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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

Judge Dale Van Slambrook, Master-in-Equity

APPELLATE COURT CASE NO. 2020-001218
COMMON PLEAS CASE NO. 2015-CP-08-00803

South Carolina Community Bank, Plaintiff,

v.

The Omega Group, LLC, Donald Muhammad and Norris, Inc. d/b/a Disaster Plus, Defendants,

of whom Samuel Daniel Cooper III is the Appellant,
and 1250 Old Gilliard Road, LLC is the Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Master-in-Equity properly order the ejectment of Cooper and delivery of the Property to the owner 1250 Old Gilliard following a fair and impartial foreclosure and sale process in which all of Cooper's constitutional, legal, and equitable rights, whether entitled to or not, were protected?

- II. Should the Court's Order include deterring measures to prevent Cooper from engaging in any further frivolous legal action related to this case?

STATEMENT OF THE CASE

The Plaintiff South Carolina Community Bank (“SCCB”) commenced this action on March 30, 2015 in the Berkeley County Court of Common Pleas, filing a Lis Pendens and Complaint against Defendants The Omega Group, LLC (“Omega Group”), Donald Muhammad (“Muhammad”), and Norris, Inc. d/b/a Disaster Plus (“Disaster Plus”)¹ to foreclose on a Mortgage given by Omega Group to SCCB on the real property at 1250 Old Gilliard Road, Ridgeville, South Carolina 29472 in Berkeley County (“the Property”). Compl. The Appellant, Samuel Daniel Cooper (“Cooper”), was an occupant of the building located on the Property for the duration of the underlying action and has appeared pro se throughout this matter.

The matter was subsequently referred to the Master-in-Equity for Berkeley County who ordered the foreclosure and sale of the Property on February 23, 2017. Order Nov. 7, 2016; Order Feb. 23, 2017. Over the next two years, the defendants engaged in a number of stall tactics to disrupt and delay the foreclosure process, including Defendant Muhammad’s improper filing of a Chapter 13 bankruptcy case on behalf of Omega Group and a substantively and procedurally insufficient appeal naming multiple new parties as appellants and respondents. Order Sept. 13, 2017; Order Sept. 27, 2017; Appeal Sept. 30, 2019; Order Oct. 21, 2019. The Property was finally sold at public auction on October 2, 2019, and a Master’s Deed was delivered to 1250 Old Gilliard on November 1, 2019. Order Nov. 1, 2019. Following a Rule to Show Cause and hearing, the Master-in-Equity issued a Writ of Assistance ordering the Berkeley County Sheriff to eject and remove the defendants from the Property and deliver the premises to 1250 Old Gilliard. Pet. Dec. 9, 2019; Order Dec. 10, 2019; Order Jan. 10, 2020; Tr. Feb. 6, 2020; Order Feb. 12, 2020. Cooper then filed a Demand for Jury Trial on February 27, 2020, claiming that certain evidence was

¹ Disaster Plus was named as a defendant in the foreclosure action as a potential interest-holder in the Property on the basis of a holding a subordinate judgment lien.

obtained in violation of his constitutional rights and asserting a right to trial by jury. Mot. Feb. 27, 2020.

Following 1250 Old Gilliard's motion for criminal and civil contempt and sanctions, in which 1250 Old Gilliard requested the court to enforce its prior Writ of Assistance, strike Cooper's demand for a jury trial, and hold the opposing parties in contempt and impose sanctions, the court held a hearing on July 23, 2020, in which 1250 Old Gilliard; Omega Group, including its member and defendant Muhammad; and Cooper were present. Mot. Mar. 12, 2020. With the express understanding and willing agreement of all parties present, the Master-in-Equity announced the parties' agreement and ordered from the bench that Omega Group, Muhammad, and Cooper, and anyone operating under or authorized by those parties, must vacate the Property by August 23, 2020, that any other requests for relief including Cooper's jury trial request were voluntarily withdrawn, and that if the defendants and Cooper had not vacated the Property within 30 days, they would face damages, claims, and potential contempt for violating the order. Tr. 14-19, Jul. 23, 2020.

