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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

CASE NO. 2020-CP-08-00267

APPELLATE CASE NO. 2020-000629

Lisa Michelle Ray,Appellant,

v.

Parkway Village Apartments,Respondent.

INITIAL BRIEF OF RESPONDENT

/s Paul B. Ferrara, III
Paul B. Ferrara, III
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December 23, 2021

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT DID NOT MAKE ANY ERRORS OF LAW OR FACT AND JUDGMENT MUST BE AFFIRMED.

STATEMENT OF FACTS

This case concerns the eviction of the Petitioner from her apartment. Petitioner's lease with respondent was month to month and Petitioner was required to pay \$147.00 per month. The housing authority subsidizes the remainder of her rent. On January 14, 2020, Respondent filed an eviction before the Magistrate's office in Goose Creek for non-payment of rent. (R. at __). A rule to show cause hearing was requested by Petitioner and heard by Judge Deaton on January 23, 2020. (R. at __) The writ of ejectment was granted on January 27, 2020. (R. at __) On January 28, 2020, Petitioner appealed the writ of eviction to the Circuit Court. (R. at __).

Thereafter a Bond to stay hearing was heard before the Magistrate's Court, on January 30, 2020. (R.at __) Judge Deaton ordered \$147.00 to be paid within five (5) days of the hearing and on the first of each month thereafter, to allow the stay to remain in effect. (R at. __).

On March 9, 2020, Judge Roger Young heard the appeal from the Magistrate's court and found no errors at law or fact were committed by the Magistrate (R. at __) Judge Young issued a form 4 affirming the ejectment and furthering ordering the Petitioner to vacate the premises no later than March 31, 2020, as she failed to pay the bond required. (R.at __). Petitioner asserts through her filed notice of appeal that she received written entry of Judge Young's order on March 28, 2020. (R. at __). Petitioner unsuccessfully attempted to file an appeal of the March 28, 2020 Order of Judge Young. (R. at __). This Court advised Petitioner that she must follow the rules and allowed Petitioner until May 14, 2020, to cure the defects. (R. at __) The timeliness of the Petitioner's appeal is of concern; however, as the Petitioner is pro-se and the proof of service by the Circuit Court clerk of the Order being appealed, is unclear, the merits are nonetheless addressed below.

STANDARD OF REVIEW

Section 18-7-170 of the South Carolina Code (2019) articulates the standard of review to be applied by the circuit court in an appeal of a magistrate's judgment:

Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact. See also Hadfield v. Gilchrist, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000).

Generally, the Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law. See Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct.App.1984). Specifically, “[i]n ejectment proceedings first heard in magistrate's court, the Court of Appeals is without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence.” Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct.App.1984). “Unless we find an error of law, we will affirm the judge's holding if there are any facts supporting his decision.” Hadfield, 343 S.C. at 94, 538 S.E.2d at 271.

LAW/ANALYSIS

S.C. Code Ann. 27-37-10 states that a tenant may be ejected “when (1) the tenant fails or refuses to pay the rent when due or when demanded, (2) the term of tenancy or occupancy has ended, or (3) the terms or conditions of the lease have been violated.” Additionally, once a writ

of ejectment has been issued, S.C. Code Ann. 27- 37-130 requires a bond to be posted to stay the ejectment appeal. Specifically, the Code states:

“An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby. In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate.”

ARGUMENT

I. THE TRIAL COURT DID NOT COMMIT AN ERROR OF LAW OR FACT IN UPHOLDING THE EJECTMENT ISSUED BY THE MAGISTRATE.

In this case, S.C. Code Ann. 27-37-10 was properly applied by Judge Deaton. There is no dispute that Petitioner failed to pay the rent that was due at the time of the ejectment hearing. Further, S.C. Code Ann. 27-37-130 was properly followed as evidenced by Judge Deaton’s ruling that \$147.00 dollars be paid each month by the Petitioner. On March 8, 2020, when Judge Roger Young heard the matter, he properly ruled that the bond requirement was not satisfied and as a result, issued his order for the Petitioner to move from the premises no later than March 31, 2020. Petitioner’s appeal appears to be based on the fact that she has never paid rent late in the past and thus, she should be given a “free pass” this time. However, South Carolina law does not allow, or provide, a “free pass” to tenants who fail to pay rent.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court to affirm the Order of the Honorable Rad Deaton and Order of the Honorable Roger Young in this case.

December 23, 2021

/s Paul B. Ferrara, III

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Lisa Michelle Ray,Appellant,

v.

Parkway Village Apartments,Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Initial Brief, Designation of Matter and Certification of Counsel by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2021, addressed to:

Pro-Se Petitioner
Lisa Michelle Ray
775 Sangaree Pkwy Blvd.
Apt. 5-C
Summerville, SC 29486

/s


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*Paul B. Ferrara, III**
*Janel K. Ferrara**

**(also Admitted in N.C.)*

December 23, 2021

The Honorable V. Claire Allen
Chief Deputy Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Lisa Michelle Ray v. Parkway Village Apartments
Appellate Case No.: 2020-000629
Our File No.: 21-589

Dear Ms. Allen:

Please find enclosed for filing, the Respondent's Initial Brief, Designation of Matter, Certificate of Counsel and Proof of Service for the above-referenced appellate case number.

Thank you.

Sincerely,

FERRARA LAW FIRM, PLLC

/s Paul B. Ferrara, III
Paul B. Ferrara, III

Enclosures

cc: Lisa Michelle Ray