

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. JACKSON KIMBALL, Circuit Court Judge

Case No. 2015-CP-46-02223
Appellate Case No. 2015-002157

Paces River Apartments,

Respondent,

v.

Reginald Evans,

Appellant.

INITIAL BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND RESPONDENT IN DEFAULT?
2. DID THE CIRCUIT COURT ERR IN FAILING TO REMAND THE CASE BACK TO THE TRIAL COURT?
3. DID THE TRIAL COURT ERR IN NOT PROSECUTING THE RESPONDENT FOR PRACTICING LAW WITHOUT A LICENSE?

STATEMENT OF THE CASE

Appellant filed a Complaint on May 18, 2015 with the Catawba/Ebenezer Magistrate Court in York County, South Carolina requesting \$7,500 injunctive relief. The hearing on the case was scheduled for June 30, 2015. Respondent filed an Answer which was later struck from the record upon motion by Appellant as the Respondent was not represented by an attorney. The magistrate court dismissed the Complaint for failing to provide facts to support a basis on which relief could be granted.

Appellant filed a Notice of Appeal of the magistrate court case to the York County Court of Common Pleas on July 24, 2015. The appeal hearing was scheduled to be heard at 2:00pm on September 17, 2015 at the York County Equity Court Building. At the appeal hearing, Appellant failed to appear when the case was called, and the magistrate court's dismissal was affirmed and Appellant's appeal was dismissed with prejudice.

ARGUMENTS

- I. BECAUSE APPELLANT FAILED TO APPEAR TO ARGUE ANY ERRORS OF LAW OR FACT WHEN APPELLANT'S CASE WAS CALLED, THERE WAS NO ISSUE OF ERROR AS TO A DEFAULT JUDGMENT.

Appellant's Statement of Issues on Appeal, the first issue asks if the Trial Court erred in failing to find Defendant in Default. Then, in the Statement of the Case, Appellant states that

Respondent was held in default. In the argument, no case law or facts are put forth. The argument is only that the Trial Court should have enforced the default order. In the Circuit Court's Order Dismissing Plaintiff's Appeal from Trial Court and Dismissing Plaintiff's Motion for Default Judgment with Prejudice, the presiding judge found that "the appeal was without merit." The Circuit Court further references the magistrate's Return of Civil Appeal and found that "there were no factual issues to be resolved. Rather, Appellant simply failed to offer factual evidence in support of his claim that Respondent violated three specific statutes." (Order Dismissing Plaintiff's Appeal from Trial Court and Dismissing Plaintiff's Motion for Default Judgment with Prejudice, p. 1). Furthermore, the Magistrate's Return of Civil Appeal indicates that Respondent's Answer was struck upon motion of Appellant and found the Respondent in Default. (Return of Civil Appeal p. 3).

II. BECAUSE APPELLANT FAILED TO APPEAR WHEN APPELLANT'S CASE WAS CALLED, THE APPEAL WAS PROPERLY AFFIRMED AND DISMISSED.

In Appellant's brief, Appellant fails to put forth an argument as to his Statement of Issue number 2 which asks if the court erred in failing to remand the case back to the trial court. Since Appellant does not put forth any argument as to this statement of issue, Respondent requests that the issue be dismissed.

S.C. Code Ann. § 18-7-170 (1985) sets out the standard of review for magistrate court appeals to the circuit court:

"Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

"A circuit court sitting in an appellate capacity in a civil case from the magistrate has the ability

to make a determination in the same manner as the circuit court in trials without a jury and to reverse for errors of fact even though the circuit court did not have the opportunity to observe witness demeanor.” *Vacation Time of Hilton Head Island, Inc., v. Kiwi Corp.*, 280 S.C. 232, 234, 312 S.E.2d20, 21 (Ct.App.1984). Furthermore, “this court presumes an affirmance by a circuit court of a magistrate's judgment was made upon the merits when the testimony is sufficient to sustain the magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law.” *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct.App.2001). “Unless we find an error of law, the appellate court will affirm the circuit court's holding if there are any facts supporting the decision.” *Hadfield v. Gilchrist*, 343 S.C. 88, 94, 538 S.E.2d 268, 271 (Ct.App.2000).

In our instant case, Appellant filed an appeal of the magistrate court case to the York County Court of Common Pleas. The appeal hearing was scheduled to be heard at 2:00pm on September 17, 2015 at the York County Equity Court Building. At the appeal hearing, the case was called and Appellant failed to appear for the hearing and the trial court's ruling was affirmed and Appellant's appeal was dismissed with prejudice as evidenced by the Circuit Court's Form 4 Order and Order Dismissing Plaintiff's Appeal. (Form 4 Order, p. 1) (Order Dismissing Plaintiff's Appeal from Trial Court and Dismissing Plaintiff's Motion for Default Judgment with Prejudice, p. 1). Furthermore, the Circuit Court found that “the appeal was without merit” and “there were no factual issues to be resolved. Rather, Appellant simply failed to offer factual evidence in support of his claim that Respondent violated three specific statutes.” (Order Dismissing Plaintiff's Appeal from Trial Court and Dismissing Plaintiff's Motion for Default Judgment with Prejudice, p. 1).

III. BECAUSE THE PRACTICE OF LAW WITHOUT A LICENSE IS A COLLATERAL MATTER, THE PROSECUTING OF OR FAILURE TO PROSECUTE IS A COLLATERAL ISSUE NOT RELEVANT TO THE MERITS OF THE CASE.

In *The Roof Doctor, Inc. v. Birchwood Holdings, Ltd.*, 366 S.C. 637, 622 S.E.2d 746 (Ct.App.2005), an employee of Birchwood appeared in court on behalf of Birchwood after an answer and counterclaim was filed, and counsel for Birchwood sent a letter authorizing the individual to appear in court. *Id.*, 366 S.C. 637, 638 622 S.E.2d 746, 747 (Ct.App.2005). Judgment was subsequently rendered in favor of Roof Doctor but the judgment was reduced because of Birchwood's counterclaim. *Id.*, 366 S.C. 637, 638 622 S.E.2d 746, 747 (Ct.App.2005). On appeal, "Roof Doctor argued that any actions by Birchwood at the trial in magistrate's court, as allegedly unauthorized, were invalid." *Id.*, 366 S.C. 637, 640, 622 S.E.2d 746, 748 (Ct.App.2005). The Circuit Court affirmed the magistrates ruling and on appeal to the South Carolina Court of Appeals, the Court found that "[w]e agree with the circuit court that any unauthorized practice of law before the magistrate was a collateral matter not entitling Roof Doctor to reversal on appeal.." *Id.*, 366 S.C. 637, 643, 622 S.E.2d 746, 750 (Ct.App.2005).

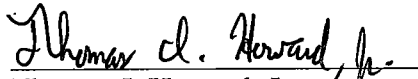
Appellant argues that the magistrate court erred in not prosecuting Respondent because Respondent filed an Answer and appeared in court without authorization. The Magistrate's Return of Civil Appeal indicates that Respondent's Answer was struck upon motion of Appellant and found the Respondent in Default. (Return of Civil Appeal p. 3). Furthermore, the matter of prosecuting a party for practicing law without a license is a collateral matter. Therefore, Appellant's argument is not relevant to the present appeal and is without merit.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

August 15, 2016

Respectfully submitted,



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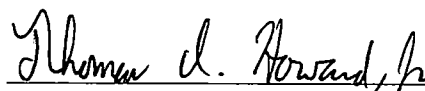
Reginald Evans,

Appellant

CERTIFICATE OF SERVICE

I certify that I have served the **Initial Brief of Respondent** on Reginald Evans by depositing a copy of it in the United States Mail, Postage Prepaid, on **August 15, 2016**, addressed to him at:

Reginald Evans
1200 Broad Street
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Sumter, SC 29150



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Via Facsimile & U.S. Mail

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Re: **Reginald Evans v. Paces River Apartments**
Appellate Case No: 2015-002157
Our File No.: 30113-00006

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Dear Ms. Kitchings:

Enclosed are the original and one copy of the Initial Brief of Respondent and a Certificate of Service and the original and one copy of Respondent's Designation of Matter to be Included in the Record on Appeal and a Certificate of Service. Please file the same and return the clocked-in copies to me in the enclosed envelope.

By copy of this letter, we are hereby serving the same upon the Appellant, Reginald Evans.

Thank you for your assistance in this matter. Please do not hesitate to contact me should you have any questions or need additional information.

With kindest regards, I am,

Sincerely yours,

BROWNLEE WHITLOW PRAET & FILE, PLLC



Thomas I. Howard, Jr.

TIH,JR./jlw

cc: Reginald Evans (via U.S. Mail)

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