Cooper, along with Muhammad and other newly named individuals, then filed a motion on August 3, 2020 to dismiss and vacate the July 23, 2020 agreement to vacate the premises and reassert a right to a jury trial. Mot. Aug. 3, 2020. By Order dated August 10, 2020, the Master-in-Equity denied the motion as substantively and procedurally improper and restated the parties' July 23, 2020 agreement and the court's bench order, noting there had been no threat or duress to any party in reaching the agreement. Order Aug. 10, 2020. Cooper filed a motion to alter or amend, for reconsideration, and for a stay on August 21, 2020, which the court denied on August 24, 2020. Mot. Aug 21, 2020; Order Aug 24, 2020.

Cooper filed a Notice of Appeal on September 1, 2020 with this Court (and on September

11, 2020 with the lower court) from the Master-in-Equity's August 24, 2020 Order. Appeal Sept. 11, 2020. Following a number of procedural deficiencies, including Cooper's failure to pay the notice of appeal filing fee, failure to submit a copy of the order on appeal, and lack of and improper proof of service, this Court dismissed this appeal on October 5, 2020. The appeal was reinstated on October 26, 2020. Cooper filed his initial brief on January 25, 2021, but did not serve the brief on 1250 Old Gilliard and failed to file a designation of matter to be included in the record.

STANDARD OF REVIEW

Ejectment is an action at law. Rogers v. Nation, 284 S.C. 330, 326 S.E.2d 182 (Ct. App. 1985). In an action at law, tried by a judge without a jury, the findings of the trial court must be affirmed if there is any evidence to support them. Minorplanet Systems USA Ltd. v. American Aire, Inc., 368 S.C. 146, 628 S.E.2d 43 (2006) (citing Townes Assocs. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)).

Although the Master-in-Equity's orders subject to appeal do not pertain to the underlying foreclosure action, Cooper continues to raise arguments regarding the propriety of the foreclosure. Accordingly, 1250 Old Gilliard is providing the standard of review applicable to a foreclosure action should the Court find it necessary for its review. A foreclosure action is an equitable action. Wachovia Bank, Nat'l Ass'n v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014). Thus, a court's standard of appellate review in a foreclosure action is de novo. Stoney v. Stoney, 421 S.C. 528, 809 S.E.2d 59 (2017). Under de novo review, a court may consider two principles long recognized by our courts "(1) a trial [court] is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial [court]." Stoney, 421 S.C. at 530, 809 S.E.2d at 59. De novo review allows the court to take its own view of the evidence and make its own findings of fact. Id.

STATEMENT OF THE FACTS

This foreclosure and ejectment matter has been characterized by lengthy delays, stall tactics, and improper and frivolous conduct by the named defendants and occupants of the Property. As stated, SCCB filed the Lis Pendens and Complaint in 2015 to foreclose on a mortgage given by Omega Group to SCCB in 2005. Compl. The filed pleadings established that jurisdiction was proper in Berkeley County; included the accurate legal description of the Property; incorporated the Note for \$167,500, executed by Defendant Muhammad, and Mortgage, executed by Omega Group, as exhibits; and pled the details of the default and resulting damages. Compl., Exs. A-B; Am. Compl. The defendants were properly served with all pleadings in the foreclosure action, as evidenced by the affidavits of service filed with the Berkeley County Court. At this time, Cooper was an occupant and tenant of the building. Tr. 3, 14-15, Jul. 23, 2020. Cooper has acknowledged he is not a member of the Defendant Omega Group but has proclaimed he is the “authorized representative” for Omega Group and also connected to Omega Group by family relation. Tr. 14-15, Jul. 23, 2020. Once Cooper appeared in the case on his own behalf, he was notified of any filings and scheduled hearings in which he was involved by U.S. mail, as shown by the filed certificates of service.

