

THE STATE OF SOUTH CAROLINA IN THE COURT APPEAL

APPEAL FROM CHARLESTON COUNTY

J.C. Nicholson, Judge

CASE NO. 2015-CP-10-3372

Appellant No. 2015-002039

RECEIVED
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SC Court of Appeals

Gernaris Hamilton.....Appellant

V.

Henry Scott Sr.....Respondent

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8 February 2016

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My commission expires
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STATEMENT OF ISSUES ON APPEAL

1. Because respondent did not have a court order writ of ejection and respondent had no legal rights to enter residence.
2. Because the court did not notify the appellate of a non-jury trial or had a jury trial waiver for the records the expectation was a jury trial, the jurors were there for selection.
3. Because the court dismissed the jurors and only the court dismissed the seated jurors this is state action all the jurors were waiting to be selected at the time of trial.
4. Because the court for good cause could've granted a continuance, after counsel abandon the case or for the record state the fact the trial will continue.
5. Because the findings of the court and conclusion is without evidentiary support the conclusion is erroneous.

STATEMENT OF CASE

On February 6, 2015 Appellant filed in Small Claims Court. That the respondent violated his contract (lease) by entering his dwelling and threw his personal property out, without a Writ of Eviction. Respondent claims that he sent a letter of vacate the property because of a dog on property violated the lease. The lease was under North /Charleston Housing Authority HCV. The Respondent demanded a jury trial several times, Appellant was represented by Attorney William Thrower and Respondent retained Attorney Bruce Berlinsky. On May 27, 2015 the date of trial Attorney Thrower told the judge he had to be in Federal court and left. The judge then dismiss the jurors and had a non-jury trial, without any evidence submitted by Respondent or attorney.

On June 1, 2015, Appeal was filed June 16, 2015 Appellant file pleadings and exhibits on June 29, 2015. Was placed on hearing docket on July 16, 2015 Respondent filed a late answer on July 13, 2015 Appellant file a motion to answer August 6, 2015. The hearing was on August 14, 2015 and denied on August 14, 2015. Motion to amend to a written order was respectfully denied on September 16, 2015. Appellant filed appeal in the Appellant's court on September 25, 2015. The question is legally and constitutional can the landlord enter into the property without a court order Writ of Eviction, then comes the damages of \$7,500 in which the complaint was filed. The Constitution questions a jury trial notice is due process to be informed (when the waiver come in) Waiver on record or in court. The Jurors were in court seated waiting like Appellant was for jury selection, the judge comes in and said I will not be needing you all today and they left. The judge continued with a non-jury trial after all of this, no attorney, no jury, and no evidence or Exhibits from the Respondent only what he thought was legal. Appellant would like to recover for his losses in the amount of \$7,500 plus cost. There was never any written order from either courts on their findings and conclusion of law. Therefore only what is in the transcript and Magistrate's return to file this appeal; the lower court did not look at the pleadings or read it. 20 minutes and out of court and all the responses was with the Attorney William Thrower who did not do his job.

Attorney-Client-Facts

Counsel should have notified the court the he was no longer going to be counsel for the appellate (SCRMC) rules (13) A (14) and (15). These Magistrates court rules were in place, but the non-jury trial proceed (Floyd V. Kosko) 3295 E 2d 459. An attorney that undertakes the representation of a client in a case impliedly agrees to proceed with the case until it has been terminated, and it is not at liberty to abandon it (Trans. Pg 12-lines 12-20). Only word we have is counsel for the respondent whom did not file answer to any pleading in Magistrate's court, court of common plea or Appellant court, but to take his word the record is silent see Exhibit (4) (Notice of motion scheduling pg 1-5). Counsel did not get sanction under SCRPC Rule 15 (A). The court did not rule on these issues.

Contract Facts

The contract is an obligation which arises from actual agreement of parties manifested by written conduct (Trans pg 13-Line 1-13) MRpg S. 44-45 Gaskins v. Blue Cross-Blue Shield of S.C. 271. SC 101 245 S.E. 2d 598 (1978), Moore V. Palmetto State Life INS. CO. 222 S.E. 2d 492, 73 S.E. 2d 688 (1952) If the agreement is manifested by words, the contract was voided on the (30th) 30 of August when respondent wrote the letter. (S.C code Ann 27-40-530 (D)) was clear what needed to be done to enter the dwelling "court order" not a letter or dog neighbor abandonment, but a court order, Respondent stated (Scott), he found the "appellant" the appellant was not out of town, or hospitalized the contract was not expired why was there a need to throw out the appellant's procession, no rent was due, electricity, water, food, clothing, appliances, there was no abandonment, respondent had (3) days before the house was to be in back in his possession. Electricity and water were turned on in the new tenant's home on the 5th of November (Exhibit 2 pg 11). There is no reason he gave for his action only what the letter said. A new tenant on the 5th of November, 4 days after respondent discarded the appellant's property, and no itemized statement.

