THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2017-002386

Windy Hill MHP, LLC, Respondent,

v.

Chris Holcombe, Appellant.

BRIEF OF RESPONDENT

Appellant:

Chris Holcombe
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

COURT RULE

STATEMENT OF ISSUES ON APPEAL

I. APPELANT CITES NO AUTHORITY FOR HIS POSTION THAT HUD LAWS SHOULD BE MADE TO PREVENT AN EVICTION OR FINANCIAL BURDEN.

II. APPELANTS ISSUES REGARDING THE PROCESS AFFECTING HIS HEALTH AND ARGUMENTS REGARDING HEALTH, HOME AND PHONE CONVERSATIONS IS NOT PRESERVED FOR APPEAL.

III. THE CIRCUIT COURT DID NOT ERR IN RULING THAT NEITTHER THE FEDERAL FAIR HOUSING AMENDMENTS ACT OF 1998 NOR THE SOUTH CAROLINA FAIR HOUSING LAW REQUIRES REASONABLE ACCOMODATIONS AT THE TERMINATION OF A LEASE BY ITS TERMS.

IV. THE CIRCUIT COURT DID NOT ERR IN RULING THAT, IF REASONABLE ACCOMODATIONS ARE REQUIRE BY EITHER THE FEDERAL FAIR HOUSING AMENDMENTS ACT OF 1998 OR THE SOUTH CAROLINA FAIR HOUSING LAW, RESPONDENT DID PROVIDED THE APPELLANT WITH REASONABLE ACOMMODATIONS.

STATEMENT OF THE CASE

Windy Hill MHP, LLC brought an ejectment action against Mr. Holcombe on August 3, 2016 in Anderson County Magistrate's Court with case number 2016CV0410700527. The ejectment hearing was held without jury by Anderson County Magistrate's Judge S. Thompson Tucker on August 31, 2016. The Magistrate's Court ruled for Windy Hill MHP, LLC and issued a Writ of Ejectment on the same day granting Mr. Holcombe 20 days to voluntarily vacate. (R. p. 3).

On September 12, 2016 Mr. Holcombe filed an appeal of the Magistrate's Court Writ of Ejectment in the Anderson County Court of Common Pleas. The Honorable R. Lawton McIntosh heard the appeal on July 20, 2017 and took the matter under advisement. On November 7, 2017 the Honorable R. Lawton McIntosh electronically signed an order affirming the Magistrate's Court. That Order was filed on November 8, 2017. (R. p. 5-8).

FACTS

Mr. Holcombe is disabled and bound to a wheelchair. (R. p. 16 (sub p. 20, line 20 – p. 21, line 2)). Windy Hill is managed by Karen Wagner ("Wagner"). On or about January 26, 2008, Windy Hill and Holcombe entered into a written lease agreement whereby Windy Hill leased the ground to Holcombe on which Holcombe placed a mobile home that he owns. (R. p. 197 – 205, R. p. 25 (sub p. 54, lines 7-9 and p. 55, lines 8-10)). That lease was extended by one year lease renewals each year with the last written lease renewal being entered into on or about August 1, 2014. (R. p. 206, R. p. 14 (sub p. 10, lines 23-24), R. p. 24 (sub p. 52, lines 16-18)). That lease and the most recent renewal terminated by its terms on July 31, 2015. (R. p. 206, R. p. 24 (sub p. 52, lines 16-18)).

As the end of the lease term approached, Wagner sent Holcombe a letter on July 30, 2015 outlining concerns, mainly involving the actions of Mr. Holcombe's son, who is not disabled and who lived with Mr. Holcombe. (R. p. 207, R. p. 25 (sub p. 57, lines13-16)). On June 24, 2015, Mr. Holcombe purchased a 2.14 acre parcel of land in Anderson County, South Carolina. (R. p. 25 (sub p. 56, lines 9-11)).

