

The South Carolina Court of Appeals

Marthina Wardlaw, Appellant,

v.

Martin Gilliard, Respondent.

Appellate Case No. 2026-002037

ORDER

On September 15, 2026, Appellant filed a notice of appeal from a circuit court order denying her motion to reconsider the circuit court's denial of her motion to proceed *in forma pauperis*. According to the public index, the circuit court issued an order on September 10, 2026, denying Appellant's motion to proceed *in forma pauperis* and stating that if Appellant failed to pay the filing fee and associated costs, then her case would be dismissed on September 11, 2026, "without further order of the court." Based upon this court's review of the public index and Appellant's filings, it appears the matter on appeal in the circuit court was the magistrate court's order evicting Appellant from residential rental property.

The public index also shows that on September 11, 2026, Appellant filed a "request for undertaking to stay execution of ejectment under S.C. Code § 27-40-800" in the circuit court.

On September 15, 2026, Appellant filed an "emergency verified petition for stay of execution and writ of supersedeas" in this court. On September 17, 2026, this court granted a temporary stay and remanded this case to the circuit court for an expedited hearing on Appellant's emergency verified petition for stay of execution and writ of supersedeas as well as her request for an undertaking. *See* Rule 241(d), SCACR (explaining an application for supersedeas must first be made to the lower court which entered the order on appeal); S.C. Code Ann. § 27-40-800(f)(1) (2007), as amended by Act No. 252 (H.3387), § 4, 2026 S.C. Acts (eff. June 30, 2026) ("Upon appeal . . . to the court of appeals, a court shall not stay an execution of a judgment for ejectment unless the tenant files an affidavit with the proper

appellate court, in which the tenant promises to pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. Once the affidavit is accepted by the court, the judge of the court having jurisdiction shall order stay of execution upon the undertaking.").

Based upon this court's review of the public index and notification from Appellant, the circuit court denied Appellant's "motion for supersedeas" on September 28, 2026. The order does not appear to address Appellant's request for an undertaking.

This court's understanding of section 27-40-800 is that a tenant is entitled to a stay of a circuit court order in an eviction matter when the tenant pursues an appeal to this court if the tenant complies with the terms of the statute. *See* S§ 27-40-800(f)(1), as amended by Act No. 252 (H.3387), § 4, 2026 S.C. Acts (eff. June 30, 2026) ("Upon appeal . . . to the court of appeals, a court shall not stay an execution of a judgment for ejectment unless the tenant files an affidavit with the proper appellate court, in which the tenant promises to pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. Once the affidavit is accepted by the court, the judge of the court having jurisdiction shall order stay of execution upon the undertaking."). We acknowledge that providing an additional opportunity to stay an eviction so late in the proceedings may seem odd, especially when the tenant has been denied the ability to proceed *in forma pauperis* in the circuit court, as is the case here. *See id.* Nevertheless, the statute appears to contemplate the granting of a stay while an appeal is pursued in this court if certain statutory requirements are satisfied. *See id.* Further, the statute appears to contemplate the circuit court setting an amount for the tenant to pay to the landlord. *See id.*

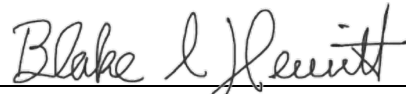
On September 28, 2026, Appellant filed a second "emergency motion for temporary stay of ejectment pending appeal." Appellant states her request for an undertaking "was not addressed, heard, or ruled upon" at the remanded hearing. On September 30, 2026, Appellant provided a "status update" to this court, stating she had received "the writ of eviction" directing her to vacate the residence by 9 a.m. on October 1, 2026.

After careful consideration of the filings, we grant a temporary stay and remand this matter to the circuit court for consideration of Appellant's request for an undertaking as contemplated by section 27-40-800 of the South Carolina Code. We acknowledge the burden placed upon the circuit court by remanding the matter, especially for a second time, and we appreciate the work the circuit court has

already performed. Nevertheless, this court is constrained by the language of the statute to provide Appellant with an opportunity to pursue a stay while her appeal is pending as long as she complies with the terms of the statute and the undertaking as set by the circuit court.

Appellant shall provide this court with status updates in writing every thirty days until the circuit court rules on Appellant's emergency verified petition for stay of execution and writ of supersedeas and request for an undertaking. Further, Appellant shall provide this court with a copy of the circuit court's written order regarding the petition and request within ten days of receiving notice of the ruling. Appellant's failure to provide this court with status updates every thirty days or to notify this court of the circuit court's ruling within ten days of receiving notice of the ruling will result in dismissal of this appeal. Further, Appellant must provide this court with an affidavit that complies with section 27-40-800(f)(1) within ten days of receipt of notice of the circuit court's ruling.

This appeal is not held in abeyance while the circuit court considers the petition and request.



J.

FOR THE COURT

Columbia, South Carolina

FILED
Sep 30 2026

cc:

Marthina Wardlaw

Martin Gilliard

Alma Y. White

The Honorable Benjamin H. Culbertson