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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
Civil Action No. 2024-CP-1300960

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2025-000133

Vanderbilt Mortgage and Finance, Inc.....Respondent,

v.

Michael Shane Hammonds, Jessica Ann Hammonds, and Unknown Occupants,Defendants,

Of whom Jessica Ann Hammonds is theAppellant.

RESPONDENT'S INITIAL BRIEF

s/Lowndes Pope

Lowndes Pope, S.C. Bar # 66507

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Winesett v. Winesett, 287 S.C. 332, 338 S.E.2d 340 (1985)2

STATEMENT OF ISSUES ON APPEAL

1. Has Appellant failed to preserve any issues for appellate review?

STATEMENT OF THE CASE

On November 6, 2024, Vanderbilt Mortgage and Finance, Inc. (“Vanderbilt”) brought a claim and delivery action against Defendants Micheal Shane Hammonds, Jessica Ann Hammonds to recover a manufactured home due to their default on a Consumer Loan Note and Security Agreement to finance the purchase of the manufactured home. Complaint (filed Nov. 6, 2024). Appellant was personally served with the Complaint on November 11, 2024. Aff. Service (filed Nov. 13, 2024). Appellant failed to answer the Complaint or otherwise appear. On January 8, 2025, Respondent filed an Affidavit of Default along with a Motion for Default Judgment as against Appellant and Micheal Shane Hammonds. Aff. Default (filed Jan. 8, 2025); Mot. For Default Judgment (filed Jan. 8, 2025). On January 9, 2025, the Honorable Circuit Court Judge Brian M. Gibbons entered an Order for Default Judgment for Repossession and Writ of Assistance (“Order”). Order (filed Jan. 9, 2025). Ms. Jessica Ann Hammonds did not file a motion to set aside the Order pursuant to Rule 55(c) and Rule 60(b), SCRCP. Instead, on January 16, 2025, she filed with this Court a Notice of Appeal of the Order.

STANDARD OF REVIEW

“An appellate court may not, of course, reverse for any reason appearing in the record.” On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000). “The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.” Id. “This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review

those issues and arguments.” Id. Thus, a default judgment may not be appealed to this Court unless a motion is made to the circuit court to set aside the default judgment pursuant to Rule 60(b), SCRCP. Winesett v. Winesett, 287 S.C. 332, 334, 338 S.E.2d 340, 341 (1985). “An appeal may then be taken from the denial of this motion.” Id.

ARGUMENT

“The purpose of an appeal under our procedure is to determine if the lower court did something that it should not have done, or omitted doing something it should have done.” Powers v. City of Aiken, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970). “This court will not grant relief on alleged error asserted for the first time on appeal.” Id. Here, Appellant raises for the first time issues that were never raised to the circuit court. Consequently, the circuit court has not had the chance to hear Vanderbilt’s rebuttal of Appellant’s complaints and consider all relevant facts and law. Appellant’s failure to ask the circuit court to set aside the default judgment for any of the reasons specified within Rule 60(b), SCRCP, has made her arguments on appeal unpreserved for appellate review.

CONCLUSION

For this reason, Respondent respectfully requests that this Court affirm the circuit court’s Order of Default Judgment for Repossession and Writ of Assistance.

s/Lowndes Pope

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