

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas**

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Aug 04 2020

SC Court of Appeals

The Honorable Perry H. Gravely Circuit Court Judge

**Case No. 2020-CP-23-00631
Appellate Case No. 2020-000904**

MARY EARLE

Respondent,

vs.

BOULDER LP

Appellant.

INITIAL BRIEF OF APPELLANT

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Statement of Issues on Appeal

- I. Did the Circuit Court err in remanding this matter to the magistrate court with instructions to set the amount to be paid pending any jury trial “pursuant to any applicable public housing guidelines”?
- II. Did Circuit Court err in remanding to the magistrate court this matter for a determination of the amount owed because the issue of the amount of rent to be paid is moot given that Respondent failed to pay any amount as required under South Carolina statutory law?

Statement of Case

Appellant Boulder-LP (“Boulder”) is an apartment complex located at 300 Furman Hall Road in Greenville, South Carolina. Boulder is a Section Eight housing facility in which tenants receive federal subsidies for housing. Typically, the amount of rent a tenant pays is calculated as a function of income, and tenants are required to undergo annual certifications of income, as well as interim certifications for any changes in income in between the annual certifications.

Boulder and Respondent Mary Earle (“Earle”) entered into a lease agreement in December 2018 (the “Lease”). Pursuant to the terms of the Lease, Earle is required to make monthly rent payments, the amount of which is dependent upon the calculation of Earle’s subsidies from the federal government. Boulder maintains what would be considered fair market value for the complex, but this amount is offset by any subsidies received by the tenants. These subsidies are paid to Boulder.

Boulder asserts Earle failed to make her rent payments on time, resulting in an arrearage of \$2,118.00. Boulder filed an application for ejectment based on Earle’s non-payment of rent. Earle objected to the application and filed a request for a jury trial. Pursuant to S.C. Code Ann. § 27-40-790, the magistrate court held a bond hearing at which it was required to determine any

bond or monthly rent owed to the landlord while the eviction is pending. The magistrate court ordered that Earle pay to the court \$1,000.00 in bond for the disputed arrearage as well as make monthly payments of \$282.00. However, this amount would not be considered the fair market value of the unit.

At the bond hearing, Earle and her counsel attempted to argue the merits of the eviction action, but the court emphasized that a full jury trial on the merits would be scheduled for a later date. Earle failed to pay the \$1,000.00 as required by January 28, 2020. Therefore, on January 30, 2020, the magistrate court entered a writ of ejectment.

Following the initial bond hearing to set the amount to be paid while the jury trial was pending, Earle filed a notice of appeal to the circuit court. This was not an appeal on the merits of the eviction action but rather on the procedures used by the magistrate court in setting the amount of the bond at the hearing. Pursuant to S.C. Code Ann. § 27-40-800, the court held a second bond hearing to set the bond amount while the appeal to the circuit court was pending. At this hearing, the magistrate court ordered Earle to pay \$282.00 per month. Once again, this hearing was not on the merits of the eviction or the appeal, but rather simply to determine the amount to be paid by Earle while the circuit court appeal was ongoing.

Following a remote, video hearing, the circuit court issued a brief Form 4 Order in which it remanded this matter to the magistrate court with instructions to adhere to the requirements of S.C. Code Ann. § 27-40-790 and *pursuant to any applicable public housing guidelines*. (Order p. 2, emphasis added). This appeal followed.

Boulder asserts the circuit court erred when remanding this matter to the magistrate court for two reasons. First, the circuit court erred in ordering the magistrate court consider “applicable public housing guidelines” as this is not permitted under the plain language of S.C. Code Ann.

§ 27-40-790. Second, this remand was improper as the issue of what amount of rent is required to be paid while a jury trial is pending is moot because Respondent failed to make any payment at all.¹

Facts

A. Lease Agreement

Boulder and Earle entered into the Lease in December 2018. This is a Model HUD lease agreement that incorporates the rules and regulations promulgated by the Department of Housing and Urban Development, including the HUD Multifamily Occupancy Handbook (“Handbook”). Additionally, pursuant to the express terms of the Lease, the Lease renews each year unless either party terminates it.

The Lease does not include a set rent amount that is required to be paid each month. Rather, the amount of rent is calculated based on a tenant’s income. If a tenant’s employment circumstances changes, whether through an increase or decrease in income, Boulder engages with the tenant in a recertification process whereby the tenant is required to bring specific documents to the landlord so rent can be re-calculated.

B. Ejectment Action

On December 30, 2019, Boulder filed an action for ejectment in the Summary Court in East Greenville, South Carolina. In its application for ejectment, Boulder alleged Earle failed to pay rent when due and sought possession of the rented premises. (Application).

