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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL GREENVILLE COUNTY

Court of Common Pleas

Perry H. Gravely, 13th Circuit Judge

Appellate Case No. 2020-001182

Sean Eric Roach,

Respondent,

v.

Lee C. Yarborough

Appellant,

FINAL REPLY BRIEF OF APPELLANT

s/ Wesley D. Few/

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YARBOROUGH

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Statutes

S.C. Code Ann. § 18-7-1701

S.C. Code Ann. § 16-3-1700 *et seq.*.....2

Other Authorities

None at this time

REPLY

Respondent misleads this Court as to the holding in *Bowers v. Thomas*, 644 S.E.2d 751, 753 (Ct. App. 2007). (R. at 11). The full quote from *Bowers* read as follows: “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.’” *Id.* at 753. The Court of Appeals in *Bowers* also stated, as follows:

[T]he 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.

Id. (commenting primarily on an affirmance by the Circuit Court).

In an ejectment proceeding, one party is deemed to have acted in accordance with the lease or not. As noted in *Bowers*, the issue to be determined is binary, namely, whether the “rent is paid when due ...[or not].” *Id.*

In this case, the Circuit Court was required to conduct a review of the evidence to determine if the facts supported a finding of Harassment in the 2nd degree. Specifically, the Circuit Court was required to “give judgment according to the justice of the case ... as to any or all the parties and for errors of law or fact.” S.C. Code Ann. § 18-7-170.

The fact that Respondent invoked his 5th Amendment Privilege not to testify, and has continued to do the same in the pending federal case, creates a presumption / adverse inference in a civil case that Respondent was responsible for the eight (8) highly offensive mailings. *See e.g., Griffith v. Griffith*, 332 S.C. 630, 640, 506 S.E.2d 526, 531 (Ct. App. 1998) (quoting Yale Law Journal article stating, “In a civil suit involving only private parties, no party brings to the battle the awesome powers of the government, and therefore to permit an adverse inference to be drawn from exercise of the [5th Amendment] privilege does not implicate the policy considerations

underlying the privilege.”).

The Circuit Court here gave no deference at all to the fact that the Respondent refused to testify regarding the mailings. In fact, the Circuit Court’s stated finding discounting the mailings, stating that the mailings “did not appear to target [Appellant],” *Id.* at 3, is clear error. As shown in Appellant’s Initial Brief at pp. 13-14, the mailings included pictures of Appellant super-imposed on the movie character, Hilly Holbrook, a/k/a Two Slice Hilly, from the movie *The Help*. Appellant is identified by name in the cards, and they were sent to her neighbors, and members of the national board she serves on, NAPEO.¹ Appellant is targeted as the owner of a Christian Woman-owned company,” and also called a “racist,” in the cards. *Id.*

As set forth in Appellant’s Initial Brief, to establish Harassment in the 2nd Degree, under S.C. Code Ann. § 16-3-1700(B), Appellant / Yarborough was required to show the following by a preponderance of the evidence:

"Harassment in the second degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

Id. (underline emphasis added).

The Circuit Court’s order does not make a finding that Respondent’s mailings were not intentionally sent, or that the mailings following up on the numerous electronic and other threats from Respondent that occurred in May and June of 2019 did not create a pattern that was repeated. The Circuit Court, nor the Respondent are in any position to state that Appellant did not suffer emotional distress, including weight loss, anxiety, which required an unexpected doctor’s

¹ National Association of Professional Employer Organizations, where Appellant now serves as the Chair[person] of its Board of Directors. <https://www.napeo.org/about-napeo/leadership-committees/2019-2020-board-of-directors>

office visit on Nov. 9, 2019, in the midst of the onslaught of the mailings, which started on or about October 31, 2019 and ended on or about December 2, 2019.

For at least the reasons set forth herein, and in Appellant's Initial Brief and Record on Appeal, Appellant/ Yarborough respectfully requests that the order of the Magistrate Court be re-instated and this remanded to the Magistrate Court for consideration of a permanent restraining order.

Respectfully submitted

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