

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Thomas L. Hughston, Circuit Court Judge

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DEC 19 2016

**SC Court of Appeals**

Case No. 2015-CP-18-1308

Adrian Smalls,

Respondent,

v.

Brenda Lee Barnett,

Appellant.

**INITIAL BRIEF OF RESPONDENT**

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December 15, 2016

TABLE OF CONTENTS

Table of Authorities..... ii

Statement of the Case..... 1

Arguments

1. THE MAGISTRATE WAS NOT REQUIRED TO SCHEDULE A HEARING ON APPELLANT’S MOTION FOR RECONSIDERATION..... 2

2. THE CIRCUIT COURT DID NOT ERR IN HEARING APPELLANT’S APPEAL WITHOUT A RULING BY THE MAGISTRATE ON THE MOTION FOR RECONSIDERATION..... 2

3. THE MAGISTRATE HAD SUBJECT MATTER JURISDICTION OVER THIS MATTER PURSUANT TO S.C. CODE § 22-3-1110..... 4

Conclusion..... 4

TABLE OF AUTHORITIES

CASES

Pollard v. County of Florence, 444 S.E.2d 534, 536 (S.C. Ct. App 1994)..... 2

Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 4,  
518 S.E.2d 56, 58 (Ct.App.1999)..... 3

Collins Music Co., Inc. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct.App. 2002)..... 3

Pelican Bldg. Ctrs. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993)..... 3

STATUTES

S.C. Code Ann. § 22-3-20 (2007)..... 4

S.C. Code. Ann. § 22-3-1110 (2007)..... 4

S.C. Code Ann. § 22-3-1120 (2007)..... 4

S.C. Code Ann. § 22-3-1140 (2007)..... 4

OTHER AUTHORITIES

James F. Flanagan South Carolina Civil Procedure 475 (2d ed.1996)..... 3

Charles E. Carpenter, Jr. *Preserving Error for Appeal*,  
South Carolina Lawyer, 15, 18 (Mar./Apr. 1995)..... 3

## STATEMENT OF THE CASE

Respondent is the owner of the real property located at 22 Stratton Drive, North Charleston, SC 29420 (the "Property") by way of a deed dated July 8, 2014, which is recorded in the Dorchester County RMC Office at Book 9346 Page 249-A. Appellant sold the Property to Respondent, and was allowed to occupy the Property by verbal agreement of the parties for a period of time in exchange for rent payments of \$500 per month. Thereafter, Appellant stopped paying rent. On November 7, 2014 Respondent filed an Application for Ejectment and Rule to Vacate or Show Cause against Appellant. On December 1, 2014 the eviction was granted by Judge Cook; however, the parties reached a settlement and a Writ of Ejectment was never served. On February 18, 2015 Respondent again filed an Application for Ejectment and Rule to Vacate or Show Cause. On March 6, 2015 the eviction was dismissed by Judge Johnson for failure to establish a landlord/tenant relationship.

On June 18, 2015 Respondent filed the present action styled as an Application for Notice to Quit Premises (Trespass). Personal service was completed June 22, 2015 at 8:35 a.m. A motion to request hearing was due on June 29, 2015 which was never made. Appellant's attorney, Louis S. Moore, faxed a Motion to Dismiss and Special Answer on June 30, 2015. The Motion for hearing was denied since it was not timely filed. On June 30, 2015 Appellant's attorney filed a Motion for Reconsideration. Before the Motion for Reconsideration could be heard, Appellant's attorney filed an Appeal on June 30, 2015 at 5:20 p.m. and the Magistrate stayed the Motion for Reconsideration and Writ of Execution.

Judge Hughston held a hearing on Appellant's appeal to the Circuit Court on December 15, 2015, and issued a Judgment on December 23, 2015 affirming the decision of the Magistrate. Appellant subsequently filed a notice of appeal to the South Carolina Court of Appeals with the

Dorchester County Clerk of Court on January 4, 2016.

## ARGUMENT

### **I. THE MAGISTRATE WAS NOT REQUIRED TO SCHEDULE A HEARING ON APPELLANT'S MOTION FOR RECONSIDERATION.**

In her brief, Appellant argues that the Magistrate was required to set a hearing on her Motion for Reconsideration. (Appellant's Brief at 1-3). However, the South Carolina Court of Appeals has ruled that it is not reversible error for a lower court to deny a motion to alter or amend a judgment under Rule 59(e) SCRCP without conducting a hearing. See Pollard v. County of Florence, 444 S.E.2d 534, 536 (S.C. Ct. App 1994). "Under Rule 59(f), SCRCP, a Rule 59(e) motion 'may in the discretion of the court be determined on the briefs filed by the parties without oral argument.'" Id. (quoting Rule 59(f), SCRCP).

