

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Case No. 2018-00106

CitiMortgage, Inc., Respondent,

v.

Satara Lopez and Francisco Lopez, Appellants.

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DEC 03 2018
SC Court of Appeals

RETURN IN OPPOSITION TO PETITION FOR A WRIT OF MANDAMUS

While Appellants' road to obtaining the relevant transcripts for this matter has indeed been "long and tortuous," it has been entirely self-inflicted. Appellants' surprising Petition requests that this Court issue a writ of mandamus compelling Judge Strickland to provide them with the names of the court reporters of record for various hearings before him. Respondent CitiMortgage, Inc. ("CitiMortgage") has already provided Appellants with this information on several occasions. Moreover, in addition to failing to comply with this Court's November 7, 2018 Order, this Petition is untimely, procedurally improper, and unnecessary. Accordingly, for all these reasons, the Court should deny Appellants' Petition and dismiss this appeal.

I. Appellants failed to respond to CitiMortgage's Motion to Dismiss or comply with the Court's November 7, 2018 Order.

The full background of Appellants' transcript-related difficulties is set forth in CitiMortgage's Return in Opposition to Appellants' Request for Permission to Order Transcript Out of Time, filed August 27, 2018, and Motion to Dismiss, filed October 10, 2018. CitiMortgage directs the Court's attention to those filings and incorporates their contents by reference herein.

CitiMortgage's Motion to Dismiss was premised on three grounds: (1) Appellants failed to order transcripts within the time specified by the South Carolina Appellate Court Rules ("SCACR"), (2) the appeal is untimely, and (3) Appellants failed to appeal the only order relevant to their substantive claims for relief. This motion was filed on October 10, 2018 and, to date, Appellants have not responded. Appellants' Petition fails to even acknowledge the Motion to Dismiss, much less address any of the arguments asserted therein. For this reason alone, the Court should deny the Petition and dismiss the appeal.

Furthermore, on November 7, 2018, the Court issued an Order directing Appellants to provide "[w]ithin ten days of the date of this order . . . proof they have ordered the transcript from the court reporter and made sufficient payment arrangements." *Id.* This deadline expired on November 19, 2018, and Respondents failed to comply with the terms of this letter. Respondents have not provided any proof that they ordered the transcript(s) and/or have made sufficient payment arrangements. Instead, two days after the Court's mandatory deadline, Appellants filed their mandamus petition. This continued violation of the appellate court rules and the Orders of this Court also supports dismissal pursuant to Rule 260(a), SCACR.¹

¹ Further, Appellants have also failed to correct a previous deficiency with their August 21, 2018 motion for leave to order transcript out of time. The Court issued a deficiency letter on August

II. Appellants' Petition is procedurally improper.

To the extent Appellants are attempting to bring their Petition within the confines of this existing appellate matter, it is improper because this Court lacks jurisdiction. The South Carolina Code's statutory grant of jurisdiction gives this Court appellate jurisdiction over "any case in which an appeal is taken." S.C. Code Ann. § 14-8-200(a). The Code also gives this Court the authority to "issue writs of supersedeas, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case," as well as jurisdiction to entertain petitions for "writs of certiorari in post-conviction relief matters." *Id.* Moreover, although the Code gives this Court the power to issue remedial writs, such as mandamus, it is only as "*necessary to give effect to its jurisdiction.*" S.C. Code Ann. § 14-8-220 (emphasis added). Contrast this with the South Carolina Constitution's grant of jurisdiction to the Supreme Court, which provides that: "The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs." S.C. Const. art. V, § 5; *see also* S.C. Code Ann. § 14-8-220 (noting that the Supreme Court has the power to issue writs of mandamus in its original jurisdiction).

Appellants' Petition does not raise any issues necessary to give effect to this Court's jurisdiction. It is undisputed that upon filing of the notice of appeal, this Court obtained exclusive jurisdiction over the appeal. *See* Rule 205, SCACR. Appellants' decision not to obtain the transcripts is irrelevant to this Court's jurisdiction.

This Court lacks original jurisdiction to issue the relief requested by Appellants. Their Petition, therefore, must be brought as a new action in the original jurisdiction of the Supreme

22, 2018 directing Appellants to pay the filing fee for this motion. To date, it does not appear that this additional deficiency has been corrected.

Court in compliance with Rule 245, SCACR. This Petition is procedurally improper and should be denied for lack of jurisdiction.

III. CitiMortgage provided Appellants with the court reporter information.

For unknown reasons, Appellants continue to assert that they have been unable to obtain the names of the court reporters and that the Master-in-Equity has not responded to their requests for assistance. Appellants first raised the court reporter issue in a letter to Judge Strickland dated July 2, 2018.² Appellants' counsel did not ask CitiMortgage's counsel for the name of the Court reporters prior to sending this letter, and still has not requested this information to date.

