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Apr 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian Gibbons, Circuit Court Judge

Civil Action No. 2024-CP-29-00993

Appellate Case No. 2024-001696

Graham Underwood and Felicia Underwood, Appellants,
v.
Heartland Realty, Respondent

And

Clayton Lamar Hall, Intervenor

MOTION TO DISMISS FOR LACK OF JURISDICTION

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ATTORNEY FOR INTERVENOR CLAYTON LAMAR HALL

TABLE OF AUTHORITIES

Cases

Burns v. S.C. Comm'n for the Blind, 302 S.C. 234, 394 S.E.2d 356 (1990) 1
Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006) 1
McComas v. Ross, 368 S.C. 59, 627 S.E.2d 902 (Ct. App. 2006) 2

Statutes

SC Code of Laws (1986, as amended) § 27-40-800(d) 1

Rules

Rule 240, SCACR..... 1
Rule 41(b), SCRCP 1
Rule 60(b), SCRCP 2

Clayton Lamar Hall, by and through his attorney, Donovan M Steltzner, brings the following Motion to Dismiss before this Court:

INTRODUCTION

This appeal arises from an eviction proceeding wherein the Appellants, tenants of property owned by the undersigned, appealed an adverse decision from the magistrate court to the Circuit Court pursuant to SC Code of Laws (1986, as amended) § 27-40-800(d). The Circuit Court dismissed the appeal due to the Appellants' failure to timely prosecute the case under Rule 41(b), SCRCP, *sua sponte*. Subsequently, the Appellants appealed that dismissal to this Court. The undersigned contends that this Court lacks jurisdiction over the appeal for the reasons set forth below. This Motion is made pursuant to Rule 240, SCACR, and is supported by the embedded Memorandum.

I. The Court of Appeals Lacks Jurisdiction Because there is No Final Ruling on the Merits.

The Court of Appeals' jurisdiction is limited to reviewing final judgments or appealable interlocutory orders of lower courts. See *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006); *Burns v. S.C. Comm'n for the Blind*, 302 S.C. 234, 394 S.E.2d 356 (1990). Here, the circuit court's dismissal was procedural—not a ruling on the merits of the underlying landlord-tenant dispute.

Because the circuit court did not adjudicate the underlying appeal from magistrate court, there is no substantive legal issue before this Court. The only remedy available to the appellants—should they wish to pursue it—is to seek reinstatement of their appeal at the Circuit Court level or refile the action in magistrate court if procedurally permitted. The appellants' failure to prosecute does not create an appealable issue that this Court can review.

II. Dismissal for Failure to Prosecute is Not a Decision on the Merits.

South Carolina courts have generally held that dismissals for failure to prosecute are not decisions on the merits. See *McComas v. Ross*, 368 S.C. 59, 627 S.E.2d 902 (Ct. App. 2006). The Court of Appeals cannot issue an opinion on the substance of a claim where no substantive ruling has occurred below.

III. The Only “Remedy” for a Failure to Prosecute is to Prosecute.

The appellants cannot use an appellate court as a mechanism to bypass their own inaction in the lower court. Since their appeal was dismissed for inaction, their recourse is to either (1) seek relief from the dismissal at the circuit court level under Rule 60(b), SCRCP, or (2) initiate a new action if appropriate. There is no actual controversy or legal error for this Court to review.

Because the Circuit Court's dismissal of the appeal was purely procedural and did not involve any ruling on the merits of the case, there is no justiciable issue before this Court. The appeal should be dismissed for lack of appellate jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(2), and Rule 262(c)(1) SCACR, the undersigned hereby certifies that a true copy of the Motion for Dismissal in the above-referenced case has been served upon Graham Underwood, Felicia Underwood, and Heartland Realty at their mailing address listed below, on this the 29th day of April, 2025.

Graham Underwood
Felicia Underwood
1722 Baskins Hill Road
Heath Springs, SC 29058

Heartland Realty
114 E. Hilton St
Kershaw SC 29067



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