Jury-Fact

Once there was a demand for a jury trial the only way to waiver was by records intelligently and understandingly rejecting the demand. Respondent after counsel for appellant abandon him, the opportunity arises for a non-jury trial not by record but by duress of circumstances. This was time for the court under Magistrate rule's to adjust to the situation not to abide in it by a non-jury trial. The court dismissed the jurors the Magistrate return page one (1). Chavas V. Brown 385 S.E. 2d 206. "The trial judge is inextricably involved in the process of obtaining a fair and impartial jury". Because the trial judge makes the determination as to the importability of a "selected jury" we hold his involvement in the selection process in substantial enough to be considered "State Action". Subject to the mandates of the Fourteenth Amendment.

The jurors were in court (see jurors list M.R.pgs 27-33) not once but twice the jury list was sent for a jury trial. There was never a waiver, the court with duress of circumstances let that happen. The records are clear magistrate's return the transcript. This is state action.

APPEAL ON ERRORS IN FACT

Because there was no evidence submitted in court this hearing which was supposed to be a Jury trial (M.R. pg. 15 18, 20) was turned into a non-jury trial without due process notice are attorney all fact stated in the Magistrate's return, no writ of ejection, no letter about dog, no (15) fifteen day wait for abandonment, also no waiver from jury trial. There is fact finding or conclusion of law. There's no evidence to reasonable support the court's decision S.C. Code Ann 27-40-530-D, Respondent admitted he went into the house without court order or law enforcement (Trans. Pg. 11 Line 1-9). The Magistrate Court would not modify the finding of fact, because there was no fact (Trans. Pg. 11 Line 7-9). Appellant filed motion to alter and amend under Rule 59 (E) SCRPC only to be denied without the findings of facts from a court order, who's to say what the findings were. (Order filed in appeal September 25, order dated September 18, 2015), everything is in the Magistrate return and the court ordered transcript.

WAIVER

Because the court error in the constitutional requirement to due process and equal protection of the law, the procedural step before any waiver (M.R. pg1) (Trans. Pg. 5, line 10-25 and pg. 12 line 8-10). Magistrates Court Rule's. Rule (13A) Conduct of Trial; Jury Trials; Witnesses; Subpoenas. (A) Trial should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of Justice. In the trail of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully present.

The consent of counsels and sanction of the court must be had, trial by jury is a right guaranteed by the constitutions of both South Carolina and the United Stated. State V. Arthur cited 374 S.E2d.292.A7 [1]. The state concedes the waiver of a constitutional or statutory right requires a showing on the record that the defendant made the waiver knowingly and intelligently. Chavous V. Brown cite as 385.S.E.2d206 at 209. The function of a jury in South Carolina is to determine the facts from the evidence and apply those facts to the law as charged by the trial jury. There is no underlying distinction between the function of a Criminal Jury and a Civil Jury. One isn't more important than the other. Justice under the law for all parties is the goal of any trial; Appellant expectancy was a Jury trial, the Jurors were in court awaiting selection. Was and when the waiver was presented isn't in the courts records only in the respondent's counsel (Trans pg. 12 line 8-12) that they can at any time without notice decided to waiver after counsel walked out on appellant constitutional requirements must be had by the court on records.

ARGUMENTS

CONTRACT: LETTER AND LEASE

Because of (Preponderance of evidence of writ)

