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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

Appellate Case No. 2020-001130

Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C
.....Respondent

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp.,
South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the.....Appellant

MOTION TO DISMISS APPEAL

Albertelli Law

William S. Koehler
1201 Main St, Suite 1450
Columbia, SC 29201
(803) 828-0880
Attorneys for Respondent

May 6, 2021

STATEMENT OF ISSUE

Respondent Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C moves to dismiss this appeal on the grounds that Appellant has not preserved the issues for appeal.

PROCEDURAL HISTORY OF APPEAL

This is a mortgage foreclosure. Appellant filed an Answer and Counterclaims, which he later amended. Respondent filed a Reply. Appellant filed various motions, of which eight were pending at the time of hearing. Respondent filed a Motion to Dismiss Appellant's Counterclaims and to Refer the case to the Master in Equity. ("Motion to Dismiss").

A hearing was held on the Motion to Dismiss, and the pending motions filed by Appellant. The hearing was attended by counsel for Respondent and Appellant. Respondent had paid the motion filing fee for only one of his motions, but he asked that particular motion be stayed until a later time. Judge Goodstein, presiding, granted Respondent's request.

The Court declined to hear Appellant's motions where he had not paid the filing fees. The Court granted Appellant's Motion to Dismiss, and this appeal followed.

MEMORANDUM AND MOTION TO DISMISS

Appellant lists twelve issues on appeal in his initial brief. Eight of the issues raised by Appellant involve the dismissal of his counterclaims. Appellant also seeks to appeal dismissal of his motions for which he failed to file the filing fee; appeal the circuit court's failure to enjoin parties; appeal the circuit court's failure to vacate an order substituting Plaintiff; appeal the circuit court's failure to physically file proof of the circuit court's jurisdiction.

I. With the exception of his FDCPA claim, Appellant refused to address any of his counterclaims at the hearing.

At the hearing before Judge Goodstein, counsel for Respondent argued the Motion to Dismiss. After the conclusion of that presentation, the Court asked Appellant for his response. Appellant declined to argue his position and has waived the right to try to re-litigate it before this Court because the issue is not preserved. The transcript of the motion hearing, attached hereto as an exhibit, shows:

MR. BRUCE: And for me to speak as far as what he's talking about ---

THE COURT: Yes.

MR. BRUCE: --- the motion to dismiss.

THE COURT: Yes.

MR. BRUCE: It would be a breach of that contract for me to continue and start making objections towards the issue that he's claiming.

(Tr., p. 11, ll. 3-10)

When given the opportunity to present his case, Appellant declined. Later he did make some arguments about the FDCPA, which are addressed below. Appellant has not preserved any issues related to his counterclaims.

“ ‘Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.’ *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006). At a minimum, issue preservation requires that an issue be raised to and ruled

upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is ‘axiomatic that an issue cannot be raised for the first time on appeal.’ *Id.* Imposing such a requirement on the appellant ‘is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.’ *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).” *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011)

II. FDCPA claims

Appellant argued a different theory for his Fair Debt Collections Practices Act (“FDCPA”) claims at hearing than he seeks to argue in his brief to this Court and has not preserved a claim under FDCPA for review.

At the hearing, Appellant argued that he did not receive a verification in the form he wanted. Appellant did not address whether Respondent is a debt collector under the FDCPA. In the argument section of his brief Appellant now argues Respondent is a debt collector under the FDCPA. However, Appellant did not raise or argue this point at the hearing.

Appellant’s entire position at hearing was that he should have a verification in the form he requires. He cannot now raise other issues and theories for the first time to in an appeal. *Id.*

III. Appellant did not argue the circuit court’s failure to enjoin parties, the circuit court’s failure to vacate an order substituting Plaintiff, the circuit court’s failure to vacate an order substituting Plaintiff, the circuit court’s failure to vacate an order substituting Plaintiff or the circuit court’s failure to physically file proof of the circuit court’s jurisdiction.