Following the filing of the application for ejectment, Earle requested a jury trial. Under the Residential Landlord-Tenant Act, when a tenant requests a jury trial, the magistrate court is

¹ Appellant disagrees with the magistrate court’s ruling setting the rent at lower than the market rate, but recognizes that this issue was not appealed to the circuit court.

required to hold a bond hearing to set the amount of rent to be paid during the pendency of the jury trial.

C. Bond Hearing

Thereafter, on January 21, 2020, the magistrate court held a hearing pursuant to S.C. Code § 27-40-790(a) to determine the amount of rent to be paid until the jury trial could occur. At the hearing, Boulder proffered that Earle owed \$2,118.00 for the amount of rent in arrears. This was the bond hearing, not a hearing on the merits of the ejectment action.

After hearing arguments from both counsel, the Court entered an oral order requiring payment to secure the amount in arrears that Boulder alleges to be due and owing by Earle. The Court ordered Earle to pay \$1,000.00 to the Clerk of Court as payment toward the amount of rent allegedly in arrears. Payment of the \$1,000.00 was to be made no later than 5:00 pm on January 28, 2020. The Court further ordered Earle to make ongoing monthly rent payments in the amount of \$282.00 beginning February 1, 2020. The Court reached its conclusion of the monthly rent owed as it was the current amount owed under the terms of the Lease and tenant's current certification. Earle failed to make a payment to the Court in the amount of \$1,000.00 on January 28, 2020, as ordered. On January 30, 2020, the magistrate court entered a Writ of Ejectment ordering the constable to proceed with the process to evict Earle. The executing official attempted to initiate ejectment of Earle on or about February 4, 2020, and left notice of the request to vacate at Earle's residence.

D. Appeal

On or about January 28, 2020, Earle filed a Notice of Appeal of the Order ("Notice"). In the Notice, Earle asserted Boulder, "in bad faith, institute[d] eviction proceedings against [Earle] without good cause and in violation of the lease agreement and the South Carolina Landlord Tenant

Act.” Earle further claimed that she “disputes the amount of rent alleged by [Boulder], but was not given the benefit of a hearing in which the dispute was heard.” On February 7, 2020, the magistrate court entered its Return to Appeal (“Return”) in which he outlined his reasoning for his decision at the bond hearing. The Court noted that Earle, through her counsel, had attempted to argue the merits of the eviction action at the bond hearing on January 21, 2020. (Return, p. 1). The Court further stated in its Return that it was ordering Earle to continue paying rent at the amount that she had been paying, or, in other words, the market value minus any applicable subsidies. (Return, p. 1).

On February 13, 2020, the magistrate court held a second hearing pursuant to S.C. Code Ann. § 27-40-800 to determine the amount of the bond while the appeal to the Circuit Court regarding the initial bond was pending. At this hearing, the Court ordered Earle to make payments of \$282.00, beginning March 1, 2020.

Earle made one payment in the amount of \$282.00 for the month of February 2020. However, Earle failed to make any further payments, violating the multiple orders of the magistrate court.

E. Circuit Court Appeal

A hearing on Earle’s appeal from the magistrate court was held on May 15, 2020, and was conducted pursuant to the Order of the South Carolina Supreme Court for the Operation of the Trial Courts During the Coronavirus Emergency issued on April 3, 2020. The parties consented to holding the hearing via telephone with a court reporter. Once again, at this hearing, Earle attempted to focus on the merits of the eviction action rather than just the statutorily required bond process. (Transcript, p. 3-5). The Court questioned whether Earle on the language of S.C. Code Ann. § 27-40-790, which states that the court is to set the amount of rent to be paid during the pendency of

an appeal at the market value. (Transcript, p. 5). Earle argued that this was not the case due to Boulder being considered Section 8 Housing. (Transcript, pp. 5-6).

The Court did not rule on whether the amount set by the magistrate was correct, but rather remanded the case. The Court held that it did “not appear, based on the return filed by the magistrate, the preliminary determination adhered to the requirements of this code section.” (Order). Therefore, the Circuit Court remanded the matter to the magistrate court to make a preliminary determination of the bond amount as set forth in S.C. Code Ann. § 27-40-790 and pursuant to any applicable public housing guidelines.. This appeal followed the circuit court’s order of remand.

Argument

I. The Circuit Court Erred in Ordering the Magistrate Court to Consider Applicable Public Housing Guidelines When Setting the Amount to be Paid by Respondent Pending Any Jury Trial.

Under S.C. Code Ann. § 18-7-170, the standard of review to be used by the circuit court when reviewing an appeal of the magistrate judge’s decision as follows:

Upon hearing the appeal, 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. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

In order to reverse a magistrate judge’s ruling, the appellant in the circuit court must show error at trial, prejudicial to her rights, or influencing adverse judgment. *Stukes v. Life Ins. Co. of Virginia*, 163 S.C. 216, 161 S.E. 478 (1931). Moreover, if there is sufficient undisputed evidence to support the judgment of the magistrate court, then any error in admitting other evidence will be considered harmless. *Charles v. Atlantic Coast Line R. Co.*, 78 S.C. 36, 58 S.E. 927 (1907).

