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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Case No. 2025-CP-46-01222

Appellate Case No. 2025-001843

Tonya R. Blake, Individually and as
Personal Representative of the Estate of
Reco D. Miller,

Appellant,

v.

Brenda Burris,

Respondent.

RESPONDENT'S RETURN TO *PRO SE* APPELLANT'S MOTION TO COMPEL

Respondent hereby submits this Return, pursuant to Rule 240(e), SCACR, and respectfully requests that the Court deny *Pro Se* Appellant Blake's November 6, 2025, filing which the Court has construed as a motion to compel. *Pro Se* Appellant Blake's November 6, 2025, motion should be denied because Appellant's motion to compel does not fall within the Court's appellate jurisdiction, the subpoena with which Appellant seeks to compel compliance was improperly issued after the trial court's final order dismissing the case, and Appellant's filing was never served on Respondent as required under Rules 240 and 262, SCACR.

Introduction and Statement of Facts

This appeal from the York County Court of Common Pleas follows the dismissal of Appellant Tonya Blake (“Appellant” or “Appellant Blake”)’s complaint pursuant to Rule 12(b)(6), SCRCRCP. The Honorable G.D. Morgan, Jr., granted Respondent Burris’ Motion to Dismiss, finding that Appellant’s complaint did not allege facts sufficient to constitute a cause of action and that the allegations did not support relief under any theory of law. **Exhibit A**, Order Granting Defendant’s Motion to Dismiss, 1. The formal order of dismissal, without prejudice, was entered on August 28, 2025. *Id.* at 6. No motion for reconsideration was filed in the Court of Common Pleas. Appellant was represented by counsel at the trial court level. *Id.* at 1. Her counsel of record was relieved by this Court’s Order dated October 24, 2025.

Appellant, now proceeding *pro se*, filed a “proof of service” on November 6, 2025, which the Court construed as a motion to compel. **Exhibit B**, Letter from the Clerk of the Court of Appeals dated November 18, 2025. The clerk noted that Appellant Blake’s filing was deficient for failing to “provide a proof of service stating that a copy of [Appellant’s] motion to compel has been served on the respondent’s counsel.” *Id.* *Pro Se* Appellant mailed a proof of service to Respondent’s counsel on November 24, 2025, stating that *Pro Se* Appellant had filed a motion to compel and served “this notice” (a proof of service) by mail on November 24, 2025. **Exhibit C**, Appellant’s Proof of Service dated November 24, 2025. However, Appellant has not served her motion on Respondent in accordance with Rule 240, SCACR, because *no copy of the filing which the Court construed as a motion to compel was served with Appellant’s proof of service.* *Id.*; **Exhibit D**, Video Recording (showing Respondent’s counsel’s office opening Appellant’s sealed

November 24, 2025, mailing containing only a proof of service).¹ Instead, only the one-page proof of service was mailed to Respondent’s counsel.² *Id.*

Argument

I. Appellant’s motion to compel is not within the Court’s appellate jurisdiction.

This Court’s jurisdiction is “appellate only,” and the Court has jurisdiction “over any case in which an appeal is taken from an order, judgment, or decree of the circuit court.” S.C. Code Ann. § 14-8-200(a). *See also* S.C. Code Ann § 14-3-330 (Supreme Court appellate jurisdiction). Moreover, discovery motions must be made in the circuit court, not made to this Court while appealing a dismissal by the trial court. Under the *South Carolina Rules of Civil Procedure*, a motion to compel a subpoena response is properly directed to the court which issued the subpoena. Rule 45(c)(2)(b), SCRCF (“If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time *in the court that issued the subpoena* for an order to compel the production.”) (emphasis added). *See also* Rule 37(a), SCRCF (“An application for an order to a party may be made to the court in which the action is pending, or ... to the court where the deposition is being taken.”). Moreover, even if Appellant were attempting to appeal a discovery order, “an order compelling discovery does not ordinarily involve the merits

¹ Just as with Appellant’s motion to compel, Appellant served only a proof of service of her notice of appeal and did not serve a copy of the notice of appeal on Respondent’s counsel within the 30-day requirement of Rule 203, SCACR. Appellant’s failure to serve Respondent with the notice of appeal in accordance with Rule 203 is one of the bases upon which Respondent seeks dismissal of this appeal in Respondent’s Motion to Dismiss pending before this Court.

² Although Appellant’s motion to compel is file stamped November 6, 2025, Respondent’s counsel was first made aware of the motion upon receipt of the Clerk of Court’s deficiency letter sent on November 18, 2025, when the filing became publicly available on the Court’s electronic case management system.

of the case and may not be appealed.” *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003).

