

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Milton G. Kimpson, Circuit Court Judge

Appellate Case No. 2024-001520

Centre Pointe Charleston, LLC
d/b/a Centre Pointe Apartment
Homes,

Respondent,

v.

Avis Johnson,

Appellant.

FINAL BRIEF OF RESPONDENT

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s/ Sean M. Tropea _____

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POINTE APARTMENT HOMES**

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal.....1

Statement of the Case.....1

Standard of Review.....1

Arguments

1. BECAUSE THE FACTS AND EVIDENCE SUPPORT THE RULING OF THE TRIAL (MAGISTRATE) COURT, NO ERROR OF FACT EXISTS.....2

2. BECAUSE THE ISSUES REFERRED TO BY APPELLANT AS THE BASIS FOR APPELLANT’S APPEAL WERE NOT PRESENTED TO THE TRIAL (MAGISTRATE) COURT AND/OR PROPERLY INCLUDED IN APPELLANT’S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, SAID ISSUES CANNOT BE RAISED ANEW ON APPEAL AND/OR ANY ERRONEOUS ATTEMPTS BY APPELLANT TO EFFECTUATE SAME SHOULD NOT BE SO INCLUDED AND/OR CONSIDERED BY THE COURT.....3

Conclusion.....5

TABLE OF AUTHORITIES

CASES

Bowers v. Thomas, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007).....1

Hadfield v. Gilchrist, 343 S.C. 88, 92–93, 538 S.E.2d 268, 270 (Ct. App. 2000).....1

STATUTES

S.C. Code Ann. § 18-7-10 (1985).....1

S.C. Code Ann. § 18-7-170 (1985).....1

S.C. Code Ann. § 27-40-710 (1986).....2

RULES

Rule 209, SCAR.....4

Rule 210, SCAR.....4

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL (MAGISTRATE) COURT ERR IN ISSUING THE WRIT OF EJECTMENT (FOR POSSESSION OF PREMISES IN AN EVICTION ACTION) IN FAVOR OF THE RESPONDENT BY FINDING THAT RENT WAS NOT TIMELY AND/OR SUFFICIENTLY PAID?

STATEMENT OF THE CASE

This matter is on appeal from the North Area 1 Magistrate Court of Charleston County, South Carolina.

On or about October 16, 2023, Respondent filed an Application for Ejectment (2023CV1010101158), seeking possession of certain premises leased by Respondent to Appellant.

On or about November 15, 2023, the Magistrate Court conducted the Rule to Vacate or Show Cause hearing – at said hearing, the Magistrate Court granted Respondent’s Application for Ejectment by finding that rent was not timely and/or sufficiently paid (specifically for September and October 2023) and ordering that the writ of ejectment should issue in favor of Respondent. Respondent subsequently filed for / sought the Writ of Ejectment, and Appellant responded by appealing this case to the Circuit Court (2023CP1005823), which the Circuit Court resolved in favor of the Respondent, affirming the ruling of the Magistrate Court.

Respondent subsequently filed for / sought the Writ of Ejectment for a second time; however, on or about September 12, 2024, Appellant filed a notice of appeal, appealing further / again to *this* Court along with a motion to stay the Circuit Court’s order (affirming the ruling of the Magistrate Court).

STANDARD OF REVIEW

Under the South Carolina Code, Chapter 7 of Title 18, “when a judgment is rendered by a magistrates court [...] the appeal shall be to the circuit court of the county wherein the judgment was rendered.” *See* S.C. Code Ann. § 18-7-10 (1985). The standard of review to be applied by the circuit court on appeal of a magistrate’s judgment is articulated in Section 18-7-170 of the South Carolina Code (1985). Upon hearing the Appeal, the appellate 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.” *Bowers v. Thomas*, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007); *see also Hadfield v. Gilchrist*, 343 S.C. 88, 92–93, 538 S.E.2d 268, 270 (Ct. App. 2000).

ARGUMENTS

I. BECAUSE THE FACTS AND EVIDENCE SUPPORT THE RULING OF THE TRIAL (MAGISTRATE) COURT, NO ERROR OF FACT EXISTS.

This matter is an appeal of an eviction that was sought by Respondent based on rent not being timely and/or sufficiently paid by Appellant.

The Affidavit and Application for Ejectment and Rule to Vacate or Show Cause corroborate / further specify that that rent was not timely and/or sufficiently paid (specifically for September and October 2023).

The Lease between Appellant and Respondent corroborates Appellant and Respondent agreed to and did execute / sign a valid, binding rental agreement wherein Appellant, as tenant, was/is obligated to pay monthly rent to Respondent, as landlord, with rent due on the first (1st) of each month and late on the fifth (5th) of the month.

The Lease also includes language that provides in bold text “IF YOU DO NOT PAY YOUR RENT ON TIME WHEN REQUIRED BY THIS LEASE CONTRACT: This is your notice. If you do not pay your rent within five days of the due date specified in this Lease [], we can start to have you evicted without further notice. You will not receive any further notice or warnings as long as you live in this rental unit, unless we decide to provide them to you as a gratuity not as a right.”

S.C. Code Ann. § 27-40-710(B) (1986) provides that “[i]f rent is unpaid when due and the tenant fails to pay rent within five days from the date due or the tenant is in violation of Section 27-40-540, the landlord may terminate the rental agreement provided the landlord has given the tenant written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period. 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.”