The South Carolina Residential Landlord and Tenant Act (the “Act”), S.C. Code Ann. §§ 27-40-10. et seq., establishes the substantive and procedural law by which a magistrate judge is to administer hearings and trials related to the eviction of residential tenants. South Carolina Code Ann. § 27-40-790 establishes the methodology by which the magistrate court is to determine the rent amount to be paid between the time of a request for a jury trial and the jury trial itself. Specifically, S.C. Code Ann. § 27-40-790(a) addresses the payment of funds into the Court during pending contested eviction matters and specifically requires the Court to “. . . hold a hearing as soon as feasible after the issues have been joined, and preliminarily determine the matter.” Section § 27-40-790 further states:

In the event that the basis for the disagreement of the amount of rent due is the landlord’s alleged violation of the rental agreement or the provisions of this chapter, the rent to be paid must be the fair-market rental value of the premises at the time of the hearing.

Subsection (b) of this stated further provides that:

[i]n the event the amount of rent is in controversy, the court shall determine the amount of rent to be paid to the landlord in the same manner as in subsection (a) or (b) of [Section 790]

S.C. Code Ann. § 27-40-790(b)

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” *Garvin v. State*, 365 S.C. 16, 21, 615 S.E.2d 451, 453 (2005). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” *Knotts v. S.C. Dept. of Natural Resources*, 348 S.C. 1, 10, 558, S.E.2d 511, 516 (2002). “The legislature’s intent should be ascertained primarily from the plain language of the statute.” *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004).

“The first question of statutory interpretation is whether the statute’s meaning is clear on its face.” *Wade v. Berkeley Cnty.*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). “[T]he words

of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (citing *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). Here, the terms of the statute are clear – the Court is to order payment of the fair market value of the rent. There is no allowance for any other considerations, including public housing guidelines.

“Section 27-40-790 . . . establishes that rent must be paid by the tenant for [her] continued use and occupancy of the premises during the duration of the action for possession.” The Honorable Scott D. Whittle, 2016 WL 386068, at *3, Op. S.C. Att’y Gen. (2016). Once a writ of ejectment is issued by the magistrate court, a party can appeal the order. S.C. Code Ann. § 27-40-800 governs the procedures of the appellate court. Specifically, Section 800(a) requires that a tenant execute an undertaking that the tenant will continue to make payment of rent as it becomes due during the pending appeal. S.C. Code Ann. § 27-40-800(a). This section provides that:

if the tenant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the landlord, shall issue a warrant of ejectment

At the hearing on February 13, 2020, the magistrate court ordered Earle make ongoing rent payments in the amount of \$282.00 per month while the circuit court appeal was pending. Earle, with the assistance of counsel, agreed to make payments to Boulder in the amount of \$282.00 each month. The Act requires that a tenant pay the fair market value while an eviction proceeding is pending. The purpose of this statute is to prevent a tenant from living rent-free while waiting for a jury trial. This is what Respondent continues to do and would continue to do if permitted.

Nowhere in the plain language of the statute does it provide that a magistrate court is to consider “any applicable public housing guidelines.” The statute clearly and on its face requires

the magistrate court to set the rent to be paid while an ejectment action proceeds is the fair market value. There is no exception provided for public housing or any other type of housing that may be subject to additional federal requirements. The circuit court erred in ordering the magistrate court to consider any such guidelines. Assuming remand was appropriate, the order should simply have stated that the magistrate is to follow the unambiguous and precise language of S.C. Code Ann. § 27-40-790, setting the amount to be paid by Respondent at the fair market value of the rental unit.

II. The Circuit Court Erred in Remanding the Matter when the Issue of the Amount of Rent to be Paid is Moot Because Respondent Failed to Pay Any Amount.

Even if the magistrate court could consider public housing guidelines when setting the amount to be paid by tenants, which is denied, the issue of the amount to be set is moot as Respondent has failed to make any payments. Even if Respondent was required to make payments less than the fair market value, Earle has paid nothing, therefore the issuance of a writ of ejectment is proper and required.

Additionally, Boulder asserted that Earle owed a significant amount of past rent, totaling \$2,118.00. Earle disagreed such arrearage was owed. Therefore, as security for this disputed back rent, the court ordered Earle to pay \$1,000.00 to the magistrate court by January 28, 2020, and to continue paying monthly rent of \$282.00. Earle failed to make this court-ordered \$1,000.00 to the magistrate court by the established deadline. Thus, the court promptly and appropriately entered a writ of ejectment.

