

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Judge Ferrell Cothran

Case No. 2021-CP-14-00425

Ronnie Gainey

Respondent,

v.

Tamara Gaylord

Appellant.

INITIAL BRIEF OF APPELLANT

Tamara Gaylord
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Pro Se

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT VIOLATE THE RIGHT TO DUE PROCESS?
2. DID THE COURT VIOLATE FEDERAL LAW BY HOLDING HEARING?
3. DID THE COURT ALLOW AN IMPROPER HEARING BASED ON A RETALIATORY EVICTION?

STATEMENT OF THE CASE

On July 21, 2021 after a ruling by family court found the parties were not common-law married, Appellant Tamara Gaylord received a court summons from magistrate court notifying her of an eviction hearing on August 5, 2021, initiated by the respondent,

The hearing was continued to August 19, 2021 and the final order was entered into record September 9, 2021. Judge Marcia Frye ruled in favor of Gainey, giving appellant 24 hours to vacate her residence.

Notice of Appeal was served to Gainey via his attorney Ceth Land on September 17, 2021. The appeal was presided over by Judge Ferrell Cothran on November 4, 2021. Judge Cothran dismissed the case.

STANDARD OF REVIEW

Appellate review of a magistrate court judgment is given to the court of common pleas as found in S.C. Code Ann. § SECTION 18-7-190, which states “if upon an appeal in an issue of law the court should adjudge the pleading complained of to be valid, it shall, in like manner, require the opposite party summarily to answer such pleading or join issue thereon, as the case may require.”

ARGUMENTS

1. DID THE COURT VIOLATE THE RIGHT TO DUE PROCESS?

The violation of Ms. Gaylord's right to due process is found in the court's denial of a jury and the court's refusal to allow entry of her witnesses, as well as Mr. Gainey's improper filing of documents.

- (a) Mr. Gainey's Notice to Quit was not acted on within the 120 day timeline as stated in Rule 6 of SC Rules of Magistrate Courts and is therefore subject to dismissal. No service of rule from the court was ever provided as described in S.C. Code Ann. § 27-37-20. Respondent claims application for ejectment was filed but can only provide proof of service for the Notice to Quit, while at the same time denying a Notice to Quit was filed.
- (b) The Court denied the Appellant the right to a jury trial. According to S.C. Code Ann. § 27-37-60, the tenant must "appear and contest ejectment" at which time the court shall allow "trial by jury if demanded by either party." The respondent failed to show when the application for ejectment was filed. The judge ruled that the timeline to request a jury trial started when the respondent filed the notice to quit. However, the statute states the request for a jury must be requested within 5 days of the court hearing. The case was bifurcated before any rule to show cause or eviction notice from the magistrate's office was served. No hearing for the eviction was held until August 5, 2021. The request for a jury trial was submitted July 21, 2021, well within the 5 day notice limit.
- (c) Ms. Gaylord was denied her right to due process by the court refusing to allow her to present evidence, including videos showing her unlawful eviction by Mr. Gainey, as summarized in S.C. Code Ann. § 27-40-660. In addition, her witnesses were denied entry to the courthouse. Rule 11(e) of Magistrate Courts states "Witnesses may be called, and the court shall have the power to issue subpoenas to compel their attendance". The on-scene security prevented her witnesses from entering the building so they could not be called to testify. The judge indicated at the start of the hearing that she was aware of the witnesses expected to testify, yet she made no effort to correct the error of them being denied entry.
- (d) Ms. Gaylord was denied her right to due process by the court starting before her counsel arrived. The Plaintiff's attorney reported during the appeal "We had not actually started the testimony by the time he arrived. We had just addressed some preliminary issues." The plaintiff was in fact called to the stand by his attorney approximately 3min45sec into the trial as indicated by the attached transcript.

The Plaintiff was then sworn in by Judge Frye at 4 min. Ms. Gaylord's counsel arrived approximately 8min45sec into the trial. His testimony had been in progress for almost 5 minutes before Ms. Gaylord's counsel arrived.

During the initial appeal, Judge Cothran questioned whether Judge Frye issued a judgment before the arrival of counsel and it was denied, however Judge Frye did indeed issue a judgment 2min42sec into the trial, well before Ms. Gaylord's attorney arrived.

(e) Ms. Gaylord was never sworn in as required by Magistrate Rule 13(d)

2. DID THE COURT VIOLATE FEDERAL LAW BY HOLDING HEARING?

The violation of federal law by the magistrate court is found in the insistence of holding an in-person hearing after Ms. Gaylord was exposed to Covid-19, as well as holding an eviction hearing while a federal moratorium was still in effect.

- (a) Ms. Gaylord requested a continuance based on her recent cancer diagnosis. In accordance with rule 14 of Magistrate Courts, "the court shall be lenient...in granting continuances of trials for good cause shown when necessary." The Appellant did provide proof to the Court that she was under treatment from a mastectomy and was placing her health at risk by being present in a courtroom while the pandemic is rapidly spreading. The judge pointed to Ms. Gaylord's attendance at a previous hearing in denying a continuance, yet the date of the hearing the judge referenced took place before her mastectomy.
- (b) Ms. Gaylord had direct exposure to covid-19 and notified the court of the exposure. Again, her attendance was deemed mandatory for her case to move forward, not only putting her health at further risk but also risking the health of anyone she came into contact with at the courthouse. Federal law mandates quarantine for individuals with close-contact exposure to COVID-19. The court forcing Ms. Gaylord to appear when she should have been quarantined was reckless and a violation of federal law.

3. DID THE COURT ALLOW A HEARING BASED ON A RETALIATORY EVICTION?

The eviction process started after the Appellant confronted the Respondent about his participation in questionable real estate transactions. Therefore the eviction is retaliatory pursuant to Section 27-40-910.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the magistrate court.

Respectfully submitted,

/s/ Tamara Gaylord

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May 17, 2022