CHAPTER 9

Appeals to Supreme Court and Court of Appeals

**SECTION 18‑9‑10.** When appeal may be taken.

 An appeal may be taken to the Supreme Court or the Court of Appeals in the cases mentioned in Sections 14‑3‑320 and 14‑3‑330. The procedure for taking an appeal is as provided by the South Carolina Appellate Court Rules.

HISTORY: 1962 Code Section 7‑401; 1952 Code Section 7‑401; 1942 Code Section 780; 1932 Code Section 780; Civ. P. ‘22 Section 645; Civ. P. ‘12 Section 383; Civ. P. ‘02 Section 344; 1870 (14) 358; 1991 Act No. 115, Section 3, eff June 5, 1991; 1999 Act No. 55, Section 26, eff June 1, 1999.

CROSS REFERENCES

Appeal when case decided on report of referee and exceptions, see SCRCP, Rule 53.

Appeals from decisions of board of registration under the South Carolina Election Law, see Sections 7‑5‑180, 7‑5‑230 et seq.

Appellate jurisdiction of Supreme Court, see Sections 14‑3‑320, 14‑3‑330.

Jurisdiction of Supreme Court, see SC Const, Art V, Section 5.

Original jurisdiction of Supreme Court, see Section 14‑3‑310.

Procedure in Supreme Court, see Sections 14‑3‑340 to 14‑3‑450.

Right to appeal of person denied registration to vote, see SC Const, Art II, Section 9.

Library References

Appeal and Error 18, 41, 337 to 435.

Infants 2866.

Westlaw Topic Nos. 30, 211.

C.J.S. Appeal and Error Sections 46 to 49, 51, 58, 86, 90 to 92, 361 to 402, 407, 409 to 412, 414 to 449, 451 to 504.

C.J.S. Infants Sections 105 to 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Post‑Conviction Relief Section 3, Relationship to Federal and State Habeas Corpus.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law: The Right to an Appeal. 27 S.C. L. Rev. 380.

The Scope of Judicial Review: A Continuing Dialogue. 31 S.C. L. Rev. 171.

NOTES OF DECISIONS

In general 1

1. In general

Defendant was not “aggrieved” by circuit court’s order reversing magistrate’s dismissal of driving under the influence (DUI) charge, and therefore order was not appealable; order was analogous to an order denying a motion to suppress evidence, which was an interlocutory order that was not immediately appealable. State v. Looper (S.C.App. 2015) 412 S.C. 363, 772 S.E.2d 516, rehearing denied, certiorari granted. Criminal Law 1023(3)

A criminal defendant may appeal a circuit court order remanding his case to magistrate’s court for further proceedings if the defendant is aggrieved; abrogating State v. Clifford, 335 S.C. 129, 515 S.E.2d 550. State v. Gregorie (S.C. 2000) 339 S.C. 2, 528 S.E.2d 77. Criminal Law 1180

Motorist was entitled to appeal circuit court order overturning magistrate’s court speeding conviction and remanding case to magistrate’s court for new trial, as motorist was “aggrieved” by that order. State v. Gregorie (S.C. 2000) 339 S.C. 2, 528 S.E.2d 77. Criminal Law 1180

Judgment based upon pleadings and deposition of plaintiff taken by defendant before magistrate, determining that jury issue exists and denying motion for summary judgment, is interlocutory and not appealable. Neal v. Carolina Power and Light Co. (S.C. 1980) 274 S.C. 552, 265 S.E.2d 681.

Cited in State v. Cottingham (S.C. 1953) 224 S.C. 181, 77 S.E.2d 897.

Quoted in Sease v. Dobson (S.C. 1892) 36 S.C. 554, 15 S.E. 703.

**SECTION 18‑9‑20.** Review of convictions of capital offenses.

 The Supreme Court shall review each conviction of a capital offense by any court in this State.

HISTORY: 1962 Code Section 7‑401.1; 1974 (58) 2361.