In Pollard the appellant filed a motion to alter or amend the judgment, and the written motion set forth arguments on the issues raised, and gave citations to legal authority. Id. The Pollard court determined that "[a]lthough Pollard did not style her notice of motion and motion as a 'brief,' it nevertheless constitutes one in every sense of the word". Id. As such, the Pollard court ruled that the lower court did not abuse its discretion in deciding the appellant's Rule 59(e) motion.

Here, the Appellant filed a four (4) page Motion for Reconsideration which cited court rules, case law, statutes, and which contained legal arguments. (Motion for Reconsideration at 1-4). Under Rule 59(f), SCRCP and the holding in Pollard, the Magistrate was not required to set a hearing on Appellant's motion because Appellant's position was fully briefed within the written motion.

### **II. THE CIRCUIT COURT DID NOT ERR IN HEARING APPELLANT'S APPEAL WITHOUT A RULING BY THE MAGISTRATE ON THE MOTION FOR RECONSIDERATION.**

Appellant argues in her brief that the Circuit Court erred in hearing her appeal prior to a definitive ruling on her Motion for Reconsideration because Rule 59(e) stays the time for an appeal until entry of an order granting or denying such a motion. This argument fails for two reasons: (1) the trial court is not required to specifically rule on the issue raised in the motion if the issue has been properly raised by a Rule 59(e) motion; and (2) the stay discussed in Rule 59(e) works to extend the time to file a notice of appeal, but does not preclude a hearing on that appeal when a party files the appeal prior to the issuance of a ruling.

"Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised." Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct.App.1999) (quoting James F. Flanagan, *South Carolina Civil Procedure* 475 (2d ed.1996)); see also Collins Music Co., Inc. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct.App. 2002) (quoting Coward Hund).

"One commentator noted: 'Lawyers cannot force a trial judge to address a disputed issue.' Moreover, the Supreme Court identifies two ways to preserve the issue: 'a ruling by the trial judge or a posttrial motion.' The language implies that a properly requested ruling under Rule 59 is sufficient without a specific judicial decision on the matter."

*South Carolina Civil Procedure* 475-76 (2nd ed.1996) (footnotes omitted) (quoting Charles E. Carpenter, Jr. *Preserving Error for Appeal*, *South Carolina Lawyer*, 15, 18 (Mar./Apr. 1995) and Pelican Bldg. Ctrs. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993)).

Here, Appellant filed a timely motion for reconsideration and then immediately filed a notice of appeal without taking advantage of the stay of time to do so contained in Rule 59, SCRC. Pursuant to the authorities cited above, the Magistrate was not required to issue a specific ruling on the matters raised in Appellant's Motion for Reconsideration, and the Circuit Court did not err

in hearing Appellant's appeal without a ruling from the Magistrate because the issues were properly raised and preserved by Appellant's Motion for Reconsideration.

**III. THE MAGISTRATE HAD SUBJECT MATTER JURISDICTION OVER THIS MATTER PURSUANT TO S.C. CODE § 22-3-1110.**

Section 22-3-20 of the South Carolina Code (2007) provides, "No magistrate shall have cognizance of a civil action . . . [w]hen the title to real property shall come in question, except as provided in Article 11 of this chapter." S.C. Code Ann. § 22-3-20. Article 11 provides, "When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may . . . set forth in his answer any matter showing that such title will come in question." S.C. Code. Ann. § 22-3-1110 (2007).

At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

S.C. Code Ann. § 22-3-1120 (2007).

"If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause . . . and the defendant shall be precluded, in his defense, from drawing the title in question." S.C. Code Ann. § 22-3-1140 (2007).

Here, the Magistrate had subject matter jurisdiction over the action. Barnett did not comply with the statutory provisions relating to the Magistrate's subject matter jurisdiction because she did not execute a written undertaking executed by a surety, and nothing in the record shows otherwise.

**CONCLUSION**

For the reasons stated herein, this Court should affirm the judgment of the Circuit Court.

Respectfully Submitted,



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