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

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2016-CP-32-1968
ORIGINAL MAGISTRATES DOCKET 2016-CV-32-1060854

Bob Rice Realty, Inc., Respondent,

v.

Gerald J. Nagy, Appellant.

RESPONDENT'S FINAL BRIEF

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2. Did the Circuit Court err by considering evidence not admitted at the trial court level?

3. Did the Circuit Court err in denying Appellant's request for damages?

4. Did the Circuit Court err by refusing to hearing arguments on retaliatory conduct and denying damages when this issue was not raised to or ruled upon by the Magistrate Court?

STATEMENT OF THE CASE

This action arises from a Landlord-Tenant dispute. Appellant had been renting a residential property from Bob Rice Realty, Inc. (Respondent) without a lease since 1982. In October 2013, the Respondent attempted to effectuate a lease with the Appellant for the term of January 1, 2014 through December 31, 2014, by sending the Appellant an unsigned lease for his review. Although the parties disagree about how or why the lease was not signed by both parties, it is undisputed that the lease was never formalized with both parties' signatures. (R. pp. 13, 35-36)

Respondent served Appellant with a thirty day notice to vacate on April 4th, 2016. When the Appellant failed to vacate the property, Respondent filed this action, a Rule to Vacate, on May 18, 2016. Appellant timely filed an Answer and Counterclaim.

On June 2, 2016, a bench trial was held in the Lexington County Magistrate Court. The Appellant argued the unsigned lease from 2014 was effective based on South Carolina Code §27-40-320(a) and that it contained an automatic renewal clause causing the lease to automatically renew in 2015 and again in 2016. (R. p. 13) Judge Dooley held in favor of the Respondent, holding that the unsigned lease was valid for the period of January 1, 2014 through December 31, 2014 pursuant to South Carolina Code §27-40-320, subsections (a) and (b), but that pursuant to subsection (c), the lease was only valid for a term of one year. (R. p. 14) Judge Dooley also denied Appellant's counterclaims as they were based on an expired lease. (R. p. 14) On that same date, Appellant filed and served a notice of intent to appeal the eviction to the Court of Common Pleas.[1]

[1] A bond hearing was held on June 2, 2016, whereby the Appellant was required to pay the monthly rent during the pendency of the appeal.

The appeal was heard on September 20, 2016, by the Honorable Donald B. Hocker. 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."* (R. p. 4) Judge Hocker also awarded Appellant $150.00 in court costs for filing the appeal. On October 24, 2016, Appellant filed and served a Notice of Appeal of Judge Hocker's monetary damage award.

FACTS

Appellant had been renting a residential property from the Respondent without a lease since 1982. In October 2013, Respondent sent Appellant a letter indicating the Respondent would like the parties to execute a lease agreement effective January 1, 2014, and stating the monthly rental amount would be increased. In January 2014, Respondent sent an unsigned lease agreement to the Appellant and asked the Appellant to contact them to discuss the lease. Despite numerous requests for the Appellant to return a signed copy of the lease, Respondent never received the lease. (R. pp. 12-13) In his testimony to the trial court, Appellant claims he did sign and mail the lease agreement to the Appellant initially. (R. p. 13) However, Appellant also admitted he subsequently received multiple requests from the Respondent to forward a copy of the signed agreement, but he never did so. (R. p. 13) In accordance with the unsigned lease, Appellant made timely rental payments throughout 2014. (R. p. 13)

On July 8, 2015, Respondent sent the Appellant a letter terminating the month to month tenancy and requesting Appellant vacate the property no later than September 30, 2015. Appellant responded on August 18, 2015, stating his belief that the 2014 lease had renewed pursuant to its automatic renewal clause, but indicating he would vacate the property on or before the end of the lease term, which he alleged was December 31, 2015. Believing the Appellant would willingly vacate the property as of December 31, 2015, Respondent took no further action to remove the tenant from the property thereby allowing him to continue his month to month tenancy throughout 2015.