CROSS REFERENCES

Bail not being allowed when defendant sentenced to death, see Section 18‑1‑90.

Execution of death sentence upon dismissal of appeal, see Sections 17‑25‑370 to 17‑25‑400.

Provisions regarding appeal of judgments including the sentence of death, see Section 14‑8‑200.

Review by the Supreme Court of imposition of death penalty, see Section 16‑3‑25.

Library References

Criminal Law 1019.

Westlaw Topic No. 110.

**SECTION 18‑9‑30.** Appeals in probate matters.

 The Supreme Court and the Court of Appeals shall have jurisdiction of all questions of law arising in the course of the proceedings of the circuit court in probate matters in the same manner as provided by law in other cases.

HISTORY: 1962 Code Section 7‑402; 1952 Code Section 7‑402; 1942 Code Section 229; 1932 Code Section 229; Civ. P. ‘22 Section 186; Civ. P. ‘12 Section 62; Civ. P. ‘02 Section 56; 1870 (14) 56; 1999 Act No. 55, Section 27, eff June 1, 1999.

CROSS REFERENCES

Appellate jurisdiction of Supreme Court, see Sections 14‑3‑320, 14‑3‑330.

Jurisdiction of Supreme Court, see SC Const, Art V, Section 5.

Original jurisdiction of Supreme Court, see Section 14‑3‑310.

Library References

Courts 202(5).

Westlaw Topic No. 106.

NOTES OF DECISIONS

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1. In general

On appeal from the probate court to the circuit court on probate of a will, the cause must be regarded as a law case, the issue of will or no will being legal in its nature, and the circuit court’s findings of fact are not reviewable by the Supreme Court. Thames v. Rouse (S.C. 1908) 82 S.C. 40, 62 S.E. 254. Appeal And Error 1008.1(8.1)

In matters in chancery originating in the probate court, the findings of the circuit court as to questions of fact are not final but are subject to be reviewed and reversed as in other appeals in chancery, if opposed to the clear weight of the testimony. In re Solomons’ Estate (S.C. 1906) 74 S.C. 189, 54 S.E. 207.

In matters other than matters in chancery originating in the probate court, such as probate of wills, the Supreme Court has no power to review findings of fact of the circuit court made by that court on appeal from the probate court. In re Solomons’ Estate (S.C. 1906) 74 S.C. 189, 54 S.E. 207.

An order of a circuit court remanding a cause in probate matter to the probate court for the purpose of obtaining omitted testimony without hearing the appeal denies the successful party below his legal right to have the appeal heard in the circuit court and such order is appealable in the Supreme Court. Ex parte White (S.C. 1890) 33 S.C. 442, 12 S.E. 5.

Issues of fact coming up to the Supreme Court on appeal in probate matters in cases of chancery may be remanded to the circuit court to be referred to a jury. Shaw v. Cunningham (S.C. 1878) 9 S.C. 271.

**SECTION 18‑9‑40.** Statement of questions of law and facts when questions certified.

 When the circuit court shall render judgment upon a verdict taken, subject to the opinion of the court, the questions or conclusions of law together with a concise statement of the facts upon which they arose shall be prepared by and under the direction of the court, shall be filed with the judgment roll, and shall be considered a part of the judgment roll for the purposes of a review in the Supreme Court or the Court of Appeals.

HISTORY: 1962 Code Section 7‑403; 1952 Code Section 7‑403; 1942 Code Section 780; 1932 Code Section 780; Civ. P. ‘22 Section 645; Civ. P. ‘12 Section 383; Civ. P. ‘02 Section 344; 1870 (14) 358; 1999 Act No. 55, Section 28, eff June 1, 1999.

CROSS REFERENCES

Judgment roll in case appealed to circuit court, see Section 18‑7‑210.

Rendering of judgment by circuit court in case on appeal, see Section 18‑7‑170.

Library References

Appeal and Error 544(2).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 573.