Thereafter, the defendants and Cooper engaged in an ongoing barrage of frivolous legal conduct in an effort to disrupt the sale process from moving forward. As referenced, Defendant Muhammad filed an improper Chapter 13 bankruptcy case on behalf of Omega Group. Order Sept. 13, 2017; Order Sept. 27, 2017. Despite having no right as a non-lawyer to file documents on behalf of a corporation, Cooper, along with the Samola Family Trust/Omega Group and “others” also noticed an appeal, asserting Judge Van Slambrook, SCCB, and SCCB’s CEO and lawyer as respondents, from an order denying relief to the defendants based on Cooper’s filing of a “Judicial Notice Rule 201, Void Judgment/Vacate Sale, and Emergency Hearing” and “formal request” for

a “certified copy of the emergency court hearing.” Appeal Sept. 30, 2019. This Court found the order was not final and dismissed the appeal, also noting in its order of dismissal that the appellants had not appealed the order of foreclosure. Order Oct. 21, 2019.

Finally, after a four and a half year foreclosure process, the Property was sold at auction in October 2019, and 1250 Old Gilliard received title to the Property by Master’s Deed in November 2019. Order Nov. 1, 2019. After taking title, 1250 Old Gilliard assumed all responsibilities of ownership, paying past due taxes, insurance premiums, and mortgage payments. Aff. Christopher J. Calabrese. Despite the change in ownership, of which all parties were well informed, Cooper and the named defendants refused to vacate the premises and continued to act as they owned the building. Aff. Calabrese; Order Dec. 10, 2019; Order Jan. 10, 2020. Cooper confronted 1250 Old Gilliard’s insurance inspector in a threatening manner and claimed to be a federal agent and intervened when a locksmith attempted to gain access for 1250 Old Gilliard. Aff. Calabrese. Cooper, acting as the owner of the building, continued to still show vacant commercial units to prospective tenants and even collected rent from other occupants in the building without making any payments to 1250 Old Gilliard whatsoever. Aff. Calabrese; Mot. Mar. 12, 2020; Tr. 7-8, Feb. 6, 2020; Tr. 6, 16, Jul. 23, 2020.

Cooper then proceeded to violate multiple orders of the court, including a writ of assistance directing the defendants and Cooper to vacate the Property. Order Feb. 12, 2020; Mot. Mar. 12, 2020. Cooper also continued to undermine the court’s orders and obstruct 1250 Old Gilliard’s right to possess and occupy the Property by filing a Demand for Trial by Jury. Mot. Feb. 28, 2020. On July 23, 2020, the Master-in-Equity held a hearing on 1250 Old Gilliard’s Motion for Contempt and Request for Eviction, at which 1250 Old Gilliard, Omega Group and Muhammad, and Cooper were present. Tr. 3-4, Jul. 23, 2020. The Master ensured that all parties present had an opportunity

to offer argument and testimony and that all parties understood the agreement reached at the hearing, which was that the defendants and Cooper would voluntarily vacate the Property within thirty days (August 23, 2020) and remove all personal property. Tr. 4, 10-19, Jul. 23, 2020. The defendants and Cooper also agreed that anyone under their authority would vacate the premises, and that they would not enter into new leases or agreements with existing or new tenants or otherwise interfere with 1250 Old Gilliard's use and enjoyment of the Property. Tr. 15-19, Jul. 23, 2020. Also as part of the agreement, Cooper and the defendants agreed to withdraw any other requests for relief, including Cooper's request for a jury trial. Tr. 17-18, Jul. 23, 2020. This agreement/bench order was clearly set forth in court and Cooper verbalized his understanding. The Master warned the defendants and Cooper that if they were not out of the Property within thirty days, they would return to court with the door "wide open" to damages, claims, and contempt for violating the order. Tr. 18-19, Jul. 23, 2020.