The Appellant again failed to vacate the property by the end of 2015, and on February 22, 2016, the Respondent sent a notice to the Appellant indicating he must vacate the property by March 1, 2016. Appellant responded on February 29, 2016, stating his belief that the 2014 lease had again renewed pursuant to its automatic renewal clause. Respondent then filed a Rule to

Vacate on March 10th, 2016 which was heard by the Magistrate on March 31, 2016. The Magistrate found that no written lease was in effect and the tenant was on a month to month tenancy. The Magistrate therefore denied the action due to Respondent's failure to provide the tenant thirty (30) days' notice as a holdover tenant on a month to month tenancy pursuant to S.C. Code §27-40-770(b).

As a result of this ruling, Respondent served Appellant with a thirty day notice to vacate on April 4th, 2016. When the Appellant again failed to vacate the property, Respondent refiled the Rule to Vacate on May 18, 2016. Appellant timely filed an Answer and Counterclaim.

On June 2nd, 2016, a bench trial was held before the Honorable Albert J. Dooley, III, in Lexington County Magistrate's Court. Although the parties disagreed about how or why the 2014 lease was not signed by both parties, it is undisputed that it was in fact not signed by the landlord and the landlord did not return a signed copy to the Appellant. (R. pp. 13-14) The Appellant argued the unsigned lease from 2014 was effective based on South Carolina Code §27-40-320(a) and that it contained an automatic renewal clause causing the lease to automatically renew in 2015 and again in 2016. (R. p. 13) Judge Dooley held in favor of the Respondent, holding that the unsigned lease was valid for the period of January 1, 2014 through December 31, 2014 pursuant to South Carolina Code §27-40-320, subsections (a) and (b), but that pursuant to subsection (c), the lease was only valid for a term of one year. (R. p. 14) Judge Dooley also denied Appellant's counterclaims. (R. p. 14) Appellant filed a notice of appeal on the same date.

The appeal was heard on September 20th, 2016, before the Honorable Donald B. Hocker. Respondent did not appear at the appellate hearing in Circuit Court. (R. p. 4) The Respondent didn't provide a record on appeal and did not request or provide a transcript of the Magistrate Court hearing, instead relying on the Magistrate's Return. During the circuit court hearing, the

Appellant presented documents that were not in evidence from the lower court, and are in fact, part of settlement discussions between the parties. (R. pp. 22, lines 23-25; pp. 23, lines 1-2). The primary document relied upon by the Circuit Court was an email from the Respondent in attempt to settle this matter by allowing the Appellant to remain in the property until December 2016. (R. pp. 26, lines 23-25; pp. 27, lines 1-2).

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.*" (R. p. 4) Judge Hocker in effect stayed the execution of the eviction until December 31, 2016, based on the Respondent's email and also awarded Appellant $150.00 in court costs.

STANDARD OF REVIEW

In an appeal from the Magistrate Court, the circuit court maintains a broad scope of review, however, 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 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 vs. Gilchrist*, 343 S.C. 88, 94, 538 S.E.2d 268, 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 v. Gilchrist* at 343 S.C. 88, 92-93, 538 S.E.2d 268, 270. However, statutory interpretation is a question of law, of which the appellate court reviews de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

I. Validity of Unsigned Lease

It is undisputed that the Respondent sent the Appellant an unsigned lease for the term of January 1, 2014 through December 31, 2014, and the lease was never formalized with the signatures of both parties. The second paragraph of the lease states: "Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions contained herein, the dwelling located at 300 Timber Ridge Drive, West Columbia, SC 29169 for a period commencing on the 1st day of January 2014, and thereafter until the 31st day of December, 2014, at which time the Lease Agreement shall automatically renew each year unless terminated in writing." (R. p. 33)

South Carolina Code §27-40-320 provides for the enforcement of unsigned or undelivered rental agreements.

SECTION §27-40-320. Effect of unsigned or undelivered rental agreement.

> (a) If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.
>
> (b) If the tenant does not sign and deliver a written rental agreement which has been signed and delivered to the tenant by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.
>
> (c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.