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1. In general

Cited in Brandt v. Standard Mut. Life Ass’n (S.C. 1942) 199 S.C. 247, 19 S.E.2d 105.

Stated in Citizens’ Bank v. Heyward (S.C. 1926) 144 S.C. 365, 142 S.E. 651.

Finding of fact by circuit court on appeal from magistrate’s court is not reviewable. Stacy v Cherokee Foundry & Machine Works (1904) 70 SC 178, 49 SE 223. Jones v. Atlantic Coast Line R.R. (S.C. 1904) 70 S.C. 214, 49 S.E. 568.

An order refusing to quash the array of jurors on grounds held to be mere irregularities is not appealable under this section [Code 1962 Section 7‑403]. Rhodes v. Southern Ry. Co. (S.C. 1904) 68 S.C. 494, 47 S.E. 689. Appeal And Error 106

Applied in Verner v. Perry (S.C. 1895) 45 S.C. 262, 22 S.E. 888.

**SECTION 18‑9‑50.** Practice and proceedings on appeal from courts of general sessions.

 The practice and proceedings in cases of appeal from the courts of general sessions shall conform to the practice and proceedings in cases of appeal from the courts of common pleas.

HISTORY: 1962 Code Section 7‑404; 1952 Code Section 7‑404; 1942 Code Section 1033; 1932 Code Section 1033; Cr. P. ‘22 Section 123; Cr. C. ‘12 Section 102; Cr. C. ‘02 Section 75; R. S. 74; 1884 (18) 737.

Library References

Courts 181.

Westlaw Topic No. 106.

NOTES OF DECISIONS

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1. In general

Stated in State v Marks (1905) 70 SC 448, 50 SE 14. State v Avant (1910) 85 SC 570, 67 SE 908.

**SECTION 18‑9‑130.** Effect of notice of appeal on execution of judgment; sale of defendant’s property; appeal in civil action involving signatory of Master Settlement Agreement.

 (A)(1) A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or:

 (a) twenty‑five million dollars, whichever is less, for a business entity that employs more than fifty persons and has gross revenues exceeding five million dollars for the previous tax year; or

 (b) one million dollars, whichever is less, for all other entities or individuals.

 (2) A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed. The plaintiff in such a case may not proceed with a sale of defendant’s property if the defendant enters into an undertaking, with good sureties, in double the appraised value of the property or the amount of the judgment, to pay the judgment with legal interest and all costs and damages the plaintiff may sustain by reason of the appeal or to produce the property levied on and submit to the sale if the judgment is confirmed.

 (B)(1) The appeal of a judgment awarding relief in a civil action, under any legal theory, involving a signatory of the Master Settlement Agreement, as defined in Section 11‑47‑20(e), or a successor to or affiliate of a signatory to the agreement, automatically stays the execution of that judgment.

 (2) The stay described in this subsection is effective upon the filing of the notice of appeal and during the entire course of appellate review of the judgment.

HISTORY: 1962 Code Section 7‑412; 1952 Code Section 7‑412; 1942 Code Section 782; 1932 Code Section 782; Civ. P. ‘22 Section 647; Civ. P. ‘12 Section 385; Civ. P. ‘02 Section 346; 1870 (14) 360; 1873 (15) 501; 2004 Act No. 216, Section 2, eff April 26, 2004; 2011 Act No. 52, Section 6, eff January 1, 2012.

Editor’s Note

2004 Act No. 216, Section 3, provides as follows:

“This act takes effect upon approval by the Governor and applies to all cases pending on or filed on or after that date.”

2011 Act No. 52, Section 7, provides as follows:

“SECTION 7. This act takes effect January 1, 2012, and applies to all actions that accrue on or after the effective date except the provisions of SECTION 3 do not apply to any matter pending on the effective date of this act.”

CROSS REFERENCES

Automatic stay of execution during appellate review of judgment in civil action involving party to Master Settlement Agreement entered into in connection with Tobacco Escrow Fund Act, see Section 11‑47‑40.

