

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY

Thomas A. Russo, Circuit Court Judge

Appellate Case No.: 2019-000102

Demetric Hayes and Carla Marshall.....Appellant,

v.

Jim Stroud.....Respondent

FINAL BRIEF OF RESPONDENT

RECEIVED

Nov 10 2020

SC Court of Appeals

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STATEMENT OF THE ISSUES

1. Did the Circuit Court correctly affirm the Magistrate Court's order ruling that the Appellants could not retrieve and admit text messages, letters, and photographs, which the Appellants did not have in the Courtroom at the time of trial?
2. Did a conflict of interest exist based upon the Respondent's counsel former representation of the Appellant, Carla Marshall on an unrelated matter?
3. Did the Circuit Court correctly affirm the Magistrate Court's order that the Appellant, Ms. Marshall, could only testify as a witness because she was not a party to the lease agreement, and thus, lacked standing?
4. Did the Circuit Court correctly affirm the Magistrate Court in its application of sections 27-40-440 and 27-40-610 of the South Carolina Residential Landlord and Tenant Act?
5. Did the Magistrate Court deny the Appellant's rights to make objections during the trial of the case?

STATEMENT OF THE CASE

This case arises from a lease agreement (the "Lease") between the Plaintiff-Respondent, Jim Stroud (the "Respondent"), and the Defendant-Appellant, Demetric Hayes. (R. pp. 41-45). Under the Lease, the Respondent leased to the Appellant, Demetric Hayes, the property known as 2003 Enchanted Lane, Florence, South Carolina (the "Premises"). (R. p. 44) The Defendant-Appellant, Carla Marshall, resided at the Premises with Mr. Hayes. (*See* R. p. 16).

The Respondent initiated eviction proceedings on August 6, 2018, naming "Demetric Hayes, Carla Hayes & All Others." (Appx. p. i) The ejectment proceedings were initiated on the grounds of failure to pay rent. (*Id.*; R. p. 7, lines 23-26).

The Appellants filed an Answer with the Magistrate on August 16, 2018. (R. pp. 16-18). In their Answer, the Appellants raised violations of sections 27-40-440 and 27-40-610 of the South Carolina Code Residential Landlord and Tenant Act as a defense. (*Id.*). The Appellants alleged that the Respondent failed to discharge his duties prescribed by section 27-40-440 due to the backup of the sewer system operated by the City of Florence which services the Premises. (R. p. 16). The Answer of the Appellants did not assert any counterclaims, nor did it request damages. (R. pp. 16-18).

The action was tried on August 22, 2018, before the Honorable Peter E. Becker, Florence Magistrate. (*See* R. p. 7-12). No motions were made by the Appellants to disqualify the Respondent's counsel. (R. p. 11, lines 22-24; Initial Brief of Appellant (Amended)). The Magistrate, after considering the testimony and evidence of the parties, found that the Appellants failed to pay rent in accordance with the Lease. (R. p. 11, lines 25-27). As a result of the Appellants failure to pay rent, the Magistrate granted the Respondent's request for ejectment and issued a Writ of Ejectment. (R. p. 2). The Writ of Ejectment required the Appellants to vacate the property on or before August 27, 2018. (*Id.*).

The Appellants timely appealed the Magistrate's order issuing the Writ of Ejectment to the Court of Common Pleas for Florence County. The Notice of Civil Appeal set forth the following exceptions of the Appellants:

- Failure to recognize hearsay exceptions;
- Failure to allow the Plaintiff to testify;
- Failure to allow evidence to be presented and considered;
- Judge Beker [sic] turned me (Carla Marshall) into a witness when it is clear that I am a party in the case;
- Failure to recognize violations in the landlord tenant act section 27-40-440, 27-40-10
- Judge Becker allowed Attorney Patrick Ford to continuously interrupt pro-se litigant Demetric Hayes and Carla Marshall (witness);

- Attorney Patrick Ford has represented me Carla Marshall so there's a conflict of interest;
- Violation of section 27-40-720

(R. p. 19). The Circuit Court heard the Appellants appeal on December 20, 2018. After considering the arguments of the Appellants and Respondents, the Honorable Thomas A. Russo affirmed the order of the Magistrate Court issuing the Writ of Ejectment and dismissed the Appellant's Appeal. (R. pp. 3-4). The Appellants filed their Notice of Appeal with the Circuit Court on January 22, 2019. (Notice of Appeal). The Appellants appealed from the Order of the Honorable Thomas A. Russo, affirming the Magistrate's decision. (*Id.*).

