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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM BERKELEY COUNTY
Court of Common Pleas**

The Honorable Dale E. Van Slambrook, Circuit Court Judge

Appellate Case No. 2026-001435
Circuit Court Case No. 2026-CP-08-00376

Joseph E. Donohue, IV, and Caroline Marvin,
Appellants,

v.

GS North Main Owner, LLC d/b/a Marlowe Summerville,
Respondent.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. Whether a separate notice of appeal was required for an order that was the sole and express basis of the dismissal already appealed — purely a question of law. The circuit court denied Appellants’ timely Rule 59(e), SCRCF motion as “procedurally defective” on the ground that Appellants “failed to properly appeal” the magistrate’s Order of Non-Compliance, although that order was the sole and express basis of the dismissal the motion challenged, was entered only two days before the dismissal, and — by the circuit court’s own acknowledgment — was the vehicle that “would have bound the Circuit Court to review whether the tenant actually paid the bond to stay pending appeal.” Did the circuit court err as a matter of law?

II. Must the dismissal of Appellants’ appeal be reversed where the asserted non-compliance with the bond to stay was produced by Respondent — the payee designated by the court’s own bond order — demanding sums exceeding the court-ordered amount and refusing, in writing, to accept any lesser payment, and where, as a result of the rulings below, no court has ever reviewed whether Appellants actually complied?

STATEMENT OF THE CASE

This appeal arises from an ejectment action commenced by Respondent against Appellants on December 30, 2025, in the Goose Creek Magistrate’s Court (Case No. 2025CV0810606061), on grounds of nonpayment of rent. Following a show-cause hearing, the magistrate ruled for Respondent on January 26, 2026, and a writ of ejectment issued on February 3, 2026.

On February 3–4, 2026, Appellants timely appealed to the Court of Common Pleas for Berkeley County (C/A No. 2026-CP-08-00376), serving and filing a notice of appeal with supporting Exhibits 1–3 setting out their exceptions, including the magistrate’s denial of Appellants’ dispositive motions concerning the statutory notice to cure and the computation of the five-day cure period under Rule 6(a), SCRCF, the exclusion of evidence, and the refusal of Appellants’ defenses and counterclaims. (Notice of Appeal & Exs. 1–3, filed Feb. 3, 2026.)

On February 11, 2026, the magistrate entered a Bond to Stay Execution on Appeal requiring Appellants to pay (i) a bond of \$6,203.85 within five days, and (ii) \$2,270.00 per month thereafter — the monthly rent fixed by the lease — due the first of each month and late after the fifth, by cashier’s check payable to Respondent. (Bond to Stay Execution on Appeal, Feb. 11, 2026.) Appellants timely paid the \$6,203.85 bond in full. (Mot. to Alter or Amend ¶¶ 10, 16–17, Mar. 30, 2026; accord Resp.’s Mot. to Dismiss Appeal ¶ 6 (conceding timely payment).)

On March 6, 2026, within the March payment window and after the bond had been paid Respondent sent Appellants a “5-Day Notice for Non-Payment of Rent” declaring both February and March 2026 unpaid and demanding \$4,268.21, an amount comprising \$1,774.54 of “Outstanding February Rent,” the \$2,270.00 March rent, and \$223.67 in pest-control, pet-rent,

insurance, trash, internet, utility, water/sewer, and late-fee charges beyond the court-ordered rent. The notice stated: “Payment must be made in full by cashier’s check to Marlowe Summerville, as partial payments will NOT be accepted,” and set a deadline of 12:00 p.m. on March 11, 2026. (5-Day Notice, Mar. 6, 2026.) Because the court’s bond order made Respondent the sole and mandatory payee, Respondent’s written refusal to accept any payment less than its above-order demand foreclosed tender of the court-ordered \$2,270.00.

Respondent reported non-payment to the magistrate. On March 16, 2026, the magistrate held a hearing on non-compliance and signed an Order of Non-Compliance, entered in the circuit court on March 18, 2026, reciting that Appellants “failed to post bond in the amount of \$2,270.00 to stay the execution of the Warrant of Ejectment.” (Order of Non-Compliance, entered Mar. 18, 2026.) The bond, in the amount of \$6,203.85, had in fact been posted and paid; \$2,270.00 was the monthly rent.

Two days later, on March 20, 2026, the circuit court dismissed Appellants’ appeal by Form 4F order stating, in its entirety: “Appellant filed an appeal on 02/03/2026. Appellant failed to comply with the Bond to Stay. Magistrate filed a request for Dismissal on 03/16/2026. Therefore, this matter is hereby DISMISSED.” (Form 4F Order, Mar. 20, 2026.) No hearing on the merits of the appeal was ever held.