Shortly following this bench order, which was clearly delineated by the court and agreed upon by the parties, Cooper (along with Defendant Muhammad and other named individuals) filed a Motion to Dismiss/Vacate the Case and Emergency Hearing, claiming the agreement was made under duress based on a perceived threat and reasserting a right to a jury trial. Mot. Aug. 3, 2020. In the August 10, 2020 Order, the Master-in-Equity denied the motion as substantively and procedurally improper and stated the movants had exhausted their judicial, legal and/or equitable remedies. Order Aug. 10, 2020. The Master also found the July 23, 2020 agreement and bench order was reached without threat or duress to any party; the agreement to vacate was voluntary; and Cooper voluntarily relinquished his previous request for a jury trial. Order Aug. 10, 2020. The Order then directed the Berkeley County Sheriff to eject and remove the defendants and occupants from the Property and put 1250 Old Gilliard in possession. Order Aug. 10, 2020. The Master

denied Cooper's motion to alter or amend in the August 24, 2020 Order. Order Aug. 24, 2020.

In short, Cooper has delayed and disrupted this case and abused the legal process for years with procedurally improper, repetitive, and irrelevant filings and arguments. While 1250 Old Gilliard does finally occupy the Property, the facts and procedural history set forth here demonstrate a need to reach a definitive resolution regarding 1250 Old Gilliard's right to ownership and possession without intrusion and prevent Cooper from further frivolous legal proceedings related to this matter.

ARGUMENT

- I. The Master-in-Equity's August 10, 2020 and August 24, 2020 Orders properly commanded the ejection of Cooper from the premises and the delivery of the Property to 1250 Old Gilliard following a fair and impartial foreclosure and sale process in which all of Cooper's constitutional, legal, and equitable rights were protected.**

The Court should affirm the Master's orders and find that Cooper was properly ejected from the Property after a judicial process that was thorough and legally and equitably sound. Cooper has not properly preserved his arguments regarding the foreclosure for this Court's review, and any such arguments fail on the merits regardless of preservation issues. Further, the ejection and delivery of the Property to 1250 Old Gilliard was procedurally and substantively proper and all of Cooper's claimed rights were protected.

- A. Cooper has no procedural or substantive basis to contest the underlying foreclosure action.**

A party seeking foreclosure has the burden to establish the existence of the debt and the mortgagor's default on the debt. U.S. Bank Trust Nat'l Assoc. v. Bell, 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009). Once the debt and default are established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction. Id. Furthermore, any issues and arguments are preserved for appellate review only

when they are raised to and ruled on by the lower court. Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010). A ruling that is not appealed is the law of the case and requires affirmance. Id.

Any arguments now raised by Cooper relating to the foreclosure fail for procedural and substantive reasons. Procedurally, Cooper has failed to preserve these arguments for appellate review and the order of foreclosure is the law of the case. Cooper did not adequately raise issues, arguments, or defenses regarding the validity of the foreclosure in the lower court, and he failed to contest the foreclosure in any way in his first appeal to this Court. As stated, this Court made a note of such failure in its order of dismissal of the first appeal. Substantively, SCCB, who has not even been named a respondent in this appeal, satisfied its burden in the foreclosure action with ample evidence of the loan and resulting damages in its pleadings. The defendants and Cooper established no relevant defenses to refute or even question the validity of the note and mortgage. Thus, Cooper has no successful arguments to contest the foreclosure proceeding at this time before this Court.

B. The ejectment of Cooper and the delivery of the Property to 1250 Old Gilliard was procedurally and substantively proper.

An owner may pursue the legal remedy of ejectment when, among other reasons, the tenant's term of tenancy or occupancy has ended. S.C. Code Ann. § 27-37-10; A&P Enters., LLC v. SP Grocery of Lynchburg, LLC, 422 S.C. 579, 812 S.E.2d 759 (Ct. App. 2018). Section 27-37-20 through 160 outlines the process and procedures for an ejectment proceeding.

