

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Judge

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Appeals Case No. 2013-001622

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Derick Ward , ..... Appellant

Vs.

Margaret Ashbaugh ..... Respondent

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INITIAL RESPONDENT'S BRIEF

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**SC Court of Appeals**

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MAGISTRATES COURT HAVE SUBJECT MATTER JURISDICTION OVER A DISPUTE BETWEEN PARTIES OVER A RENT TO OWN AGREEMENT INVOLVING A MANUFACTURED HOME VALUED AT \$7,000.
- II. ARE APPELLANT'S SUBSTANTIVE DUE PROCESS CLAIMS PRESERVED FOR APPEAL
- III. ARE APPELLANT'S PROCEDURAL DUE PROCESS CLAIMS PRESERVED FOR APPEAL

## STATEMENT OF THE CASE

This is an appeal from a June 7, 2013 decision of the Florence County Circuit Court upholding a magistrate court's order of ejectment against Appellant Derick Ward.

On March 26, 2013, Ashbaugh filed an Application for a Rule to Vacate or Show Cause in the Florence County Magistrate's Court. (App. for Eject., filed March 26, 2013.) In her Application, Ashbaugh alleged that Ward had "failed to pay rent when due or demanded." (Rule to Vacate or Show Cause, filed March 27, 2013.) On March 28, 2013, Ward filed an Answer Ward's counsel has previously misstated this amount as \$7,500. (Mag. Ret. 5, filed April 12, 2013.)

On April 4, 2013, the Magistrate conducted a hearing on the merits of Ashbaugh's summary ejectment action. (Mag. Ret. 1, tiled April 11, 2013.) Both parties appeared pro se and no transcript of the hearing was taken, although a summary of the parties' testimony is given by the Magistrate in his Return. After hearing from both parties, the Magistrate issued a Writ of Ejectment against Ward. (Writ of Eject., filed April 4, 2013.)

Following the issuance of the Writ of Ejectment, Ward retained counsel and timely appealed the magistrate's decision to the Florence County Circuit Court. (Ward's Not. of App., filed April 8, 2013.) On April 11, 2013, the magistrate held a bond hearing, ordered the Writ stayed and required Ward to pay Ashbaugh \$200 per

month during the pendency of the appeal. (Bond, filed April 11, 2013.) Also on April 11, 2013, the Magistrate tiled a Return on Appeal, in which he stated: "[T]his court could only conclude that the Plaintiff was the actual owner of the home and that any agreement to rent to own was breached by the failure of the Defendant to make payments as required and therefore the Plaintiff had a right to evict the Defendant." (Mag. Ret. 5, filed April 11, 2013.). Ashbaugh then hired counsel, who filed a Response.

On June 7, 2013, the circuit court heard Ward's appeal from the Magistrate's ejectment ruling. (Transcript of June 7, 2013 Cir. Ct. hearing.) Following the hearing, in a Form 4 Order the circuit court affirmed the issuance of the Writ of Ejectment, stating: "This Court finds that the magistrate did have jurisdiction." (Cir. Ct. Order, filed June 7, 2013.)

On June 17, 2013, Ward tiled a Rule 59 Motion to Reconsider, requesting an explanation of the court's holding or a new hearing on the merits. (Not. of Mot., filed June 17, 2013.) In his Motion, Ward contended: "this Court did not rule as to whether or not there was a landlord-tenant relationship." (Id. at 1). Following the circuit court's denial of Ward's Motion, he filed this appeal with the South Carolina Court of Appeals. (Order Denying Plaintiff's Mot. to Reconsider, filed June 28, 2013; Not. of App., filed July 22, 2013.)