On March 30, 2026, within ten days of the dismissal, Appellants served and filed a Motion for Relief of Judgment or to Alter or to Amend Order pursuant to Rules 59(e) and 60, SCRCF. The motion challenged the dismissal and its sole predicate, asserting among other grounds that Respondent “refused lawful tender consistent with the Court’s Bond Order, in March of 2026, after accepting payment in full from Appellants for the original Bond”; that

Respondent “demanded an inflated amount”; that Respondent “claimed Appellants ‘failed to pay rent in March’” while “omitt[ing] its refusal to accept payment for March”; that “[a] party cannot refuse proper payment then claim default based on that refusal”; and that written communications evidencing the refusal and the above-order demands had not been adjudicated by any court. (Mot. to Alter or Amend ¶¶ 15–24, Mar. 30, 2026.) The motion asked the court to vacate the Form 4F dismissal, reinstate the appeal, and hear the matter. (Id. ¶¶ 27–28.)

On May 27, 2026, the circuit court denied the motion by Form 4 order, without a hearing. The court acknowledged the motion was “filed on March 30, 2026” and “timely received.” (Form 4 Order, May 27, 2026.) Quoting *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992), and *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the court nonetheless ruled that Appellants had “failed to properly appeal the Order of Non-Compliance,” reasoning that the non-compliance order “is separate from the appeal of the Magistrate’s Order that was entered on January 26, 2026 and would have bound the Circuit Court to review whether the tenant actually paid the bond to stay pending appeal,” and denied the motion “as procedurally defective.” (Id.)

On June 26, 2026, within thirty days of receiving written notice of entry, Appellants served their Notice of Appeal to this Court upon Respondent’s counsel electronically, as reflected in the court’s Notice of Electronic Filing, and filed it with the Clerk of this Court. (Notice of Appeal & NEF, June 26, 2026; Am. Notice of Appeal & Proof of Service, July 10, 2026.) On August 21, 2026, this Court denied Respondent’s motion to dismiss the appeal. By letter, the Court thereafter set the briefing schedule now in effect. Appellants gave notice that no transcript would be ordered because the appeal presents a question of law arising on the face of the orders below, whether a separate notice of appeal was required for an order that was the sole

and express basis of the dismissal already appealed and this brief and Appellants' Designation of Matter are accordingly served pursuant to Rules 208(a)(1) and 209, SCACR.

STANDARD OF REVIEW

Whether a separate notice of appeal was required for an order that was the sole and express basis of the dismissal already appealed is purely a question of law. It turns on the construction and application of Rule 59(e), SCRPC, and of the statutes and rules governing appeals from the magistrate's court, and it is answerable on the face of the orders below — which is why no transcript was ordered in this appeal. Questions of law are reviewed de novo, without deference to the circuit court's legal conclusions. See *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008). A ruling that rests upon an error of law is, by definition, an abuse of discretion. *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). The same standards govern Issue II, which independently challenges the dismissal as resting upon errors of law and upon a predicate finding no court has reviewed.

ARGUMENT

I. Whether a separate notice of appeal was required for an order that was the sole and express basis of the dismissal already appealed is purely a question of law — and the answer is no. The denial of Appellants’ timely Rule 59(e) motion as “procedurally defective” rests on a requirement the law does not impose.

The dispositive question in this appeal is purely one of law: whether a separate notice of appeal was required for an order that was the sole and express basis of the dismissal already appealed. It is for that reason that no transcript was ordered, the question is answered entirely on the face of three documents and the rules themselves. The Order of Non-Compliance supplied the dismissal’s only ground; the Form 4F dismissal rested expressly and exclusively upon it; and the May 27 order denied the timely motion challenging that dismissal for want of a second, separate appeal of the predicate order. No provision of the South Carolina Rules of Civil Procedure, the South Carolina Appellate Court Rules, or the ejectment statutes imposes that requirement; the May 27 order’s own authorities refute it; and the two-day interval between the predicate order and the dismissal made the supposed requirement impossible to satisfy in any event.

The March 20 dismissal had exactly one stated basis: the magistrate’s non-compliance order. The Form 4F order says so in three sentences — “Appellant failed to comply with the Bond to Stay. Magistrate filed a request for Dismissal on 03/16/2026. Therefore, this matter is hereby DISMISSED.” A timely motion under Rule 59(e), SCRCP directed at that dismissal therefore necessarily — indeed, could only challenge the validity of that basis. That is precisely the office of the rule: “[t]he purpose of Rule 59(e)... is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). The only “matter encompassed” in the March 20 decision was the

non-compliance determination; a Rule 59(e) motion that reached it was not procedurally defective, it was the rule working exactly as designed.