Appellant identifies these issues for appellate review in his brief. He did not raise these issues to Judge Goodstein, and he has not preserved them for this Court's review. *Id.*

IV. Dismissal of motions for failure to pay filing fees

At the hearing Appellant argued that he should not have to pay filing fees until the county provided him proof of where the fees are being allocated. (Tr., p. 4, ll., 14-18). In his brief Appellant abandons this argument and argues instead he should be allowed to proceed without paying filing fees because he has filed sufficient documents to evidence his indigent status. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 143, 337 S.E.2d 244, 245 (Ct. App. 1985)

Appellant has not preserved his claim to proceed as an indigent. He did not claim that position at hearing instead arguing the county had not proven to him where the funds will go. Judge Goodstein asked about the filing of an affidavit of indigency. Appellant informed the Court he had not filed one. Judge Goodstein then invited Appellant to argue why he had not paid the fee, and Appellant declined to argue indigency. (Tr., p. 3, l. 24 – p. 4, l. 18) Thus, having not raised the issue to the Circuit Court, Appellant cannot raise it now.

Additionally, Appellant cites no authority in his brief for his position that he should not have to pay the filing fee. “ ‘An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.’ *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct.App.2011); *see also S.C. Dep't of Soc. Servs. v. Mother*, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct.App.2007) (finding an issue abandoned because the appellant made ‘a conclusory argument without citation of any authority to support her claim’); *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct.App.2004) (‘Issues raised in

a brief but not supported by authority are deemed abandoned and will not be considered on appeal.’)” *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 573, 772 S.E.2d 882, 892 (Ct. App. 2015)

Conclusion

Appellant has not preserved any of the issues he now raises in his brief. He cannot raise issues for the first time on appeal, and his brief should be dismissed.

Respectfully submitted,

Albertelli Law

/s/ William S. Koehler
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(803) 828-0880
Attorneys for Respondent

May 6, 2021

State of South Carolina)
)
County of Dorchester)

In The Court of Common Pleas
First Judicial Circuit
2016-CP-18-1678

Wilmington Savings Fund)
Society FSB as Trustee of)
Stanwich M, et al.,)

Plaintiffs,)

vs.)

Nelson L. Bruce, et al.,)

Defendants.)

Transcript of Record

March 12, 2020
St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge

A P P E A R A N C E S:

William S. Koehler, Esquire
Attorney for the Plaintiffs

Nelson L. Bruce
Self-represented Litigant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	14

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
	No exhibits introduced.	

1 THE COURT: All right, what's next?

2 CLERK: Next we have 2016-CP-18-1678. We have eight
3 motions on the docket. The defendant, Nelson Bruce, has a
4 amended motion for pretrial discovery; a motion to dismiss;
5 a motion to vacate the March 23, 2018, order; a motion to
6 dismiss the September 25, 2017, order; motion to vacate the
7 September 15, 2017, order; motion for temporary restraining
8 order; motion to stay proceedings. And then we have the
9 plaintiff's motion to dismiss and for order of reference.

10 THE COURT: All right. Thank you.

11 Thank you both. All right and, yes, sir, and your
12 name.

13 MR. KOEHLER: Good morning, Your Honor. William
14 Koehler here on behalf of plaintiff.

15 THE COURT: All right, and you are Mr. Bruce?

16 MR. BRUCE: Yes, ma'am.

17 THE COURT: Very well. All right.

18 (A PAUSE.)

19 THE COURT: All right. Mr. Bruce, there is a note
20 from the clerk's office indicating that for some or all of
21 the motions, that you did not pay a filing fee. Is that --
22 tell me about that.

23 MR. BRUCE: Yes. I contested the filing fee.

24 THE COURT: Okay. Did you happen to file an affidavit
25 of indigency?

1 MR. BRUCE: I did not.

2 THE COURT: Okay, and tell me the reason that you did
3 not pay the filing fee.

4 MR. BRUCE: Well, as far as the filing fee.

5 THE COURT: Yes.

6 MR. BRUCE: The county basically receives -- they do
7 like a -- what do you call it? The county does a estimate,
8 I guess. Not like a estimate but they do -- and I can't
9 think of the term right now, but...

