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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2024-CP-21-02557
Appellate Case No. 2025-001126

Rachel Buie,Appellant,

v.

Florence County Housing Authority,Respondent.

INITIAL BRIEF OF RESPONDENT

HAYNSWORTH SINKLER BOYD, P.A.

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STATEMENT OF ISSUES ON APPEAL

- 1. Did the circuit court act within its discretion in dismissing Rachel Buie's magistrate-court appeal for failure to prosecute when neither Buie nor her counsel of record appeared for the scheduled May 13, 2025 hearing?**
- 2. Does Buie's contention that she was not personally notified of the hearing fail as a matter of law, where her counsel of record received effective electronic notice that is imputed to her, and no exception to that rule applies?**
- 3. Are Buie's challenges to the dismissal and to the underlying rent charges preserved for appellate review, where she sought no relief from the dismissal in the circuit court and raised no such issues below?**

INTRODUCTION

This appeal arises from a magistrate-court ejectment that Rachel Buie (“Buie”) appealed to the circuit court. When her appeal was called for hearing on May 13, 2025, neither Buie nor her counsel of record appeared, and the circuit court dismissed the appeal for lack of prosecution. (May 14, 2025 Order, R. at 1). Buie’s appeal to this Court rests on a single premise: that she was not personally informed of the hearing date.

That premise fails as a matter of law because Buie was represented by counsel at the time of the hearing, and Buie concedes counsel was notified. Under settled South Carolina law, notice to an attorney is notice to the client, and counsel’s neglect is imputed to the client. Accordingly, the dismissal was a proper exercise of the circuit court’s discretion requiring affirmance.

STATEMENT OF THE CASE AND FACTS

Buie was a tenant of the Florence County Housing Authority (“the Authority”). On October 10, 2024, the Florence Magistrate Court ordered her to vacate her residence for nonpayment of rent. (Magistrate Return, R. at 1). On December 20, 2024, the magistrate set a nominal bond payment of \$22.00 to stay execution while the matter was reviewed by the circuit court. (Magistrate Return, R. at 2-3).

Buie’s appeal was called for hearing in the Florence County Court of Common Pleas on May 13, 2025, at 2:00 p.m. Neither Buie nor her counsel appeared. The Honorable William H. Seals, Jr. dismissed the appeal for lack of prosecution, and the Form 4 Judgment Order was entered and mailed to the parties on May 14, 2025. (Order, R. at 1).

Buie received written notice of the entry of judgment on May 29, 2025, and served a notice of appeal to this Court on June 9, 2025. Buie’s counsel was later relieved by order filed July 21, 2025.

ARGUMENT

I. The circuit court acted within its discretion in dismissing Buie’s appeal for failure to prosecute.

A. Standard of Review.

“Whether an action should be dismissed for failure to prosecute is left to the discretion of the trial court judge, and his decision will not be disturbed, except upon a clear showing of an abuse of discretion.” *McComas v. Ross*, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006). The circuit court’s authority to dismiss an appeal for failure to prosecute is both inherent and long recognized. See *Equitable Fire Ins. Co. v. Fishburne*, 72 S.C. 24, 51 S.E. 528, 528 (1905).

B. The circuit court’s dismissal was a proper exercise of that discretion.

An appeal from magistrate court proceeds in the circuit court pursuant to S.C. Code Ann. §§ 27–37–120, 14–5–340, and 18–7–170. The appeal is subject to the South Carolina Rules of Civil Procedure. Rule 74, SCRPC. Those rules authorize dismissal “[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court.” Rule 41, SCRPC. The appellant bears the burden of prosecuting her own appeal; a magistrate-court appellant who fails to pursue the appeal with due diligence is subject to dismissal. See *Joyner v. Glimcher Props.*, 356 S.C. 460, 463, 589 S.E.2d 762, 763 (Ct. App. 2002).

