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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-38-01339
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers Appellant,

v.

James Smith, Jr. Respondent.

RESPONDENT’S FINAL BRIEF

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STATEMENT OF THE CASE

Respondent Smith owns the real property located at 1429 LeGrand Smoak Street, Cordova, South Carolina (the “Property”), and he allowed Appellants to live there rent-free for a period of time. (R.p. 59; Application for Ejectment (Eviction), dated August 2, 2018.) However, on July 2, 2018, Respondent Smith wrote to Appellants giving them 30 days to vacate the Property. (R.p 60; *Id.*) On August 8, 2018, Respondent Smith filed a Rule to Vacate or Show Cause for Eviction in Orangeburg County Central Region Magistrate Court against Appellants Rivers. (R.p. 61; Rule to Vacate or Show Cause (Eviction), filed August 8, 2018.)¹

The Magistrate Court ruled in favor of Respondent Smith and ruled that Appellants Rivers were unlawfully occupying the Property. (R.p. 62; Magistrate’s Return of Civil Appeal, filed November 21, 2018.) On October 17, 2018, Appellants filed a Notice of Intent to Appeal to the circuit court and a Corrected Notice of Appeal on October 18, 2018. (R.pp.128-129; Notice of Intent to Appeal to Circuit Court, filed October 17, 2018, Corrected Notice of Intent to Appeal, filed October 18, 2018.) Appellants sought to stay the ejectment during the appeal to the circuit court. (R.p. 54, Magistrate’s Return of Civil Appeal.) Accordingly, the Magistrate Court held a hearing to determine the appropriate

¹ On August 6, 2018, Appellants initiated a separate civil action by filing a Complaint in the Orangeburg County Court of Common Pleas, challenging Respondent’s ownership of the Property and alleging causes of action for constructive fraud, negligence, conversion, unjust enrichment, and invalid owner. (R.p. 18, *Rufus Rivers and Merle Rivers v. James Smith, Jr.*, 2018-CP-38-01016, filed August 6, 2018.) On August 17, 2018, the Rivers filed an Amended Complaint in the Court of Common Pleas in the same matter. The case was referred to the Master in Equity. On August 28, 2019, following a hearing, Judge James B. Jackson, Jr., Master in Equity for Orangeburg County, dismissed Appellants’ Amended Complaint for failure to state a cause of action upon which relief could be granted. Appellants did not appeal that decision and the time for appeal of that order has now expired.

amount of monthly rent for Appellants to pay into court during the appeal to the circuit court in order to stay the ejectment. (R.p. 54; Magistrate's Return of Civil Appeal.) Because Appellants had never paid rent on the Property, Respondent submitted the Affidavit of Connie Gaston, a local property manager, to aid the Magistrate Court in determining fair market rent for the Property. (R.pp. 54, 120-121; Magistrate's Return of Civil Appeal.) In response, Appellants presented to the Magistrate an unexecuted "Bond Undertaking and Order."

The Magistrate Court determined appropriate rent to be \$700.00, and ordered it to be paid into the Magistrate Court registry each month as bond securing a stay of the eviction pending appeal. (R.p. 54; Magistrate's Return of Civil Appeal.)

On January 6, 2020, the circuit court affirmed the eviction ordered by the Magistrate Court. (R.p. 4; Order, dated Jan. 6, 2020.) On March 2, 2020, Appellants appealed their eviction to the South Carolina Court of Appeals.

STANDARD OF REVIEW

Upon an appeal of an ejectment proceeding which was first heard in magistrate's court, this Court "reviews the order under a limited standard of review in which (1) findings of fact are to be upheld if there is any supporting evidence and (2) absent an error of law, the circuit court's holding is to be affirmed." *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 424 S.C. 298, 302-303, 818 S.E.2d 224, 226-227 (2018).

ARGUMENT

Appellants bring their appeal based upon two arguments. First, Appellants argue that pursuant to South Carolina Code Ann. § 22-3-20, the Magistrate Court lacked subject-matter jurisdiction to adjudicate the eviction because Appellants attempted to contest Respondent's ownership of the Property. Second, Appellants argue that the Magistrate Court did not determine that a landlord-tenant relationship existed at the time of the eviction, therefore the eviction was improper. Neither of these arguments has merit.

I. The Magistrate Court had subject matter jurisdiction over the eviction matter.

Appellants contend that the title to the property was in question and, therefore, pursuant to S.C. Code Ann. § 22-3-20, the Magistrate Court would not have subject matter jurisdiction over the eviction matter. (Brief of Appellants, p. 8.) Section 22-3-20(2) provides that the Magistrate's Court lacks jurisdiction "[w]hen the title to real property shall come in question." S.C. Code Ann. § 22-3-20(2).

Appellants argued to the Magistrate Court that the title to the real property was in question because on August 6, 2018, they had filed a lawsuit in the Orangeburg County Court of Common Pleas claiming that they should have title to the real property located at 1429 Legrand Smoak Street, Cordova, South Carolina. Contrary to Appellants' arguments, Appellants' Common Pleas lawsuit did not affect the Magistrate Court's

jurisdiction to hear the underlying eviction proceeding. This is because Section 22-3-20(2) does not apply to eviction proceedings. The Honorable William P. Steele, who was a magistrate for Anderson County, South Carolina, addressed this issue directly in an article published in the *South Carolina Lawyer* as follows:

Finally, certain types of actions cannot be filed in magistrate's court. A magistrate may not hear actions in which the title to property comes in question. S.C. Code Ann. § 22-3-20(2) (Law. Co-op. 1989). However, a proceeding to eject a tenant who claims title in himself is not an action involving the title to land but a **summary proceeding, and it may be filed in magistrate's court.** *State ex rel. O'Neale v. Fickling*, 10 S.C. 301 (1878).

Hon. William P. Steele, Jr., A Tale of Two Courts--Civil Procedure in Magistrate Court and the Court of Common Pleas, S.C. Law., MARCH/APRIL 1997, at 32, 33 (emphasis added). Thus, even though Appellants tried to contend in their separate lawsuit that title to the real property should have been in them, that did not make the proceeding to eject them from 1429 Legrand Smoak Street an "action involving the title to land," and it was, instead, a "summary proceeding" that was appropriately maintained in Magistrate Court. The Magistrate Court properly had and maintained jurisdiction of this eviction proceeding.

Importantly, the Circuit Court provided Appellants an opportunity to pursue their claim of ownership through their separate lawsuit and continued the hearing on their appeal until that lawsuit was resolved. Thus, by the time this matter came back for hearing on appeal before the Circuit Court, Appellants' lawsuit challenging title had been dismissed. Appellants did not appeal that dismissal. Accordingly, even if Section 22-3-20(2) were applicable, there was (and is) no basis for Appellants' contention that they ever had title to the real property.

Appellants mention Section 22-3-1110 in their Brief of Appellants, but it is not clear what purpose it serves in their argument. Sections 22-3-1110 through 1180 collectively

entitled “Proceedings When Title to Real Estate is Involved.” As set forth above, an eviction proceeding is not one where title to real estate is involved; thus, Article 11 of Title 22, Chapter 3 is inapplicable in this matter.

Even if it were applicable, its purpose was already served by Appellants filing a separate lawsuit in Circuit Court claiming they owned the property. The purpose of the procedures set forth in Section 22-3-1110 is to give defendants the ability to refer potentially complex title issues which arise in the Magistrate Court to the Circuit Court for adjudication. Appellants’ claims regarding ownership of the Property were fully adjudicated in the Master-In-Equity when they filed their separate action in the Court of Common Pleas. The Master-In-Equity’s order dismissing Appellants’ lawsuit was not appealed. Therefore, Appellants fully exhausted their opportunity to argue that they own the Property as of August 8, 2019 and are now barred by *res judicata* from claiming ownership of the Property or from claiming Respondent does not own the Property.

Finally, even if Section 22-3-1110 is applicable, Appellants failed to follow the procedure required by that section; therefore, that issue is not preserved for appeal. See *Creighton v. Coligny Plaza Ltd. Pshp.*, 334 S.C. 96, 108 (S.C. Ct. App. 1998) (“An issue not raised to or ruled on by the trial court is not preserved for appellate review.”).

Should Appellants succeed in this appeal, and this Court overturn the eviction for lack of subject matter jurisdiction, the result would be for Respondent to be forced to go through the eviction process again. It would be futile and a waste of judicial resources to force Respondent to relitigate the eviction when Appellants are foreclosed from asserting the only argument they have ever put forth against eviction from the Property.

II. A landlord-tenant relationship existed between Appellants and Respondent upon which to base the eviction action.

Appellants argue that the issue of a landlord-tenant relationship was not addressed at the hearing on November [sic] 18, 2019.”² (Brief of Appellants, p. 7.) This is incorrect. Beyond that, they provide no argument that they were not Respondent’s tenants.

In considering Appellants’ argument of no landlord-tenant relationship, the Circuit Court cited the following definitions. A “landlord” is “the owner, lessor, or sublessor of the premises.” S.C. Code Ann. § 27-40-210(6). An “owner” is defined as “one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.” S.C. Code Ann. § 27-40-210(8). A “tenant” is defined as “a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15). A “rental agreement” is defined as “all agreements, written or oral, and valid rules and regulations adopted under § 27-40-520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.” S.C. Code Ann. § 27-40-210(12). Absent a rental agreement which fixes a definite term, a tenancy is month to month. S.C. Code § 27-40-310(d). All that is required to terminate a month-to-month tenancy is written notice to the tenant thirty days before the termination date in the notice. S.C. Code § 27-40-770(b).

In finding a landlord-tenant relationship, the Magistrate Court noted that a “tenant at will” is defined as “Every person other than the owner of real estate, excepting a domestic servant and farm laborer, using or occupying real estate without an agreement,

² There was no hearing in this case on November 18, 2019, the hearing was on October 18, 2019. (R.p. 31; Tr.)

either oral or in writing.” S.C. Code Ann. § 27-33-10(3). (R.p. 53; Magistrate’s Return of Civil Appeal.)

The Circuit Court held that Respondent holds recorded title to the Property, proof of which he presented to the Magistrate Court and which is included in the Magistrate Court Return for Appeal. There is no evidence in the record that would indicate that Respondent is not the owner of the Property.

Until July 2, 2018, Respondent permitted Appellants to occupy the Property without a written lease, to the exclusion of others, without a definite term. Thus, Appellants are tenants of Respondent. The Circuit Court properly affirmed the Magistrate Court’s determination that there was a landlord-tenant relationship between the parties.

Appellants have presented no argument regarding why they disagree with this decision or how the Circuit Court did not explicitly address this determination. Therefore, Appellants have waived this argument.

III. Appellants have no claim to the funds being currently held in escrow in the Magistrate Court’s registry.

In their Conclusion, Appellants request that this Court “release Appellants’ funds being held in escrow,” among other requested remedies. Appellants made rental payments into the Orangeburg County Magistrate Court’s registry to secure supersedeas for the pendency of their appeal to the Circuit Court. (R.p. 2; Order, dated Jan. 6, 2020.) This appeal has now concluded and the Circuit Court has ordered “the rental payments currently held in the Orangeburg County Magistrate’s Court’s registry be disbursed to [Respondent] at the earliest possible date.” (R.p. 8; *Id.*) Respondent owns the Property. Appellants occupy the Property as tenants. Appellants have occupied the Property against the wishes of Respondent since July 8, 2018, and Respondent has received no

rental payments whatsoever from Appellants during this time, as the Magistrate Court ordered rental payments to be made into the court's registry instead of to Respondent directly.

Appellants have provided no argument regarding why these rental payments should not be released to Respondent per the Circuit Court's Order. Not only did Appellants fail to make an argument for these payments to be paid to them, no argument could be successful. Appellants have only ever asserted a single reason they should not be ejected from the Property: their unsupported contention that Respondent is not the proper owner of the Property. As described above, Appellants have tried and failed to attack Respondent's ownership of the Property and are estopped from pursuing the matter further. Appellants have no colorable argument that these rental payments belong to Appellants. Therefore, this Court should refuse to order the Magistrate Court to release these funds to Appellants and instead this Court should affirm the Order of the Circuit Court which dictated that the funds should be released to Respondent.

CONCLUSION

Appellants have failed to show that the Orders on Appeal contain any findings of fact which lack supporting evidence or that the Circuit Court has made an error of law. Therefore, and for the reasons set forth above, Respondent respectfully requests that this Court to affirm the order of the Circuit Court upholding the decision of the Magistrate Court in this matter and remand the matter to the Magistrate Court for ejectment proceedings.

Respectfully submitted,

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