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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

W.T. Geddings, Special Referee
Civil Action No. 2023-CP-08-00547

Appellate Case No.: 2025-001547

U.S. Bank Trust National Association, Not in Its Individual Capacity but Solely as
Owner Trustee for VRMTG Asset Trust, Respondent,

v.

Betty J. Moultrie aka Betty J. Shine, Individually and as Personal Representative of the Estate of
Bradford Moultrie aka Bradford Willie Moultrie; The Personal Representative, if any whose name is
unknown, of the Estate of Corinth Moultrie; Bradford Moultrie aka Bradford Moultrie, II; and any
other Heirs-at-Law or Devises of Bradford Moultrie aka Bradford Willie Moultrie, Deceased, and
Corinth Moultrie, Deceased, their heirs, Personal Representatives, Administrators, Successors and
Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title
or interest in the real estate described herein; also any persons who may be in the military service of
the United States of America, being a class designated as John Doe; and any unknown minors or
persons under a disability being a class designated as Richard Roe, South Carolina Federal Credit
Union, and Berkeley Electric Cooperative, Inc.,Defendants,

Of whom Betty J. Moultrie is the Appellant is theAppellant.

RESPONDENT’S INITIAL BRIEF

s/M. McMullen Taylor

M. McMullen Taylor, S.C. Bar # 72848
Heidi B. Carey, S.C. Bar # 7020
RILEY POPE & LANEY, LLC
2838 Devine Street
Columbia, South Carolina 29205
(803) 799-9993
mtaylor@rplfirm.com

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STATEMENT OF ISSUES ON APPEAL

1. Has Appellant abandoned her issues on appeal by failing to comply with Rule 208(b), SCACR?
2. Is Appellant's Rule 59(e) Motion untimely, thus precluding appellate review?
3. Are Appellant's arguments concerning the Order of Foreclosure unpreserved for appellate review?
4. Even if Appellant's Rule 59(e) Motion was reviewable, did the Special Referee err in denying the Motion without specifically addressing the arguments raised in the Motion?

STATEMENT OF THE CASE

On February 24, 2023, U.S. Bank Trust National Association, Not in Its Individual Capacity But Solely as Owner Trustee for VRMTG Asset Trust ("U.S. Bank" or "Plaintiff") filed a foreclosure action against Mrs. Betty J. Moultrie, individually and as personal representative of the estate of her deceased husband, Bradford Moultrie; any personal representative of the estate of Corinth Moultrie, Betty and Bradford Moultrie's deceased son; Bradford Moultrie II, Betty and Bradford Moultrie's surviving son; and any unknown persons, including those in the military and those who may be disabled, with any right, title or interest in the mortgaged property; along with another lienholder. (Summons and Complaint, filed Feb. 24, 2023). Mrs. Moultrie was served on February 28, 2023, and on or about March 21, 2023, she sent a letter to U.S. Bank's counsel, which was treated as an Answer.

U.S. Bank filed a motion for summary judgment on May 23, 2023 along with a supporting affidavit. (Motion for Summary Judgment and Supporting Affidavit, filed May 23, 2023). The matter was referred to the Berkeley County Master-In-Equity, Judge Van Slambrook. On July 19, 2023, Mr. Willie B. Heyward, Esq. entered an appearance for Mrs. Moultrie. At a hearing on U.S. Bank's motion for summary judgment held on June 14, 2023, Mr. Heyward requested time to conduct discovery into

whether mortgage payments were made but allegedly not accepted by the loan servicer. Master-In-Equity Van Slambrook granted Mrs. Moultrie's request for discovery, to be concluded by January 17, 2024, and held Plaintiff's motion for summary judgment in abeyance until after the discovery deadline. Judge Van Slambrook also granted Mrs. Moultrie's motion for leave to file an Amended Answer. Her Amended Answer, filed on August 18, 2023, did not assert any defenses; rather, the Amended Answer sought to incorporate all affirmative defenses within Rule 8, SCRPC as if restated verbatim within the Amended Answer, without pleading any supporting facts. (Amended Answer filed Aug. 18, 2023). Mrs. Moultrie did not conduct any discovery by the discovery deadline. On February 5, 2024, U.S. Bank filed an affidavit in support of its motion for summary judgment that authenticated certain business records addressing Mrs. Moultrie's contention that her mortgage payments were misapplied, including correspondence from the loan servicer explaining the application of her payments and why she was in default, and a detailed payment history.