The May 27 order’s contrary premise — that Appellants were required first to file a separate appeal from the non-compliance order itself — finds no support in the South Carolina Rules of Civil Procedure, the Appellate Court Rules, or the ejectment statutes. Those statutes prescribe one appeal in an ejectment case: from the magistrate’s judgment, by a notice “stating the grounds upon which the appeal is founded.” S.C. Code Ann. § 18-7-20; see § 27-37-120. They prescribe what follows a claimed default on the undertaking “upon application of the landlord,” the stay ends and “the clerk ... shall issue a warrant of ejectment,” § 27-40-800(c), (e) — and they commit any dispute concerning the undertaking to the circuit court, on motion, “after notice and a hearing.” § 27-40-800(d). Nowhere do they convert the magistrate’s certification of non-compliance into a second judgment requiring its own notice of appeal.

The non-compliance order was not a freestanding final judgment opening a new appellate track. It was a certification by the magistrate, transmitted into an appeal already pending in the circuit court, whose only function was to trigger the dismissal of that appeal. The circuit court already had jurisdiction over the appeal the order was transmitted into; no rule required Appellants to commence a second, parallel appeal in the same court, concerning the same case, to empower the court to examine the predicate of its own order. An appeal — and a fortiori a post-judgment motion addressed to the very court that acted — brings up for review the grounds on which the challenged ruling necessarily rests. See S.C. Code Ann. § 14-3-330(1) (upon appeal from a final judgment, the appellate court “may ... review any intermediate order or decree necessarily affecting the judgment not before appealed from”). The sequence of events makes the error concrete.

The non-compliance order was entered in the circuit court on March 18, 2026. The dismissal followed on March 20, 2026, two days later. There was no practical interval within which a “separate appeal” of the non-compliance order could have been noticed, briefed, and decided before the dismissal it triggered had already issued. Once the dismissal issued, Appellants did exactly what the May 27 order’s own authorities command. Elam holds that a party “must” file a Rule 59(e) motion “when an issue or argument has been raised but not ruled on, in order to preserve it for appellate review.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). Appellants’ motion raised the refused tender, the above-order demands, and the resulting invalidity of the non-compliance finding (Mot. ¶¶ 15–24) — and the court declined to rule on any of it, on the stated ground that the motion itself was the wrong vehicle. The order thus faulted Appellants for taking the very step its cited precedents require, while leaving the dispositive question unexamined.

Nor was the motion barred as an attempt to raise matter that could have been presented “prior to judgment.” *Anderson Mem’l Hosp., Inc. v. Hagen*, 313 S.C. 389, 434 S.E.2d 268 (Ct. App. 1993). There was no “prior to judgment”: the dismissal issued on the magistrate’s certification without motion practice before the circuit court, without a hearing, and without notice that the court was poised to act — two days after the predicate order arrived. The first opportunity Appellants had to be heard by the circuit court on the non-compliance question was the Rule 59(e) motion itself.

The May 27 order’s own reasoning concedes the consequence of its ruling. The court wrote that a separate appeal “would have bound the Circuit Court to review whether the tenant actually paid the bond to stay pending appeal.” That is an acknowledgment that, as a result of the disposition below, no court — not the magistrate in the summary non-compliance proceeding,

not the circuit court on the Form 4F, and not the circuit court on reconsideration — has ever reviewed whether Appellants actually complied with the bond order. A procedural theory whose express product is that the dispositive question of the case escapes all judicial review is not a sound construction of Rule 59(e); it is the denial of any forum, and it is reversible error of law.

Finally, the timeliness of the motion is beyond dispute the May 27 order itself recites that the motion was “filed on March 30, 2026” and “timely received,” and a timely Rule 59(e) motion performs its office notwithstanding a court’s characterization of it as procedurally improper. See *Swing v. Swing*, Op. No. 28266 (S.C. Sup. Ct. filed Mar. 12, 2025) (“[W]e clarify today that ‘timely’ is a temporal term, and as it is used in Rules 203(b)(1) and 59(f), it means only that the post-trial motion — in this case a Rule 59(e) motion was served on the opposing parties not later than ten days from the date of receipt of written notice of the entry of the order the merits of which the motion purports to address.”).

The pure question of law at the center of this appeal therefore has a complete answer: no separate notice of appeal was required for an order that was the sole and express basis of the dismissal already under challenge; the timely Rule 59(e) motion was the proper — indeed, under Elam, the required — vehicle; and the denial of that motion as “procedurally defective” should be reversed, and with it the dismissal the motion properly challenged.

II. Independently, the dismissal cannot stand where the asserted non-compliance was produced by Respondent’s refusal, as court-designated payee, to accept the court-ordered payment, and no court has ever reviewed Appellants’ actual compliance.

