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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

Kristi F. Curtis, Circuit Court Judge
C/A No. 2023-CP-43-00148

Appellate Case No. 2023-00630

Jamar Stark and Tyla McNeill,

Appellants

vs.

Southern Touch Properties,

Respondent.

FINAL BRIEF OF RESPONDENT

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May 6, 2025

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STATEMENT OF ISSUES ON APPEAL

1. WAS THE PAYMENT ARRANGEMENT, AS AGREED UPON BETWEEN THE APPELLANTS AND RESPONDENT, DULY CONSIDERED BY THE JUDGE?
2. DID THE JUDGE CONSIDER AND ACKNOWLEDGE THE ABSENCE OF A WRITTEN NOTICE TO PAY OR QUIT PROVIDED TO THE APPELLANTS AT THE TIME OF THE EVICTION OR CLEARLY STATED IN CONSPICUOUS LANGUAGE IN THE ORIGINAL LEASE, AS OUTLINED BY THE LANDLORD TENANT LAW, SECTION 27-40-710?
3. DID THE JUDGE CONSIDER THE LOWER COURT'S ERROR IN NOT ALLOWING EVIDENCE AGAINST THE RESPONDENTS?

STATEMENT OF THE CASE

The Appellants, Jamar Stark and Tyla McNeill, entered into a rental lease agreement for the lease and rental of the premises known as 6195 Fish Road, Dalzell, SC 29040 with the owner of the premises, Jillian Clamor, through her agent, Southern Touch Property Management, LLC pursuant to their written lease agreement on December 30, 2021.(Record on Appeal, Lease, Page 11).

The Appellants and the Respondent appeared before the Magistrate for Sumter County on February 2, 2023, for the conduct of an eviction hearing wherein the Respondent sought to evict the Appellants (Record on Appeal, Magistrate's Return, Page 1-3). In this trial, the Appellant, Jamar Stark, acknowledged that the rent was owed and unpaid (Record on Appeal, Magistrate's Return- Page 1).

The Appellant, Jamar Stark, acknowledged that the Respondent had filed several eviction actions against them (Record on Appeal, Magistrate's Return – Page 2). The

Appellants did not include in their pleadings any of the tenant's remedies as outlined in the South Carolina Residential Landlord Tenant Act (Record on Appeal, Magistrate's Return – Pages 2-3). Because the Court found that there was a past due rental arrearage exceeding five days, the Court ruled that the Respondent could legally evict the Appellants (Record on Appeal, Magistrate's Return – Page 3; Record on Appeal, Magistrate's Judgment – Page 7).

The Appellants then appealed from the Magistrate's Court to the Court of Common Pleas of the Third Judicial Circuit. At the hearing of the appeal before the Honorable Kristi F. Curtis, Judge of Court of Common Pleas for the Third Judicial Circuit, the Court heard the testimony, reviewed exhibits provided and heard argument by the parties (Record on Appeal Transcript of Court Proceeding – Pages 12-21).

On April 18, 2023, Judge Curtis issued her Judgment in a Civil Case affirming the ruling of the Magistrate's Court and finding that the Appellants failed to meet their burden of showing that the lower Court, the Magistrate's Court, made an error of law. (Record on Appeal-Judge Curtis' Order; P.4-6). She further found that the lease provides that payment is due on the first of each month, and she disagreed with the argument of the Appellants that they should have had until the tenth of the month to pay the rent before the landlord could file for an eviction because under S.C. Code Ann. §27-40-710(b), if rent is unpaid when due and the tenant fails to pay rent within five days from the date due, the landlord may terminate the rental agreement providing the landlord has given the tenant written notice of the non-payment and his intention to terminate the rental agreement if the rent is not paid within that period. The Court further found that the landlord's obligation to provide notice under this section is satisfied for any lease term after the landlord has

given one such notice to the tenant or if the notice is contained in conspicuous language in a written rental agreement. The Court found that the landlord had given the tenant notice on multiple occasions when rent had been past due. (Record On Appeal-Judge Curtis' Order; P.4-6).

The Appellants have presented no evidence of "harm" caused by the Respondent nor by Judge Curtis adherence to the mandates of the Residential Landlord Tenant Act.

