

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Circuit Court Judge

Case No. 2020-CP-08-00718

Bethany Aloha Rich, Appellant,

v.

New Heights Property Management, Respondent.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL FOR
FAILURE TO PAY MAY BOND

INTRODUCTION

Appellant Bethany Aloha Rich ("Appellant") filed this appeal of the Court of Common Pleas' decision upholding the Goose Creek Magistrate's Court writ of ejectment issued against Appellant and in favor of Respondent New Heights Property Management ("Respondent"). Respondent's motion to dismiss alleges that Appellant failed to pay a bond. Respondent's motion acknowledges, however, that there is no operative bond set in this matter at this time and that a Motion to set such a bond has been file by Appellant and not heard. Accordingly, Respondent's Motion should be denied.

STATEMENT OF FACTS

On February 3, 2020, Respondent filed an Application for Ejectment with the Goose Creek Magistrate Court, who then issued a Rule to Vacate or Show Cause. On March 11, 2020, the parties

appeared before the Magistrate because Appellant requested a hearing to show cause why a writ of ejectment should not be issued. At the conclusion of the hearing, the Magistrate issued the writ.

Appellant filed an appeal to the Court of Common Pleas on March 13, 2020. A hearing on Appellant's initial appeal was held in the Court of Common Pleas on October 20, 2020. On November 16, 2020, the Court of Common Pleas entered a written order that affirmed the eviction. On December 30, 2020, Appellant filed a motion with the Circuit Court to set the amount of bond for Appellant's appeal to this Court. The Circuit Court did not immediately set such a bond, though Appellant made monthly payments as if such a bond had been set.

On July 13, 2021, Respondent filed a Motion with the Circuit Court to dissolve the stay of execution for failure to pay bond. After a virtual hearing on July 20, 2021, the Circuit Court issued an Order, dated July 29, 2021, formally setting a bond to stay execution pending Appellant's appeal to this Court, and requiring Appellant to submit proof of having made May's payment by a date certain; Appellant admittedly did not submit that proof. During the virtual hearing, Appellant testified that she believed that she had made the May payment, but was unable at that time or subsequently, to produce any proof. On August 26, 2021, Respondent filed an additional Motion to Dissolve Stay of Execution, which the Circuit Court granted that day. The Circuit Court further stated that "[Appellant's] appeal at the Court of Appeals is hereby dismissed." Ex. A.

ARGUMENT

Respondent's Motion to Dismiss should be denied because the Circuit Court did not have jurisdiction to dismiss Appellant's appeal to this Court. Further, Appellant's appeal to this Court can and should proceed regardless of whether the judgment of the Magistrate Court, as affirmed by the Circuit Court, has been executed, as the appeal deal with issues beyond mere possession of the property.

S.C. Code Ann. 27-400-800(f)(1) provides that “Upon appeal to the Supreme Court or the court of appeals, it is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking.” The statute further provides that tenant’s failure to pay the bond within five day of the due date entitles the landlord to execution of the judgment for possession.

S.C. Code Ann. 27-400-800 refers only with the stay of execution of the underlying judgment; it does not reference any effect on the jurisdiction of this Court to hear the appeal. Appellant concedes that the Circuit Court retains jurisdiction to enforce the terms of its order staying execution. The statute does not confer jurisdiction on the Circuit Court to dismiss this appeal.

Further, there are other issues raised in this appeal which are unaffected by the dissolution of the stay of ejectment. Admittedly, possession of the property is always the primary issue in any ejectment case. In this case, however, possession of the property is only one of several issues on appeal. Appellant’s position before the Magistrate Court, the Circuit Court, and as set forth in her initial brief to this Court, is that Respondent failed to give proper notice prior to filing its Application for Ejectment. As a result, Appellant was unable to relocate to alternate rental accommodations due to the pending eviction which was either disclosed or discovered as she applied for other housing. Appellant’s arguments have conceded that Respondent could have given thirty days’ notice to terminate her month-to-month tenancy and she would have had no available defense to remain in the property. It is the manner by which Respondent instituted this action that

is at the core of Appellant's appeal and that issue is unaffected by the dissolution of the stay of ejectment.

Finally, as a practical matter, Appellant should not be required to remain in the property which is the subject of this action in order to pursue her appeal. The Rule to Show Cause hearing in this matter was heard on March 11, 2020, almost eighteen (18) months ago. Appellant should not be forced to relinquish her appeal and face the negative and prejudicial consequences associated therewith (including a completed ejectment on her rental history and credit and potential liability for costs and attorneys' fees) because the circumstances of her life have changed in the year and a half following the events that gave rise to the action. Accordingly, Respondent's Motion to Dismiss this appeal should be denied.

CONCLUSION

This Court should deny Respondent's Motion to Dismiss because the Circuit Court did not have jurisdiction to dismiss the appeal and the appeal raises issues beyond possession of the property at issue.

Respectfully submitted,

/s/ Jeffrey W. Kuykendall _____
Jeffrey W. Kuykendall – Attorney at Law
S.C. Bar No. 102538
127 King St., Ste. 208
Charleston, SC 29401
Phone: (843) 790-5182
Facsimile: (866) 733-1909
Jwkuykendall@jwklegal.com
Attorney for Appellant

At Charleston, South Carolina
This the 2nd day of September, 2021.