## STATEMENT OF THE FACTS

In December 2011, Appellant Derick Ward and his aunt, Respondent Margaret Ashbaugh, made an oral agreement that Ward would "rent to own" Ashbaugh's manufactured home. (Ward's Answer 1, filed Apr. 8, 2013; Mag. Ret. 4, filed April 12, 2013.) The parties agreed to a purchase price of \$7,000, to be paid in monthly installments of \$200.1 (Id.) In August 2012, the owner of the lot upon which the home was situated ordered Ashbaugh to remove the home from the property. (Id.) Thereafter, Ward moved the home to a lot rented by Ward's girlfriend, Brandy Blackburn, located at 2911 Effingham Highway, Effingham, South Carolina.' (Id. at 1-2.) Subsequently, Ashbaugh issued a bill of sale for the home to Blackburn. (Id. at 2).

According to the Return, Ashbaugh stated that Ward "agreed to rent to own the mobile home by verbal agreement for a price of \$7000 in 'as is condition' in October 2011." (Id.) Ashbaugh also stated that Ward "agreed to pay the lot rent to a third party...and make a rent to own payment of \$200 per month on the mobile home," as well as "pay the property taxes" on the mobile home. (Id.) Ward stated that he agreed to purchase the mobile home for \$7000 at \$200 per month. (Id.) The Magistrate's Return also states that both parties agreed that Ashbaugh issued a Bill of Sale to Ward (through his live-in girlfriend, Brandy Blackburn), as Ward and Blackburn were

responsible for moving the mobile home from one lot to another and required the Bill of Sale to do so. (Id. at 2, 4-5.) As agreed, Ward and Blackburn moved the mobile home to a lot that they are currently leasing from a third party. (Id. at 5.) The parties disagreed as to (1) whether the cost of moving and setting up the mobile home on a new lot would be deducted from the purchase price, and (2) whether Ward tendered the balance of the purchase price to Ashbaugh after moving the mobile home. After hearing from both parties, the Magistrate issued a Writ of Ejectment against Ward. (Writ of Eject., filed April 4, 2013.) According to the Return, Ashbaugh stated that Ward "agreed to rent to own the mobile home by verbal agreement for a price of \$7000 in 'as is condition' in October 2011." (Id.) Ashbaugh also stated that Ward "agreed to pay the lot rent to a third party...and make a rent to own payment of \$200 per month on the mobile home," as well as "pay the property taxes" on the mobile home. (Id.) Ward stated that he agreed to purchase the mobile home for \$7000 at \$200 per month. (Id.) The Magistrate's Return also states that both parties agreed that Ashbaugh issued a Bill of Sale to Ward (through his live-in girlfriend, Brandy Blackburn), as Ward and Blackburn were responsible for moving the mobile home from one lot to another and required the Bill of Sale to do so. (Id. at 2, 4-5.) As agreed, Ward and Blackburn moved the mobile home to a lot that they are currently leasing from a third party. (Id. at 5.) The parties disagreed as to (1) whether the cost of moving and setting up the mobile home on a new lot would be deducted from the

purchase price, and (2) whether Ward tendered the balance of the purchase price to Ashbaugh after moving the mobile home. After hearing from both parties, the Magistrate issued a Writ of Ejectment against Ward. (Writ of Eject., filed April 4, 2013.)

#### ARGUMENT

THE MAGISTRATES COURT HAD SUBJECT MATTER JURISDICTION OVER A DISPUTE BETWEEN PARTIES OVER A RENT TO OWN AGREEMENT INVOLVING A MANUFACTURED HOME VALUED AT \$7,000.

The sole issue presented by this appeal is the existence of subject matter jurisdiction of the Magistrates Court.

The parties appeared before the Magistrate and tried this case on April 4, 2013. No objection was made as to the timing of the hearing or the jurisdiction of the Magistrate's Court. The parties presented the case as a dispute over the ownership of a manufactured home that Ward purchased from Ashbaugh for \$7,000.00.

The civil jurisdiction of the Magistrate's Court is set out in §22-3-10 of the South Carolina Code of Laws (1976) as amended. Subparagraph 11 of that grant of jurisdiction includes jurisdiction

in any action to recover the possession of personal property claimed, the value of which ... does not exceed the sum of seven thousand five hundred dollars;

Magistrates Court jurisdiction also extends to all matters between landlord and tenant,

without limitation as to the value of the property. §23-3-10 (10) S.C. Code.