Buie did not carry that burden. When her appeal was called on May 13, 2025, neither she nor her counsel appeared, and no explanation was offered. (Order, R. at 1). On similar facts, the South Carolina Supreme Court held that dismissal for failure to prosecute is not an abuse of discretion where the absence of the party and counsel permits an inference of unreasonable neglect. *Small v. Mungo*, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970). The circuit court’s dismissal here rests on precisely that inference and should be affirmed.

Buie cannot show otherwise by relying on decisions reversing dismissals entered against diligent litigants. In *McComas v. Ross*, this Court reversed a dismissal where the plaintiff arrived at the courthouse only minutes after the case was called, had actively pursued discovery, and had no history of delay. *McComas*, 368 S.C. at 63-64, 626 S.E.2d at 905. Buie’s circumstances are the opposite: she and her counsel failed to appear entirely, offered no reason for their absence, and took no step to prosecute the appeal. Nothing in the record shows the diligence that animated the reversal in *McComas*.

For this reason, the Authority asks that the Court affirm the circuit court’s dismissal of the magistrate-courts appeal for failure to prosecute as a valid exercise of discretion.

II. Buie’s contention that she lacked notice of the hearing fails because her counsel’s notice is imputed to her.

Buie’s sole substantive argument is that she personally was not notified of the May 13, 2025 hearing. That argument is foreclosed by settled law. Whenever service is required upon a party represented by an attorney, it is made upon the attorney. Rule 262, SCACR; Rule 5(b)(1), SCRCRCP. An attorney is the alter-ego of the client, and notice received by the attorney in the course of the representation is effective as notice to the client. *Williams v. Williams*, 335 S.C. 386, 391, 517 S.E.2d 689, 691 (1999). Clients are bound by their attorneys’ acts and omissions within the scope of the representation. *Koutsogiannis v. BB & T*, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005).

This is true even where the result is harsh. An attorney’s neglect is imputed to the client, and the client is not relieved of a resulting default or dismissal on that basis. *See Richardson v. P.V., Inc.*, 383 S.C. 610, 619, 682 S.E.2d 263, 267 (2009) (citing *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct.App.1987) (observing that the “courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant”));

Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (imputing an attorney’s negligence to a defaulting litigant); *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 609, 681 S.E.2d 885, 889 (2009) (finding a litigant who cannot show good cause independent of counsel’s neglect is not entitled to relief).

Here, Buie was represented by counsel of record on May 13, 2025. Buie’s own brief concedes that her attorney was “electronically notified” of the court date. Thus, there was proper notice of the hearing.

No exception to the rule applies. Relief has been afforded only where the client was effectively unrepresented: for example, where a disbarred attorney failed to notify the client of a hearing, or where counsel willfully and unilaterally abandoned the representation. *See Tobias v. Rice*, 386 S.C. 306, 310-11, 688 S.E.2d 552, 554 (2010). Nothing in the record here suggests that Buie’s counsel was suspended, disbarred, or had abandoned her at the time of the hearing; to the contrary, counsel remained her attorney of record and received notice. Buie’s remedy for any failure by her attorney to relay the hearing date lies against that attorney, not in reversal of the circuit court’s dismissal.

III. Buie’s remaining arguments are not preserved and are outside the record on appeal.

In addition, Buie did not raise these, or any, arguments before the circuit court. An issue must be raised to and ruled upon by the circuit court to be preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Buie sought no relief from the dismissal in the circuit court. She did not move to alter or amend the judgment, did not seek relief from the dismissal, and did not ask the court to enter a dismissal without prejudice or to consider any lesser disposition. Any argument that the circuit court should have chosen a different course is therefore unpreserved.

Buie's challenge to the Authority's rent and balance calculations fares no better. The judgment on appeal rests solely on Buie's failure to appear and prosecute her appeal; the merits of the rent dispute were never tried or adjudicated in the circuit court. (Order, R. at 1). Those factual complaints were not presented to the circuit court and provide no basis to disturb the dismissal.

CONCLUSION

For the foregoing reasons, this Court should affirm the circuit court's dismissal of Buie's appeal.

Respectfully submitted,

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