STATEMENT OF THE FACTS

The Respondent and the Defendant-Appellant, Demetric Hayes entered into the Lease for the Premises. (R. pp. 41-45). The Defendant-Appellant, Carla Marshall, resided at the premises with Mr. Hayes. (*See* R. pp., 16-17). Pursuant to the terms of the Lease, Mr. Hayes agreed to pay \$2,200 per month before the first day of each month. (R. p. 41). If Mr. Hayes failed to pay the monthly rent within five days of the due date, the Lease permitted the Respondent to initiate ejectment proceedings without further notice to the Respondent. (*Id.*).

While residing at the Premises, the Appellants experienced issues due to the backup of the sewer system operated by the City of Florence, which services the Premises. (R. p. 7, line 26-p. 8, lines 1-11; R. pp. 16-17). On two occasions sewage backed up into the Premises, on June 9, 2018, and a second time on July 29, 2018. (*Id.*). Due to the sewer system backup, the Appellants withheld rent and vacated the Premises. (*Id.*). The Appellants never provided written notice of the issues until August 4, 2015. (R. p. 49). Furthermore, the Respondent could not control the issues with the sewer system that he did not maintain or operate. (R. p. 8, lines 17-19).

STANDARD OF REVIEW

The standard of review applied by the Circuit Court in an appeal of a Magistrate's judgment is prescribed 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 of the parties and for errors of law or fact.

S.C. Code Ann. § 18-7-170 (2014); *Burns v. Wannamaker*, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984). Where the Circuit Court has affirmed the Magistrate's decision, this Court must determine whether the Circuit Court order is controlled by an error of law or is unsupported by the facts. *A & I, Inc. v. Gore*, 366 S.C. 233, 621 S.E.2d 383, 386 (2005) (citing *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001)). "The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law." *Id.*

ARGUMENT

I. This Court should dismiss the Appeal of the Appellants because the issues on appeal are moot.

The issues raise by the Appellant on appeal are moot because the Appellants voluntarily abandoned the Premises. An appellate court does not concern itself with moot issues. *Berry v. Zahler*, 220 S.C. 86, 87, 66 S.E.2d 456 (1951). In *Berry*, the landlord brought an ejectment proceeding in Magistrates Court against the appellants for possession of a residence. *Id.* at 87. The tenants appealed the action, but after the trial, they had vacated the premises. *Id.* There, the South Carolina Supreme Court dismissed the appeal on the grounds that it was moot. *Id.*

Here, like in *Berry*, the Appellants had vacated the Premises. In fact, at the time of trial, the Appellants no longer occupied the property (R. p. 8, lines 4-5, 12-14; R. p. 16). Therefore, this Court should dismiss the Appellant's appeal because the issues raised are moot. *See Berry*, 220 S.C. at 87.

II. This Court should affirm the Order of the Circuit Court because the issues on appeal are based on vague argument and unsupported by authority.

The brief of the Appellants lacks any authority supporting their arguments. (*See generally* Initial Brief of Appellant (Amended)). The Argument section merely recites the facts as alleged in their pleadings and testified to testified to at trial. (*Id.*, see R. p. 7 line 26-8 line 14; *see also* R. pp. 13-18). The section of the Initial Brief of Appellants (Amended) entitled Statement of Review, is also devoid of any argument or authority supporting the Appellants' assertions on appeal. Other than references to sections 27-40-440 and 27-40-640, there is no citation to any statute, case, or other authority. (Initial Brief of Appellant (Amended)).