As established, after 1250 Old Gilliard received title to the Property in November 2019, Cooper refused to vacate the premises. Rather, he engaged in numerous actions in complete defiance to the change in ownership, including having a threatening confrontation with 1250 Old Gilliard's insurance inspector, claiming to be a federal agent and intervening with a locksmith's

attempts to gain access, continuing to show vacant units to prospective tenants, and collecting rent from other occupants. The Master-in-Equity subsequently issued Rules to Show Cause on December 10, 2019, and January 10, 2020, providing Cooper with two opportunities to show why he should not be removed from the Property. Having failed to receive any valid reasons from Cooper or the defendants, the Master-in-Equity then issued a Writ of Assistance on February 12, 2020, directing their ejectment. Also as established, Cooper then agreed in court during the July 23, 2020 hearing to vacate the Property and allow 1250 Old Gilliard to take possession. Following the public auction and delivery of the Master's Deed to the Property, 1250 Old Gilliard clearly had the right to possession of the Property and Cooper's entitlement to occupancy was terminated. 1250 Old Gilliard properly pursued its legal remedy of ejectment, and the Master-in-Equity followed the process for the remedy prescribed by the South Carolina statute.

C. Cooper's constitutional, legal, and equitable rights were protected throughout the judicial process.

Cooper has raised many complaints on appeal, none of which are supported by law or fact, pertaining to claimed constitutional and civil rights, specifically regarding jurisdiction and service, impartiality of the court, and his request for a jury trial.

With respect to service, Rule 4 of the South Carolina Rules of Civil Procedure serves the purposes of conferring personal jurisdiction on a court and assuring a defendant of reasonable notice of the action. Roche v. Young Bros., Inc., 318 S.C. 207, 456 S.E.2d 897 (1995). In determining whether service of process has been made, courts will inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction and the defendant has notice of the proceedings. Id.

A party cannot seek disqualification of a judge based on impartiality by simply alleging bias. Mallett v. Mallett, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996). The complaining party

must show some evidence of bias or prejudice stemming from an extrajudicial source and resulting in decisions based on information other than what the judge learned from his participation in the case. Id.; Roper v. Dynamique Concepts, Inc., 316 S.C. 131, 447 S.E.2d 218 (Ct. App. 1994). If there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. Mallett, 323 S.C. 141, 473 S.E.2d 804.

A party is not entitled, as a matter of law, to a jury trial in a foreclosure action, which is an action in equity. Wachovia Bank, 407 S.C. 321, 755 S.E.2d 437. While a landlord or tenant may request a jury trial in an ejectment proceeding, they may also relinquish this right by a knowing and voluntary waiver. S.C. Code Ann. § 27-27-80; Wachovia Bank, 407 S.C. 321, 755 S.E.2d 437.

Here, the defendants and Cooper, once he asserted himself in the matter, have been properly served at all stages in the case. SCCB properly served the parties in the underlying foreclosure action, and 1250 Old Gilliard has properly served the parties, including Cooper, in the ejectment proceeding. The affidavits and certificates of service in the record establish this. Further, the pleadings demonstrate that the Berkeley County Master-in-Equity properly exercised jurisdiction over this matter, which was referred to him, and the parties, all of which are businesses located in or residents of Berkeley County. Furthermore, Cooper has had numerous opportunities to present arguments and testimony in an impartial court. Cooper cannot seek disqualification or impartiality of Judge Van Slambrook just by naming him as a respondent or alleging bias without evidence of some prejudice stemming from an extrajudicial source. Cooper has presented no specific arguments and pointed to no evidence to even suggest impartiality occurred during any of the proceedings. Finally, any request by Cooper for a jury trial was tenuous at best since no landlord-tenant relationship existed between Cooper and 1250 Old Gilliard. Rather, 1250 Old

Gilliard was the rightful owner of the Property following a foreclosure and public auction, and Cooper violated multiple court orders by remaining in possession, obstructing 1250 Old Gilliard's inspection and use of the Property and collecting rent from other tenants. Even if Cooper had a right to request a jury trial and asserted that right in a procedurally proper manner, he knowingly and voluntarily relinquished any such right at the July 23, 2020 hearing when the Master-in-Equity ensured repeatedly that Cooper understood and agreed to drop the jury trial request.

II. Cooper has engaged in inequitable conduct and initiated frivolous legal proceedings throughout the underlying action and now on appeal, and the Court of Appeals should affirm the Master-in-Equity's Orders and impose deterring measures to resolve this matter effectively and conclusively.