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is prescribed by S.C.Code Ann. § 18-7-170 (1976) as follows:

Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. Hadfield v. Gilchrist, 343 S.C. 88, 92-94, 538 S.E.2d 268, 270-71 (Ct. App. 2000).

In Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct.App.1984), this Court amplified:

As is readily apparent, Section 18-7-170 confers authority upon the Circuit Court to reverse a magistrate's findings of fact when exercising appellate jurisdiction in an appeal from a magistrate's judgment. See Dingle v. Northwestern R. Co., 112 S.C. 390, 99 S.E. 828 (1919); Redfearn v. Douglass, 35 S.C. 569, 15 S.E. 244 (1892); cf. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 312 S.E.2d 20 (Ct.App.1984) (where the Circuit Court reversed a magistrate's findings of fact in an ejectment action). Burns, 281 S.C. at 357, 315 S.E.2d at 182.

While the Circuit Court maintains a broad scope of review, our standard is more limited:

[T]he Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law Bagnal v. Southern Express Co., 106 S.C. 395, 400, 91 S.E. 334, 335-36 (1917); Stanford v. Cudd, 93 S.C. 367, 369-70, 76 S.E. 986, 986-87 (1913); see 5B C.J.S. Appeal & Error § 1817 at 152-53 (1958)]...Burns, 281 S.C. at 357, 315 S.E.2d at 182.

Our Supreme Court, in Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913), held that where the testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the Circuit Court, this Court will assume the Circuit Court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law. The Court enunciated:

In obedience to the statute [S.C.Code Ann. § 18-7-170], the circuit court might have concluded that the magistrate erred in refusing some or all of the defendant's requests, or in admitting some or all of the testimony objected to by defendant, but the court might have thought, upon consideration of the case on the merits, that, notwithstanding such errors, the plaintiff was entitled to judgment; and as there was evidence which would have warranted such a conclusion, and as we cannot say that the judgment was affected or controlled by any error of law, it must be affirmed. Stanford, 93 S.C. at 370, 76 S.E. at 987.

The rule is articulated in Price v. Charleston & W.C. Ry., 93 S.C. 576, 77 S.E. 703 (1913):

As the circuit court is required to give judgment, in such cases, according to the justice of the case, without regard to technical errors and defects, which do not affect the merits [S.C.Code Ann. § 18-7-170], and as the record does not disclose the grounds upon which the court rendered its judgment, we must assume that it was rested upon some sound and meritorious ground, and sustain it, if the record discloses any such ground. Price, 93 S.C. at 578, 77 S.E. at 703; Hadfield v. Gilchrist, 343 S.C. 88, 92-94, 538 S.E.2d 268, 270-71 (Ct. App. 2000).

In the case Vacation Time of Hilton Head Island, Inc., v. Kiwi Corp., 313 S.E.2d 20, 280- S.C. 232 (1984), our courts have held: After an exhausting review of the statutes applicable to ejectment proceedings first heard in Magistrate's Court and the cases interpreting those statutes, we conclude that this court is without jurisdiction to reverse the findings of fact of the Circuit Court if there is any supporting evidence. Wright v. Ritz Theatre, 211 S.C. 161, 44 S.E.2d 308 (1947); Hart v. Cook Brokerage, 135 S.C. 335, 133 S.E.822 (1926); Dingle v. Northwestern R. Co., 112 S.C. 390, 99 S.E. 828 (1919); Redfern v. Douglas, 35 S.C. 569, 15 S.E. 244 (1892).

The proper procedure having been followed, the only determination for this court is whether there is any evidence to support the Circuit Judge's findings of fact.

ARGUMENT 1:

Both the Magistrate and the Circuit Court Judge weighed the evidence and ruled that eviction should be granted.

