

**RECEIVED**

**Apr 06 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

---

Civil Action No. 2016-CP-40-04139  
**Appellate Case No. 2019-001533**

---

Morgan Conley.....Appellant/Petitioner,

v.

April Morganson.....Respondent.

---

**PETITION FOR REHEARING**

---

Richard L. Whitt, S.C. Bar #: 62895  
Jefferson D. Griffith, III, S.C. Bar #: 2299  
**Whitt Law Firm, LLC**  
Post Office Box 362  
Irmo, South Carolina 29063  
Email: Richard @RLWhitt.law  
Email: Jeff@RLWhitt.law  
(803) 995-7719

*Attorneys for Petitioner*

**TABLE OF AUTHORITIES**

**CASES**

Abell et al. v. Bell et al. 91 SE 2d 548 (1956).....9

Boiter v. South Carolina Dept. of Transp., 712 SE 2d 401 (2011).....3

Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733  
(Ct. of App. 2005).....9

First Union Nat'l Bank v. FCVS Comm., 469 S.E.2d 613, 617  
(Ct. App. 1996).....11

Hembree v. \$1,847.00 US Currency, 743 SE 2d 864 (Ct. App. 2013).....3

Hodges v. Rainey, 533 SE 2d 576 (2000).....7, 8, 9, 10

Skinner v. Westinghouse Elec. Corp., 716 SE 2d 443 (2011).....3

Snyder's Auto World, Inc. v. George Coleman Motor Co., Inc.,  
434 S.E.2d 310, 312 (Ct. App. 1993).....4, 5

State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).....9

Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970).....9

**STATUTES**

S.C. Code Ann. §27-40-240(B)(3), (1976, as amended).....3, 5, 6, 7, 8, 9, 11

S.C. Code Ann. §27-40-240(B)(1), (1976, as amended).....3, 5

## INTRODUCTION

Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022, dismissing Appellant/Petitioner's Appeal.

This Court failed to comply with "Bright Line" rules, often cited by this Court, concerning proper statutory construction. This Court improperly agreed with Respondent and the Lower Court, that an email communication constitutes actual notice under S.C. Code Ann., §27-40-240(B)(1), (1976, as amended), and thereby this Court's Order ignores the specific requirements of S.C. Code Ann., §27-40-240(B)(3), (1976, as amended).

In a review of statutory construction by this Court the following applies, "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *Boiter v. South Carolina Dept. of Transp.*, 712 SE 2d 401 (2011). **Also, in a review of statutory construction** this Court cannot choose a general provision S.C. Code Ann., §27-40-240(B)(1), over a specific provision S.C. Code Ann., §27-40-240(B)(3), *Skinner v. Westinghouse Elec. Corp.*, 716 SE 2d 443 (2011); *Hembree v. \$1,847.00 US Currency*, 743 SE 2d 864 (Ct. App. 2013).

This Court's Order highlights this Court's adoption of the Respondent's position in the Lower Court. Namely, that Appellant/Petitioner received proper Notice, when Appellant/Petitioner only received email communications and not the proper Notice, **required** by S.C. Code Ann., §27-40-240(B)(3), (1976, as amended)<sup>1</sup>.

In this Court's Order on page "5", herein, this Court stated that Appellant/Petitioner, "...[argued] that the circuit court erred...finding [Appellant] received sufficient notice pursuant to section 27-40-240(B)(3) of the South Carolina Code (2007)." On its face, S.C. Code Ann., §27-40-240(B)(3), **requires in pertinent part**, "...in the case of the tenant, [Notice] is delivered in hand to the tenant or mailed by registered or certified mail to the tenant..." Note, that the tenant in this case **did not** receive Notice by hand-delivery, **did not** receive Notice by Registered Mail, **nor did** the tenant receive Notice by Certified Mail.

---

<sup>1</sup> In pertinent part, §27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant..."

## INTRODUCTION (Cont.)

Finally, this Court's Order finds as follows, "We further hold any error in the making of certain statements at the hearing was harmless because Conley had sufficient notice. See *Snyder's Auto World, Inc. v. George Coleman Motor Co., Inc.*, 315 S.C. 183, 186, 434 S.E.2d 310, 312 (Ct. App. 1993) (stating an appellant must show both error and prejudice)."

Appellant/Petitioner has outlined herein numerous errors by the Lower Court and Appellant/Petitioner specifically alleged prejudice. Specifically, Appellant/Petitioner was prejudiced by Respondent's unlawful retention of Appellant/Petitioner's prepaid rent and security deposit and the prejudice was described in Appellant/Petitioner's "Statement of the Facts" on page "6" in Appellant's Final Brief filed with this Court on January 9, 2021, "The Respondent/Landlord never returned Appellant/Tenant's security deposit or prepaid rent..."

