

THE SOUTH CAROLINA COURT OF APPEALS

Shemuel Nahum Ben Yisrael,

APPELLANT,

v.

Law Offices of Darrell Thomas Johnson, Jr.,
LLC, Darrell Thomas Johnson, Jr., Attorney,
Mills Morrison, Attorney, Town of
Yemassee, Yemassee Police Department,
Gregory Alexander, Police Chief, Joseph
Loadholt, Police Officer, Samuel Watson, Jr.,
Police Officer, Leslie A. Jamison, Police
Officer, M. W. Strauss, Police Officer,
Beaufort Motor Sports, and State Fiscal
Accountability Authority,

RESPONDENTS.

APPELLATE CASE NO. 2021-000

Appeal from Civil Action No. 2019-CP-07-
00894

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Jan 27 2022

SC Court of Appeals

**NOTICE OF MOTION AND
MOTION TO DISMISS APPEAL**

TO: SHEMUEL BIN YISRAEL, PRO SE PLAINTIFF:

GROUND OF MOTION

The Defendants/Respondents Town of Yemassee, Gregory Alexander, Police Chief, Joseph Loadholt, Police Officer, Samuel Watson, Jr., Police Officer, Leslie A. Jamison, Police Officer, and M. W. Strauss, Police Officer, hereby move before the Court of Appeals to dismiss Plaintiff/Appellant Shemuel Bin Yisrael's appeal pursuant to Rule 240 of the South Carolina Rule of Appellate Procedure ("SCRAP"), on the grounds that the Appellant failed to preserve any arguments opposing Respondents' motion to dismiss for appellate review, and the other issues raised at the hearing before the circuit court cannot possibly constitute reversible error.

FACTS AND PROCEDURAL HISTORY

The Appellant filed the summons and complaint in this case on April 22, 2019. The Defendants filed their first motion to dismiss the Complaint on May 21, 2019. On November 25, 2019, Judge Dukes entered an order granting the first motion to dismiss as to Yemassee Police Department and denying it as to the remaining defendants. Judge Dukes held, “I deny the balance of the motion, but require the Appellant, within 15 days of this Order to make more definite and certain his allegations by specifically listing his causes of action as they relate to each Defendant with specific dates of alleged occurrences.” The Appellant failed to file an amended complaint, and on January 14, 2020, the Respondents filed their second motion to dismiss on the grounds the Appellant failed to comply with the order. The second motion to dismiss was heard by Judge Bonds on August 10, 2021. This hearing took place nearly twenty-one months after the order requiring the Appellant to amend his complaint was entered. The hearing took place over a year and a half after the Defendants served the second motion to dismiss on the Appellant. The Appellant never filed an amended complaint in this case.

The Appellant did not file a brief opposing the second motion to dismiss, but he appeared at the hearing before the circuit court. At the start of the hearing, the Appellant asked to record the hearing, and the judge denied the Appellant’s request (Circuit Court Order, P. 1-2). After the request was denied, the Appellant attempted to immediately appeal the ruling with a generic written motion he prepared before the hearing appealing “any and all rulings” (Circuit Court Order, P. 2). The judge refused to allow the appeal the grounds that the appeal was interlocutory; it was not procedurally appropriate pursuant to Rule 203, SCRAP because the Appellant was attempting to appeal before the entry of a written order;

and it violated Rule 11, SCRCF because it was solely for the purpose of delay (Circuit Court Order, P. 2-3). When the judge refused to allow him to appeal the denial of his request to record the proceedings, the Appellant chose to leave the hearing before oral arguments on the motion to dismiss (Circuit Court Order, P. 2-3). He was warned several times by the court that if he left before oral arguments, he would not be allowed back into the courtroom, but he chose to leave anyway (Circuit Court Order, P. 2). On August 12, 2022, the circuit court entered an order granting the Respondents' motion to dismiss on the grounds that the Appellant willfully failed to comply with Judge Dukes' previous order to amend his complaint (Circuit Court Order, P. 6-7).

1. The Appellant failed to present any argument in opposition to the motion to dismiss, so there is no issue preserved for appellate review.

As discussed above, the Appellant did not file a brief in opposition to the Respondents' motion to dismiss the complaint, and he left the courtroom without making any oral argument opposing the Respondent's motion to dismiss. Because the Appellant failed to present any argument opposing the motion, he also failed to preserve any argument for appeal. *See 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, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.") Any argument the Appellant raises now will be raised for the first time on appeal. As this is not allowed, the Appellant's motion must be dismissed because there were no preserved issues to him to appeal regarding the order dismissing the case.

2. The denial of the Appellant's request at the hearing to record the hearing and the denial of the Appellant's attempt to appeal the denial of his request to record the hearing on the motion to dismiss could not possibly constitute

reversible error because these issues have nothing to do with the court's ruling on the motion to dismiss.

The other issues raised at the hearing before Appellant left the courthouse constitute harmless error as a matter of law. "To constitute error, a ruling to admit or exclude evidence must affect a substantial right." *State v. Curry*, 370 S.C. 674, 680, 636 S.E.2d 649, 652 (Ct. App. 2006) (*citing* Rule 103(a), SCRE; *State v. Johnson*, 363 S.C. 53, 60, 609 S.E.2d 520, 524 (2005)). "However, error is harmless where it could not reasonably have affected the trial's outcome." *Id.* (*citing State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985)). There is no substantial right to record a hearing. In fact, the South Carolina Rules of Civil Procedure generally prohibit recording hearings. *See* Rule 605(b), SCRPC. More importantly, it is impossible for the Appellant to show that not being allowed to record the hearing could reasonably have affected its outcome because whether the Appellant recorded the hearing has nothing to do with the actual merits of the motion. The Appellant could have presented the exact same arguments against the motion to dismiss whether or not he was recording the proceeding. Therefore, this issue cannot possibly constitute reversible error.

The denial of the Appellant's request to appeal the ruling barring him from recording the hearing before any written order was entered cannot possibly constitute reversible error either. The right to appeal does not arise until there is a *final* order pursuant to Rule 201, SCRAP. An oral ruling is not a final order as a matter of law. "It is well settled that a judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling." *Corbin v. Kobler Co.*, 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct. App. 2002) (*citing Badaux v. Davis*, 337 S.C. 195, 204, 522 S.E.2d 835, 839 (Ct.App.1999)). "The written order is the trial judge's final order and as such constitutes the final judgment of the court. The final

written order contains the binding instructions which are to be followed by the parties.” *Id.* (citing *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (citing Rule 58, SCRCP)). More importantly, the denial of the Appellant’s attempt to appeal an oral ruling during the hearing has nothing to do with the merits of dismissing the Appellant’s case for failing to amend his complaint. Therefore, this issue cannot constitute reversible error. The sole issue which could constitute reversible error is the order dismissing the complaint without prejudice, and for the reasons stated above, the Appellant failed to preserve any argument on this issue. Therefore, the appeal should properly be dismissed.

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January 27, 2022
Beaufort, South Carolina