Wagner had a phone conversation with Holcombe on July 25, 2015 regarding the violations. (R. p. 16 (sub p. 22, lines 21-22)). She followed up that conversation with a letter on July 30, 2015. (R. p. 16 (sub p. 22, lines 4-11)). That letter again outlined the ways that Holcombe, through his son, was being a bad neighbor and states that Wagner and Holcombe mutually agreed that it would be best if he vacated at the end of his lease and that Windy Hill would not renew the lease. (R. p. 207). The letter also states that she offered him the reasonable accommodation of 60 days past the end of the lease term to vacate. (R. p. 207, R. p. 27 (sub p.

22, lines 4-11)). Wagner also indicated that she might allow a month-to-month accommodation if the issues outlined in the letter were resolved.

Seven months after Mr. Holcombe's lease terminated, on March 22, 2016 Windy Hill sent Mr. Holcombe a letter stating that it desired to put its own home on the property and stated that Mr. Holcombe must be out by July 31, 2016. (R. p. 209, R. p. 26 (sub p. 61, lines 10 – 15)). July 31, 2016 was a full year after the end of his lease term. On June 21, 2016 Windy Hill sent Mr. Holcombe another letter reminding him that he had to be out by July 31, 2016. (R. p. 201, R. p. 26 (sub p. 61, lines 10-15)).

Mr. Holcombe did not vacate the property and Windy Hill filed ejectment proceedings. The ejectment hearing was held on August 31, 2016. At the hearing Mr. Holcombe admitted that he had made no preparation to move and argued that he should be reasonably accommodated because of his disability and that accommodation should be that he would be allowed to remain indefinitely. (R. p. 26 (sub p. 60, line 25) – R. p. 27 (sub p. 62, line 1)).

The trial court considered his discrimination/accommodation argument and found that Windy Hill had made "due accommodations" and that Holcombe failed to "show any discriminatory policy" in the ejectment. (R. p. 29 (sub p. 72, lines 7-16)). The trial court therefore granted a Writ of Ejectment giving Holcombe 20 days to move his mobile home from Windy Hill's property. Holcombe appeal's the issuance of this Writ. (R. p. 3).

STANDARD OF REVIEW

When an ejectment proceeding is first heard in Magistrate's Court the heard on appeal by the Circuit Court, "this court 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. 233, 312 S.E.2d 20, 21 (Ct. App. 1984). "[T]he only determination for this court

is whether there is any evidence to support the Circuit Judge's findings of fact." *Id.* "Unless we find an error of law, we will affirm the judge's holding if there are any facts supporting his decision." *Hadfield v. Gilchrist,* 343 S.C. 88, 94, 538 S.E.2d 268, 271 (Ct. App. 2000).

ARGUMENT

I. Because the Appellant Cites no Authority For His Position that HUD Laws Prevent Eviction or Financial Burden the Appeal Should be Dismissed.

The Appellant's appeal should be dismissed because he makes only short conclusory statements without citation to authority. Rule 208(b)(1)(E) SCACR requires that Arguments have a discussion and citations to authority. Appellant makes a only a one sentence Argument unsupported by citation to authority that "[t]he HUD laws state that changes should be made to prevent an eviction financial burden." "[A]n issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993). See also *State v. Crocker*, 621 S.E.2d 890, 366 S.C. 394 (SC, 2005), *Williams v. Leventis*, 290 S.C. 386, 350 S.E.2d 520 (Ct. App. 1986), *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668 (Ct. App. 1991).

Appellant's remaining Arguments are slightly longer, but likewise are short conclusory statements without supporting authority.

II. None of the Appellants Arguments, Other than Reasonable Accommodation, were Preserved for Appeal.

Appellant's Issue on Appeal that " This whole process is really affecting my health because of me having the disability that I have" and Appellant's Arguments, stated in the Table on Contents as Health, Home, and Phone Conversations are not preserved for appeal. The only issues ruled on by the Circuit Court are that 1) Respondent had a right to recover property at the

termination of the lease by its terms; 2) that there is no requirement for reasonable accommodations under the Fair Housing Amendments Act of 1998 at 48 U.S.C. § 3604 ("FHA") or the South Carolina Fair Housing Law at SC Code § 31-21-40 ("SCFHL") at the termination of a lease by its terms, 3) that even if reasonable accommodations were required by the FHA or SCFHL, the respondent did give a reasonable accommodation, and 4) that the trail (Magistrate's) court made an individualized assessment of Appellant's needs and correctly determined that was no discrimination against Appellant. Therefore Appellants Second Issue on Appeal and his second through fourth Arguments were not raised or ruled on by the Circuit Court (nor the Magistrate's Court). "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.: *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1997). Because these issues were not raised and ruled on by the lower court, they should be dismissed.

