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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Gernaris Hamilton.....Appellant

V.

Henry Scott, Sr.Respondent

Appellate Case No. 2015-002039

Appeal from Charleston County

J. C. Nicholson, Jr., Circuit Court Judge

RULE 221 REHEARING

UNDER

SCACR 240

Gernaris Hamilton
4453 Jenwood Street
Ladson, S.C., 29456
(843)718-8952

Bruce A. Berlinsky, P.A.
One Carriage Ln. Bldg. F
Charleston, SC 29407
(843)852-2202

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ISSUES MISAPPRENDED

1. Rule 52(A) SCRPC
2. Rule 59 (E) SCRPC
3. S.C. Code ANN 27-40-530 (D) (4)
4. S.C. Code of LAW 18-7-170
5. RECORDS ON APPEAL

PETITION FOR REHEARING

Appellant move's before the court on this petition under SCACR Rule 221 and Rule 240.a petition that the court have overlooked the records on appeal from the lower court in reference to "ISSUES being raise for the first time on appeal." "PRESERVATION "

Facts

The records on appeal pages 2, 3, and 4 it is very clear that appellant filed in court after being denied a Rule 59(e) in compliance with SCRCF. The court did not file a form order 52 (a) as required in a non-jury trial. (See records on appeal transcript pages 14 – lines 17-25 and page 15 lines 1-8) The court did not file the SCRCF Rule 52(a) finding by the court but in fact ask the attorney for the Respondent to write the SCRCF Rule 52 (a) for him (see Records on appeal transcript page 14 line 23-24.) "Due Process protection afforded by the fourteen amendment and South Carolina Constitution "To preserved the Issue" and Equal Protection. South Carolina Constitution Art. 13 "Requires "All PERSON" to be treated alike circumstances and conditions both in privileges conferred and liabilities imposed. By the courts Action toward the Appellant its clear the court was not going to give the appellant facts finding or conclusion of Law.

Issues Over Looked

SCRCF Rule52 (A)

In the Matter of the Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002). The court held in Luckabaugh that the circuit court erred in failing to set forth its findings-and violating Rule 52 (a), SCRCF-in an initial merits hearing under the Act. Luckabaugh recognizes the obvious-meaningful appellate review is more readily obtained when we are presented with a clear presentation of the basis for the circuit court's findings:

Trail courts, sitting without juries in an action at law, write their findings specially and separately:

To allow a reviewing court to determine from the record whether the judgement-and the legal conclusions which underlie it-represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.

Appellant contends the lower court erred because it failed to substantially comply with Rule 52(a), SCRCF. When reviewing an action at law, on appeal of a case tried without a jury, this Court will not disturb the judge's finding of fact "unless found to be without evidence which reasonably supports the judge's findings." Townes Associates, Ltd. V. City of Greenville 266

S.C. 81, 86, 221 S.E.2d. 773, 775 (1976). The South Carolina Rules of Civil Procedure require “[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts special and state separately its conclusions of law thereon.” Rule 52(a), SCRCP. The rule is directorial in nature so “where a trial court substantially complies with Rule (52) and adequately states the basis for the result it reaches.

SCRCP Rule 59(E)

Appellant filed a Motion to Alter or AMEND. Facts finding and Conclusion of law August 26, 2015. Chiappetta V. ORR, 359, S.E. 530 (S.C.Ct.App.1987). Jackson V speed, 326 S.C. 289.486 S.E. 2d 750 (1991) holding issue not presented for appellant review where appellant failed to object to the cost issue either at the hearing or in their motion to alter or amend the order. Noisett V. Ismail 304. S.C. 56.403 SE 2d.122 (1991) holding that where a trial court does not explicitly rule on an argument raised and appellant makes no Rule 59 (e) motion to obtain a ruling the appellate court may not address the issue. (Jackson V. Speed, Suprai.. Noisette V Ismail. This issue was not presented for appellate review because it was not ruled upon by the trial court and no Rule 59 € SCRAP motion made.

Inside the Records on appeal

1. Page (4) Denial of the appeal
2. Page (3) Rule 59€ Motion to alter or amend order
3. Page (2) Denying Motion to alter or amend

Transcript

1. Page 14. Line 25 Appellant asked the court for a form order
2. Page 14 Line 23 and 24 the court asked Respondent to write the SCRCP Rule 52 (a) Findings by the Court.
3. A look at the Magistrate’s file (page 14- line 8-9)

ABANDONMENT

Page 25 Charleston water system letter of service

Page 42 – Amendment to confirm North Charleston Housing Authority letter. HCV Program.