Pro Se Appellant Blake’s motion to compel a subpoena response from non-party T-Mobile was made, in the first instance, to this Court. As such, it is not an appeal from any order, judgment, or decree of the circuit court. Unlike motions for extension of time, motions to reinstate, motions to remand, or motions to dismiss, Rule 240(a), SCACR, does not provide for motions to compel to be filed in the appellate court. Moreover, the circuit court is the proper court in which to bring discovery motions. Accordingly, it is not within this Court’s appellate jurisdiction to grant Appellant’s instant motion to compel a subpoena response, and Appellant’s motion should be denied.

II. Appellant’s subpoena was improperly issued after the circuit court dismissed the case.

Appellant’s subpoena to T-Mobile was issued by the clerk of the York County Court of Common Pleas *six (6) days after* the circuit court issued a final order dismissing the case. **Exhibit D**, Subpoena dated September 3, 2025; **Exhibit A** at 6 (entering the final order dismissing the case on August 28, 2025). Under Rule 45, SCRCPP, a subpoena may only be issued in a *pending* case. Rule 45(a)(1)(B), SCRCPP (“Every subpoena shall ... state the title of the action, the name of *the court in which it is pending*, and its civil action number[.]”) (emphasis added). Similarly, the scope of discovery is limited to “any matter, not privileged, which is relevant to the subject matter involved in the *pending* action[.]” Rule 26(b)(1), SCRCPP (emphasis added). Indeed, it is improper for a subpoena to be issued in a case which is no longer pending. *See Matter of Fabri*, 418 S.C. 384, 392, 793 S.E.2d 306, 310 (2016) (attorney issuance of a subpoena in a case that is not pending is sanctionable conduct); *Matter of Lundgren*, 421 S.C. 300, 303, 806 S.E.2d 125, 127 (2017) (improper to issue a subpoena in a dismissed case and falsely state the action is pending). As

Appellant's subpoena was not issued in a pending case and was improperly issued after the case was dismissed, the Court should deny Appellant's instant motion to compel.

III. Appellant sent proof of service but never served a copy of her motion on Respondent.

An appellant must serve a copy of his or her motion on each party and otherwise comply with the Appellate Rules. Rule 240(d), SCACR. Serving only the proof of service, without the motion itself, does not constitute effective service. Rule 262, SCACR (“Service ... shall be made by: (1) *Delivering a copy* to the person... (2) *Depositing a copy* in the U.S. mail ... (3) *Serving a copy* on the person by electronic means in a manner provided by order of the Supreme Court of South Carolina.”) (emphasis added).³ Here, just as Appellant has done with other filings in this matter, i.e. Appellant's Notice of Appeal, Appellant sent only a proof of service and did not serve a copy of her filing (“proof of service”) in which she asks this Court for an order compelling T-Mobile to respond to her subpoena. **Exhibit D**. Accordingly, *Pro Se* Appellant's motion to compel should be denied as Appellant has not complied with the requirements of Rule 240 and Rule 262, SCACR.

Conclusion

For the foregoing reasons, Respondent respectfully requests that this Court deny *Pro Se* Appellant Blake's November 6, 2025, filing which the Court has construed as a motion to compel.

[SIGNATURE ON FOLLOWING PAGE]

³ The time in which to file a Return to a motion begins to run when a party is served with a copy of the motion. Rule 240(e), SCACR. While Respondent has not been served with a copy of the motion and, therefore, Respondent's ten-day deadline to file a Return has not begun to run, Respondent nevertheless has filed this Return within ten days of the date listed on Appellant's proof of service.

MURPHY & GRANTLAND, P.A.

s/ Santino U. Ambrosini

E. Raymond Moore, III, Esquire (SCB 11609)

Santino U. Ambrosini, Esquire (SCB 106857)

P.O. Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Email: ermoore@murphygrantland.com;

sambrosini@murphygrantland.com

Attorneys for Respondent Brenda Burris

Columbia, South Carolina
December 4, 2025

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CIVIL ACTION NO: 2025-CP-46-01222

Tonya R. Blake, Individually and as Personal Representative of the Estate of Reco D. Miller,

Plaintiff,

v.

Brenda Burris,

Defendant.