10 THE COURT: Okay.

11 MR. BRUCE: They file a -- it's not a summary but it's
12 like financials every year, and for people who are paying
13 taxes, that -- those financials cover those fees for
14 filing. And I requested that this court provide me proof
15 of what these filing fees are going to, what budget, and I
16 have not received that. So, I'm contesting the filing
17 fees, to see what these are actually going from, if we as
18 taxpayers are paying taxes in regards to these fees.

19 THE COURT: Okay. All right, and very well. Did you
20 pay filing fees with regards to any of your motions?

21 MR. BRUCE: I've paid filing fees before, but that's
22 before I was informed of what -- the summary as far as, you
23 know.

24 THE COURT: Okay.

25 MR. BRUCE: What I stated before.

1 THE COURT: Sure. With regards to the motions that
2 you have filed to be heard today, did you pay your filing
3 fee on any of these motions?

4 MR. BRUCE: I don't believe so.

5 THE COURT: Very well. Okay. All right. Very well,
6 and it's your position, as I understand it, that because
7 the -- you believe and your position is, is that, that the
8 cost to run the court system or any other expenses to which
9 the filing fees may go towards, that those expenses ought
10 be paid by ---

11 MR. BRUCE: Estimated.

12 THE COURT: --- tax dollars.

13 MR. BRUCE: Estimated finances.

14 THE COURT: That there ought not be a requirement for
15 a filing fee and, therefore, that is the basis upon which
16 you did not pay your filing fees. Is that correct?

17 MR. BRUCE: Yes. That's correct.

18 THE COURT: Very well. All right. Now, in order ---
19 Yes?

20 CLERK: Judge, he did pay for number one on the
21 roster.

22 THE COURT: Okay. So, the amended motion pretrial
23 discovery?

24 CLERK: Yes, ma'am.

25 THE COURT: Amended motion pretrial discovery, that

1 one the filing fee was paid. Gotcha. Okay, but not with
2 regards to the others?

3 CLERK: No, ma'am.

4 THE COURT: Okay. Very well.

5 Now, Mr. Bruce, so that you -- I have and can preserve
6 your issue, I'm going to determine that based upon state
7 law, you are required to pay your filing fee prior to a
8 motion being heard unless you have complied with the
9 statute that allows for those who are indigent and have
10 filed their affidavit and been deemed to be indigent.
11 Those individuals can go forward without the paying filing
12 fees. You've told me that you have not filed such an
13 affidavit of indigency and that -- and you have put on the
14 record your basis for your belief that you ought be allowed
15 to go forward and argue your motions without the filing
16 fees having been paid.

17 Under these circumstances, Mr. Bruce, with the
18 exception number one where you did pay your filing fee, I
19 am not going to hear those motions because you have failed
20 to comply with the payment of the filing fee which is
21 required. However, that issue is now preserved and if you
22 wish to appeal that issue, you certainly can do that, okay?

23 MR. BRUCE: Okay.

24 THE COURT: That would be with regards to the other
25 motions, not number one because, as I understand it, the

1 motion which is described on the docket as amended motion
2 pretrial discovery, with regards to that motion, that one
3 would be heard because the filing fee was paid. That
4 motion I'm showing was filed on July the 23rd of 2018.

5 The motion which we have also today, the motion to
6 dismiss an order of reference, that is a motion that has
7 been filed by the plaintiff. Correct, Mr. Koehler?

8 MR. KOEHLER: Correct, Your Honor.

9 THE COURT: Did you pay your filing fee?

10 MR. KOEHLER: Yes, Your Honor.

11 THE COURT: All right. No indication from the clerk's
12 office that that filing fee was not paid.

13 Now, the motion to dismiss that has been filed by the
14 plaintiff, it is a motion to dismiss what pleading?

15 MR. KOEHLER: The defendant's counterclaims. It's a
16 motion to dismiss the defendant's counterclaims and to then
17 refer the case.

18 THE COURT: Okay. Gotcha. All right.

19 All right, I think...

20 (A PAUSE.)

21 THE COURT: All right, let me hear from you on your
22 amended motion for pretrial discovery, Mr. Nelson.

23 MR. BRUCE: Well, I want to request a stay on that as
24 well.

25 THE COURT: Okay.

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MR. BRUCE: Because -- yes.

THE COURT: Oh. You don't want to hear that right now?