Appellants did not present the alleged payment arrangement to the Magistrate. The Magistrate's Return does not include any report of a presentation regarding the alleged payment arrangement. (Record on Appeal, Pages 1-3). Even though the Magistrate's Return did not include evidence of any alleged agreement relative to late payment of rent, the Court of Common Pleas heard testimony from the Appellants regarding such an agreement (Record on Appeal, Page 12 - Transcript of Hearing, Page 7, and Lines 10-19 to the Transcript of Hearing). In addition, the Circuit judge asked for a copy of any text messages the Appellants wanted her to see (Record on Appeal - Transcript of Hearing, Page 13, Line 25; Page 14, Line 1; Page 8). The Circuit judge then questioned the Appellants regarding the text they sent indicating the rent would be paid in full tomorrow, and then the Appellants, the next day, paid only \$1,000 leaving a remaining balance of \$550 due (Record on Appeal - Transcript of Hearing, Page 15, Lines 18-25). The testimony of the Appellants was refuted and disputed by the Respondent in his testimony. (Record on Appeal - Transcript of Hearing, Page 16, Line 4). The Respondent's testimony was supported by a statement of account (Record on Appeal - Transcript of Hearing, Page 16, Line 15-23).

The terms of the lease provide in paragraphs 7 and 9 that "rent is due in advance on the first days of each month, *no exceptions*." (Record on Appeal; Lease Agreement-Page 11). The Court took into consideration the Appellants' argument relative to a five-

day grace period and did not see the five-day grace period language in the lease (Record on Appeal – Transcript of Hearing, Page 17, Lines 20-24).

ARGUMENT 2:

The Appellants have admitted to prior eviction proceedings against them by the Respondent. (Record on Appeal- Magistrate's Return; Transcript of Circuit Court Trial P.13; L110). In her ruling, Judge Curtis found that once notice was given of prior delinquencies, no further notice was required pursuant to §27-40-710 (Record on Appeal – Judgment in a Civil Case, Pages 4-6).

ARGUMENT 3:

There is no evidence in the record showing any denial by either Magistrate's Court or the Circuit Court of allowing into evidence any evidence presented on behalf of the Appellants' case.

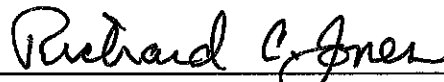
Pursuant to S. C. Code Ann. §18-7-170 (1985), in appeals from the magistrate court, the Circuit Court "may affirm or reverse the judgment of the [magistrate], in whole or in part, as to any or all the parties or for errors in law or fact." Nonetheless, the Circuit Court is restricted regarding which issues it may entertain in determining whether a judgment should be affirmed or reversed, either in whole or in part. The circuit court, acting as an appellate court in a case heard by the magistrate, cannot consider questions that have not been presented to the magistrate. See Sanders v. Hayes, 128 S.C. 181, 122 S.E. 572 (1924) (where the defendant failed to object at the trial that the magistrate was related to the plaintiff although his attention was called to it, that objection cannot be raised on appeal); Hill v. Garrett, 83 S.C. 572, 65 S.E. 821 (1909) (wherein the court held the objections, on appeal from a magistrate court, were not available unless

raised below). Also, the parties to an appeal from the magistrate court are restricted to the theory on which the case was tried in the magistrate court. 51 C.J.S. Justices of the Peace §141 at 299 (1967); see White v. Livingston, 231 S.C. 301, 306, 98 S.E.2d 534, 537 (1957) (“It is well settled that one cannot present and try his case on one theory and thereafter advocate another theory on appeal.”).

CONCLUSION

The evidence is sufficient to sustain the judgment of the Magistrate’s Court, and there are no facts to show that the affirmance by the Circuit Court was influenced by an error of law. Therefore, the Judgment of the Circuit Court should be affirmed.

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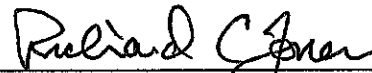
Southern Touch Properties,

Respondent.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent in the above-referenced case upon the Appellants on May 6, 2025, by depositing a copy of same in the United State Mail, postage prepaid, addressed to the Appellants at the following address:

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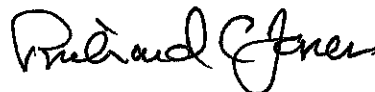
RE: Jamar Stark and Tyla McNeil vs. Southern Touch Properties
Court of Appeals Case No. 2023-00630

Dear Ms. Kitchings:

Please find enclosed Final Brief of Respondent and Proof of Service in the above-referenced matter. By copy of this letter, we are serving the same upon the Appellants.

Should you have any questions, please feel free to contact me.

Sincerely,



Richard C. Jones
Attorney at Law

RCJ/mlb

Enclosures

cc: James Stark
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