This appeal seeks to raise a subject matter jurisdiction challenge to the judgement below. Because the pro se pleading were couched in terms of a landlord tenant dispute Ward now contends that the Magistrates Court lacked subject matter jurisdiction. No issue of jurisdiction was raised at trial. The records shows that the actual dispute between the parties was over a manufactured home valued at less than seven thousand five hundred dollars. While this objection was not raised at trial, subject matter jurisdiction can be raised for the first time on appeal. Lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal, by a party or by the court. *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653-54 (Ct.App.1998). "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Majors v. S.C. Sec. Comm'n*, 373 S.C. 153, 159, 644 S.E.2d 710, 713 (2007). "The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental." *Peterson v. Peterson*, 333 S.C. 538, 547, 510 S.E.2d 426, 431 (Ct.App.1998).

Ward's brief acknowledges that this dispute tried by the magistrate was over a manufactured home valued at less that \$7,000.

The uncontested facts in this case show that the relationship between Ashbaugh and Ward is not that of a landlord and a tenant, but rather that of a seller and a purchaser of personal property. The parties in this case agree that they had an oral contract whereby Ward was

purchasing the mobile home on a rent-to-own basis from Ashbaugh, paying \$200 a month, and that those monthly payments were going toward the purchase price of \$7,000. Once Ward paid the full \$7,000, Ashbaugh would transfer the paper title to Ward. This seller-purchaser relationship is distinct from the landlord-tenant relationship. Appellant's Brief page 12.

So the question for this Court is whether or not such a dispute is within the subject matter jurisdiction of the Magistrate's court. §23-3-10 (11) is the grant by the legislature of that subject matter jurisdiction to the Magistrates Court. Since the dispute before the Magistrate is within the Magistrate's jurisdiction, Ward's appeal must fail, as the Circuit Judge ruled.

#### QUESTIONS II AND III

II. APPELLANT'S SUBSTANTIVE DUE PROCESS CLAIMS ARE NOT PRESERVED FOR APPEAL

III. APPELLANT'S PROCEDURAL DUE PROCESS CLAIMS ARE NOT PRESERVED FOR APPEAL

Ward's remaining arguments are not properly preserved for appeal.

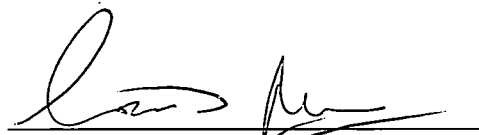
Ward's claims as to substantive due process and procedural due process are raised for the first time on appeal. See Notice of Civil Appeal. The notice of appeal does not raise these questions and they were not argued before the Circuit Court. Unlike challenges to subject matter jurisdiction which may be raised at anytime, these question must be presented to the trial court. It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the

trial court to be preserved. See generally *I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (S.C., 2000) *Holy Loch Distribs., Inc. v. Hitchcock*, 340 S.C. 20, 531 S.E.2d 282 (2000); *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000). *Pye v. Estate of Fox*, 633 S.E.2d 505, 369 S.C. 555 (S.C., 2006). Because Appellant Ward did not raise these issues before the Magistrate or before the Circuit Court this court should not consider them.

#### CONCLUSION

The record below shows that the dispute between the parties was within the subject matter of the Magistrates Court and the remaining claims were not presented to the Magistrate or the Circuit Court, therefore the ruling of the Circuit Court should be affirmed..

Respectfully submitted



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March 19, 2014

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CERTIFICATE OF SERVICE

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I certify that I have served the Respondent's Initial Reply Brief on Appellant's Attorney by depositing a copies of the same in the United States Mail, postage prepaid, on March 20, 2014, addressed to the following address:

David E. Tait Esq  
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March 20, 2014



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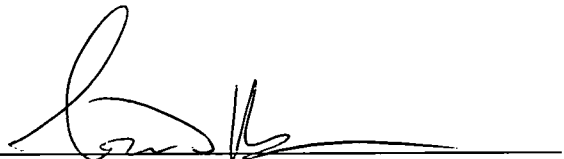
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