MR. BRUCE: Not right now, no.

THE COURT: Okay.

MR. BRUCE: And the reason why is because I have another pending case in district court.

THE COURT: Okay.

MR. BRUCE: Which was what I was supposed to -- I filed the motion to stay for but, like you said, there would be filing fees.

THE COURT: Gotcha.

MR. BRUCE: So, it's probably going to be appealed.

THE COURT: Gotcha. Okay. No problem.

MR. BRUCE: But it's, it's based off another contract, so, than this one.

THE COURT: No problem. So, we'll stay that one.

All right, Mr. Koehler, your motion.

MR. KOEHLER: Thank you, Your Honor.

THE COURT: Yes.

MR. KOEHLER: Plaintiff -- this is a foreclosure action.

THE COURT: Yes.

MR. KOEHLER: Plaintiff had initiated it with the filing of the summons and complaint. The defendant filed

1 an answer and counterclaims which he amended. We filed a
2 reply and in our reply, we pleaded our 12(b)(6) motion to
3 dismiss.

4 THE COURT: Okay.

5 MR. KOEHLER: And that we are renewing here. The
6 defendant's pleading lists several things in captions but
7 does not develop any of those. We ask the court dismiss
8 anything if it could be even construed as a counterclaim
9 simply by listing within a caption. The defendant did go
10 into some depth on three counterclaims of which I was able
11 to discern, and we would ask that those be dismissed.

12 First was liable. The defendant had a counterclaim
13 for liable, but he did not in his pleadings identify any
14 facts that would, could be construed as a libelous
15 statement. In fact, he did not specify any facts or any
16 statements at all. He did reference some of the pleadings,
17 which, as we put in our memo, are privileged.

18 Second, the defendant pleaded a counterclaim for
19 slander, I believe. Again, no statement was identified
20 slanderous or otherwise, and certainly no spoken statements
21 at all.

22 Third, the defendant made some references to the Fair
23 Debt Collection Practices Act, the FDCPA. I assumed he was
24 making a claim under that.

25 As an initial matter, this debt was validated by our

1 law firm. So, he has had that, and plaintiff in this case
2 is not collecting a debt. This is a deficiency waiver.
3 They are simply enforcing a security interest.
4 Additionally, they're not a debt collector under FDCPA as
5 they are not collecting the debt of another. It is their
6 debt. And since there -- those causes of action fail to
7 state facts sufficient to form causes of action, we ask the
8 court to dismiss it, those.

9 If the court does that, the only remaining action will
10 be our foreclosure action, which we believe would be
11 appropriate to be referred to the master in equity, and ask
12 the court to do that as well.

13 THE COURT: All right. Gotcha.

14 All right and, Mr. Nelson, I'll hear from you.

15 MR. BRUCE: Well, in regards to what the plaintiff is
16 stating.

17 THE COURT: Yes.

18 MR. BRUCE: Around January of 2019, I sent out a
19 presentment to them, which was a offer which basically was
20 -- pretty much covers most of what's going on here. They
21 failed to respond to that, thereby agreeing to that
22 contract, and I filed a copy of that on the record showing
23 proof that. They had a ten to twenty-day rejection period
24 to reject that offer.

25 THE COURT: Very well. Okay. All right.

1 MR. BRUCE: They failed to respond to that offer.

2 THE COURT: Okay.

3 MR. BRUCE: And for me to speak as far as what he's
4 talking about ---

5 THE COURT: Yes.

6 MR. BRUCE: --- the motion to dismiss.

7 THE COURT: Yes.

8 MR. BRUCE: It would be a breach of that contract for
9 me to continue and start making objections towards the
10 issue that he's claiming.

11 THE COURT: Okay.

12 MR. BRUCE: And that's why it's in district court
13 right now.

14 THE COURT: Yes.

15 MR. BRUCE: In process of being confirmed, and that
16 would determine basically the full validity of the claims
17 in that contract.

18 THE COURT: Okay.

19 MR. BRUCE: In regards to this matter as well.

20 THE COURT: Okay. Very well. Anything else you want
21 to tell me about the -- in response to the motion to
22 dismiss?

