

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
Appellate Case #2016-002177

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Donald B. Hocker, Circuit Court Judge  
Case No. 2016-CP-32-1968

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Bob Rice Realty, Inc., Respondent,

v.

Gerald J. Nagy, Appellant.

RECEIVED

APR 24 2017

SC Court of Appeals

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**MOTION TO DISMISS APPEAL OF  
CIRCUIT COURT APPELLATE ORDER  
ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854**

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Attorney for the Respondent

April 24, 2017  
Columbia, SC

## PROCEDURAL POSTURE

On June 2, 2016, the Honorable Albert J. Dooley (Magistrate Judge) issued an order evicting the Appellant from Respondent's property. On that same date, Appellant filed a notice of intent to appeal the eviction to the Court of Common Pleas. The appeal was heard on September 20, 2016, by the Honorable Donald B. Hocker.<sup>1</sup> Judge Hocker's ruling states, "The Magistrate's ruling is reversed, *to the extent of allowing the Appellant to remain on the property until December 31, 2016.*" Judge Hocker in effect stayed the execution of the eviction until December 31, 2016, and also awarded Appellant \$150.00 in "court costs." (Order attached as Exhibit A.) On October 24, 2016, Appellant filed a Notice of Appeal of Judge Hocker's "monetary damage award."

## STANDARD OF REVIEW

South Carolina Code § 18-7-170 articulates the standard of review to be applied by the circuit court in an appeal of a magistrate's judgment:

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. The circuit court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all of the parties and for errors of law or fact.

*Bowers v. Thomas*, 644 S.E.2d 751, 373 S.C. 240 (Ct. App. 2007). See also, *Hadfield v. Gilchrist*, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000). While the circuit court maintains a broad scope of review, the Court of Appeals' standard of review is more limited. *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984). "In ejectment proceedings first heard in magistrate's court, the Court of Appeals is without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence." *Vacation*

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<sup>1</sup> Respondent did not appear at the appellate hearing in Circuit Court. Appellate appeared *pro se*.

*Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984). “Unless we find an error of law, we will affirm the judge’s holding if there are any facts supporting his decision.” *Hadfield*, 343 S.C. at 94, 538 S.E.2d at 271. The Court of Appeals retains *de novo* review of whether the facts show the circuit court’s decision was controlled or affected by errors of law. *Hadfield* at 92-93, 538 S.E.2d 268, 53 S.E.2d at 270.

### LEGAL ANALYSIS

Respondent moves to dismiss this appeal on the following grounds:

Appellant failed to file a Motion to Alter or Amend the Judgment or for Reconsideration with the Circuit Court pursuant to Rule 59(e), SCRPC.

“An issue must have been raised to and ruled upon by the trial court in order to be preserved for appellate review.” *BMW of North America, LLC v. Complete Auto Recon Services, Inc.*, 399 S.C. 444, 454-455, 731 S.E.2d 902, 908 (Ct. App. 2012). “A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004). “When a court makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the court to rule on the issue in order to preserve it for appeal.” *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005).

The Circuit Court awarded Appellant \$150 in court costs. The Circuit Court did not rule on Appellant’s alleged damages and Appellant did not file a Rule 59(e), SCRPC motion with the circuit court to obtain a ruling. “When a court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRPC, motion to obtain a ruling, the appellate court may not address the issue.” *Smith v. NCCI, Inc.*, 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct.

App. 2006); Because the Circuit Court did not address Appellant's damages and the Appellant failed to file a Rule 59(e) Motion to obtain a ruling, the Appellate Court should not address the issue.

### CONCLUSION

The Respondent respectfully requests this appeal be dismissed.

Respectfully Submitted,

  
Cynthia K. Mason  
Cynthia K. Mason

# EXHIBIT A

State of South Carolina

FILED

Court of General Sessions

County of

Lexington

2016 SEP 21

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Court of Common Pleas

Gerald J. Nagy

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

ORIGINAL

vs. Appellant

Bench Order

Bob Rice Realty

Case#:

2016-cl-32-1968

Respondent

THIS IS A Magistrate's Appeal.  
THE Appellant Appeared pro se.  
THE Respondent did not appear  
through representative or counsel.

IT IS ORDERED that the  
Magistrate's ruling is reversed  
to the extent of allowing the  
Appellant to remain on the  
property until December 31, 2016  
in accordance with the subject  
lease. Judgment for court  
costs of \$150 is allowed in favor  
of the Appellant against the  
Respondent.

So Ordered

Carrigg

SC

9-20-16

Donald B. Hocker  
Circuit Court Judge

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Bob Rice Realty, Inc., Respondent,

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Gerald J. Nagy, Appellant.

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**PROOF OF SERVICE**

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I certify that I have served Respondent's request for an Motion to Dismiss on the following by depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2017, addressed as follows and via email to the following:

Gerald J. Nagy  
300 Timber Ridge Rd.  
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[geraldjnagy@magyarmail.com](mailto:geraldjnagy@magyarmail.com)



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Attorney for the Respondent

April 24, 2017