In the trial court, Appellant testified he received an unsigned lease from the Respondent, and he signed and returned the lease to the Respondent. (R. p. 13) Respondent testified they never received a signed copy of the lease from the Appellant despite numerous requests for a copy. (R. pp. 12, 14) In spite of this fact, Appellant accepted possession of the property and paid rent without reservation and Respondent accepted the rental payments without reservation.

As a result, S.C. Code §27-40-320, gave the rental agreement the same effect as if it had been signed and delivered by both parties for a period of one year, January 1, 2014 through December 31, 2014.

During the circuit court hearing, the Appellant presented documents that were not in evidence from the lower court, and are in fact, part of settlement discussions between the parties that transpired after the Magistrate Hearing. (R. p. 22, lines 23-25). It appears the primary document relied upon by the Circuit Court was an email from the Respondent in attempt to settle this appeal by allowing the Appellant to remain in the property until December 2016. (R. p. 26, lines 1-2; lines 23-25).

Therefore, Judge Hocker erred in reversing the Magistrate Court "to the extent of allowing the Appellant to remain on the property until December 31, 2016" when the unsigned lease expired on December 31, 2014 pursuant to S.C. Code §27-40-320 and in allowing the Appellant to present documents that were not entered into evidence at the trial court level and were part of settlement negotiations.

II. Automatic Renewal Clause

Appellant argued both at the trial level and on appeal that because the lease was valid under S.C. Code §27-40-320, the automatic renewal clause contained in the lease was valid. (R. p. 19, lines 21-25; p. 20, lines 1-6)

Section (c) of S.C. Code §27-40-320 states, "[i]f a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year." Appellant argues this section applies only to the lease term, and does not prohibit an automatic renewal clause.

When a statute's language is plain and unambiguous, and conveys a clear and definite

meaning, the court has no right to impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Id.* The best evidence of legislative intent is the text of the statute. *Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998). An appellate court should reject the interpretation of a statute that would lead to an absurd result the legislature could not have intended. *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008).

The language of Section 27-40-320(c) is plain, clear and unambiguous. "If a rental agreement given effect *by the operation of this section* provides for a term longer than one year, it is effective for only one year." (Emphasis added.) Because the unsigned lease was given effect *solely* by the operation of this section, it can only be valid for one year. An automatic renewal clause contained in a lease given effect by this section would defeat the purpose this statute by allowing an otherwise invalid lease to be valid for a period in excess of one year, resulting in an absurd result the legislature could not have intended.

Therefore, Judge Hocker erred in reversing the Magistrate Court "to the extent of allowing the Appellant to remain on the property until December 31, 2016" when the unsigned lease expired on December 31, 2014.

III. Lease Credits

Appellant claims he is entitled to a $25.00 monthly credit under the lease. The lease states, "As an incentive to Tenant to make rent payments by the first of the month and for being responsible for all minor maintenance of the premises, a pre-payment discount in the amount of

$25.00 may be deducted from the above rental amount each month." (R. p. 33)

However, Appellant testified that he did not withhold this amount from the monthly lease payments and paid the rent without reservation. (R. p. 30, lines 13-17) Since the appellant did not deduct this amount from his rent and rent was paid without reservation pursuant to S.C. Code §27-40-320 the lease was only valid for one year through December 31, 2014, and the first time Appellant availed himself of the rental credit for repair expenses incurred in February 2015 (R. pp. 44) this term is not applicable.

Furthermore, both at the trial level and in his brief, Appellant argues the above referenced term was altered by a verbal agreement between the parties. "When Appellant and Respondent entered into the lease, there was a verbal agreement between Appellant and Respondent that Appellant would pay the full rent due, including the $25.00 per month, and if and when any repair expenses were incurred, Appellant would adjust the following month's rent accordingly and send Respondent an up-to-date accounting. The first time Appellant availed himself of the rental credit for repair expenses incurred in February 2015, the credit was denied." (R. pp. 44) Respondent has no knowledge of an oral agreement, and this issue was not raised to or ruled upon by the Magistrate Court.