23 MR. BRUCE: In regards to the motion to dismiss, and
24 so that I don't waiver any further arbitration rights, I
25 will present a few things. There are some affidavits filed

1 on the record in regards to the debt validation that they
2 never responded to, including the attorneys. They failed
3 to respond. The FDCPA requires that they respond in thirty
4 days. They failed to respond, failed to produce any
5 validation of the debt.

6 The attorney claims that the attorney validated the
7 debt. They have no firsthand knowledge in regards to that,
8 and so they cannot validate that debt. Only a person with
9 firsthand knowledge can validate that debt, and again they
10 have produced no affidavits in rebuttal to my affidavit.

11 THE COURT: Got it. Very well.

12 All right, gentlemen, thank you so much.

13 I'm going to ask for a proposed order.

14 MR. KOEHLER: Yes, ma'am.

15 THE COURT: Obviously I want you to send it, please,
16 to Mr. Nelson when you send it to me, if not before, and I
17 will let you know of my decision, okay?

18 MR. KOEHLER: Thank you, Your Honor.

19 THE COURT: Thank you. Thank you very much.

20 MR. KOEHLER: Any particular time frame?

21 THE COURT: I would appreciate it in thirty days;
22 however, if you need a longer period, just simply let me
23 know.

24 MR. KOEHLER: That should be no problem, Your Honor.

25 THE COURT: Very well.

1 MR. KOEHLER: Thank you.

2 THE COURT: I appreciate it.

3 And with regards to Mr. Nelson, since he is appearing
4 *pro se*, I would draft from his perspective. I would take
5 the drafting as an obligation myself in the event that I
6 rule in his -- as he would wish and based on his argument,
7 I will draft that order.

8 Very well. Thank you.

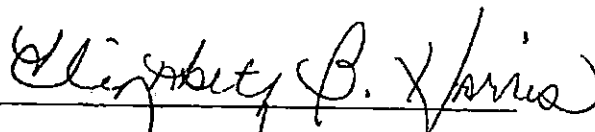
9 MR. BRUCE: Thank you.

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA,
ON THE 12TH DAY OF MARCH, 2020.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 22ND, 2020

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

Appellate Case No. 2020-001130

Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C
.....Respondent

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp.,
South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the.....Appellant

CERTIFICATE OF MAILING

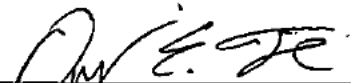
The undersigned hereby certifies that she is an employee of Albertelli Law and is a person of such age and discretion to be competent to serve papers.

That on the 6th day of May 2021 she served copies of Respondent's Motion to Dismiss Appeal by placing said copies in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Pleadings:
Parties Served:

Motion to Dismiss Appeal

Nelson L. Bruce
144 Pavilion Street
Summerville, SC 29483



Aubrey Fox
Paralegal
Albertelli Law

Columbia, South Carolina



1201 Main Street, Suite 1450, Columbia, SC 29201
Phone: 803.828.0880 | Fax 803.828.0881 | alaw.net

May 16, 2021

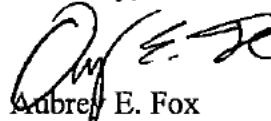
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Wilmington Saving Fund, FSB v. Bruce
Appellate Case No. 2020-001130

To Whom It May Concern:

Please find enclosed an original and copies of the Motion to Dismiss Appeal regarding the above-referenced matter. A check in the amount of \$50.00 is also enclosed. Please do not hesitate to contact our office should you have any questions.

Sincerely,



Audrey E. Fox
Paralegal

Enclosures

THIS LAW FIRM MAY BE DEEMED A "DEBT COLLECTOR" UNDER THE FAIR DEBT COLLECTION PRACTICES ACT. ANY AND ALL INFORMATION OBTAINED MAY BE USED FOR THE PURPOSE OF COLLECTING A DEBT

IF YOU ARE A DEBTOR IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY THIS IS NOT AN ATTEMPT TO COLLECT A DEBT FROM YOU PERSONALLY BUT AN ATTEMPT TO ENFORCE PLAINTIFF'S LIEN.

Alberelli Law
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Columbia, SC 29201

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