III. The Circuit Court did not Err in Ruling that neither the Fair Housing Amendments Act of 1998 nor the South Carolina Fair Housing Law Requires Reasonable Accommodations at the Termination of a Lease by its Terms.

Both the Fair Housing Amendments Act of 1998 at 48 U.S.C. § 3604 ("FHA") and the South Carolina Fair Housing Law at SC Code § 31-21-40 ("SCFHL") make it unlawful "to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap" or to "discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap." SC Code § 31-21-40(6) and (7), 48 U.S.C. § 3604(f)(1) and (2). Neither mentions that a handicapped person may not be expected to vacate at the termination of a lease by its terms. It has been held that discrimination can occur when a landlord fails to make reasonable accommodations for handicapped persons. *County of*

Charleston v. Sleepy Hollow Youth, Inc., 340 S.C. 174, 530 S.E.2d 636 (Ct. App. 2000). However, Respondent can find, and Appellant has cited, no case that requires a reasonable accommodation at the termination of a lease by its terms. Because neither the statutes nor the case law speak to the end of a lease term agreed to by a handicapped person, there is no requirement to give a reasonable accommodation at the end of a lease term.

V. The Circuit Court did not Err in Ruling that, if a Reason Accommodations are Required by either the FHA or the SCFHL, Respondent did Provide the Appellant with Reasonable Accommodations.

Assuming that the FHA and SCFHL require an accommodation of time to move to land already owned after the termination of a lease by its terms, the "reasonable accommodation must be (1) reasonable and (2) necessary (3) to afford handicapped persons equal opportunity to use and enjoy housing." *Bryant Woods Inn v. Howard County*, 124 F.3d 597, 604 (4th Cir. 1997) (Citing 42 U.S.C. § 3604(f)(3)). Appellant was given an accommodation that was reasonable and afforded the Appellant one year to use and enjoy the property while making arraignments to move. Respondent initially agreed to allow him to remain on the leased land 60 days past the lease termination to make arraignments to move his mobile home to a lot that he had already purchased. This accommodation was voluntarily lengthened by the Respondent to one year past the termination of the lease. Respondent made it clear that Appellant would have to vacate and gave notices of initially 60 days, then, when the accommodation became one year instead of 60 days, Respondent gave notices at 120 days and 30 days. However, one year to move to land that he owns is not what the Appellant seeks. He asked the Magistrate's Court for an indefinite amount of time to vacate. An indefinite delay in vacating property is not a reasonable accommodation. See *McQuestion v. Crawford*, 765 N.W.2d 822, 2009 WI App 35 (Wis. App., 2009) ("To suggest that those found eligible for emergency assistance can remain indefinitely in

housing from which they have been evicted could lead to serious abuse."); *Andover Housing Authority v. Izrail Shkolnik*, 443 Mass. 300, 820 N.E.2d 815 (2005) ("This court has rejected the idea that indefinite requests for "more time" to address a disabling condition are reasonable."); *Groner v. Golden Gate Gardens Apartments,* 250 F.3d 1039 (6th Cir. 2001) ("Such an indefinite arrangement, moreover, would likely have imposed an undue administrative burden on the Golden Gate staff. Accordingly, Groner has failed to demonstrate that such an accommodation was reasonable."); *Von Beltz v. Bentley Homes, LLC* (Cal. App., 2014) ("Von Beltz's request that defendants accommodate her by indefinitely delaying her eviction was not reasonable as a matter of law.")

Appellant has been accommodated and his request for infinite time as an accommodation is not reasonable as a matter of law.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b) SCACR.

September 27, 2018

Respectfully submitted,

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