Nevertheless, upon learning of this letter, CitiMortgage's counsel emailed Appellants' counsel on August 3, 2018 and provided the names of the court reporters present for the three hearings leading up to the foreclosure judgment. They were as follows:

1. Wanda K. Ceil with A. William Roberts, Jr. & Associates for the April 19, 2017 hearing,
2. Amy R. Cope also with A. William Roberts, Jr. & Associates for the June 29, 2017 hearing, and
3. Sarah E. Young with A. Williams Roberts, Jr. & Associates for the final merits hearing on November 7, 2017.

Without acknowledging this email, Appellants filed another motion for permission to order the transcript out of time on August 21, 2018, reasserting that they were having difficulty ascertaining the names and contact information for the court reporters.

However, CitiMortgage filed its Return in Opposition to this Motion on August 27, 2018 and again set forth the information about the court reporters. Several weeks passed with no

² CitiMortgage was not copied on this letter (despite the letter saying that CitiMortgage was copied via email).

response and without Appellants providing any proof that the transcripts had been ordered. Therefore, in light of the continuing deficiencies with this appeal, CitiMortgage filed its Motion to Dismiss on October 10, 2018. For a third time, CitiMortgage set out the names of the court reporters and the applicable hearing dates in that motion.

Despite having the court reporter information for several months, Appellants have not provided *any* proof that they have even *contacted* these court reporters or placed an order for the transcripts. Instead, Appellants continue to assert that they have been unable to determine the names of the court reporters and continue to intimate that “most, if not all,” of the hearings in this matter were heard without a court reporter. This assertion is untenable and patently false. Therefore, the Court should deny the Petition.

IV. The Petition fails on the merits.

Finally, even if Appellants’ Petition was properly before the Court, their request for mandamus relief fails on the merits.³ The writ of mandamus is the “highest judicial writ known to the law.” *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 493, 685 S.E.2d 600, 605 (2009). “Mandamus is utilized only to compel ministerial duties and then only if the ‘asserted right is clear and certain.’” *Knight v. Austin*, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012) (quoting *Godwin v. Carrigan*, 227 S.C. 216, 222, 87 S.E.2d 471, 473 (1955)). “The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created and or imposed by law.” *Porter v. Jedziniak*, 334 S.C. 16, 18, 512 S.E.2d 497, 497 (1999). A ministerial duty is “defined as one which a person performs in obedience to a mandate of legal

³ Additionally, even if Appellants’ Petition was properly filed in the Court of Appeals, Appellants failed to tender a filing fee.

authority without regard to or the exercise of his own judgment upon the propriety of the act to be done.” *Godwin*, 227 S.C. at 222, 87 S.E.2d at 473-74.

“To obtain a writ of mandamus requiring the performance of an act, the petitioner must show (1) a duty of respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.” *Porter*, 334 S.C. at 18, 512 S.E.2d at 498.

Here, Appellants have not met their burden of showing that they are entitled to mandamus relief. Appellants have not identified any “established right” or an imperative duty imposed on the Master-in-Equity to provide the requested information. Appellants have also failed to detail the specific legal right for which discharge of the duty is *necessary*. CitiMortgage already gave Appellants the names of the court reporters and they have made no effort to contact them. Action by the Master is not necessary for Appellants to obtain the hearing transcripts. Therefore, mandamus is not the only available legal remedy for Appellants. Note that counsel were present for hearings where court reporters took testimony and arguments. Plus, Appellant Satara Lopez actually testified with a court reporter present.

Appellants simply have not met their burden of showing that the Court should issue the highest judicial writ known to law. The Court should deny the Petition for this reason as well.

V. Conclusion

For the reasons stated above, the Court should deny Appellants’ Petition for a Writ of Mandamus and grant CitiMortgage’s Motion to Dismiss.

Signature on Following Page

Respectfully submitted,

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December 3, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Circuit Court Judge

Case No. 2018-00106

CitiMortgage, Inc.,..... Respondent,
v.
Satara Lopez and Francisco Lopez, Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Return in Opposition to Petition for a Writ of Mandamus

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December 3, 2018

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The Honorable Jenny Abbott Kitchings
Clerk of Court
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RE: CitiMortgage, Inc. v. Satara Lopez and Francisco Lopez
Case No. 2018-00106
Our File No. 026019/01875

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Dear Ms. Kitchings:

Enclosed for filing please find the original and 7 copies of a *Return in Opposition to Petition for a Writ of Mandamus* in the above-referenced matter. Please file the original and return a clocked copy to us via our courier.

By copy of this letter to opposing counsel, we are hereby serving them with a copy of this pleading.

Very truly yours,

Blake T. Williams

BTW:kdm
Enclosures

cc: Joseph Henry, Esquire
Nathaniel Roberson, Esquire
Andrew B. Walker, Esquire