S.C. Code Ann. § 27-40-710(B) (1986) additionally provides “[t]he written notice requirement upon the landlord under this subsection shall be considered to have been complied with if the rental agreement contains the following or a substantially equivalent provision:

"IF YOU DO NOT PAY YOUR RENT ON TIME

This is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit."

S.C. Code Ann. § 27-40-710(B) (1986) further provides "[t]he presence of this provision in the rental agreement fully satisfies the "written notice" requirement under this subsection and applies to a month-to-month tenancy following the specified lease term in the original rental agreement. If the rental agreement contains the provision set forth in this subsection, the landlord is not required to furnish any separate or additional written notice to the tenant in order to commence eviction proceedings for nonpayment of rent even after the original term of the rental agreement has expired."

The Ledger of Appellant corroborates the fact that rent was not timely and/or sufficiently paid by Appellant and in fact "bounced" (as can be seen by the insufficient funds / "NSF") indication on the appropriate line items on the first page of the Ledger of Appellant.

Upon information and belief, the Affidavit and Application for Ejectment and Rule to Vacate or Show Cause, Lease between Appellant and Respondent, and Ledger of Appellant were all presented to the trial (Magistrate) court (i.e., during the original eviction hearing), the Circuit Court (i.e., via arguments / filings of parties and as part of the Magistrate's Return), and included in Respondent's Designation of Matter to be Included in the Record on Appeal.

Because the facts and evidence supporting the rulings of the trial (Magistrate) court and Circuit Court, no error of fact exists and therefore the Court should issue a ruling / order AFFIRMING same.

- II. BECAUSE THE ISSUES REFERRED TO BY APPELLANT AS THE BASIS FOR APPELLANT'S APPEAL WERE NOT PRESENTED TO THE TRIAL (MAGISTRATE) COURT AND/OR PROPERLY INCLUDED IN APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, SAID ISSUES CANNOT BE RAISED ANEW ON APPEAL AND/OR ANY ERRONEOUS ATTEMPTS BY APPELLANT TO EFFECTUATE SAME SHOULD NOT BE SO INCLUDED AND/OR CONSIDERED BY THE COURT.

In the Appeal to the Circuit Court, Appellant alleges, to the extent these allegations can be discerned, "I feel like I wasn't given proper time to get out of the apartment[.]" which in context of ordinary eviction / process and procedure amounts to Appellant not providing argument against the only issue that should be before the court

(i.e., rent not being timely and/or sufficiently paid by Appellant). Appellant pleading that Appellant was not given enough time to vacate the leased property amounts to, at most, a nondescript / nonarticulated complaint that does not argue / excuse Appellant's failure to timely and/or sufficiently pay rent.

In the Notice of Appeal to the Court of Appeals, it appears Appellant attempts to (erroneously) raise a new issue on appeal by claiming/alleging that Appellant was not in good health during the appeal hearing that was scheduled before the Circuit Court on or about August 29, 2024, for the Circuit Court to determine the outcome of Appellant's Appeal to Circuit Court. Appellant and undersigned counsel attended (via WebEx) the hearing scheduled before the Circuit Court on or about August 29, 2024, and at that time, Appellant made no reference and/or articulated no testimony indicating that Appellant was unable to continue with the hearing.

Rule 209, SCAR provides "[a]t the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal."

Rule 209, SCAR additionally provides "[a] party shall not include any matter in his Designation which is not relevant to the appeal."

Rule 210, SCAR provides "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal" and "the appellate court will not consider any fact which does not appear in the Record on Appeal."

Appellant, in Appellant's Designation of Matter to be Included in the Record on Appeal, appears to reference matters / documents that are not part of / relevant to this case and/or that which were not presented to the trial (Magistrate) court or the Circuit Court. Respondent has still yet (as of this date) to receive physical copies of Appellant's Initial Brief and/or Designation of Matter to be Included in the Record on Appeal. Without engaging in what appears to be an unnecessary recitation of the issues referred to by Appellant as the basis for Appellant's appeal, per Appellant's Initial Brief and/or Designation of Matter to be Included in the Record on Appeal, it is clear that not only are the issues referred to entirely different from one another in substance and/or presented to the trial (Magistrate) court and/or properly included in Appellant's Designation of Matter to be Included in the Record on Appeal, but none of these are relevant to the only issue that should be before this Court and/or subject to argument in an appeal of an eviction based on rent not being timely and/or sufficiently paid by Appellant: did the trial (Magistrate) court err in issuing the writ of ejectment in favor of the Respondent by finding that rent was not timely and/or sufficiently paid by Appellant?

Because the issues referred to by Appellant as the basis for Appellant's appeal were not presented to the trial (Magistrate) court and/or properly included in Appellant's Designation of Matter to be Included in the Record on Appeal, said issues cannot be raised anew on appeal and/or any erroneous attempts by appellant to effectuate same should not be so included and/or considered by the Court.

CONCLUSION

For the reasons stated, this Court should AFFIRM the judgment of the trial (Magistrate) court and Circuit Court by issuing the writ of ejectment (for possession of premises in an eviction action) in favor of the Respondent by finding that rent was not timely and/or sufficiently paid by Appellant.

November 13, 2025.

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