Because there was a contract between appellant and respondent (M.R. pgs. 35-39) there was an agreement. The contract was an obligation which arises from actual agreement of parties, manifested by words oral or written by conduct (Trans. Pg. 13, Line 1-13) (M.R. pgs. 44-45) Gaskins.V. Blue Cross Blue Shield of South Carolina 271 S.C. 101, 245 S.E. 2d 598 (1978), Moore V. Palmetto State Life Ins Co. 222, S.E. 2d 492, 73 S.E. 2d 688 (1952). If the agreement is manifested by words, the contract was void on the (30th) of August when respondent wrote the letter. Now to come to court with frivolous claim that Appellate had a dog and abandoned the property (M.R. pg. 1 Trans. Pg. 11 Line 13-14). It was the letter that broke the lease, no itemized statement, no writ of ejection as required by S.C. Code Ann 27-40-530 and 15-7-10, 27-40-530 Access (D). A landlord has no other right of access EXCEPT: 1. Pursuant to court order; 2. As permitted by 27-40-720 "(Noncompliance affecting health and safety, and 27-40-720)(a) the unexplained absence of a tenant from a dwelling unit for a period of fifteen days after default in the PAYMENT of rent must be construed as abandonment)". 3. When accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejection proceeding 4. Unless the tenant has abandoned or surrendered the premises. (Trans. Pg. 4 Line 5-25)

This is not a new finding it was clearly stated in the court of Common Pleas, there's no statement of damages (Trans. Pg. 10 Lines 8-14).

Arguments

ATTORNEY-CLIENT

(M.R. pg.1) The Magistrate Court in its return did not mention counsel but had all the repose's to (M.R. pg. 16-24) Attorney William Thrower, for the court to even ask such a question at a time like this at the hearing is unheard of the records of the hearing is silence on records of Attorney-Client privilege was not waived, a person attains the statue of a "client" when that person seeks legal advice by communicating in confidence with attorney for purpose of obtaining such advice. The case was clear under S.C. code Ann 27-40-530 (D). There was no court order or any evidence from the respondent to support it.

Once Attorney William Thrower came to court for the record on March 4, 2015 he was appellants counsel (M.R. p. 16-24). Floyd V. Kosko 329 S.E.2d.459 At 460 [3-5] An attorney who undertakes the representation of a client in a cause impliedly agrees to see case through to its termination and is not at liberty to abandon it (Trans pg. 5 line 10-24 and pg. 12 line 12-20). Counsel had (30) thirty days' notice, counsel should have asked for continuance, appellant had no access to the document which was sent to counsel. How could appellant argue a case he just got abandon under the sixth amendment right to counsel of your choice.

Once attorney William Thrower came to court on March 4, 2015. On the record for the appellant he was counsel. All paper's pertaining to the case he received this becomes attorney client, representation. Under the (6th) Sixth Constitution Amendment appellant was do counsel of his choice.

All through the magistrates return there is no record of counsel for appellant (M.R. pgs. 1-3) the return (M.R. pgs.16-24) everything else is silent and a silent record in any court is impermissible. The court record should have shown that counsel (William Thrower) was not.

Jury Dismissal and Waiver

The Appellant argue that (Scott) Respondent asked for a Jury Trial (SCRMC 22-3-230) March 3, 2015 in respondents answer on the date of trial the Magistrate Court claim that Jury Trial was waived after he obtained counsel. (M.R. pg.1) and (M.R. pgs. 14-15). There is nothing on the record of when he obtained counsel or waiver of rights by respondent (SCRMC 22-2-170 or pursuant to provision of 22-3-920) affirmative waiver by defendant of his right. Boykin V. Alabama 395U.S.238 (1969). Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which shows that counsel, but intelligently and understandingly rejected the offer anything less and not a waiver. All note send out was for a Jury Trial alone with the jurors list. The jurors were in court awaiting selection. The respondent did not and could not release Jury pool only the court has that authority to call jurors or release them. Chavous V. Brown 385S.E.2d206At209. Because the trial Judge makes the determination as to the impartiality of a select Jury, We hold his involvement in the selection process is substantial enough to be considered "State Action" under South Carolina Constitution Art. I §3 Equal Protection requires "All persons to be treated alike under like circumstances and conditions both in privileges conferred and liabilities imposed." "The function "of a Jury in South Carolina is to determine the facts from the evidence and apply those facts to the law as charged by the trial Judge. There is no underlying distinction between the function of a criminal Jury and a civil Jury. One is not more important than the other. Justice under the law for all parties is the goal of any trial. With these issues being such a novel issue in South Carolina the Appellant would asked that the court made a decision on relief, for the Appellant. The outcome of a new hearing would not see justice.

Before the trial of the issue the Judge stop the case by dismissing the juror's (M.R. pg. 27-33), and continued on with a non-jury trial. The United States Supreme Court has stated that (Peremptory Challenge) has always been consider a necessary part of trial by jury [and] one of the most important rights secured to the accused Swain V. Alabama, 380 u.s. 202, 219, 85 S. ct. 824, 835, 13 L. Ed. 2d 759 (1965) quoting Pointer V. United States, 151 u.s. 396, 408, 14 S. ct. 410, 414, 38L.Ed. 208 (1894). Peremptory Challenges in civil case in this state are provided by statue, section 14-7-1050 Code of Laws of South Carolina, 1976 as amended. The intent of the code section is to give litigants a fair and impartial jury. Chavas V. Brown 385 S.E.2d 206 because the trial Judge made that determination as to the impartiality of dismissing the jurors that were there to be selected it's substantial enough to be considered " State Action" subject to mandates of the fourteenth Amendment.

Trial Judge may excuse Jurors from sitting on particular case, but not to determine constitutional challenges to select a Jury.

APPEAL AND ERROR ARGUMENT

The sole fact the respondent in his answer (M.R. pgs. 14-15) that he would bring or produce the writ of ejection in court, only by what is said in the Magistrates return (M.R. pgs. 1-2). The letter from respondent (M.R. pgs. 44-45) Notice to vacate property sent to North Charleston Housing Authority and Appellant dated August 30, 2014 was in fact a broken contract by respondent the lease did not expired until November 1, 2014 at midnight. No reference to dog or abandonment. There was no evidence presented to the court only respondent sister in law who lives in respondent's trailer for free, unauthorized dog and sent written notice (M.R. pgs. 44-45) Trans. Pg. 11 Lines 1-19. There was no evidence presented only word of mouth S.C. Code Ann 27-40-30D. Access: A landlord has no other right of access except; Pursuant to court order; Trans. pg. 10 Line 25 pg. 11 Lines 1-2. There's no evidence Hiott V. Guaranty Nt. Ins. Co. 496 S.E. 29 At. 421 in a non-jury action at law the Judges findings of fact will not be disturbed on appeal unless they're without evidentiary support. They are numerous errors of law in this case. (M.R. pg. 3) S.C. Code Ann 27-40-410; any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due. The court said it, but there was no damages to be itemized. The "case" No Counsel (SCRM Rule 13 A) No evidence (SCRM Rule 15 B) No continuance (SCRM Rule 14). Appellant can neither be a Judge nor a Juror in his own case. Section 14-7-1050 code of law of South Carolina (1976) as amended. The intent to give litigants a fair and impartial Jury.

CONCLUSION

For all the above reasons this Judgment should be reversed, the circuit court erred in applying the test of equal protection and due process of the law, the records of the hearing, the Magistrates return, there is no evidence to support the findings of the court, counsel abandon the case without warning. All the rights guaranteed by the constitutions both South Carolina and United States were not protected, from the start of the hearing to the outcome no evidence was that clause of the constitution to the appellate no state..... Shall deny to any person within its jurisdiction equal protection of the law.

Is there evidence?

No Writ, No Waiver, No Jury, No Attorney

No, evidence

This Case Should be reverse

Respectfully submitted,



Sworn to before me
8 February 2016



My commission expires
1 October 2019

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J.C. Nicholson, Judge

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CERTIFICATE OF COUNSEL

The undersigned certified that this final brief complies with rule 211(b), SCACR.

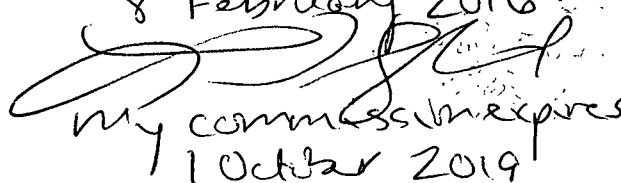


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Sworn to before me
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THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

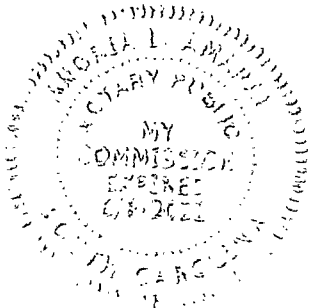
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Gernaris
Hamilton.....APPELLANT
Henry Scott Sr.....Respondent

PROOF OF SERVICE

I certify that I have served ~~the record on appeal and~~ the final briefs by mailing one copy each in the United States Postal Mail to Bruce A. Berlinsky, P.A, at One Carriage Lane Bldg. F Charleston, SC 29407.



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Charleston County, State of South Carolina
The foregoing instrument was acknowledged before me
this 9th day of February, 2016
by Garnaris Hamilton
[Signature] Notary Public
ANDRIA L. AMARAL
My Commission expires June 8, 2022