**THIS COURT’S ORDER FOR WHICH REHEARING IS SOUGHT**

“**PER CURIAM:** Morgan Conley appeals the circuit court's order granting an involuntary non-suit against her pursuant to Rule 41, SCRCR. On appeal, Conley argues the circuit court erred in making certain statements during the hearing and finding she received sufficient notice pursuant to section 27-40-240(B)(3) of the South Carolina Code (2007). We affirm pursuant to Rule 220(b), SCACR. We hold Conley received sufficient notice when she received an email communication from her landlord. See S.C. Code Ann. § 27-40-240(A) (2007) ("A person has notice of a fact if: (1) the person has actual knowledge of it; (2) the person has received a notice or notification of it; or (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person 'knows' or 'has knowledge' of a fact if he has actual knowledge of it." (emphasis added)); S.C. Code Ann. § 27-40-240(B) (2007) ("A person 'notifies' or 'gives' a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it."); S.C. Code Ann. § 27-40-240(B)(1) (2007) ("A person 'receives' a notice or notification when . . . it comes to his attention."). We further hold any error in the making of certain statements at the hearing was harmless because Conley had sufficient notice. See *Snyder's Auto World, Inc. v. George Coleman Motor Co., Inc.*, 315 S.C. 183, 186, 434 S.E.2d 310, 312 (Ct. App. 1993) (stating an appellant must show both error and prejudice).

**AFFIRMED.1**

**WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.”**

## RESPONDENT'S MISLEADING ARGUMENT IN HER BRIEF

Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022, dismissing Appellant/Petitioner's Appeal:

This Court should note that, throughout Respondent's Brief, Respondent attempted to disguise the fact that the **Respondent/Landlord only sent electronic mail** to the Appellant/Petitioner. The **Respondent/Landlord failed** to send the required Notice to the Appellant/Petitioner by delivery in hand, or by mailing the Notice to the Appellant/Petitioner, by Registered or Certified Mail. See, S.C. Code Ann., §27-40-240(B)(3)<sup>2</sup>, (1976, as amended). It is uncontroverted that the **Respondent/Landlord failed** to hand-deliver the Notice and the **Respondent/Landlord failed** to mail the Notice to the Appellant/Petitioner by Registered or Certified Mail. Despite Respondent/Landlord's failure to comply with South Carolina Law, Respondent/Landlord's Brief is replete with misleading references, as follows.

- On page "4" of Respondent/Landlord's Brief, the Respondent/Landlord describes her noncompliant electronic mail as, "...**written digital communication**...."
- On page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her noncompliant electronic mail as, "...**a written communication**...."
- Also, on page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her noncompliant electronic mail as, "...**the actual written communication**...."
- On page "6" of Respondent/Landlord's Brief, the Respondent/Landlord describes her noncompliant electronic mail as, "**The written communication**...."
- On page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her noncompliant electronic mail as, "...**written notification**...."
- Also, on page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her noncompliant electronic mail as, "...**the written communication**...."
- On page "8" of Respondent/Landlord's Brief, the Respondent/Landlord describes her noncompliant electronic mail as, "...**a written communication**...."

Emphasis supplied in all of the above-referenced quotes.

---

<sup>2</sup> In pertinent part, §27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant...."

## IMPROPER STATEMENTS MADE BY LOWER COURT

Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022, dismissing Appellant/Petitioner's Appeal.

- **The Trial Judge opined** that he believed that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send electronic mail, not by hand-delivery, Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), that Notice be by hand-delivery, or by Registered or Certified Mail, (R. p. 34 lines 10-20); (R. p. 44).
- **The Trial Judge stated** that he was justified in changing the meaning of a clear and unambiguous Statute, by the following comments. Namely, that in Trial Judge's opinion, a tenant attempting to enforce the plain and ordinary meaning of the Statute, §27-40-240(B)(3), against "...unsuspecting landlords...", was an attempt by a tenant to "...pin[the Act's provision] on a Landlord", despite the fact that the requirements exist today in the Act, (R. p. 36 lines 19-25).
- **The Trial Judge stated**, "...so I think it is time to simplify, clarify, modernize, and revise the laws concerning landlords and tenants." (R. p. 34 lines 11-13). This statement by the Trial Judge that he intended, in effect, to simplify, clarify, modernize and revise the South Carolina Residential Landlord and Tenant Act, is remarkable. Obviously, the Lower Court was without authority to take the actions he took at the conclusion of the Appellant/Tenant's case, "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 SE 2d 576 (2000). "Where a statute's language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning." Hodges v. Rainey, 533 SE 2d 576 (2000).
- **The Trial Judge's Order stated** that, "The South Carolina Landlord/Tenant (*sic*) Act certainly requires certified mail notification in certain instances but, as set forth above, and as is the case in this situation, the Plaintiff clearly received email notification of all aspects concerning the parties lease." (R. p. 3).
- **The Trial Judge stated** that he believed that the Act dated back to 1986 and that e-mail technology did not exist in 1986. (R. p. 34 lines 10-20). The Trial Judge then stated that it was acceptable for the Respondent/Landlord to send electronic mail to the Appellant/Tenant about the Respondent/Landlord's confiscation of both the Appellant/Tenant's prepaid rent and security deposit, (R. p. 34 lines 10-20). The Trial Judge found it was acceptable to send the Notice by electronic mail, which was not hand-delivered, or mailed by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (R. pp. 1-4).