ORDER GRANTING DEFENDANT BRENDA BURRIS' MOTION TO DISMISS

This matter came before the court upon Defendant Brenda Burris (“Defendant”)’s Motion to Dismiss at a hearing held on August 12, 2025. E. Raymond Moore, III, appeared and argued the motion on behalf of Defendant, and Taylor Grooms appeared and argued on behalf of Plaintiff Tonya R. Blake, Individually and as Personal Representative of the Estate of Reco D. Miller (“Plaintiff”). Both counsel made compelling arguments on behalf of their clients. The Court acknowledges and sympathizes with the unfortunate loss of life in this case. However, based on a review of the file, submissions of the parties, and after hearing oral argument, the Court hereby **GRANTS** Defendant’s Motion to Dismiss and the Plaintiff’s Complaint is **DISMISSED**, without prejudice. Plaintiff has not alleged facts sufficient to constitute a cause of action and the allegations of Plaintiff’s Complaint, viewed in the light most favorable to Plaintiff, do not support relief under any theory of law.

FACTS

This case arises out of a fire that occurred at a single-family residential home in Rock Hill, South Carolina. For several years, Plaintiff rented the home from Defendant and lived there along with her husband and son. Compl. ¶ 6. On April 26, 2022, Plaintiff’s husband alerted her to a fire



which had broken out in his room. *Id.* at ¶¶ 8-9. Plaintiff's husband, who had previously suffered a stroke and was confined to a hospital bed, was unable to get out of the house and died in the fire. *Id.* at ¶¶ 7, 11. Plaintiff alleges that the rental home was not equipped with smoke detectors. *Id.* at ¶¶ 15-17. Plaintiff alleged causes of action for negligence, survival, wrongful death, loss of consortium, and negligent infliction of emotional distress. *Id.* at ¶¶ 14-39.

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRC, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 327, 574 S.E.2d 502, 506 (Ct. App. 2002) (quoting *Baird v. Charleston Cty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999)). “A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint.” *Click Props., LLC v. Thomas SC Props., LLC*, 445 S.C. 468, 483, 914 S.E.2d 488, 495 (Ct. App. 2025), *reh'g denied* (Apr. 10, 2025) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). “The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states any valid claim for relief.” *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004). Dismissal is appropriate “if the facts alleged in the complaint do not support relief under any theory of law.” *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

DISCUSSION

I. Defendant cannot be liable for alleged failure to install smoke detectors because liability is barred under S.C. Code Ann. § 5-25-1380.

Plaintiff-tenant alleged negligence-based causes of action for Defendant-landlord's alleged failure to install smoke detectors in her rental home. Article 11 of Building Codes and Fire Prevention requires an owner to provide smoke detectors in rented one-family homes. S.C. Code

Ann. §§ 5–25–1310 and 1330(A). However, Article 11 specifically states: “Failure to comply with the provisions of this article *does not create a cause of action* for a per se statutory violation for liability, *or for negligence-based* liability, for death, injury, or damages.” S.C. Code Ann. § 5–25–1380 (emphasis added). The Court of Appeals has held that this provision precludes liability for failure to install smoke detectors. *Robinson v. Code*, 384 S.C. 582, 587-88, 682 S.E.2d 495, 497-98 (Ct. App. 2009). Therefore, even accepting Plaintiff’s allegations regarding the lack of smoke detectors as true, S.C. Code Ann. § 5–25–1380 precludes recovery against Defendant on that basis. *Id.* at 588, 682 S.E.2d at 498 (“Article 11 does not provide for a negligence cause of action.”). Accordingly, Plaintiff’s allegations regarding smoke detectors fail to allege facts sufficient to constitute a cause of action and are hereby dismissed.

II. Plaintiff’s allegations of negligence do not allege that written notice was provided to Defendant as required for liability to attach under the Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-630(d).

Plaintiff’s Complaint asserts allegations relating to smoke detectors and general, conclusory allegations of negligence concerning the premises. The Residential Landlord and Tenant Act (“the Act”) creates a negligence cause of action for a tenant of residential property against his or her landlord “for failure, *after notice*, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition.” *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct.App.1989) (emphasis added). There is no specific requirement under the Act mandating that a landlord provide smoke detectors. *Code*, 384 S.C. at 586, 682 S.E.2d at 497. Moreover, no cause of action for negligence arises until a tenant “has given notice to the landlord and the landlord fails to act within a reasonable time[.]” S.C. Code Ann. § 27–40–630(d).

The general and conclusory allegations of the Complaint do not allege that Plaintiff provided written notice to Defendant regarding any allegedly deficient condition of the rental

property. Similarly, the Complaint does not allege that Plaintiff provided written notice to Defendant regarding any lack of smoke detectors. Accordingly, the allegations of Plaintiff's Complaint, viewed in the light most favorable to Plaintiff, do not support relief under any theory of law and must be dismissed.

III. The Complaint's conclusory allegations are insufficient to overcome Defendant's motion to dismiss under Rule 12(b)(6), SCRCP.

Plaintiff's Complaint alleges various general and conclusory allegations, including that Defendant was negligent in:

- “(b) Failing to address known or foreseeable risks associated with fire safety; ...
- (d) Failing to implement or enforce a proper maintenance plan to ensure the home remained safe and habitable;
- (e) Failing to otherwise act as a reasonably prudent owner or manager of a short-term rental would have acted under the same or similar circumstances; ...
- (f) Failing to ensure the house contained proper life safety and fire protection measures; ...
- (h) In such other particulars as the evidence at trial may show.”

Compl ¶ 17. Allegations which are merely conclusory are subject to dismissal. *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (affirming dismissal of a complaint where were “conclusory only and therefore demurrable.”) (citing *Stroud v. Riddle*, 260 S.C. 99, 194 S.E.2d 235 (1973)). “A motion under Rule 12(b)(6) ... admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law.” *Carolina Winds Owners' Ass'n, Inc. v. Joe Harden Builder, Inc.*, 297 S.C. 74, 76, 374 S.E.2d 897, 899 (Ct. App. 1988) (citing *Bryan v. Stillwater Bd. of Realtors*, 578 F.2d 1319 (10th Cir.1977)) (*disagreed with on other grounds, Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989)). Plaintiff's general and conclusory allegations do not include facts sufficient to support a cause of action for negligence. Accordingly, dismissal of Plaintiff's Complaint is proper under Rule 12(b)(6), SCRCP on this additional basis.

It is therefore **ORDERED** that Defendant Brenda Burris' Motion to Dismiss is **GRANTED** and the Complaint is hereby **DISMISSED**, without prejudice.

AND IT IS SO ORDERED.

electronic signature to follow

Honorable G. D. Morgan, Jr.
Circuit Court Judge



York Common Pleas

Case Caption: Tonya R Blake Ind And As Pr Of The Estate Of Reco Miller VS
Brenda Burris
Case Number: 2025CP4601222
Type: Order/Dismissal

So Ordered

G.D. Morgan Jr.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 18, 2025

Tonya R. Blake
201 Sidney Street
Rock Hill SC 29730

Re: Tonya R. Blake v. Brenda Burris
Appellate Case No. 2025-001843

Dear Ms. Blake:

Upon reviewing your proof of service filed on November 6, 2025, which this Court construes as a motion to compel, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or your filing will not be considered:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Specifically, you must provide a proof of service stating that a copy of your motion to compel has been served on the respondent's counsel.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Santino Umberto Ambrosini, Esquire
Edward Raymond Moore, III, Esquire

EXHIBIT
B

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Appellant Case No. 2025-001843
Civil Action Case No.
2025-CP-46-01222

Brenda Burris

Respondent,

v.

Tonya R. Blake, Individually
and as Personal Representative for
The Estate of Reco D. Miller

Appellant.

PROOF OF SERVICE

I certify that I have informed Brenda Burris that I have filed a motion to compel with the SC Appeals Courts by sending Attorneys Raymond Moore and Santino Ambrosini this notice to 4406B Forest Drive, Columbia, SC 29206 by depositing a copy of it in the United States Mail, postage prepaid, on November 24, 2025.

November 24, 2025

Tonya R. Blake
201 Sidney Street
Rock Hill, South Carolina 29730
(803) 371-3324
Pro se Appellant

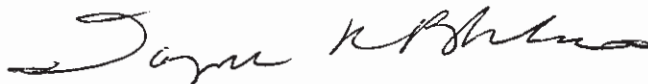


EXHIBIT
C

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201 sidney street
rock hill SC 29730-3941

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AND SANTINO U AMBROSINI
COLUMBIA SC 29206-3104



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THE STATE OF SOUTH CAROLINA
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Tonya R. Blake, Individually and as
Personal Representative of the Estate of
Reco D. Miller,

Appellant,

v.

Brenda Burris,

Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Return to *Pro Se* Appellant's Motion to Compel on *Pro Se* Appellant Tonya R. Blake by depositing a copy of it in the United States Mail, postage prepaid, on December 4, 2025, addressed to her as follows: 201 Sidney Street, Rock Hill, South Carolina 29730.

December 4, 2025

MURPHY & GRANTLAND, P.A.

s/ Santino U. Ambrosini

E. Raymond Moore, III, Esquire (SCB 11609)

Santino U. Ambrosini, Esquire (SCB 106857)

P.O. Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Email: ermoore@murphygrantland.com;

sambrosini@murphygrantland.com

Attorneys for Respondent Brenda Burris