I

As to S.C. Code Ann & 27-40-530 (d) (4) 2007 tenant could not abandoned or surrendered premises. (See Records on appeal) “AMENDMENT TO COT CONFORM TO THE EVIDENCE ON MOTION TO DISMISS. Page (42). If Appellant abandoned premise’s a termination letter from North Charleston Housing would have been sent an appellant would have been terminated from the Housing Program. The Charleston water

system letter stating that service started November 3, 2013 until November 4, 2014 page (25) see Records on Appeal (Amendment Pleading and Exhibits). *page 42*

As to what the opinion of the court said if “the tenant has abandoned or surrendered the premises

This was before (raised) the Court but not ruled on all the facts are in the Records on appeal.

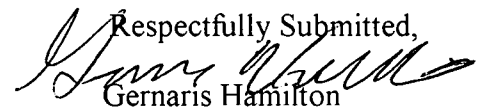
Appellant respectfully submits this Petition that the lower court erred in S.C.R.C.P Rule’s 52(a) and 59(e). No findings of fact or conclusion of law after the judgment of the court or on the motion filed.

APPEAL ERROR

S.C. Code Ann & 18-7-170: The evidence to support the finding of the court. The standard of review to be applied by the circuit court when reviewing a magistrate judgement:

The judge general ruling is insufficient on the issue for appellant review. Appellant moves to alter and amend judgement with SCRCP Rule 59 € after the court erred “in asking” Respondent to write the order of the court. (Records on Appeal transcript page 14 Line 23-24).

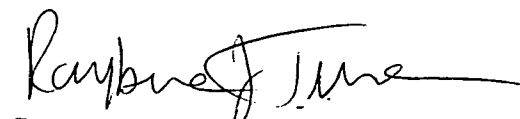
Appellant moves before the appellant court that the Records on Appeal state’s the fact that the lower court ERRED and this case should be ‘Reversed” SCRCP Rule 59 (e) was filed.

Respectfully Submitted,

Gernaris Hamilton

4453 Jenwood Street
Ladson, S.C., 29456
(843)718-8952

Bruce A. Berlinsky, P.A.
One Carriage Ln. Bldg. F
Charleston, SC 29407
(843)852-2202
Respondent

SWORN TO BEFORE ME
THIS THE 10th DAY OF
February, 2017


RAYBURNE J. TURNER
My Commission Expires:
August 21, 2024

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

Gernaris Hamilton, Appellant,

V.

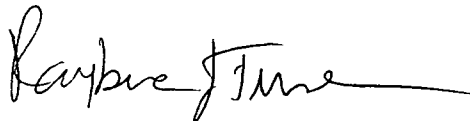
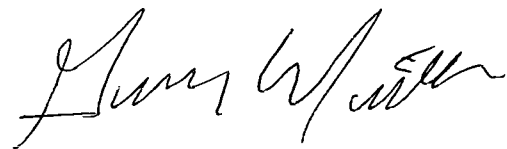
Henry Scott, Sr. Respondent.

Appellate Case No. 2015-002039

CERTIFICATION OF SERVICE

I have serve this Rehearing Petition to Burce A. Berlinsky, P.A. at One Carriage Lane, Bldg. F, Charleston, S.C. 29407 by U.S. Mail.

SWORN TO BEFORE ME
THIS THE 16th DAY OF
February, 2017



RAYBURNE J. TURNER
My Commission Expires:
August 21, 2024

LETTER TO THE APPELLATE COURT CLERK: FILING FEE, FOR PETITION FOR REHEARING UNDR SCACR 221 AND 240

RE: Gernaris Hamilton Appellant, Bruce A. Berlinsky, P.A. for Respondent case # 2015-002039

Dear Ms. Kitchings,

Enclosed is the filing fee of \$25.00.

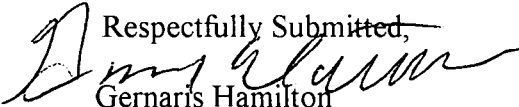
Enclosed are the following

1. Proof of Service Resent to Bruce A. Berlinsky, P.A.
2. The Original and six copies
3. Money Order for filing \$25.00

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SC Court of Appeals

Respectfully Submitted,

Gernaris Hamilton

4453 Jenwood Street

Ladson, S.C., 29456

(843)718-8952

Bruce A. Berlinsky, P.A.

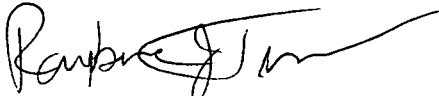
One Carriage Ln. Bldg. F

Charleston, SC 29407

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Respondent

SWORN TO BEFORE ME
THIS THE 10th DAY OF
February, 2017



RAYBURNE J. TURNER

My Commission Expires:

August 21, 2024



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Time Accepted <input type="checkbox"/> AM <input type="checkbox"/> PM	10:30 AM Delivery Fee \$	Return Receipt Fee \$	Live Animal Transportation Fee \$
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