Under South Carolina Code §32-3-10(4), Statute of Frauds, any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. Failure to put such a contract in writing renders it void. (S.C. Code §27-35-20). Moreover, a contract required to be in writing by the Statute of Frauds cannot be orally modified. *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E.2d 856 (1983). Again, it is undisputed that Respondent never signed the lease.

The Magistrate Judge properly denied Appellant's counterclaim and Judge Hocker properly denied Appellant's appeal of this issue and properly denied Appellant's request for damages.

IV. Notice to Terminate

The appellant claims the Respondent did not properly notify him of Respondent's intent to terminate the lease.

S.C. Code §27-40-240 defines both the giving and receiving of notice.

> SECTION 27-40-240. Notice.
>
> (A) A person has notice of a fact if:
> (1) the person has actual knowledge of it;
> (2) the person has received a notice or notification of it; or
> (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.
>
> (B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:
> (1) it comes to his attention; ***or***
> (2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication; ***or***
> (3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt.

(Emphasis Added.) "On July 8, 2015, Respondent sent Appellant a letter requesting Appellant vacate the premises no later than September 30, 2015." (R. p. 40) "On December 21, 2015,

Appellant sent an email to Respondent requesting a two month extension until March 1, 2016." (R. p. 42) Undeniably, the Appellant had notice of Respondent's position and intent to terminate the month to month tenancy.

V. Retaliatory Conduct

The Appellant claims "the Circuit Court Judge failed to fully consider remedies under S.C. Code §27-40-910(h) – Retaliatory conducted prohibited, which reads in part: Any landlord who acts in retaliation against the tenant for engaging in protected conduct is liable for damages up to three months rent..."

"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). "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). "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).

In his brief, the appellant admits "[t]his issue was not allowed to be raised during the Summary Court trial as the Magistrate had already ruled in favor of the Respondent." (App. Brief p. 11) However, Appellant failed to proffer testimony or to file a Motion to Alter or Amend the Judgment or for Reconsideration with the Court pursuant to Rule 59(e), SCRCP. (R. p. 13) Because this issue was not raised to and ruled upon by the Court, and the Appellant did not file a Rule 59(e), SCRCP motion with the court, "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). The Circuit Court agreed. (R. p. 31, lines 10-32).

Moreover, the Appellant has presented no evidence of retaliatory conduct. The Respondent requested a copy of the signed lease multiple times in 2014 and did not receive it. Since the parties operated under the terms of the unsigned lease throughout 2014, and the lease expired on January 1, 2015, Respondent was simply trying to either effectuate a written lease or oust a holdover tenant. There is nothing retaliatory about a landlord attempting to effectuate a written lease.

In fact, the Appellant admits, "[t]he principle, Mr. Robert Rice, passed away and the operations were assumed by his heirs, with Terri Lynn McLaughlin being appointed as Property Manager and Sales Broker." It is logical, under these circumstances, that the heirs may want to sell off some the business's properties to reduce their responsibilities.

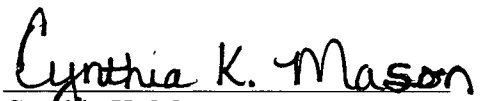
Additionally, the Respondent graciously allowed the Appellant several extensions after requests to vacate were made, after the eviction was ordered, to the Circuit Court, and again to this Court when the Appellant filed a Writ. Respondent has been more than accommodating to the Appellant, who, as of the date of the filing of this brief, has still not fully vacated the property pursuant to this Court's order.

There is simply no evidence of retaliatory conduct and no evidence the Circuit Court failed to fully consider the applicability of this statute, particularly in light of the fact that this issue was not raised to and ruled upon by the trial court. Therefore, the Circuit Court properly refused to consider this argument and properly denied Appellant's request for damages.

CONCLUSION

The circuit court erred in reversing the magistrate court, but properly denied Appellant's request for damages.

Respectfully submitted,



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