24 case is important to you, and I take everything I do very
25 seriously, and I'm going to read -- I saw -- you sent in a

ATTACHMENT B

1 it's 100 and something. I'm sorry, my mind is just going --

2 THE COURT: I know. I'm not holding you to anything.

3 MS. MOORE: Okay. But I guess at this point -- and
4 she's saying that I need to, like I said, pay more money or
5 she was going to put me out of the house without the proper
6 procedure.

7 THE COURT: Has she filed a foreclosure action?

8 MS. MOORE: Nuh-uh, she hasn't filed any foreclosure
9 actions. Because the payment -- what's in question right
10 now is the taxes --

11 THE COURT: Sure.

12 MS. MOORE: -- on the house.

13 THE COURT: Who has always paid the taxes on the house?

14 MS. MOORE: Well, this is -- when we signed the
15 agreement I was supposed to pay the taxes. This is where
16 that bond for title came in --

17 THE COURT: Right.

18 MS. MOORE: -- and the communications with Matt.
19 Because the agreement was that the taxes would be paid in my
20 name so that I would not be paying renter's taxes, I would
21 be paying owner occupied.

22 THE COURT: So who owns the deed to the house? Who
23 owns the deed to the --

24 MS. MOORE: She does. She still has the deed.

25 THE COURT: This sounds to me like a rent to own type

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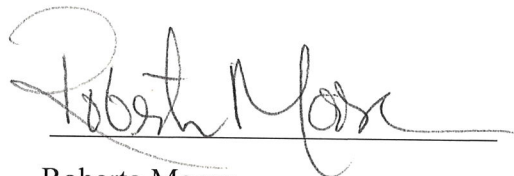
v.

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PROOF OF SERVICE

I certify that I have served the **RESPONSE TO RESPONDENT'S MOTION TO DISMISSOR, IN THE ALTERNATIVE, RESPONDENT'S MOTION TO STRIKE AND CORRECT RECORD OF APPEAL** on Rebecca Giesler by depositing a copy of it into United States Postal Service mail, postage prepaid on April 8th, 2025 addressed to her attorney of record, Jennifer M. Cloud, 1467 Ebenezer Road, Rock Hill, South Carolina 29732.

April 8, 2025



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