Pursuant to the terms of the Lease, monthly rent is due on the first of each month, with a grace period until the fifth of each month. Earle failed to make any payments. Therefore, pursuant to S.C. Code Ann. § 27-40-800(e), a final writ of ejectment should have been entered against Earle.

The writ was issued by the magistrate court for failure to comply with the court order, and the circuit court simply should have ordered this to be enforced.

Earle filed a notice of appeal to the circuit court that asserted that Boulder, “in bad faith, instituted eviction proceedings against [Earle] without good cause and in violation of the lease agreement and the South Carolina Landlord Tenant Act.” Earle further alleges that she “disputes the amount of rent alleged by [Boulder], but was not given the benefit of a hearing in which the dispute was heard.”

However, in her the appeal to the circuit court, Earle failed to allege that any error was made which prejudiced her rights with regard to the payment requirements ordered by the magistrate court pursuant to the express language of the Act. All that has occurred up to Earle’s appeal to the circuit court is the bond hearing, which is a requirement before a jury trial on the merits may occur. Pursuant to the requirements of the Act, the magistrate court held a prompt hearing on January 21, 2020. Earle appeared at this hearing with counsel and was given the opportunity to speak regarding the issue of the fair market value of rent, among other issues. (Return, p. 1). Earle attempted multiple times to argue the merits of the matter, which the magistrate court noted. (Return, p. 1). The magistrate court reminded Earle and her counsel that the bond hearing was not the appropriate venue for arguments regarding the merits of the eviction action, but did permit them to speak. (Return, p. 1).

The property manager of Boulder also appeared with counsel and was granted the opportunity to present information regarding the appropriate rent amount. The court ordered Earle to pay \$282.00 per month. (Return, p. 1). Although this amount is not necessarily in compliance with the statute because the statute requires payment of market rent, this is moot as Respondent has failed to pay any amount, even though the amount set was less than the fair market value.

Regardless of whether the magistrate court set the monthly rent amount correctly, this is a moot point because Respondent has failed to pay any amount.

The magistrate court is required to hold the bond hearing. This is not the hearing at which the merits of the underlying eviction are to be determined. As the statute states, the bond hearing is the time at which the parties discuss what constitutes the fair market value of the property at issue. The issue remanded to the magistrate, whether the magistrate set the amount to be paid correctly, is moot as Respondent failed to pay any amount, a direct violation of the statute. Based on Respondent's failure to pay any amount, the circuit court should not have remanded the matter to the magistrate court. However, if a remand is deemed proper, it should be on the limited issue of declaring the fair market rate of the unit, as required by the statute or for the purpose of enforcing the writ of ejectment.

CONCLUSION

Earle failed to comply with the orders of the magistrate court and the statutory requirements. The circuit court erred in remanding this matter to the magistrate court with instructions to consider any applicable public housing guidelines because this is a violation of the plain language of the statute. Additionally, the issue of the amount of rent to be paid is irrelevant because this question is moot as Respondent failed to pay any amount. Regardless of whether the amount of rent set by the magistrate court was correct, it is moot because Respondent has failed to pay any amount for months. Based on the circuit court's errors, Appellant respectfully requests this Court reverse the circuit court's remand, permitting the already issued writ of ejectment to move forward. Alternatively, if this Court finds remand proper, Appellant respectfully request the remand order the magistrate court to re-calculate the amount owed based on the fair market value of the property only, not any applicable public housing guidelines.

Respectfully submitted,

/s/ Emily I. Bridges

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Dated: August 4, 2020

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Respondent,

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Appellant.

PROOF OF SERVICE

The undersigned employee of the law offices of Fox Rothschild LLP, attorneys for Appellant, do hereby certify that service of the APPELLANT'S DESIGNATION OF MATTERS ON APPEAL was made on all counsel of record, specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses on August 4, 2020:

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August 4, 2020

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RECEIVED
Aug 04 2020
SC Court of Appeals

RE: *Mary Earle v. Boulder LP*
Case No. 2020-CP-23-00631
Appellate Case No. 2020-000904

Dear Ms. Kitchings:

Enclosed are (1) Appellant's Initial Brief; and (2) Appellant's Designation of Matter to be Included in the Record on Appeal; and (3) Certificate of Service. These same documents are being both mailed and e-mailed to Clerk's office and counsel for Respondent.

Thank you for your assistance in this matter.

Sincerely,

FOX ROTHSCHILD LLP

/s/ *Emily I. Bridges*

Emily I. Bridges

EIB/ela

Enclosures

cc: Vanessa Cason, Esquire (via e-mail-vanessa@vcasonlaw.com & US Mail)

A Pennsylvania Limited Liability Partnership

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