Even apart from the pure question of law presented in Issue I, the dismissal cannot survive review on its own terms. The February 11 bond order fixed both the obligation and the exclusive means of performing it: \$2,270.00 per month — the lease rent — by cashier’s check

payable to Respondent. Performance therefore depended entirely on Respondent's willingness to accept it. The record Appellants placed before the circuit court shows Respondent refused. After accepting payment in full of the \$6,203.85 bond, Respondent's March 6, 2026, notice declared both February and March unpaid; demanded \$4,268.21 — including \$1,774.54 of February rent the bond had satisfied and \$223.67 in charges beyond the court-ordered rent; and announced, in terms, that "[p]ayment must be made in full by cashier's check to Marlowe Summerville, as partial payments will NOT be accepted." (5-Day Notice, Mar. 6, 2026.) By the plain operation of that demand, a cashier's check for the court-ordered \$2,270.00, the only payment the bond order required would have been refused as "partial."

A party may not manufacture a default by refusing to accept conforming performance. Where the obligee announces in advance that conforming tender will be refused, the law does not require the obligor to perform the empty ceremony; tender is excused. *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 241–42, 421 S.E.2d 402, 404–05 (1992) ("When the obligee has manifested to the obligor that tender, if made, will not be accepted, the obligor is excused from making tender as it would be at most merely a futile gesture."); accord *McCall Co. v. Hobbs-Henderson Co.*, 138 S.C. 435, 136 S.E. 762 (1927).

Tender is likewise "excused by the imposition of unwarranted conditions by the person to whom it was to be made." *Sterling*, 309 S.C. at 241. It is enough that the obligor "stood ready and able to perform." *Id.* at 242. Appellants raised precisely this before the circuit court: that Respondent "refused lawful tender consistent with the Court's Bond Order"; that it "demanded an inflated amount"; that it then "claimed Appellants 'failed to pay rent in March'" while "omitt[ing] its refusal to accept payment"; and that "[a] party cannot refuse proper payment then claim default based on that refusal." (Mot. ¶¶ 16–20.) Those allegations, supported by the written

communications the motion identified (id. ¶¶ 22–24), directly negate the non-compliance on which the dismissal solely rests.

The non-compliance order compounds the problem on its face: it recites that Appellants “failed to post bond in the amount of \$2,270.00.” The bond was \$6,203.85, and it was posted and paid — timely, and without dispute. (Mot. ¶¶ 10, 16–17; Resp.’s Mot. to Dismiss Appeal ¶ 6) The \$2,270.00 figure is the monthly rent, not the bond. An order that conflates the two — and that was procured on a presentation that disclosed neither Respondent’s above-order demands nor its written refusal of conforming payment — is not a reliable predicate for the dismissal of an appeal, and the circuit court compounded the error by refusing, on procedural grounds, ever to look behind it.

The consequence of the rulings below is that Appellants’ appeal — an appeal in which they had posted a \$6,203.85 bond precisely to secure their right to be heard — was extinguished on a contested factual premise that no tribunal has examined, without a hearing, on two days’ unnoticed interval between the predicate order and the dismissal. The statutes governing appeals from the magistrate’s court entitle an appellant to have the appeal heard and determined. S.C. Code Ann. § 27-40-800(a) (“Upon appeal to the circuit court, the case must be heard.”); § 27-37-120 (ejectment appeals “heard and determined as other appeals in civil cases from the magistrate’s court”); id. §§ 18-7-130, -170 (appeal heard upon the record, with judgment “according to the justice of the case”).

Whatever the permissible consequences of a true failure to maintain a bond to stay, they cannot constitutionally or statutorily attach to a “failure” the obligee itself engineered and the courts never reviewed. Nor would even a true default have supported the dismissal entered: the

statute dismisses only “the appeal by the tenant to the circuit court on issues dealing with possession,” § 27-40-800(c), leaving the remaining exceptions in Appellants’ notice of appeal — habitability, the exclusion of evidence, and the counterclaims — untouched; the Form 4F dismissed the appeal in its entirety. At minimum, Appellants were entitled to the review the circuit court itself acknowledged never occurred.

Reversal, reinstatement, and remand for a merits determination restores to Appellants nothing more than what the bond they paid was supposed to secure: a decision on their appeal. To prevent recurrence of the tender impasse on remand, any bond or periodic payment required pending the reinstated appeal should be directed into the registry of the court, with disbursement upon order, a structure that fully secures Respondent while ensuring that no party’s refusal of payment can again be converted into a default.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the Form 4 Order entered May 27, 2026, and the Form 4F Order of dismissal entered March 20, 2026; reinstate Appellants' appeal in the Court of Common Pleas for Berkeley County; and remand for a hearing and determination of the appeal on its merits, with any bond or periodic payment required pending remand to be deposited into the registry of the court. In the alternative, Appellants request that the Court reverse the May 27, 2026, Order and remand with instructions that the circuit court decide Appellants' Rule 59(e) motion on its merits, including the refused-tender and non-compliance questions it declined to reach. Appellants further request such other relief as this Court deems just and proper.

Respectfully submitted,

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