Following Judge Van Slambrook's investiture as circuit court judge, the case was referred to Special Referee W.T. Geddings on November 15, 2024. On May 22, 2025, U.S. Bank filed another affidavit that updated the amount of debt owed. Mrs. Moultrie did not file any affidavits in opposition to Plaintiff's motion for summary judgment. On June 3, 2025, a hearing was held on U.S. Bank's pending motion for summary judgment. (Record of Hearing filed June 9, 2025). Upon consideration of the Note, Mortgage and Assignment, Plaintiff's affidavits, and arguments from both Parties, the Special Referee granted Plaintiff's motion for summary judgment. *Id.* An Order of Foreclosure was entered on June 12, 2025. On June 18, 2025, Mr. Heyward moved to be relieved as counsel for Mrs. Moultrie, citing disagreement as to how to move forward. The Special Referee granted this motion on June 24, 2025. On June 27, 2025, Mrs. Moultrie, *pro se*, filed and served a Motion to Reconsider the Order of Foreclosure, or in the alternative, to Set Aside the Order of Foreclosure pursuant to Rule 60(b)

(“Motion”). (Motion to Reconsider filed June 27, 2025). Counsel for Plaintiff was served with the Motion on June 27, 2025. (Certificate of Mailing filed June 27, 2025). The Special Referee denied the Motion on July 14, 2025. (Order filed July 14, 2025). On August 1, 2025, Mrs. Moultrie’s new counsel filed with this Court a Notice of Appeal of the Order Denying Mrs. Moultrie’s Motion to Reconsider. U.S. Bank was served with the Notice of Appeal on August 5, 2025.

STANDARD OF REVIEW

In cases sounding in equity, this Court “may determine the facts in accordance with [its] own view of the preponderance of the evidence.” *Donnan v. Mariner*, 339 S.C. 621, 626, 529 S.E.2d 754, 757 (Ct. App. 2000). “Appellate courts may decide questions of law with no particular deference to the circuit court’s findings.” *Wachovia Bank, Nat. Ass’n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). This Court “may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCACR.

A lower court’s decision on a motion to alter or amend the judgment under Rule 59(e) is reviewed for abuse of discretion. *Pollard v. County of Florence*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994). “An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006).

ARGUMENT

1. Appellant Abandoned Her Issues on Appeal by Failing to Comply with Rule 208(b), SCACR.

Appellant’s Brief falls short of the requirements for the content of briefs under the South Carolina Appellate Court Rules. Rule 208(b)(1)(E) and (4) require the Appellant to put forward arguments addressing each issue on appeal with discussion and citations to authority and the record on appeal. In Appellant’s first argument, Appellant states that the Special Referee’s “summary denial”

amounts to an abuse of discretion, without explaining or citing to the record or case law to substantiate her conclusion. Appellant's second argument asserts that the Order of Foreclosure was not supported by competent evidence but fails to explain why the admitted evidence was not competent. Appellant's third argument claims that she was not given a meaningful opportunity to be heard during the hearing on Respondent's motion for summary judgment, without citing to the record to show any due process violations, and without any citations to case law defining or illustrating what amounts to a meaningful opportunity to be heard and how she was not afforded such an opportunity. In Appellant's fourth argument, Appellant fails to cite anything in the record on appeal supporting her contention that the evidence conflicted with her interpretation of the Loan Modification Agreement, or that the hearing was unfair and impartial. Likewise, Appellant's fifth argument fails to cite to any case law or to the record on appeal to support her assertions. And Appellant's sixth argument suggests that Respondent may have violated federal regulations without any real explanation. Appellant's Brief makes short, conclusory statements with no real analysis or explanation supported by citations to cases or statutes listed in its Table of Authorities, nor to the Record on Appeal.

Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore will not be considered by an appellate court. *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App.1993). *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001); *State v. Black*, 319 S.C. 515, 518, 462 S.E.2d 311, 313 (Ct. App. 1995). Because Appellant failed to present substantive arguments to this Court with citations to authority and the record, Appellant has abandoned her issues on appeal.

2. Appellant's Rule 59(e) Motion was Untimely, Thus Precluding Appellate Review.

Pursuant to Rule 59(e), SCRPC, "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." A moving party then has

five days from service of the Rule 59(e) Motion to file the Motion with the Court. See Rule 5(d), SCRCP (“All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof.”). Here, Mrs. Moultrie’s counsel at the time, Mr. Willie Heyward, received written notice of the entry of the Order of Foreclosure on June 12, 2025 when the Order was filed. Therefore, a Motion to Alter or Amend must be served no later than June 23, 2025. See Rule 6(a), SCRCP (“In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.”). Mrs. Moultrie served her Rule 59(e) Motion upon Plaintiff’s counsel on June 27, 2025, thus rendering her Motion untimely. (Motion to Reconsider with Certificate of Service). The “ten-day deadline in Rule 59(e) is an absolute deadline.” *Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 433 (2018). Appellant’s failure to serve a Rule 59(e) Motion within ten days of receiving written notice of entry of the Order of Foreclosure converts that Order into a final judgment, leaving an appeal of the Order as her only recourse. *Id.* However, Appellant did not appeal the Order of Foreclosure.

3. Appellant’s Arguments Concerning the Order of Foreclosure are Unpreserved for Appellate Review.

Appellant challenges the Order of Foreclosure, arguing that it was not supported by competent evidence; failed to consider Mrs. Moultrie’s defenses; failed to consider the import of Mrs. Moultrie’s Loan Modification Agreement; and failed to consider violation of federal regulations. Appellant’s Brief, Issues on Appeal #2-6 and Sections II through VI. Appellant also argues that the Order is invalid because it was based upon an unfair hearing and disregard for the Rules of Evidence. *Id.* at #3 and #5; III and V. For these reasons, Appellant asks this Court to “vacate the foreclosure decree” and “remand

the matter for further proceedings consistent with due process and evidentiary requirements.” Appellant’s Brief, p. 2. Mrs. Moultrie did not appeal the Order of Foreclosure. An un-appealed ruling is the law of the case and should not be reviewed by this Court. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). Failure to challenge the ruling “is an abandonment of the issue and precludes consideration on appeal.” *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997). Therefore, Appellant’s second through sixth issues on appeal and corresponding arguments are precluded from appellate review.

4. To the extent that the Special Referee’s Order denying Appellant’s Rule 59(e) Motion is Reviewable, the Special Referee did not Err in Denying Appellant’s Rule 59(e) Motion Without Addressing her Arguments in the Order.

Appellant claims that the Special Referee’s “summary denial” of her Rule 59(e) Motion without addressing her arguments constitutes an abuse of discretion. (Appellant’s Brief, Argument I). Presumably, Appellant is asserting that the Special Referee erred in failing to specifically address her arguments within his Order denying her Motion. Findings of fact and conclusions of law are not required in an order denying a Rule 59(e) Motion. Rule 52(a), SCRCF. To the extent that Appellant argues that the Special Referee erred by entering the Order without holding a hearing on the merits, “under Rule 59(f), SCRCF, a Rule 59(e) motion may be determined on the motion itself and any briefs filed by the parties, without oral argument. *Pollard v. County of Florence*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994).

CONCLUSION

For these reasons, Respondent respectfully requests that this Court affirm the Special Referee’s Order Denying Appellant’s Rule 59(e) Motion.

{SIGNATURE PAGE FOLLOWS}

s/M. McMullen Taylor

M. McMullen Taylor, S.C. Bar # 72848

Heidi B. Carey, S.C. Bar # 7020

RILEY POPE & LANEY, LLC

2848 Devine Street

Columbia, South Carolina 29205

(803) 799-9993

mtaylor@rplfirm.com

Columbia, South Carolina

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