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May 13 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No.: 2022-000045

Gilbert Clinton Gee and Lourdes S. Gee..... Appellants (*pro se*),

v.

Signature Sales Group, LLC ..... Respondent.

**RETURN TO APPELLANTS' EMERGENCY MOTION**

Today, Appellants filed an Amended Emergency Motion for Immediate Temporary Relief and Temporary Order Staying Proceedings Under the Writ of Possession and Reconsideration ("Motion for Reconsideration"). Respondent requests this Court to deny the Motion for Reconsideration in its entirety. Importantly, Appellants have vacated the subject premises and Respondent has changed the locks on the unit.

Appellants have made no rent payments during the pendency of this appeal to this Court. The last rent payment made was December 12, 2021. Because they had not made the rental payments under the terms of the Bond for Stay of Execution, and because they never provided any written undertaking that they would continue to make rental payments under during the appeal to the Court of Appeals, and because they completely failed to continue making their weekly rental payments since December 12, 2021,

Respondent requested that the magistrate court issue Appellants a warrant of ejectment under Section 27-40-800(e). The magistrate court issued its Writ of Ejectment. (See, Writ of Ejectment for May 11, 2022, attached to Appellants' Motion for Reconsideration.)

Today, Appellants filed a Motion for reconsideration arguing that the Bond to Stay Execution on Appeal to Circuit Court did not inform them of the requirement to pay rent during the pendency of their appeal to the Court of Appeals. This argument is meritless. "Everyone is presumed to have knowledge of the law and must exercise reasonable care to protect his interests." *Smothers v. United States Fid. & Guar. Co.*, 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996); see also *Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 62 (2011). Accordingly, it was Appellants' responsibility and no one else to inform themselves of the requirements set forth in all of S.C. Code Section 27-40-800, including Section 27-40-800(f)(1).

Appellants further argue that Lourdes Gee's first language is Spanish such that she should have been provided a copy of the Bond to Stay Execution on Appeal to the Circuit Court in Spanish. Again, this claim is meritless. Simply because English is not Lourdes Gee's first language does not qualify her as a person of limited English proficiency for which translation services would be provided. Lourdes Gee appeared before the magistrate court on June 24, 2021, and provided the court with her name when questioned without translation. (See, Transcript attached to Appellants' Motion for Reconsideration.) Furthermore, she signed the Notice of Appeal to this Court as well as the subject Motion for Reconsideration and Certificate of Service, without the need for court translation of those documents into Spanish. In the almost one year since this matter has been pending before the magistrate court, the circuit court, and the Court of

Appeals, Lourdes Gee has never once informed any court or Respondent of any issue regarding her ability to communicate in English.

Finally, the question of Lourdes Gee's English proficiency is not properly before this Court. Although it is not clear under what rule of civil or appellate procedure Respondents are proceeding, it appears to be in the vein of a motion to alter or amend, which is provided for in Rule 59(e), SCRCF, and Rule 19(d), SCRMC. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). As to appeals, "[i]t is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000)

Appellants have had every opportunity to raise the issue of English proficiency to the magistrate court prior to today and have failed to do so. This issue is not preserved for this Court's review, and Appellants cannot raise this non-issue in a specious effort to avoid ejection.

Based upon the foregoing, Respondent requests that this Court deny Appellants' requested relief in its entirety.

Signature on following page

Respectfully submitted,

*Kathleen M. McDaniel*

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**PROOF OF SERVICE**

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The undersigned hereby certifies that a true copy of Respondent's Motion for Extension of Time to File Initial Brief of Respondent in the above-referenced case has been served on all parties and/or their counsel of record by mailing a copy of same by way of the United States Postal Service, postage pre-paid, on the date below, addressed as follows:

**PARTIES SERVED:** Gilbert Clinton Gee  
Lourdes S. Gee  
33 Office Park Road, #A-201  
Hilton Head Island, SC 29928

**PRO SE APPELLANTS**

March 16, 2022

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Jason R. Williamson, CP, SCCP