Bonds in judicial proceedings, generally, see Section 15‑1‑230.

Court officers not being sureties under South Carolina Rules of Civil Procedure, see Rule 11, SCRCP.

Money judgments under this section are not subject to automatic stay upon service of a notice of appeal, see Rule 241, SCACR.

Notice of appeal in criminal cases staying execution of sentence, see Section 18‑1‑70.

Order to stay judgment under South Carolina Rules of Civil Procedure, see Rule 62, SCRCP.

Stay and supersedeas in civil actions, see Rule 241, SCACR.

Where undertaking shall be filed, see Section 18‑9‑230.

Library References

Appeal and Error 460, 460(2), 462, 476, 485(2).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 518 to 520, 525 to 538, 540 to 546, 551.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 15, General Rule.

S.C. Jur. Appeal and Error Section 54, Exceptions to the Automatic Stay.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

S.C. Jur. Arbitration Section 32, Appeals.

Forms

South Carolina Litigation Forms and Analysis Section 37:9 , Motion to Stay Judgment Pending Appeal.

South Carolina Litigation Forms and Analysis Section 40:2 , Stay of Proceedings Pending Appeal and Security.

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases. 100 L Ed 2d 947.

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Judgment 2

Money judgments 3

1. In general

Cited in Melton v Walker (1946) 209 SC 330, 40 SE2d 161. Phillips v Bruton (1924) 128 SC 369, 122 SE 514. Liles v Harris‑Grimes Co. (1912, SC) 76 SE 115. Alston v Limehouse (1901) 61 SC 1, 39 SE 192. Stanley v Stanley (1891) 35 SC 94, 35 SC 584, 14 SE 675. Rimer v State Farm Mut. Auto. Ins. Co. (1966) 248 SC 18, 148 SE2d 742.

This section [Code 1962 Section 7‑412] is not applicable to a foreclosure sale. Carsten v. Wilson (S.C. 1963) 241 S.C. 516, 129 S.E.2d 431.

This section [Code 1962 Section 7‑412] and Code 1962 Section 7‑418, being supersedeas provisions of the general law relating to appeals, must yield to the provisions of Code 1962 Section 72‑356, a subsequent law, special in nature, with which they are in conflict. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

Applied in McDonald v. Palmetto Theaters (S.C. 1940) 196 S.C. 38, 11 S.E.2d 444.

And a review of such order is by appeal. Jordan v. Wilson (S.C. 1904) 69 S.C. 52, 48 S.E. 37.

A judgment obtained on a money demand is one “directing the payment of money,” within this section [Code 1962 Section 7‑412]. Pelzer Mfg. Co. v. Cely (S.C. 1894) 40 S.C. 430, 18 S.E. 790.

An appeal by defendant from a judgment of foreclosure will not be dismissed on the ground that no bond was given, under this section [Code 1962 Section 7‑412]. McLemore v. Powell (S.C. 1889) 32 S.C. 582, 10 S.E. 550.

Sheriff may refuse to sell property in absence of required bond. State ex rel. Detheridge v. Gilreath (S.C. 1881) 16 S.C. 100.

The stay of execution is discretionary with the judge; it is not mandatory. Brown v. Buttz (S.C. 1881) 15 S.C. 488.

2. Judgment

Term judgment used in the rule providing that a notice of appeal in a civil matter acts to automatically stay matters decided in the order on appeal, and to automatically stay the relief ordered in the appealed judgment, and in the statute providing that a notice of appeal does not act as a stay of a judgment directing the payment of money unless the presiding judge before whom the judgment was obtained grants a stay of execution, connotes a final decision of the court that addresses the merits of the cause of action and disposes of the cause as to all. State v. Cooper (S.C. 2000) 342 S.C. 389, 536 S.E.2d 870, rehearing denied. Appeal And Error 460(1)

