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Aug 11 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Judge G.D. Morgan, Jr., Circuit Court Judge
Court of Common Pleas Case No. 2026CP2304661

Devario Henderson-Nesbit,

Appellant,

v.

Forsberg, LLC,

Respondent.

APPELLANT'S EMERGENCY MOTION TO STAY EXECUTION PENDING

APPEAL

Appellant Devario Henderson-Nesbit respectfully moves this Court pursuant to Rule 241, SCACR, for an order staying execution of the August 11, 2026 Judgment in a Civil Case entered by the Judge G.D. Morgan, Jr., in Greenville County Common Pleas Case No. 2026CP2304661, and staying execution of the underlying June 29, 2026 Writ of Ejectment issued by the East Greenville Summary Court in Case No. 2026CV2310302130, during the pendency of this appeal. In support of this Motion, Appellant states as follows:

1.

Appellant and his family live continuously at 104 Sturbridge Drive, Greenville, South Carolina 29615. Absent a stay of execution, Appellant and his family face immediate physical removal from their residence during the pendency of this appeal.

2.

Appellant filed his Notice of Appeal contemporaneously with this Motion, appealing the August 11, 2026 order affirming the June 29, 2026 magistrate court judgment of ejectment. The Notice of Appeal raises substantial questions of law, including whether the magistrate court

acquired personal jurisdiction over any actual occupant of the premises where Appellant was not named as a defendant or served with any court papers, and whether the Writ of Ejectment was lawfully executed where a private party entered the residence two days before the Writ was signed in violation of S.C. Code Ann. § 27-37-160.

3.

Appellant is likely to succeed on the merits. The magistrate below expressly confirmed in his July 6, 2026 Appeal Answer to the Court of Common Pleas that no hearing was ever held, that Appellant's actual name was never provided to the magistrate court by Respondent, and that the underlying judgment was entered against "Davarrio Clinkscale" — a person unknown to any occupant of the residence. Respondent's counsel conceded on the record at the July 13, 2026 bond hearing that Respondent had proceeded on assumption as to the identity of the occupants of the residence. Respondent knew who occupied the residence — its own principals had been in direct communication with Appellant at the residence on multiple occasions in March and April of 2026 — yet Respondent named a stranger and served no occupant.

4.

Appellant will suffer irreparable harm without a stay. Loss of a family residence is harm that cannot be remedied by money damages after the fact. Appellant, his spouse, and their minor offspring would be dispossessed of the residence during the pendency of the appeal, with all of the disruption to housing, schooling, and family stability that such dispossession entails. Should this Court ultimately rule in Appellant's favor on the merits, restoration of possession after a completed ejectment would be materially more difficult than maintenance of the status quo during the appeal.

5.

Respondent will suffer no comparable harm from a stay. Respondent Forsberg, LLC is a limited liability company that acquired the property at a foreclosure sale for investment purposes. Respondent's exposure during the pendency of the appeal is limited to a delay in taking possession of investment property. Such delay is compensable, if at all, in monetary terms, and is disproportionate to the risk of physical dispossession of a family from its residence.

6.

The public interest favors a stay. The public has an interest in seeing that judgments of ejectment against family residences are entered only upon proper service, in compliance with statutory procedure, and after the affected occupants have had a meaningful opportunity to be heard. Where those requirements are seriously in question — as they are here — the public interest is served by preserving the status quo until the questions can be resolved on appellate review.

7.

A stay of execution of the underlying Writ of Ejectment has been in place since July 6, 2026, when Appellant filed his Notice of Appeal to the Court of Common Pleas. That stay has functioned without incident. No bond was set by the magistrate court on July 13, 2026, and Appellant respectfully requests that this Court order the continuation of the existing stay pending appellate review, on the same terms.

WHEREFORE, Appellant respectfully requests that this Court:

- (1) Enter an order staying execution of the August 11, 2026 Judgment of the Court of Common Pleas and the underlying June 29, 2026 Writ of Ejectment during the pendency of this appeal;
- (2) Order that no additional bond is required to maintain the stay, consistent with the July 13, 2026 order of the East Greenville Summary Court declining to set any bond amount; and
- (3) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: Devario St. H. Henderson-Nesbit

Devario Henderson-Nesbit

Appellant, All Rights Reserved

(843) 587-0399

Dated: August 11, 2026

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CERTIFICATE OF SERVICE

I, Devario Henderson-Nesbit, hereby certify that on August 11, 2026, I caused a true and correct copy of the foregoing Emergency Motion to Stay Execution Pending Appeal to be served upon counsel for Respondent by email transmission to:

Megan Serrano, Esq.

Holder Padgett Littlejohn + Prickett, LLC

800 E. North Street

Greenville, SC 29601

mserrano@hplplaw.com

By: Devario Henderson-Nesbit

Devario Henderson-Nesbit

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