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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal from Berkeley County
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Case No. 2018-CP-08-00266
Case No. 2018-CP-08-01008
Appellate Tracking No.: 2019-001169

Aracelis Santos, ...Appellant,

vs.

Harris Investment Holdings, L.L.C., ... Respondent,

REPLY BRIEF

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REPLY TO RESPONDENT'S STATEMENT OF THE CASE

The Respondent makes several material incorrect statements of fact that must be corrected. On page 7, the Respondent incorrectly states that the "parties" entered into two leases in in 2014. This is misleading because Respondent glosses over the fact is that when Harris Investments purchased the shopping center in December 2015, the Appellant occupied her space under a May 2014 lease with Respondent's predecessor, Francon (R.O.A. Vol. 2, page 532 [lease]). Respondent purchased the shopping center subject to this lease. The only reason the Appellant signed new leases with the Respondent is because her fluency in English is limited, and she did not understand her rights, and she succumbed to Harris Investments' insistence that she sign, without counsel, new leases. This initial predatory practice sets the tone for the entire case.

More importantly, on pages 8-12, the Respondent creates the false inference that the Magistrate ejected the Appellant for committing "criminal acts." This canard of "criminal acts" permeates this dispute and served as the excuse for Hanahan's coordination with the Respondent to "sundown" the Appellant. The record demonstrates that the so-called "criminal acts" were nothing more than the City's saturation of the business with its police department under the pretext of "compliance checks" to generate numerous "incident reports," which the landlord now represents to this Court as evidence of "criminal acts" even though the Magistrate did not admit them into evidence as such. A summary of these putative "criminal acts" is found in the record on appeal at pages 232 and 585 [summary of citations], which demonstrate that the City issued 51 municipal citations, at least 25 of which were dismissed and 8 of which were "no contest" pleas with fines of $50.00 each. Thus the sole evidence of "criminal acts" is grounded upon the unjustified reliance upon Police Department incident reports as an impermissible inference for "criminal acts," an inference the Magistrate rejected. As discussed more fully below, the Magistrate admitted them for the limited purpose of delineating the dates and times of the police

presence at El Alamo. Thus, rather than evidence of "criminal conduct," these incident reports prove only that the City of Hanahan blanketed Appellant's business with a police presence, and it did so as part of a coordinated conspiracy to drive the Appellant out of Hanahan. It is true that Police Chief Turner "testified El Alamo constituted a public nuisance due to repeated acts of criminal activity," but the record demonstrates that this opinion is not supported by evidence of convictions. The incident reports demonstrate that the City of Hanahan deployed its police department to intimidate the Appellant and her customers to establish Hanahan as a "sundown town." As the transcript of record reveals, R.O.A. Vol. 1, pages 388 and 392 [tr. Pages 122, lines 12-17 and 126, lines 12-21], Respondent's counsel conceded that the reports established only one fact; to wit, that the police were on the premises on certain dates:

> MR. ABNEY: I'm not here to prove crime. I'm here to show that this establishment is a public nuisance that has completely absorbed the attention of the Hanahan Police Department for the last three years. R.O.A. page 388.

The trial court, relying on this admission, admitted the incident reports **for the limited purpose** of establishing the dates of presence at the Appellant's business:

> THE COURT: I understand. Well, I agree with that. I agree with that too. So I think under 803(8) . . . they come in except for opinions and legal conclusions. For example, if an officer writes in there, I believe such-and-such is telling the truth, I think that's something I have to exclude. If the officer writes in there, I think this person is guilty of this, that's an opinion. I have to exclude that. (R.O.A. Vol. 1, page 392 [tr. Page 126, lines 12-21]

Thus, the facts are not in dispute—the City of Hanahan's Police Department camped out at El Alamo, but the disputed conclusion is **why** were the police there so often? Were they there

because they were responding to requests for service resulting in convictions, or, were they there, as the record demonstrates, for "compliance checks" as part of the City's three-pronged attack on El Alamo to manufacture evidence? The Record demonstrates that the City passed its consumption Ordinance aimed at Appellant on April 12, 2016, to outlaw the "sale" of alcohol after 2:00 a.m. to shut down El Alamo. However, the City soon realized the ordinance did not apply to El Alamo because it did not sell alcohol, and thus, on July 12, 2016, it amended its ordinance to add a section "c" to require businesses that allowed consumption on its premises to close. There was, of course, only one such business in the City: El Alamo. See R.O.A. Vol. 2, page 507-508 [tr. Page 241, line 13—242, line 14]. This background of frequent compliance checks and police harassment also brings into sharper focus the City's decision to pay Appellant to obtain a release from her civil rights claim. In short, there is sparse evidence in this record to support the Chief's opinion that El Alamo committed "criminal" acts, but a tsunami of evidence that the City's dispatch of police officers to El Alamo was nothing more than one prong of its coordinated effort to drive El Alamo from the City.

REPLY ARGUMENTS

Reply to Argument 1.

Magistrates do not have jurisdiction to enter money judgments in excess of $7,500.00.

Here, the parties reach common ground on the facts and differ in the application of caselaw. In short, this Court is called upon to decide whose reading of *Mosseri, Mosseri, Castro v. Austin's at the Beach, Inc.*, 372 S.C. 593, 642 S.E.2d 760 (Ct. App. 2007) is correct. Appellant asserts that the award of a money judgement against Appellant does not involve the "possession of property," and thus the Magistrate's jurisdiction is capped at $7,500.00. Respondent argues that an attorney's fee award is related to the "possession of property," but overlooks that this legal issue has already been decided in this case and is the law of the case. When Judge Young remanded the case to the

Magistrate to recalculate the appeal bond on April 9, 2018, (R.O.A. Vol. 1, page 59 [Order]), the circuit court determined that the appeal bond could not include amounts related to a "money judgment." The circuit court held:

> The award of attorney's fees is—unless overturned by a reviewing court later—**an unsatisfied money judgment.** (R.O.A. Vol. 1, page 61, emphasis added).

The Respondent took no exception to the Court's ruling, and it is, therefore, the law of this case.

Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. *C.J.S.* Appeal & Error § 991 (2008); see also *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Cooper Tire & Rubber Co. v. Perry et al*, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); *Watkins v. Hodge*, 232 S.C. 245, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal).

Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009)

To avoid the Constitutional limit of jurisdiction in Magistrate's Court, the Respondent turns the rules of statutory construction on their head, arguing a negative inference that if the Legislature had intended to prevent a Magistrate awarding attorney's fees in excess of its jurisdictional limit, it would have said so, and since it did not, we should assume a negative inference that the Legislature intended no limit on a money judgment issued by a Magistrate so long as the attorney's fees involved a landlord-tenant dispute. The Respondent's argument is a double negative: "Had the legislature intended to limit the statute's application only to certain categories of damage incident to a landlord-tenant dispute, it could have written the limitation into the statute." (Respondent's brief at page 14). In other words, by not saying something the Legislature permits anything not said. This is the opposite of the rule of statutory construction which requires courts to apply statutes as they are written and harmonize them.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C.79, 533 S.E.2d 578 (2009)

"[W]ords in a statute must be construed in context," and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." *S. Mut. Church Ins. Co. v. S. C. Windstorm & Hail Underwriting Ass'n.*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). "The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994)

Eagle Container Co., L.L.C. v. County of Newberry, 378 S.C. 564, 666 S.E.2d 892 (2008)

It is beyond dispute that the "general purpose" of Magistrate Court is to place a dollar limit on civil actions except in specific circumstances involving the "possession" of land. Under a plain reading of the statute, the Magistrate Court's jurisdictional limit on a money judgement is capped at $7,500.00 because a money judgment does not decide the "possession" of land. The affirmative adoption of this limit is the exclusion of any amount in excess of $7,500.00. There is nothing ambiguous about the statute: "Magistrates have concurrent jurisdiction in the following cases: (1) in actions arising on contacts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars; . . . (3) in actions for a penalty, fine, or forfeiture, when the amount claimed or forfeited does not exceed seven thousand five hundred dollars; . . . (10) in all matters between landlord and tenant **and** the possession of land as provide in Chapters 33 through 41 of Title 27." § 22-3-10, S. C. Code, ann. (emphasis added) Respondent's negative inference

to the rule of statutory construction would allow a motorist to escape a speeding ticket by arguing that a speed limit of 35 does not specifically prohibit 45.

Respondent misreads § 22-3-10, S. C. Code by sleight of hand to eliminate its jurisdictional limit in any case involving any landlord and any tenant. This was the argument specifically rejected by the Court of Appeals in the 2007 case, *Mosseri, op. cit.* There the Magistrate refused to transfer a case where the tenant's counterclaims raised claims in excess of the jurisdictional limit, and the Respondent in *Mosseri* made the same argument Respondent makes here, relying on § 12 of the statute. Subsection 12 says a Magistrate has unlimited jurisdiction in all counterclaims that involve the possession of land:

(12) in all actions provided for in this section when a filed counterclaim involves a sum not to exceed seven thousand five hundred dollars, except that this limitation does not apply to counterclaims filed in matters between landlord and tenant **and** the possession of land. (emphasis added)

The only difference between the facts in *Mosseri* and here is that the Magistrate's $35,887.23 attorney's fee award did not arise out of a counterclaim. Nonetheless, the award has nothing to do with the "possession of land." The Respondent blows right past the conjunction "and" and ignores the fact that an award of attorney's fees is (1) nothing more than a money judgment, and (2) the circuit court already decided the attorney's fees were "an unsatisfied money judgment" not involving the "possession" of land, and this ruling is the law of this case. The Appellant does not waste the Court's time analyzing the conjunction, "and," but rests on the self-evident meaning of this conjunction and the holding of the Court of Appeals in *Mosseri*: "Chapters 33 through 41 of title 27 of the South Carolina Code deal with creation, construction and termination of leasehold estates, ejectment of tenants, rent, undertenants of life tenants, and the Residential Landlord Tenant Act (which is not applicable to non-residential leaseholds). The common theme of chapters 33 through 41 is possession of the property." *Mosseri, op. cit.* The

entire discussion of attorney's fees being equivalent to "possession" of land is a red herring because the issue before the Court is not a counterclaim, but an application for attorney's fees, which is more like an application for a penalty, which results, as the circuit court found, in an unsatisfied money judgment—not an order of ejectment or anything related to the possession of land. While the application for attorney's fees arises out of a landlord-tenant dispute, it has nothing to do with the "possession" of land, which is the *sine qua non* of Magistrate jurisdiction in matters in excess over $7,500.00.

Reply to Arguments 2 and 6.
The landlord prevailed on one ground of ejectment while the Respondent prevailed on two grounds of ejectment as well as prevailed on Respondent's frivolous objection to Appellant's application to withdraw her counterclaim.

Respondent's salient argument is set out in a footnote number 4 on page 15. There it argues that the Court of Appeals should not review the attorney fees award because Appellant "abandoned" an appeal of whether ejectment was or was not proper. The Respondent's assertion that Appellant waived her rights because the Landlord demolished the building and all her contents while the case is on appeal illuminates the overarching inequitable conduct of this Respondent throughout the case. Its assertion in the face of its own misconduct demonstrates, once again, the Respondent's strategy to weaponize the judicial process in an effort to overwhelm the Appellant's weaker economic position. At the time the Respondent destroyed the building, the Appellant (1) occupied the building under an Appeal Bond Order that the Respondent made no effort to set aside, and (2) in the face of pending motions for contempt and injunction to combat the Respondent's increasingly hostile acts. R.O.A. Vol. 1, pages 66, 255, and 260 [Order, Motion for Contempt, Motion for Restraining Order]) The Appellant never "abandoned" the issue of whether ejectment was or was not proper—this issue is discussed **fully** in the Appellant's initial brief as it relates to the only issue on which this Court can now issue meaningful relief. The Appellant is both mindful

and respectful of the workload burden on the Court and chose not to require this Court to review separate briefing on something which the Court can now only issue an advisory opinion. The Respondent's arrogance in asserting the parties should brief separately an ejectment issue on a building that no longer exists reveals a lot. However, because the Court can no longer address whether an **ejectment** from a non-existent building was or was not proper, it is an irrefutable conclusion that the Landlord bulldozing the property to the ground mooted that issue. Whether ejectment was or was not proper is connection with the only issue remaining—the award of attorney's fees—is thoroughly briefed. Even if the Magistrate properly ejected the Appellant upon a proper finding of nuisance, the Appellant occupied the building under Court Order (R.O.A. Vol. 1, page 66), and if the Landlord thought it was entitled to bulldoze the building and Appellant's contents, it could have asked either the Court for an Order for immediate possession or asked the Berkeley County Sheriff to put it in possession if it could identify an Order allowing it. The Respondent did neither. What it did do is dispatch the same **City** Police Officers to stand guard and keep Appellant and her lawyer out of the premises. See Record on Appeal Vol. 2, page 692-693 [tr. Page 6, line 19—7, line 16]). It is true that the Appellant did not separately brief the issue of a finding of public nuisance as a separate assignment of error regarding Appellant's right to possession because doing so would do nothing but waste the Court's time since the destruction of the building prevents the Court to issue anything more than an advisory opinion. Now, Respondent seeks to profit from its own wrongdoing, but the Appellant, mindful of the limited judicial resources available to litigants, chose not to burden this Court with the analysis of an issue over which it could give no meaningful relief. Simply put, the issue of whether the Appellant was entitled to remain in the premises is moot, but the issue of whether the Magistrate properly found

the Appellant a public nuisance is fully briefed as it relates to the only issue left pending from the Magistrate: the award of attorney's fees.

As stated above, the Respondent's spurious assertion illustrates why the Respondent can falsely contend the issue before the Magistrate was "complex." In both the pre-trial procedure and the trial itself, the Appellant prevailed on every issue except one—whether her business constituted a public nuisance—and in light of the fact that the Respondent prevented any meaningful review of that issue by destroying the building—the Respondent manufactures another spurious claim that this Court cannot review the award of attorney's fees.

Moreover, the Respondent's reliance on *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990) is not only misplaced, but also demonstrates further why the award of attorney's fees in this case is improper. In *Heath*, the County Council sued the Sheriff's Department over the question of who had control over Sheriff's employee's grievance procedures. After the trial court ruled in favor of the Sheriff, he sought an award of attorney's fees under § 15-77-300, S. C. Code, which allows attorney's fees for a party prevailing against government action taken without "substantial justification." In affirming an award of $12,500.00 for the Sheriff, the Supreme Court explained:

> This Court has not previously determined the appropriate standard of review in an attorney's fee case under Section 15-77-300. We are guided, however, by the United States Supreme Court decision in *Pierce v. Underwood*, 487 U.S. 552, 108 S.Ct. 2541, 101 L.Ed. (2d) 490 (1988), which involved the construction of a similar section in the Equal Access to Justice Act (EAJA), Pub. L. 96-481, 94 Stat. 2328, 28 U.S.C. § 2412(d). In *Pierce*, the Supreme Court held that review of attorney's fees under the EAJA was subject to an abuse of discretion standard. Likewise, we hold that the award of attorney's fees in this case will not be disturbed unless appellants demonstrate that the trial judge abused his discretion in his consideration of the applicable factors. In this case, we hold that appellants have shown no abuse of discretion.
>
> First, with regard to the first factor, we agree with the circuit court's determination that Sheriff Heath was the prevailing party. Contrary to appellant's assertion, a party need not to be successful

as to all issues in order to be found to be a prevailing party. A prevailing party has been defined as:

> [t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention[and] is the one in whose favor the decision or verdict is rendered and judgment entered.

Buza v. Columbia Lumber Co., 395 P.2d 511, 514 (1964). A court determines the prevailing party by evaluating the degree of success obtained. *Commissioner, Immigration and Naturalization, et al. v. Marie Lucie Jean*, 496 U.S. 154, 110 S.Ct. 2316, 110 L.Ed. (2d) 134 (1990). Sheriff Heath was the prevailing party in that he successfully prevented the Council from taking the Communications Division from his office, established that he has authority to set policies for Sheriff's Department personnel, and established that such personnel are not subject to the Council's personnel policies. On only one minor issue was the Council found to be correct, that being the matter of the grievance process. Therefore, on the main issue, as well as the majority of issues, we find that Sheriff Heath was the prevailing party.

Secondly, we must examine whether the Council acted without substantial justification in pressing its claim. In *Pierce*, the Supreme Court discussed the definition of "substantial justification" in the context of attorney's fees and determined that this term does not mean "`justified to a high degree', but rather `justified in substance or in the main' — that is, justified to a degree that could satisfy a reasonable person." 108 S.Ct. at 2250. To say that there was no substantial justification is not the same as a determination that a claim was frivolous. Therefore, a court need not go so far as to brand a claim "frivolous" in order for it to be found to be without substantial justification. *Pierce v. Underwood*, 108 S.Ct. at 2251.

In determining whether there was substantial justification in this case, we look to the terms of the settlement agreement as well as to the substance and outcome of the matter which was eventually litigated. The fact of a settlement alone does not automatically dispose of the issue of substantial justification, although it can be considered a relevant factor. In this case, most of the facts and circumstances surrounding the pretrial matters are not in the record, and we therefore cannot say that the trial judge abused his discretion as to those matters when such an abuse has not been demonstrated.

Also relevant to the issue of substantial justification is the outcome of the matter eventually litigated. To determine this, we examine the litigation in *Heath I.* The statute construed in *Heath I* was unambiguous, and coupled with the relevant precedent clearly established that the Council's claims were without merit. Therefore, the Council acted without substantial justification in pressing its claim.

Applying the Court's "substantial merit" analysis to this case establishes that the following issues with the following results were before the Court:

1. Ejectment for non-payment of rent — Appellant prevailed

(Respondent's Argument 6 asserts that this Court should affirm the award of attorney's fees because it proved Appellant failed to pay rent on time. The Magistrate decided this issue adversely to the Respondent, who did not challenge the finding, and this finding is the law of this case. Therefore, there is no need to set out a separate reply argument to Argument 6 because the Order under review speaks for itself, and Appellant submits this Reply argument as her response to Respondent's Arguments 2 and 6.)

2. Ejectment for inadequate insurance — Appellant prevailed
3. Ejectment for nuisance — Respondent prevailed
4. Withdrawal of Appellant's Counterclaims — Appellant prevailed
5. Setting Appeal Bond for attorney's fees — Appellant prevailed

As argued fully in Appellant's initial brief, the Magistrate's finding of nuisance is predicated entirely on (1) the number of police incident reports—not convictions, (2) the opinions of City employees, and (3) the testimony of an openly racist witness who offered up opinion testimony about excrement. The Magistrate's reliance on unproven incident reports was an error of law because as counsel for the landlord acknowledged (quoted on page 5 above), the incident reports are not evidence of crime, and this record establishes beyond contradiction that the incident reports were self-generated because there is no evidence of convictions other than a few municipal zoning offenses. In fact, as the summary of citations at page Vol. 1, page 232 R.O.A. demonstrates, most of the charges leveled against the Appellant resulted in either not guilty or dismissals. Even the Chief of Police testified that the incident reports were not evidence of anything other than the police going there and that the City's Ordinance scheme existed to target a single busines:

Q. Now, I notice you introduced—when I say "you," I mean Mr. Abney, introduced all these incident reports over my objection. Was there an incident report filed regarding the meeting with Harris Investment Company?

A. No.

Q. . . . now, the presumption of innocence still applies in Berkeley County, right?

A. Yes.

Q. And including the City of Hanahan?

A. Yes.

. . .

Q. And to date, there's been no convictions of any of these incident reports, correct?

A. That, I can't answer. I don't know. I don't have court—access to court records.

Q. But if there had been convictions, you would have brought them here with you today and been prepared to hand them out and say, Yeah, look at all these convictions we got, right?

A. Well, I wasn't asked about convictions, just the incident reports.

Q. Did you come here voluntarily or were you subpoenaed?

A. Voluntarily.

. . .

Q. The city drafted an ordinance making it unlawful to consume alcohol after 2 a.m. in direct response to E. Alamo, correct?

. . .

Q. . . . was El Alamo the only business open after 2 a.m. in the City of Hanahan?

A. Yes.

R.O.A. Vol. 1, page 403-406 [tr. Page 137, line 4—page 140, line 1]

Thus, the entire evidence of a "public nuisance" was nothing more than the self-serving and unsupported opinions of City employees who had an obvious animus for a minority business owner. While the ability of this Court to overturn the Magistrate's Order of ejectment is mooted by the destruction of the building, the evidence produced clearly demonstrates that the Magistrate abused his discretion in awarding any attorney's fees to the Respondent in this case.

Reply to 2B. The evidence does not support the award of attorney's fees.

The issues here are addressed fully in Appellant's initial brief on pages 30-42 and do not require repetition because the Respondent does not present any arguments to sustain the award other than self-serving statements. However, Respondent asserts one incorrect statement that requires a reply, and that is the assertion on page 17: "The amount of attorney's fees awarded to Harris Investment Holdings was **reasonable** under the circumstances of this case." (emphasis on "reasonable" added). Whatever conclusion the Court of Appeals reaches on the attorney's fee award, this much is certain: $35,887.23 awarded out of an application for $54,340.58 for a non-jury, Magistrate trial that lasted less than a day and involved no discovery is the opposite of "reasonable." A license to practice law is not a money-making proposition even though lawyers are sometimes well compensated. Becoming a lawyer is not an invitation to manipulate laws to maximize profit; rather, it is an invitation to a respected profession engaged in the important program of making justice available to all. A well-known trial lawyer, Abraham Lincoln, made this point crystalline clear. As the biographer, David Reynolds, notes: "Abraham Lincoln accepted Blackstone's fundamental axiom that human law is based on moral rules. He understood that all just laws recognize and enforce moral principles and that the common law, constitutional law, and statute law—all justice and equity—are expressions of the moral sense of the law makers." David Reynolds, *Abraham Lincoln in his Times* (Penguin Press, 2020) p. 211. Consistent with these principles to make justice available to all citizens, the South Carolina Legislature created Magistrate Court to provide an economical forum to allow each citizen an opportunity to protect her rights without being burdened by excessive fees. "[These rules] shall be construed to secure the just, speedy, and inexpensive determination of every civil case within the jurisdiction of the Magistrate's Court." Scope and Purpose *S. C. Rules of Magistrates Court.*

"Trials should be conducted in an informal manner and the *South Carolina Rules of Evidence* shall apply but shall be relaxed in the interest of justice." Rules 1 and 13 *S. C. Rules of Magistrate's Court.*

As set forth in Appellant's Brief, this record depicts a shocking state of affairs of needless complexity and questionable tactics. In evaluating the Respondent's application for $54,340.58 in attorney's fees and awarding $35,887.23, the Magistrate accepted that **the entirety of the submitted bill** met the criteria for attorney's fees. In other words, rather than employing "sound discretion," the Magistrate awarded the Respondent every hour requested albeit at a lower hourly rate than the $380.00 per hour requested by the Respondent. The Respondent asked for 123.6 hours at $380.00 an hour to $280.00 an hour. R.O.A. Vol. 1, page 42 [February 9, 2018, Order at page 6] The Magistrate acknowledged that the number of hours spent on the case appeared excessive: "While certainly this court rarely, if ever, sees attorney's fees affidavits which demonstrate over one hundred hours spent litigating a case in magistrate court or one in which the attorney's fee request exceeds fifty thousand dollars ($50,000.00), the Court must consider the relationship of the parties and the nature of their contract in its analysis." (R.O.A. Vol. 1, page 43 [Order at page 7]

First, the Appellant agrees with the Magistrate: Appellant believes no Magistrate has seen an application for attorney's fees for $54,340.58 in a non-jury, Magistrates Court case before. There is no justification for one party running up over $50,000.00 in attorney's fees while the opposing party incurs attorney's fees of $2,500.00 in the same case. More importantly for this Court's review, however, is the patent legal error that the Magistrate himself highlighted: "the relationship of the parties and the nature of their contract." The record is undisputed that Harris Investment Holdings took over the shopping center after the Appellant was already a tenant under

a lease with its predecessor in title, Francon. In other words—and the Magistrate erred here—the parties had no "arm's length negotiations." (R.O.A. Vol. 1, page 43 [Order page 7]. Rather, Harris Investment Holdings tricked an unsophisticated tenant into signing an unnecessary lease. This predatory conduct continued right through the Harris Investment's decision to achieve an extra-judicial victory by destroying the premises while the case is on appeal.

Much more important, however, the Magistrate completely overlooked the coordination between the landlord and the City of Hanahan, which is obvious from Respondent's attorney's fees affidavit. The landlord incurred excessive fees in coordinating with the City, not in prosecuting an ejectment action. Even though the Magistrate stated, "This is also not a case where the unsuccessful theory so drove the evidentiary hearing and as such must in fairness be apportioned." (R.O.A. Vol. 1, page 43 [Order page 7]. The record paints the opposite picture. "Fairness" requires that the Magistrate evaluate the application for attorney's fees and determine how much of the bill was related to productive work directly relevant to an ejectment proceeding versus how much of the bill was related to the City's ancillary racial oppression of the Appellant. Neither the Magistrate nor the circuit court gave any consideration to the unequal financial positions of the parties, which is a palpable error of law:

> When presented with a request for attorney's fees, the trial court must first determine whether such an award is warranted. In making this determination, the following factors should be considered:
>
> (1) each party's respective ability to pay his/her own attorney's fee;
> (2) beneficial results obtained by the requesting party's attorney;
> (3) the parties' respective financial conditions;
> (4) effect of the attorney's fees on each party's standard of living.

Lanier v. Lanier, 364 S.C. 211 220, 612 S.E.2d 456, 461 (Ct. App. 2005); *Lacke v. Lacke*, 362 S.C. 302, 317, 608 S.E.2d 147, 155 (Ct. App. 2005); *Doe v. Doe*, 324 S.C. 492, 505, 478 S.E.2d 854, 861 (Ct. App. 1996); *E.D.M. v. T.A.M.*, 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992); *Glasscock v. Glasscock*, 304 S.C. 158, 160, 403 S.E.2d 313, 315 (1991).

It is impossible to examine the facts of this case and not come away with a clear understanding that Harris Investment Holdings was carrying water for the City because the City's efforts to eliminate the Appellant through its business license procedure were not running as quickly as it wanted. As the record shows, the "trial" before the City of Hanahan on the Business License Revocation case is materially identical to the trial before the Magistrate on ejectment. Both cases involved the same witnesses and the same manufactured evidence, right down to the Landlord's knowing deployment of its racist Mexican excrement expert, Ronald Newman. The number of hours Respondent's counsel spent in either consulting with the City, 79% of its bill, or in pursuing unsuccessful and unproductive work designed to wear down the Appellant and short circuit the judicial process is shocking at best, unethical at worst.

Thus the Magistrate erred in making no effort to address "fairness" by apportioning the attorney's fees, or, in simpler terms, simply rewarded bad behavior and oppression, which is the opposite of "sound discretion." While the Magistrate paid lip service to the necessary factors, the trial only adjusted the hourly rate from an inflated rate of $450.00 an hour down to $280.00 an hour but made no effort to examine the request for attorney's fees beyond addressing the hourly rate. However, two things are clear, the award of attorney's fees should shock the conscience of the court if for no other reason than they are 20 times greater than opposing counsel's fees in the same case.

As for the circuit court's dismissing the Appellant's tort case, the circuit court erred in dismissing the Appellant's tort case without prejudice because it is based on nothing more than one circuit court judge rewriting another circuit court judge's Order. If there were any doubt about what the parties agreed, the court should have sent the matter back to Judge Buckner to interpret

his Order, or at the least, examined a transcript, which makes clear what the parties' agreement was:

THE COURT: . . . I have discussed this matter with the parties in chambers. Mr. Goldstein has now agreed to mark 2018-CP-08-01008, which is his second notice of appeal, for which you have a motion to dismiss.

He now agrees to withdraw his second notice of appeal. You will also, accordingly, withdraw your motion to dismiss, which makes the second notice of appeal moot. And your motion to dismiss is moot. All right?

Because you do not have a transcript, both of you are encouraged by the Court to try to work out an agreement for the transcript. The problem is, this was a bilingual person. And there's a tape, but we have a translator who is trying to translate. So we have that. I don't know whether that person was certified according to the rules or not. [She was.] . . .

Have I accurately stated what y'all have agreed to in chambers, Mr. Abney?

MR. ABNEY: Yes, you have, your Honor.

THE COURT: Now, there was one caveat. What was it, Mr. Goldstein?

MR. GOLDSTEIN: That since my second appeal which I am now withdrawing is appealing subsequent orders from my first appeal, that I have to amend-

THE COURT: your first appeal to include the subsequent order.

R.O.A. Vol. 2, page 682-683 [tr. Page 18, line 15—page 19, line 20]

When the parties were before Judge Curtis, she acknowledged that she was being called upon to interpret another circuit judge's Order: "It's not my ruling; it's Judge Buckner's ruling. . . . So I don't know how we get around that." (R.O.A. Vol. 2, page 709 [tr. Page 23, lines 6-9] That is, of course, exactly right, and thus the circuit court erred in rewriting Judge Buckner's Order

to require a dismissal, when all it required was that the appeal be severed off the tort case and refiled.

Based on the foregoing, the Appellant respectfully submits that the award of attorney's fees should be vacated, and the Order dismissing Appellant's tort claim should be vacated and remanded for disposition in the normal course.

Reply to 3. The Respondent waived its right to attorney's fees by its post judgment conduct when it destroyed the building and its contents.

The Respondent makes a cursory attempt at trying to justify its actions in bulldozing both the building and Appellant's restaurant equipment while the case is on appeal. The Respondent deploys a throwaway argument that the allegedly wrongful conduct occurred *after* the judgment and is therefore not before the Court. While Santos' damages claim for the destruction of her equipment is not before the Court, what is before the Court is the subject matter of the appeal; to wit, whether the Magistrate properly ejected the Appellant. The whole purpose of the appeal was to hold on to the building, and when the Respondent decided to take matters into its own hands, it did two things at the same time, and neither one was proper. First, it prevented the Appellant from having recourse to meaningful judicial review by destroying the subject matter of the review. Second, it prevented this Court from reviewing the ejectment because the Court can no longer issue an Order addressing whether the Appellant should or should not be ejected except as an advisory opinion, and Appellant has thoroughly briefed the issue as it relates to the only issue left—attorney's fees. As the record demonstrates, the Landlord bulldozed the building while (1) the Appellant occupied it under an Appeal Bond Order (R.O.A. Vol. 1, page 66); (2) the Appellant had pending both a motion for Contempt of Court for the landlord's interference in the building and an application for Temporary Restraining Order to stop the Landlord's conduct. (R.O.A. page Vol. 1, pages 255 and 260 [Dec. 17, 2018, Motion for Contempt and March 19, 2019 Motion for

Temporary Restraining Order]) As set forth fully in Appellant's initial brief, the only decision the Court can now issue on whether the Appellant should be ejected for being a public nuisance is an advisory opinion, which it will not do. The Court of Appeals is not going to decide a theoretical case. Moreover, the Respondent seeks to elevate its contempt into a shield, arguing in Wonderland fashion that the Appellant waived her rights to appeal by failing to appeal something that no longer exists. Respondent's argument is similar to the Yiddish legal definition of chutzpah: the defendant who murders his parents and throws himself on the mercy of the Court on the ground that he is an orphan. Similarly, the Respondent seeks to profit from its own wrongdoing, even compounding its chutzpah by advancing a demonstrably false argument to this Court that it had to take down the building because it was an asbestos hazard! This is an odd position to take when all its other tenants in the same shopping center appear to be immune to asbestos. Lawyers see a lot over a 39-year career, but the destruction of a building in the middle of an appeal and then blaming the tenant is a novel theory in a career of any length, and this Court should not reward such obvious contumacious behavior.

Reply to Argument 4. The circuit court erred in dismissing the Appellant's tort claims without prejudice.

Appellant's argument 4 is equally cursory and advances only one unsupported assertion; to wit, that the parties' Consent Order (R.O.A. Vol. 1, page 68) required the Appellant's tort claim be dismissed after Respondent complained about improper joinder of claims, and the Appellant agreed to sever them. This is nothing more than another example of Respondent manufacturing a complexity out of whole cloth to generate unproductive work. Naturally, the Respondent cites no legal authority for this position because there is none. After Respondent raised an objection to an improper joinder of the appeal with a tort claim, the Appellant agreed to sever the claims and entered into a Consent Order (R.O.A. Vol. 1, page 68) to do that. The parties appeared before

Judge Buckner on August 6, 2018 and announced they had resolved the matter by agreeing to dismiss the "action." R.O.A. Vol. 2, pages 665-685 [transcript of hearing], quoted above on page 20. Seven days later, on August 13, 2018, the Appellant did exactly what she said she would do; filed an amended Notice of Appeal under the old case number. (R.O.A. Vol. 1, page 216 [Third Amended Appeal August 13, 2018]) Judge Buckner filed his Order on October 2, 2018, (R.O.A. Vol. 1, page 68), after the Appellant had already conformed to her agreement to sever the cases. In other words, the Appellant had already cured the defect just as the parties agreed. Notwithstanding this fact, the Respondent scheduled a motion before Judge Curtis and asked her to dismiss the tort case without prejudice where Judge Curtis improperly rewrote Judge Buckner's Order.

Judge Curtis committed legal error by reviewing Judge Buckner's Order and reaching a decision on her interpretation of the Order. If Judge Curtis found the Consent Order to be ambiguous, then the proper method of resolution requires sending the case back to the judge who issued the Order. One circuit court judge cannot overrule another circuit court judge: "There is a long-standing rule in this State that one judge of the same court cannot overrule another. *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943)." *Charleston County Social Servs. v. Father*, 317 S.C. 283, 454 S.E.2d 307 (1995) Neither the circuit court nor the Respondent explained how judicial economy is served or how Respondent's rights are protected by requiring the Appellant to pay a second filing fee to file the exact case under a different case number. Rather, this is another example of the Respondent's weaponizing the judicial system to harass the Appellant and create numerous procedural obstacles to impede her access to the courts. The only basis articulated by the circuit court in dismissing the case was based on her reading of what appears to be a straightforward, unambiguous Order that

required that Appellant's appeal be prosecuted separately from her tort claims, something to which the Appellant not only consented, but also had already done before the parties appeared before Judge Curtis on June 3, 2019. (R.O.A. Vol. 2, pages 665-685 [transcript of hearing] And yet, here we are, again wasting precious and limited judicial resources over a manufactured procedural complexity that makes no difference to the Respondent but which creates an additional procedural burden the Appellant must overcome to gain access to the court.

Reply to Argument 5. Appellant properly appealed her case, and the proper appeal is the law of the case.

The issue of a an alleged procedurally insufficient notice of appeal is not before the Court. The circuit court affirmed the writ of ejectment but did not dismiss the appeal based on an alleged procedural deficiency. In fact, the Court's two-sentence Order **found that all the issues except attorney's fees are moot** and affirmed the award of attorney's fees with no explanation. (R.O.A. Vol. 1, page 78 [Order]. This Order says in its entirely: "The award of attorney's fees is affirmed. All other issues are moot as the building has been demolished." The Respondent took no exception to this judgment, and thus the finding of moot is the law of the case, leaving only one issue from the Magistrate pending—the award of attorney's fees. The record demonstrates, once the Magistrate issued his final Order on May 17, 2018, the Appellant filed an amended appeal at case number 2018-CP-08-01008 on June 1, 2018. It was under this case number that the Respondent objected to the appeal being joined to tort claims. The Appellant agreed the joinder was improper, and the parties entered into the agreement before Judge Buckner on August 6, 2018, discussed above. See R.O.A. Vol. 2, pages 665-685 [transcript August 6, 2018]. As stated above, before Judge Buckner entered the Consent Order on October 2, 2018, the Appellant severed the appeal and refiled it on August 13, 2018, on the original case number 2018-CP-08-00266. (R.O.A. Vol.

1, page 216 [third amended appeal]. There is no order in this case dismissing the appeal for procedural deficiencies, and the Respondent never asked for reconsideration or took exception to the circuit court's Order and cannot assert such a basis for the first time on appeal.

Moreover, the Respondent knows that the first two appeals were premature, even agreeing with the circuit court that the appeal would not be properly filed until the Magistrate handled the appeal bond error on remand from the circuit court:

THE COURT: All right. What I'm going to do is let's see what Judge Young does with his order, okay. If it is—at some point in time hold off on any transcription until we see what Judge Young is going to do with his Order.

If he does remand it back to Magistrate Court to reset the amount or whatever he does; I don't' know what he's going to do. But if he does remand it back then I guess this appeal would be moot and it would be a new appeal, okay. I don't know what he's going to do, okay.

MR. ABNEY: I don' think that's correct, your Honor.

THE COURT: I don't know what he's going to do. I've remanded things back to Magistrates with specific instructions to tell me why you did this, this, and this. And I don't know what he's going to do; he may do that, okay.

MR. ABNEY: But he hasn't touched the merits of the appeal, your Honor.

THE COURT: I understand. But if he remands it back to the Magistrate to set the bond proper then it's a new ballgame. Circuit Court loses jurisdictional on the remand if you follow what I'm trying to say to you Mr. Abney. He may not do that; I don't know what he's going to do.

But I'm just going to continue it until he rules, okay. That's the only thing I know to do. There are too many issues hanging out there. Let's see what he does. If he amends the bond himself, then you've still got your argument.

MR. ABNEY: Okay. So you're not denying the Motion to Dismiss?

THE COURT: No, I'm not going to deny it. I'm going to continue it to see what he does because I think that's important at this point in time. If he remands it, it's one animal, and if he doesn't, it's a different animal. I mean when you remand it back to the court it was appeal from number one the aggrieved party didn't appeal my remand and number two, I lose jurisdiction to the lower court. And it's. whole new ballgame. Again, now if he doesn't remand it, then you're still alive. That's my point.

. . .

THE COURT: But he can't remand just that one issue. Hew remands the case back to the Magistrate otherwise the Magistrate won't have jurisdiction to do anything. Or he may do it himself.

Like I say from reading some of the appellate court rules, a lot of lawyers don't address this, but the civil side Circuit Court sort of got a *de novo*. You can adjust the facts as you deem appropriate in civil cases. You can't in criminal. So I don't know. . .

R.O.A. Vol. 2, pages 657-660 [tr. Page 21, line 12 – page 23, line 17]

The above colloquy is the last time the issue of the allegation that the first and second notice of appeals were procedurally insufficient is addressed. However, as set forth above, the circuit court did remand the case for redetermination of the bond and following a series of Orders

establishing the bond amount, then the Appellant filed a third amended appeal which set forth detailed allegations of error, thus curing any alleged defect.

Finally, the only two issues left that on which the Court can issue anything other than a purely advisory opinion are (1) the issue of attorney's fees, and (2) the dismissal of Respondent's complaint, and the Respondent has never contended that either of these are not properly before this Court.

Conclusion

Based on the foregoing and the record on appeal, it is clear that the circuit court abused its sound discretion by affirming the large award of attorney's fees, which are unconscionably inflated for a Magistrate Court case. It is undisputed that an award of attorney's fees is an unsatisfied money judgment and has nothing to do with "possession" of land. The circuit court, in remanding the case back to the Magistrate to revisit the appeal bond, held that the attorney's fees were an unsatisfied money judgment, and that is the law of this case. Likewise, when the circuit court dismissed the Appellant's tort claims without prejudice based on its interpretation of another circuit court's Consent Order, the circuit court exceeded its authority in interpreting and rewriting another judge's Consent Order. If the circuit court were concerned that Appellant was not conforming to her Agreement as memorialized in a Consent Order, the court should have sent the parties back to Judge Buckner to clarify his Order. Clearly the parties' consent Order, as borne out by the transcript, agreed to sever the appeal from the tort case, which the Appellant did even before Judge Buckner issued a written Order. In order to twist the parties' Consent Order into calling for a dismissal of Appellant's tort claims, the circuit court had to torture the plain meaning of the parties' consent Order to arrive at a conclusion that it required dismissal of a properly filed

case for no reason than it was improperly joined to an appeal, which Respondent had already cured.

The Respondent respectfully prays that the Court of Appeals:

Vacate the award of attorney's fees for lack of jurisdiction, or in the alternative,

Remand the award back to the Magistrate to examine the hours spent to apportion which part of the bills were actually related to the prosecution of the ejectment action and to examine them for fairness, and to redetermine the award in light of a fair apportionment of fees and in light of the Respondent's post judgment conduct.

Respectfully submitted,

February 16, 2021

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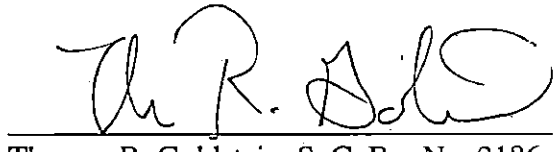
CERTIFICATE OF COUNSEL

I certify that this Final Reply Brief complies with Rule 211(b) of the *South Carolina Appellate Court Rules*.



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