3. Money judgments

Denial of motion for relief from default judgment was not a “judgment directing the payment of money” within the meaning of statute permitting trial court to stay execution of judgment directing the payment of money although notice of appeal from judgment directing the payment of money did not stay the execution of the judgment. Stearns Bank Nat. Ass’n v. Glenwood Falls, LP (S.C. 2007) 375 S.C. 423, 653 S.E.2d 274. Appeal And Error 460(2)

Payments for expert witness fees of psychiatrist hired by alleged sexually violent predator in civil commitment proceedings were not “money judgments” within contemplation of statute providing that notice of appeal did not act as stay of judgment directing payment of money unless presiding judge before whom judgment was obtained granted stay of execution, and thus orders directing payment of fees were stayed pending state’s appeal; payment of expert fees was collateral issue. State v. Cooper (S.C. 2000) 342 S.C. 389, 536 S.E.2d 870, rehearing denied. Mental Health 467

4. Issues on appeal

Master’s finding that general contractor’s attorney acknowledged during argument that trial court’s order confirming arbitration award in favor of general contractor in mechanic’s lien foreclosure action was not one directing the payment of money, for purposes of statute providing that notice of appeal from judgment directing payment of money generally does not stay execution of judgment, was law of the case and could not be reviewed on appeal, where general contractor did not file motion to alter or amend that finding. C‑Sculptures, LLC, No. 3 v. Brown (S.C.App. 2011) 393 S.C. 27, 709 S.E.2d 705. Alternative Dispute Resolution 374(1)

**SECTION 18‑9‑140.** New undertaking in case sureties have become insolvent.

 Whenever it shall be made satisfactorily to appear to the court that since the execution of an undertaking such as is mentioned in Section 18‑9‑130 the sureties have become insolvent, the court may by rule or order require the appellant to execute, file and serve a new undertaking meeting the requirements of that section and in case of failure to execute such undertaking within twenty days after the service of a copy of the rule or order requiring such new undertaking, the appeal may, on motion to the court, be dismissed with costs.

HISTORY: 1962 Code Section 7‑413; 1952 Code Section 7‑413; 1942 Code Section 783; 1932 Code Section 783; Civ. P. ‘22 Section 648; Civ. P. ‘12 Section 386; Civ. P. ‘02 Section 347; 1870 (14) 360.

CROSS REFERENCES

Justification of sureties, see Section 18‑9‑210.

Sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

Library References

Appeal and Error 475.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 538.

**SECTION 18‑9‑150.** Deposit or surety when judgment requires delivery of documents or personalty.

 If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

HISTORY: 1962 Code Section 7‑415; 1952 Code Section 7‑415; 1942 Code Section 786; 1932 Code Section 786; Civ. P. ‘22 Section 651; Civ. P. ‘12 Section 389; Civ. P. ‘02 Section 350; 1870 (14) 361; 1999 Act No. 55, Section 29, eff June 1, 1999.

CROSS REFERENCES

Bonds in judicial proceedings, generally, see Section 15‑1‑230.

Court officers not being sureties under South Carolina Rules of Civil Procedure, see Rule 11, SCRCP.

Judgments directing the assignment or delivery of documents or personal property are not subject to automatic stay upon service of a notice of appeal, see Rule 241, SCACR.

Stay and supersedeas in civil actions, see Rule 241, SCACR.

Where undertaking shall be filed, see Section 18‑9‑230.

Library References

Appeal and Error 460(2), 460(4).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 519, 534.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 54, Exceptions to the Automatic Stay.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

Forms

South Carolina Litigation Forms and Analysis Section 40:2 , Stay of Proceedings Pending Appeal and Security.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Whitman v National Manufacture & Stores Corp. (1935) 175 SC 464, 179 SE 478. Wolfe v Bank of Anderson (1923) 123 SC 208, 116 SE 451. Liles v Harris‑Grimes Co. (1912, SC) 76 SE 115. Roberts v Pipkin (1902) 63 SC 252, 41 SE 300. Stanley v Stanley (1891) 35 SC 94, 35 SC 584, 14 SE 675.

