

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2026-000674
Circuit Court Case No. 2026-CP-23-01193
Magistrate Court Case No. 2026CV2310100266

Dwana Sullivan, Appellant,

v.

Legacy Oaks II, Respondent.

**RESPONDENT’S RETURN TO NOTICE OF APPEAL AND
MOTION TO DISMISS APPEAL**

NOW COMES the Respondent, Legacy Oaks II d/b/a Parklyn Apartments, by and through their undersigned counsel, and hereby responding to Appellant’s Notice of Appeal and hereby moves this Court to dismiss this appeal filed by Appellant on the grounds that this appeal lacks a reviewable issue and was properly dismissed, dismissal by the Circuit Court did not constitute a due process violation, the bond set was proper pursuant to South Carolina law, Appellant failed to meet jurisdictional appellate requirement to maintain her appeal, and the Notice of Appeal fails to satisfy several requirements under South Carolina Appellate Rule 203. Accordingly, this appeal should be dismissed.

I. No Reviewable Issue Because the Appeal was Properly Dismissed

The dispositive issue is not the merits of the eviction or the bond amount as Appellant alleges – it is Appellant’s failure to comply with the mandatory statutory requirements and order of the magistrate court

to perfect her appeal.

Under South Carolina Code § 18-7-20, an appeal from a magistrate court to circuit court must be properly perfected, including compliance with bond requirements imposed both by statute and by order of the magistrate court. In eviction actions, South Carolina Code §§ 27-40-790 and 27-40-800 govern the tenant's obligation to post bond or pay sums required to stay the execution of the writ during the pendency of the appeal. Here, Appellant does not dispute that she failed to pay the bond by the court-ordered deadline. As a result, her appeal was never perfected, and the Circuit Court properly dismissed it. Because the appeal rests on a procedural default, there is no preserved issue for appellate review, and the appeal should be dismissed.

II. No Due Process Violation

Appellant's appeal to the Circuit Court was dismissed for her failure to pay the bond as ordered by the magistrate court. Failure to comply with a bond order is proper grounds for the dismissal of the appeal. Appellant's Motion admits she did not pay the bond by the court-ordered deadline but instead requested an extension via text message from someone with no authority to grant such extension and/or otherwise modify an order of the court. As such, the Circuit Court's dismissal of her appeal was proper. As such, this appeal is likewise not based on appealable grounds and should be dismissed.

Appellant's due process argument fails as a matter of law. Appellant was provided with a bond hearing before the magistrate to set the bond for her appeal, and she was given a clear deadline for payment of her bond. Appellant failed to comply with the deadline and order of the court. Due process requires notice and opportunity to be heard – not repeated opportunities after willful noncompliance. No additional hearing was required before dismissal for failure to comply with a court-ordered condition. Because Appellant was heard at the bond hearing and given explicit terms to which she did not comply, the subsequent dismissal for failure to comply did not require a

separate motion, notice, or hearing.

III. The Bond Is/Was Proper Under South Carolina Code §§ 27-40-790(b) and 27-40-800(b)

The bond set by the Greenville County Circuit Court was proper under South Carolina Code § 27-40-790(b). South Carolina Code § 27-40-790 governs “any action where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement: [. . .] (b) [t]he tenant is required to pay the landlord all rent allegedly owed prior to the issuance of the rule [to vacate], provided, however, that in lieu of the payment the tenant may be allowed to submit to the court a receipt and a cancelled check, or both, indicating that payment has been made to the landlord.” South Carolina Code § 27-40-790(b). As such, Appellant’s argument that her appeal bond was not proper is simply untrue. This provision provides the foundation for the bond to be set at the full outstanding balance as it states “all rent allegedly owed” – not just monthly rent accruing once the appeal is filed. Appellant’s bond was proper and legally set pursuant to South Carolina Code § 27-40-790(b).

Further, Appellant mischaracterizes South Carolina Code § 27-40-800(b). While the statute references rent accruing during the appeal, South Carolina courts recognize that the purpose of the bond is to protect the landlord’s interest during the appeal, and the magistrate has discretion in setting conditions to stay eviction. The statute does not prohibit the inclusion of past-due rent in determining the amount necessary to stay execution. The bond requirement is a condition of obtaining the stay, not a barrier to appeal itself.

When § 27-40-790(b) is read in conjunction with § 27-40-800(b), the landlord is entitled to both the outstanding balance as of the date of the entry of the writ of ejectment and, if/when the resident appeals, the monthly rent which shall accrue during the pendency of the appeal.

South Carolina courts specifically recognize (by direction of South Carolina Chief Justice

Kittredge) that this obligation may include both past-due rent and ongoing rent obligations. **See Exhibit A attached.** Requiring payment of accrued unpaid rent is consistent with the purpose of the statute – to prevent tenants from retaining possession without payment of amounts owed. Appellant cites no binding South Carolina authority prohibiting the inclusion of such arrearages. In fact, the very directive of the South Carolina Supreme Court is to apply and enforce South Carolina Code § 27-40-790(b) as written in applicable cases.

Even assuming arguendo that the bond is/was excessive (which Respondent does not agree or admit that it was in any way), Appellant’s remedy was to seek timely review or modification – not disregard the order and refuse to pay the bond. Failure to comply with the bond order independently justifies dismissal, regardless of any alleged error in the amount.

Appellant’s appeal bond is/was proper under several sections of South Carolina law and Appellant’s failure to comply properly warrants dismissal of the appeal.

IV. “Good Faith Effort” does not Cure Failure to Comply with Jurisdictional Requirement

Appellant’s argument that she attempted to obtain funds after the deadline for the bond payment is legally irrelevant. South Carolina law is clear that substantial compliance or good faith does not excuse failure to meet jurisdictional appellate requirements. See *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). Appellant did not pay the bond. Appellant did not seek relief from the court before the deadline. Appellant did not move to modify the bond order. A private communication with a property manager has no legal effect on a court-ordered deadline.

V. Appeal Should be Dismissed for Additional Procedural Deficiencies

The Notice of Appeal itself reflects deficiencies warranting dismissal under South Carolina Appellate Rule 203 in several meaningful ways. First, it fails to identify any appealable legal error

by the Circuit Court, focusing instead on underlying magistrate issues. Second, it attempts to relitigate factual matters not preserved due to dismissal based on Appellant's noncompliance with an order of the court. Third, it does not overcome the jurisdictional defect created by Appellant's failure to perfect the appeal.

VI. Conclusion

Appellant's appeal was properly dismissed by the Circuit Court for Appellant's failure to comply with a mandatory bond requirement. Appellant's arguments regarding due process, bond reasonableness, and good faith are legally insufficient and do not cure the jurisdictional defect of her failure to perfect the appeal by paying the bond as ordered by the magistrate court to maintain her appeal.

THEREFORE, Respondent respectfully requests that this Court DISMISS this appeal in its entirety.

March 23, 2026

/s/ Morgan R. Dunn
Morgan R. Dunn, SC Bar #105610
Brownlee Whitlow & Praet, PLLC
P.O. Box 62975
N. Charleston, SC 29419
Tel./Fax (843) 410-5140
Attorney for Respondent

From: Ward, Hannah L. <hward@sccourts.org>
Sent: Wednesday, December 11, 2024 3:29 PM
Subject: **Bond to Stay Execution on Appeal (SCCA 657)
Attachments: SCCA 657 (Bond to Stay Execution on Appeal) Revised 12.2024.docx; 2020 08 Directive re Bond to Stay Eviction on Appeal.pdf

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

Dear Magistrates,

Upon direction of Chief Justice Kittredge, the directive issued in August 2020 regarding orders to stay the eviction on appeal is hereby rescinded. Specifically, S.C. Code § 27-40-790(b), requiring payment of back rent by the tenant, may be enforced in applicable cases. Attached is the amended Bond to Stay Execution on Appeal form (SCCA 657) to be used in lieu of the rescinded form. The amended form has not yet been added to CMS, so please use the attached form when handling these cases.

I have also attached a copy of the August 2020 directive for your reference.

Should you have questions concerning this matter, please contact this office.

Sincerely,

Hannah Ward Pacheco
Summary Court Staff Attorney
South Carolina Court Administration
(803) 734-1844

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**Ward, Hannah L.**

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**From:** Baughman, Michelle  
**Sent:** Tuesday, August 11, 2020 4:27 PM  
**To:** Baughman, Michelle  
**Subject:** Order to Stay the Eviction on Appeal  
**Attachments:** 657-Bond to Stay Execution on Appeal (002) Fillable.doc; 657-Bond to Stay Execution on Appeal (002).pdf

Dear Magistrates,

Upon specific and immediate direction of Chief Justice Beatty, all magistrates are to immediately cease ordering a tenant to post past due rent in a residential eviction in order to stay the eviction on appeal.

Code §27-40-800 (b) of the South Carolina Residential Landlord Tenant Act requires that it is sufficient to stay execution of a judgment for ejection that a tenant sign an undertaking that he will pay the landlord the amount of rent as it becomes due periodically after the judgment was entered. Nowhere in that statute is payment of past due rent required to stay the execution of judgment pending appeal in a residential eviction appeal.

Code § 27-40-790 is not applicable to a residential eviction appeal as it is inconsistent with Code § 27-40-800. Likewise, Code §27-37-130 is not applicable to residential landlord tenant matters as it is also inconsistent with 27-40-800 and applies only to commercial landlord tenant evictions.

Please find attached an amended form Bond to Stay Ejectment On Appeal to be used in lieu of the current form contained in CMS. The attached form removes the language regarding posting of bond for back to rent and requires that the tenant pay rent as it becomes due, or within five days thereafter, pending the outcome of appeal. The current form will be removed from CMS.

Should you have questions concerning this matter, please contact this office.

Sincerely,

Bob McCurdy, Deputy Director  
SC Court Administration



SOUTH CAROLINA  
JUDICIAL BRANCH

STATE OF SOUTH CAROLINA )  
COUNTY OF \_\_\_\_\_ )  
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\_\_\_\_\_, )  
Landlord )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
Tenant(s). )

IN THE MAGISTRATES COURT

BOND TO STAY EXECUTION  
ON APPEAL

Civil Case No. \_\_\_\_\_

TO: Circuit Court

Now comes the Tenant(s) in the above-entitled action and respectfully shows the Court that a Judgment of Execution was issued against the Tenant(s) and for the Landlord on \_\_\_\_\_, 20\_\_\_\_, by the Magistrate. Tenant(s) has appealed the Judgment to the Circuit Court.

Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay rent in the amount of \$\_\_\_\_\_, per month, due on the \_\_\_ day of each month. Payments are to be made by cash, cashier's check, or money order to \_\_\_\_\_, located at \_\_\_\_\_.

Tenant(s) hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the Court and moves the Circuit Court to stay execution on the Judgment for Ejection until this matter is heard on appeal and decided by the Circuit Court.

**Bond: \$\_\_\_\_\_, due within five (5) days of today's date. Rent in the amount of \$\_\_\_\_\_, is due on the 1<sup>st</sup> day of the month and is late after the 5<sup>th</sup> day of the month. All monies are due via certified funds until the appeal is resolved. All litigants must comply with the Bond to Stay until the appeal is resolved.**

Dated on \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_  
Tenant(s)

Upon execution of the above bond, execution on the judgment of Ejectment is hereby stayed until the action is heard appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed, and the Sheriff may dispossess the Tenant(s).

Dated on \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_  
JUDGE

**RECEIVED**

**Mar 23 2026**

**SC Court of Appeals**

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Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the RESPONDENT'S RETURN TO NOTICE OF APPEAL AND MOTION TO DISMISS APPEAL on Dwana Sullivan by depositing a copy of it in the United States Mail, Postage Prepaid, on March 23, 2026, addressed to her at 740 Woodruff Road #6305 Greenville, SC 29607 and via email at [Dwanasullivan09@gmail.com](mailto:Dwanasullivan09@gmail.com).

March 23, 2026

/s/ Morgan R. Dunn  
Morgan R. Dunn, SC Bar #105610  
Brownlee Whitlow & Praet, PLLC  
P.O. Box 62975  
N. Charleston, SC 29419  
Tel./Fax (843) 410-5140  
Attorney for Respondent