South Carolina courts have the power and discretion to punish for both civil and criminal contempt and impose fines or imprisonment for all contempt matters before the court. Brandt v. Gooding, 368 S.C. 618, 630 S.E.2d 259 (2006). An appellate court also has the authority to impose "sanctions as the circumstances of the case and discouragement of like conduct in the future may require." Rule 269, SCACR.

The Court should affirm the Master-in-Equity's ejectment orders on the merits and impose sanctions and any other deterring measures deemed appropriate, pursuant to Rule 269, against Cooper to conclusively resolve the issue of possession. In short, 1250 Old Gilliard respectfully submits that it is imperative for the Court to employ its inherent equitable powers and authority under the appellate court rules in this matter to prevent Cooper from continuing to abuse the legal process that have caused (and continue to cause) 1250 Old Gilliard to accrue substantial damages to defend itself and protect its property rights. Throughout the underlying foreclosure matter, commenced in 2015, and the subsequent ejectment proceedings, Cooper and the defendants have engaged in improper, frivolous legal conduct to delay and disrupt the case and prevent 1250 Old Gilliard from their rightful possession and enjoyment of the Property. The foreclosure matter lasted

four and a half years due to the delay tactics and frivolous filings previously described herein, including the improper filings of a bankruptcy proceeding and previous appeal to this Court. In their first appeal to this Court, Cooper, Samola Family Trust/Omega Group and “others” named the Master-in-Equity, SCCB, and SCCB’s CEO and lawyer as respondents and contested an order which denied relief based on Cooper’s filing of a “Judicial Notice Rule 201, Void Judgment/Vacate Sale, and Emergency Hearing” and “formal request for a “certified copy of the emergency court hearing.” Neither Cooper nor the defendants appealed the order of foreclosure; rather the filing was a purposeful and frivolous delay of the progress of the foreclosure. In fact, 1250 Old Gilliard was unable to close on the Property until the appeal was dismissed. In dismissing that appeal, this Court noted the appellants’ failure to appeal the foreclosure, yet Cooper continues to raise unsubstantiated arguments about the merits of the foreclosure in this appeal presently before the Court.

Cooper has also violated or attempted to otherwise undermine multiple orders of the lower court in order to obstruct 1250 Old Gilliard’s right to possession of the Property. He refused to leave the Property following the change of ownership or comply with the court’s writ of assistance directing the defendants and Cooper to vacate the Property. Instead, Cooper admitted in court that he and the defendants continued to occupy the Property after the sale to 1250 Old Gilliard. Specifically, they acted as if they owned the building by confronting 1250 Old Gilliard’s insurance inspector in a threatening manner; claiming to be a federal agent and intervening with a locksmith employed by 1250 Old Gilliard; showing vacant commercial units to prospective tenants under the guise of ownership; collecting rent from other occupants in the building; and even requesting 1250 Old Gilliard pay for maintenance while denying them possession or access. Furthermore, after knowingly and voluntarily agreeing during the July 23, 2020 hearing to vacate the premises and

cease further interference with 1250 Old Gilliard's ownership rights, Cooper then filed additional frivolous motions and requests seeking the dismissal of the agreement based on duress.

Now, Cooper has filed an appeal to this Court that is also frivolous in nature, repetitive, irrelevant, and wholly unsupported by any facts or legal precedent in the record. Cooper has continued to ignore rules of appellate procedure with respect to fees, filing, document form and substance, and service. This conduct demonstrates an ongoing, blatant disregard of the legal process and the courts' orders and warrants the Court's imposition of strong, deterrent measures to prevent Cooper's continued legal frivolity and abuse.

CONCLUSION

Based on all the facts and arguments set forth, the Court should affirm the Master-in-Equity's August 10, 2020 and August 24, 2020 orders on the merits and find that the Master properly commanded the ejectment of Cooper and delivery of the Property to 1250 Old Gilliard. The Court should also impose sanctions and other deterring measures against Cooper to prevent further frivolous proceedings and conclusively resolve the issues of ejectment and possession.

Respectfully submitted,

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