Since the appeal automatically stayed the enforcement of the equitable division award, the family court had no jurisdiction to enforce the award by holding the husband in contempt for taking of automobile awarded to the wife, notwithstanding that the husband had not filed an appeal bond. Lassiter v. Lassiter (S.C. 1987) 291 S.C. 136, 352 S.E.2d 486.

Trial judge could find former husband estopped to contest former wife’s possession of automobile, awarded to her by the divorce decree, pending appeal of the decree, where the former husband had posted no appeal bond as provided by Section 18‑9‑150, and there was no error in a contempt order which provided that the former husband could purge himself by delivering the car over to the wife. Lassiter v. Lassiter (S.C.App. 1986) 289 S.C. 341, 345 S.E.2d 504, affirmed in part, reversed in part 291 S.C. 136, 352 S.E.2d 486. Divorce 1226

Stated in Allen v. Cooley (S.C. 1898) 53 S.C. 414, 31 S.E. 634.

Where an appeal without bond is taken by an executor from an order appointing a receiver of the personal property of the estate, it does not operate to stay the execution of the order, under this section [Code 1962 Section 7‑415]. Harman v. Wagner (S.C. 1890) 33 S.C. 487, 12 S.E. 98.

**SECTION 18‑9‑160.** Staying judgment to execute conveyance.

 If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

HISTORY: 1962 Code Section 7‑416; 1952 Code Section 7‑416; 1942 Code Section 787; 1932 Code Section 787; Civ. P. ‘22 Section 652; Civ. P. ‘12 Section 390; Civ. P. ‘02 Section 351; 1870 (14) 362; 1999 Act No. 55, Section 30, eff June 1, 1999.

CROSS REFERENCES

Judgments directing execution of conveyances or other instruments are not subject to automatic stay upon service of a notice of appeal, see Rule 241, SCACR.

Stay and supersedeas in civil actions, see Rule 241, SCACR.

Library References

Appeal and Error 460(2).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 519.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 54, Exceptions to the Automatic Stay.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

Forms

South Carolina Litigation Forms and Analysis Section 40:2 , Stay of Proceedings Pending Appeal and Security.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Wolfe v Bank of Anderson (1923) 123 SC 208, 116 SE 451. Stanley v Stanley (1891) 35 SC 94, 35 SC 584, 14 SE 675. Purdy v Moise (1953) 223 SC 298, 75 SE2d 605. Edwards v Edwards (1970) 254 SC 466, 176 SE2d 123.

**SECTION 18‑9‑170.** Staying judgment for sale or delivery of land.

 If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment; and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.

HISTORY: 1962 Code Section 7‑417; 1952 Code Section 7‑417; 1942 Code Section 788; 1932 Code Section 788; Civ. P. ‘22 Section 653; Civ. P. ‘12 Section 391; Civ. P. ‘02 Section 352; 1870 (14) 363; 1898 (22) 689; 1900 (23) 351.

CROSS REFERENCES

Bonds in judicial proceedings, generally, see Section 15‑1‑230.

Court officers not being sureties under South Carolina Rules of Civil Procedure, see Rule 11, SCRCP.

Judgments directing sale or delivery of possession of real property are not subject to automatic stay upon service of a notice of appeal, see Rule 241, SCACR.

Obtaining order to stay judgment under South Carolina Rules of Civil Procedure, see Rule 62, SCRCP.

Stay and supersedeas in civil actions, see Rule 241, SCACR.

Where undertaking shall be undertaken, see Section 18‑9‑230.

Library References

Appeal and Error 460(2), 460(4).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 519, 534.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 54, Exceptions to the Automatic Stay.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

S.C. Jur. Arbitration Section 32, Appeals.

S.C. Jur. Mortgages Section 144, Stay.

Forms

South Carolina Litigation Forms and Analysis Section 40:2 , