

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 24 2016
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. NICHOLSON CIRCUIT JUDGE

Case no. 2015-002039

Garnaris Hamilton.....Appellant,

v.

Henry Scott, Sr.....Respondent.

FINAL BRIEF OF RESPONDENT



BRUCE A. BERLINSKY, PA
Bruce A. Berlinsky, Esquire
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

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II. THE SMALL CLAIMS COURT JUDGE DID NOT HOLD A JURY TRIAL AS NEITHER PARTY HAD REQUESTED ONE.

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STATEMENT OF ISSUES ON APPEAL

1. THE SMALL CLAIMS COURT JUDGE HEARD THE TESTIMONY OF THE CASE, AND AS THE TRIER OF FACT, PROPERLY RULED PLAINTIFF FAILED TO SATISFY HIS CASE.
2. DID THE TRIAL JUDGE ERR IN NOT HOLDING A JURY TRIAL?
3. DID THE TRIAL JUDGE ERR IN NOT ALLOWING APPELLANT A LAWYER?

STATEMENT OF THE CASE

Appellant Ganaris Hamilton initially brought this lawsuit against Respondent Henry Scott, Sr. alleging violations of SC Residential Landlord Tenant Act claiming ouster and deposit.

On May 27, 2015, a non-jury trial was held before Honorable James Turner, Charleston County Small Claims Court Judge. Judge Turner ruled by Order dated June 1, 2015, that there was no ouster and Appellant was not entitled to a return of his security deposit.

On August 14, 2015, Appellant appealed the Order of Judge Turner to the Circuit Court. The appeal was denied by Order of Honorable J.C. Nicholson dated August 18, 2015. Thereafter, Appellant filed Notice of Appeal on Respondent.

ARGUMENTS

- I. THE SMALL CLAIMS COURT JUDGE HEARD THE TESTIMONY OF THE CASE, AND AS THE TRIER OF FACT, PROPERLY RULED DEFENDANT FAILED TO SATISFY HIS CASE.

This case was an action at law claiming violation of the SC Residential Landlord Tenant Act on the basis of wrongful ouster and wrongful withholding of Appellant's security deposit.

In an action at law, on appeal of a case tried without a jury, the findings of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judges findings. The Appellate Court must then determine whether there is any

evidence which reasonably supports the factual findings of the judge. The Appellate Court is not at liberty to decide the case on the basis of its view as to preponderance Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (SC 1976).

Further, the credibility of testimony is a matter for the finder of fact to judge. The Court gives broad discretion to the judge who has observed the witnesses and is in a better position to judge their demeanor and veracity SC DSS v. Forrester, 282 S.C. 512, 320 S.E.2d 39 (SC App 1984); Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (SC App 2011).

In the case at bar, the lower court found that Appellant was not ousted but was requested to leave for being in default of the lease, namely, possession of an unauthorized pet on the premises (SR pg. 3, para 19 and pg. 7, para 4). No formal court action was taken by Respondent and based on the notice of default, Appellant voluntarily vacated the premises without seeking to protect his leasehold interest. It should be noted that the lease was set to expire within thirty days (SR pg. 1, first para).

Witnesses testified that Appellant had removed several truckloads of his possessions and Appellant appeared to have completely vacated the property. The witnesses also testified that Appellant was on the property and appeared to have taken everything he wanted. What the witness observed left was trash and she did not see any items that Appellant claimed was missing (SR pg. 7, paras 5 and 6).

The party asserting claims has the burden of proof. In this case, the burden was not met in Appellant failed to prove that Respondent forced him to leave the premises through “ouster” and failed to prove the Respondent wrongfully withheld or dispossessed him of any property. Additionally, Respondent proved damages as a result of the unauthorized pet on the

premises entitling Respondent to withhold Appellants security deposit.

II. DID THE TRIAL JUDGE ERR IN NOT HOLDING A JURY TRIAL?

Appellant filed his initial action in Charleston County Small Claims Court pro se. at no time did he request a jury trial. Respondent had initially appeared pro se and requested a jury trial but that was waived/withdrawn after he obtained counsel. Appellant went forward with his case on the day of trial, having never requested a jury trial and freely presenting his case.

It is well settled that issues not raised in the lower court cannot be raised for the first time at the appellate level.

III. DID THE TRIAL JUDGE ERR IN NOT ALLOWING APPELLANT A LAWYER?

Appellant contends he was not given the opportunity to have a lawyer as his lawyer withdrew as counsel on the day of trial. While not in the record, Appellant was given the opportunity to obtain new counsel. Despite that opportunity, Appellant moved forward at trial and presented his case never making a motion to continue trial to obtain services of new counsel.

Again, issues not raised in the lower court cannot be raised for the first time on appeal. Further, Appellant's argument that he is entitled to an attorney in a civil matter on Constitutional grounds fails as that right is only afforded defendant in a criminal proceeding.

CONCLUSION

In an action at law, tried by a judge alone, the findings of the trial judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). Should the Court of Appeals determine this to be an equitable action, the Small Claims Judge properly denied Appellant's claims as Appellant fails to prove a violation of the SC Residential Landlord Tenant act on the basis of ouster and improper withholding of security deposit and damages. For the aforementioned reasons stated, the Court should affirm the judgment of the lower courts and allow for such further relief deemed appropriate.

Respectfully submitted,



BRUCE A. BERLINSKY, PA
Bruce A. Berlinsky, Esquire
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

March 22, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. NICHOLSON CIRCUIT JUDGE

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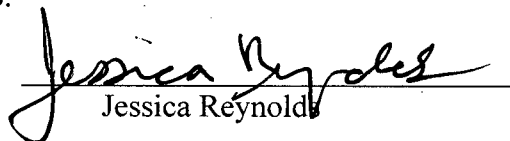
Henry Scott, Sr.....Respondent.

PROOF OF SERVICE

I, Jessica Reynolds, legal assistant to Bruce A. Berlinsky, Esquire, do hereby certify that I have this date mailed a true and correct copy of the foregoing and **FINAL BRIEF OF RESPONDENT**, postage prepaid, and deposited with the United States Postal Service as follows:

Garnaris Hamilton
4453 Jenwood St.
Ladson, SC 29456

Dated this 23rd day of March, 2016.



Jessica Reynolds

BRUCE A. BERLINSKY, P.A.
Attorney at Law

Mailing Address:
PO Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
Bruce@berlinskylawfirm.com

March 23, 2016

VIA FED EX
SC Court of Appeals
Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate St.
Columbia, SC 29201

RECEIVED

MAR 24 2016

SC Court of Appeals

Re: Garnaris Hamilton v. Henry Scott, Sr.
Appellate Case No.: 2015-002039

Dear Clerk Kitchings:

In connection with the above referenced matter, enclosed please find the following:

1. Original and 15 copies of Supplemental Record on Appeal
2. Original and 15 copies of Final Brief of Respondent
3. Proof of Service of Supplemental Record on Appeal
4. Proof of Service of Final Brief of Respondent

By copy of this letter, I am serving copies of the foregoing on the Appellant.

If you need anything further, please do not hesitate to contact me.

With kind regards, I am

Sincerely,


Bruce A. Berlinsky

BAB/jlr
Enclosures

CC: Garnaris Hamilton
4453 Jenwood Street
Ladson, SC 29456