This Court need not address any point which is manifestly without merit. S.C. Code Ann. § 14-8-250 (2017); *Cannon v. Cannon*, 321 S.C. 44, 467 S.E.2d 132 (Ct. App. 1995). Furthermore, none of the issues are argued in the Initial Brief of Appellant (Amended), and therefore, have been abandoned on appeal. *Id.* (citing *Nienow v. Nienow*, 286 S.C. 161, 232 S.E.2d 504 (1977)). While the Appellants have proceeded in this matter *pro se*, they are held to the same standard as an attorney. *See Rouvet v. Rouvet*, 338 S.C. 301, 696 S.E.2d 204 (Ct. App. 2010). Based on the foregoing, this Court should affirm the orders of the Circuit Court and the Magistrate.

III. The Appellants failed to raise any issues regarding a conflict of interest to the Magistrate, and therefore, this Court cannot address the issue.

Assuming arguendo, that a conflict of interest exists, the Appellants failed to raise the conflict to the Magistrate. (R. p. 11, lines 22-24; *See* Initial Brief of Appellant (Amended)). This Court cannot consider issues raised on appeal by an appellant who failed to present them to the Magistrate Court. *See Indigo Associates v. Ryan Inv. Co.*, 431 S.E.2d 271, 314 S.C. 519 (Ct. App. 1993) (reversing Circuit Court for considering an issue that was not raised before the Magistrate Court). In *Indigo*, the predecessors of Indigo Associates contracted with Ryan Investment Company to lease certain property in Cayce, South Carolina. *Id.* at 272. There, Indigo Associates initiated ejectment proceedings because Ryan failed to timely pay tax and rental payments. *Id.* The Magistrate ordered that Ryan be ejected. *Id.*

Ryan appealed the case, and the Circuit Court reversed the Magistrate as a matter of law. *Id.* at 273. The Circuit Court found that Indigo Associates had failed to comply with the terms of the lease regarding notice of default and that Ryan was not in default because it cured the default within the time permitted under the lease. *Id.* On appeal, this Court reversed the Circuit Court, holding that the Circuit Court could not consider the issue because Ryan failed to present it for determination by the Magistrate. *Id.* at 273-274.

Here, the Appellants claim a conflict of interest exists in this matter. However, the issue was never raised to the Magistrate (R. p. 11, lines 22-24; *See* Initial Brief of Appellant (Amended) (“We did not find out about this unethical practice until after the hearing.”)). Because the issue was never raised before the Magistrate Court, this Court cannot consider the issue. *Indigo Associates*, 431 S.E.2d 271 at 273-274. Therefore, this Court should affirm the Order of the Circuit Court affirming the Order of the Magistrate.

IV. No conflict of interested existed based on the Respondent's counsel's prior representation of the Appellant, Carla Marshall.

No conflict of interest existed as a result of the Finklea Law Firm's prior representation of the Appellant, Carla Marshall. Rule 1.9 of the Rules of Professional Conduct prohibits a lawyer who formerly represented a client from representing another person in the same or a substantially related matter when the person's interests are materially adverse to the interests of the former client. Rule 1.9, RPC; Rule 407, SCAR. The Finklea Law Firm has previously represented the Appellant-Defendant, Ms. Marshall, in a civil action for personal injuries. The civil action was filed in the Court of Common Pleas for Florence County, Case Number 2005-CP-21-01195. The lawsuit was eventually resolved, and the Finklea Law Firm sent a close file letter to Ms. Marshall on January 12, 2006. The file was closed on February 8, 2006.

The Finklea Law Firm has also represented Starlite On You Entertainment, LLC, a business entity that Ms. Marshall owns and operates (or formerly owned and operated). The scope of the representation consisted of a business deal with a third-party other than the Respondent. (*See* Initial Appellant Brief (Amended)). Once the representation was finished, a close file letter was mailed to Starlite On You Entertainment, LLC, in care of Ms. Marshall. The file was closed on January 5, 2017.¹

Matters are substantially related for purposes of Rule 1.9, "if they involve the same transaction or legal dispute, or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." Rule 1.9, cmt. [3]; Rule 407 SCAR. In

¹ While counsel for the Respondent asserts that none of the information contained herein is confidential information (as most was disclosed throughout the representation in order to carry out the representation or is a matter of public record), Rule 1.6(b)(6) does permit an attorney to reveal information relating to the representation of a client which the lawyer reasonably believes necessary to respond to allegations in any proceeding concerning the lawyer's representation of the client. Rule 1.6(b)(6), RPC; Rule 407 SCAR. Furthermore, some of the information has been disclosed by Ms. Marshall herself in her brief. (Initial Brief of Appellant (Amended)).

either event, neither prior representation of Ms. Marshall or her business remotely relates to the leasehold relationship between the Respondent and the Appellants.

Furthermore, the Rules of Professional Conduct distinguish between organizational and individual clients. *See* Rule 1.13, RPC; Rule 407 SCAR. While counsel for Starlite On You Entertainment, LLC, communicated with its principal, Carla Marshal, communications with constituents of the organization does not mean the constituents are clients of the lawyer. *See* Rule 1.13, cmt. [3]; Rule 407 SCAR. Based on the foregoing, there is no conflict of interest. *C.f.* *Ross Marine v. Query Sautter & Gliserman*, 671 S.E.2d 604, 380 S.C. 494 (2009) (holding no conflict of interest).

V. The Circuit Court correctly affirmed the Magistrate’s application of the South Carolina Residential Landlord and Tenant Act.

The Magistrate Court correctly issued the Writ of Ejectment in this case. The primary issues before the Magistrate Court were whether the Appellants failed to pay rent when due or demanded and whether the Respondent complied with his obligations under section 27-40-440. (R. p. 6; 16-18). The South Carolina Residential Landlord and Tenant Act (“RLTA”), as supplemented by other applicable rules of law, governs disputes between landlords and tenants under residential leases. S.C. Code Ann. §§ 27-40-30; 27-40-110 (2007). A tenant may be ejected for failing to pay rent when due or demanded. S.C. Code Ann. § 27-37-10(A). If the tenant fails to pay rent within five days from the date it is due, the landlord may terminate the lease agreement provided the tenant is given written notice. § 27-40-710(B). The landlord is not required to give the tenant notice, however, if the lease agreement contains the statutorily prescribed notice provision. *Id.*

Landlords are also required to maintain the premises in reasonably good and safe working order and condition. § 27-40-440. The duties imposed under section 27-40-440 applies

to the inherent physical qualities of the premises. *Fair v. United States of America*, 334 S.C. 321, 323, 513 S.E.2d 616 (1999). If a landlord fails to comply with section 27-40-440, the tenant may deliver to the landlord written notice of the breach and demand that the breach be cured within fourteen days. § 27-40-610(a). If the landlord fails to cure the breach within fourteen days, the tenant may terminate the lease. *Id.* Alternatively, the tenant may recover actual damages and obtain injunctive relief if the landlord fails to comply with the lease or section 27-40-440. § 27-40-610(b). Thus, a tenant has two options of how to proceed in the event of an alleged violation of section 27-40-440.

Section 27-40-440 may also be used as a shield in an action for possession based upon nonpayment of rent. § 27-40-640(a). The tenant may rely on the provisions of the RLTA to assert defenses for any amount recoverable under the lease. *Id.* However, tenants waive a violation of the landlord's duties under the lease agreement or section 27-40-440 as a defense in an action for possession for nonpayment of rent when they fail to notice the landlord of the duties fourteen days before rent is due. § 27-40-640(b)(1).

In order to prevail on a defense based on the landlord's failure to comply with section 27-40-440, written notice must be provided to the landlord. *See Robinson v. Code*, 682 S.E.2d 495, 498, 384 S.C. 582 (Ct. App. 2009) (affirming Circuit Court's order granting the landlord's Rule 12(b)(6) motion to dismiss, in part, because the tenant failed to provide written notice to the landlord of the problem that needed to be corrected).

The Respondent denied any breach of duties, as he had no control or ability to maintain the sewer system maintained by the City. Nevertheless, the only written notice produced by the Appellants was a letter sent to the Respondent on August 4, 2018, three days after the rent was due. (Letter to Respondent). While there was conflicting testimony as to what notices were

provided to the Respondent, the Appellants did not produce any further written notices. (R. pp. 7-12). Furthermore, the notice provided fails to comply with section 27-40-610(a), which requires the tenants to provide a landlord with 14 days to cure the breach. § 27-40-610(a). In this case, the testimony is sufficient to sustain the Magistrate's judgment and there are no facts which show the affirmance was influenced by an error of law. Therefore, this Court must affirm the Circuit Court's Order affirming the Magistrate's decision to issue the Writ of Ejectment.

VI. The Magistrate Court may have erred in ruling that Ms. Marshall was not a "party" to the action, but any such error was harmless.

The Appellant, Ms. Marshall, is clearly a party to the action, as the ejectment proceedings identify "Carla Hayes" as a Defendant. (R. p. 6). The Magistrate's Return on Appeal is unclear, but the objection raised at trial by Respondent's counsel related to Ms. Marshall's standing because she was not a party to the Lease. While the Court did provide that the Court granted the Respondent's "motion to separate" Ms. Marshall as a Defendant, Ms. Marshall was not dismissed from the case. (R. pp. 7-12). Furthermore, Ms. Marshall had the opportunity to testify in the matter. (R. pp. 7-12) The ruling of the Magistrate in this case ultimately rested on the application of the law to the testimony of the parties and evidence before the Magistrate. (Return on Appeal). Therefore, the Magistrate's ruling "separating" Ms. Marshall as a party was harmless, if not wholly unrelated, to its ultimate decision in the case. *C.f. White's Mill Colony Inc. v. Williams*, 363 S.C. 117, 123, n. 1, 609 S.E.2d 811 (Ct. App. 2005) (noting that in construing a judge's order, an appellate court must do so in light of the judge's intent as discerned from the order as a whole). Therefore, this Court should affirm the ruling of the Circuit Court upholding the Magistrate's order issuing a Writ of Ejectment.

VII. The Appellants fail to identify any specific objections that they were denied in making, and therefore, this Court cannot address them.

The Appellants assert that the Magistrate denied their right to object at trial. However, the Appellants have failed to identify any objections that they were denied from making. (Initial Brief of Appellant (Amended)). Furthermore, the Appellants have failed to identify any specific rulings by the Magistrate regarding their objections. *Id.* A party must make specific objections in order to preserve an issue for appeal. *See Pinkerton v. Jones*, 423 S.E.2d 151, 310 S.C. 295 (Ct. App. 1992) (citing 88 C.J.S. Trial § 429, 615 (1955) (“On appeal, the party will be limited, ordinarily, to the specific objections to evidence made at the trial, and the appellate court will consider only such grounds of objection as are specified.”)). Therefore, this Court must affirm the Order of the Circuit Court upholding the Magistrate’s order issuing the Writ of Ejectment.

CONCLUSION

Based on the foregoing, this Court should affirm the Circuit Court’s Order upholding the Magistrate Court’s decision issuing the Writ of Ejectment. First, the issues raised on appeal are moot. Furthermore, the Appellants fail to provide any arguments or authority in support of their assertions. There is no conflict of interest in this case and the Magistrate properly applied South Carolina law. The Circuit Court was correct in upholding the decision of the Magistrate. Even if the Magistrate erred, any error was harmless. Therefore, this Court should affirm the decision of the Circuit Court.

Respectfully submitted,

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CERTIFICATION OF COUNSEL
PURSUANT TO RULE 211(A), SCACR

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(B), SCACR, in that the Final Brief of Respondent is identical to the Amended Initial Brief of Respondent, except for revisions to references and corrections of typographical errors and misspellings.

November 10, 2020

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