## ARGUMENT

Based on the improper statements by the Trial Judge shown on page “7”, herein, which highlighted the Lower Court’s errors, at the conclusion of the Appellant/Petitioner’s case, the Trial Judge granted the Respondent/Landlord’s Motion for Directed Verdict (R. pp. 1-3). The Trial Judge’s grant of a Directed Verdict was erroneous and controlled by the Trial Judge’s refusal to enforce the plain and ordinary requirements of the South Carolina Residential Landlord and Tenant Act, (hereinafter sometimes referred to as, the “Act”). Namely, that a Notice be hand-delivered, or mailed by Registered or Certified Mail<sup>3</sup>, as required by the Statute, (R. p. 44). The Trial Judge stated that he believed that the Act dated back to 1986 and that e-mail technology did not exist in 1986. (R. p. 34 lines 10-20). The Trial Judge then stated that it was acceptable for the Respondent/Landlord to send electronic mail to the Appellant/Petitioner about the Respondent/Landlord’s confiscation of both the Appellant/Petitioner’s prepaid rent and security deposit, (R. p. 34 lines 10-20). The Trial Judge improperly found it was acceptable to send the Notice to Appellant/Petitioner by electronic mail, which was not hand-delivered, or mailed by Registered or Certified Mail, to the Appellant/Petitioner, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), (R. pp. 1-4).

“Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” Hodges v. Rainey, 533 SE 2d 576 (2000).

---

<sup>3</sup> S.C. Code Ann., §27-40-240(B)(3), (1976, as amended).

### **ARGUMENT (Cont.)**

“The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733 (Ct. of App. 2005).

‘Where a statute’s language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning.’ Hodges v. Rainey, 533 SE 2d 576 (2000).

Accordingly, it was improper for the Trial Judge to impose another meaning at the conclusion of Appellant/Petitioner’s case, namely that electronic mail satisfied the Statute’s requirement that Notice to the tenant be, hand-delivered, or mailed by Registered or Certified Mail, (R. p. 34 lines 10-20).

“If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it dehors the statute.” Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970); Abell et al. v. Bell et al. 91 SE 2d 548 (1956); “...if legislative intent is clearly apparent on the face of a statute, the court may not embark upon a search for [legislative intent].” State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).

The Trial Judge noted that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send Notice by electronic mail, not hand-delivered, or mailed by Registered or Certified Mail, to the Appellant/Petitioner, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), that Notice be hand-delivered or be mailed, by Registered or Certified Mail, (R. p. 34 lines 10-20).

**ARGUMENT (Cont.)**

“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 533 SE 2d 576 (2000).

**RESPONDENT FAILED TO RESPOND TO THE FOLLOWING ISSUES  
IN HER BRIEF.**

(Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022)

The Respondent failed to respond to the following issues in her Brief.

Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See, First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996), if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds.

- I. THE LOWER COURT ERRED WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS.**
  
- II. THE LOWER COURT ERRED WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3).**
  
- III. THE LOWER COURT ERRED WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL.**

## **CONCLUSION**

Based on the foregoing (i) applicable case law, (ii) statutes, and (iii) the facts of this case, this Court should rehear and reconsider its decision of March 22, 2022. This Court should Reverse the Lower Court's decision and Remand this matter for a decision consistent with this Court's order granting Rehearing.

Respectfully Submitted,

/s/Richard L. Whitt,

Richard L. Whitt, S.C. Bar #: 62895

Jefferson D. Griffith, III, S.C. Bar #: 2299

**Whitt Law Firm, LLC**

Post Office Box 362

Irmo, South Carolina 29063

(803) 995-7719

*Attorneys for Appellant/Petitioner*

April 6, 2022

**RECEIVED**

**Apr 06 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139  
**Appellate Case No. 2019-001533**

Morgan Conley.....Appellant/Petitioner,

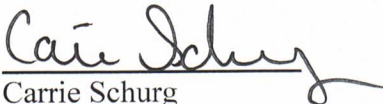
v.

April Morganson.....Respondent.

**AFFIDAVIT OF SERVICE**

I, Carrie A. Schurg, an employee of Whitt Law Firm, LLC, hereby certify that I have caused the Petition for Rehearing, and this Affidavit of Service, to be served via, electronic mail, and U.S. Mail as addressed below, on April 6, 2022.

S. Jahue Moore, Jr., Esquire  
[jakejr@mbmlawsc.com](mailto:jakejr@mbmlawsc.com)  
Post Office Box 5709  
West Columbia, South Carolina 29171

  
Carrie Schurg

April 6, 2022