

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

RECEIVED
SEP 07 2018
SC Court of Appeals

Appellate Case No. 2018-000056

Churchill Park,

Respondent,

v.

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix,

Defendants,

Of which Alan G. Nix is the

Appellant.

RESPONDENT'S RETURN TO APPELLANT'S MOTION TO REMAND

This appeal arises out of a foreclosure action initiated by Respondent against Appellant for unpaid homeowners' association dues. Trial was held before the Master in Equity for Charleston County on September 26, 2017. The trial court ruled in favor of Respondent and issued its final order on November 9, 2017. Appellant timely filed a motion to reconsider pursuant to Rule 59(e), SCRPC on November 22, 2017. The trial court denied Appellant's 59(e) motion by order dated December 1, 2017. Appellant timely served his notice of appeal of that

order on January 8, 2018. Three weeks later Appellant filed an Amended Notice of Appeal adding six additional orders from which he wishes to appeal.

After filing his motion to reconsider on November 22, 2017, Appellant filed at least nine subsequent motions before the trial court attacking various aspects of the proceedings below. Only one of these motions qualifies as a post-trial motion that would stay Appellant's time to appeal in this matter.¹ As more fully discussed below, the motions listed in Appellant's Motion to Remand are either inappropriate or have already been resolved by the trial court.

The appellate court may remand a case to the trial court to consider post-trial motions. Otten v. Otten, 287 S.C. 166, 337 S.E.2d 207 (1985). However, where the trial court has considered and ruled upon those post-trial motions there is no basis for remand. Respondent respectfully requests this court deny Appellant's Motion to Remand and require Appellant submit his initial brief without further delay.

November 28, 2017 Motion to Restore

Appellant filed a Motion to Restore on November 28, 2017 seeking to restore case 2017-CP-10-04031 "to the state of Pending." Appellant's motion alleges case number 2017-CP-10-04031 was erroneously ended on November 9, 2017 based on an "alleged trial on September 26, 2017."

The trial court heard testimony and took evidence at a final trial in case 2017-CP-10-04031 on September 26, 2017. Appellant filed a timely motion pursuant to Rule 59(e) on November 22, 2017. When that motion was denied Appellant's post-trial remedies ended and Appellant's recourse was through appeal. Appellant timely perfected his appeal of the November 9, 2017 Order on January 8, 2018. Accordingly, there is no basis for remand to the trial court to hear Appellant's Motion to Restore.

¹ The trial court entered an order setting the foreclosure sale date and setting the bond pursuant to S.C. Code § 18-9-170 on July 27, 2018. Appellant's motion to reconsider that order was timely filed on July 27, 2018 and was denied by the trial court on August 28, 2018.

November 29, 2017 Motion for Judicial Recusal


Appellant filed a Motion for Judicial Recusal on November 29, 2017. The trial court heard arguments on this motion on May 30, 2018. Appellant declined to argue the motion before the trial court so the trial court ruled based on Appellant's arguments contained within his motion. (May 30, 2018 Trans. p. 57, l. 22 - p. 60, l. 11). The trial court denied this motion by order filed June 1, 2018. Appellant subsequently appealed this order in his Second Amended Appeal dated July 16, 2018. Because this motion has already been ruled upon and included in this appeal, remand is unnecessary and improper.

July 6, 2018 Motion for Relief From Order Dated June 1, 2018

Appellant filed a Motion for Relief from Order Dated June 1, 2018 on July 6, 2018. The Order filed June 1, 2018 was a short form order denying Appellant's motion. The short form order also indicated that a formal order on Plaintiff's Motion to Schedule Sale would be forthcoming. The trial court entered that formal order on July 27, 2018. Appellant subsequently filed a Motion to Clarify and for Relief of the Order filed July 27, 2018² on that same day. The trial court heard these motions on August 27, 2018 and denied them by order filed August 28, 2018. Because this motion has already been ruled upon remand is unnecessary and improper.

For these reasons Respondent respectfully requests the court deny Appellant's Motion to Remand and require Appellant submit his initial brief without further delay.

September 6, 2018



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² The caption of this motion reads Defendant's Motion to Clarify and for Relief of Order Dated June 1, 2018, however the body of the motion makes it clear that the motion seeks to "amend or set aside the Court's Order filed July 27, 2018 and for clarification of the same."

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PROOF OF SERVICE

I certify that I served Respondent's Return to Appellant's Motion for Remand on Alan G. Nix by depositing a copy of it in the United States Mail, postage prepaid, on September 7, 2018 as follows:

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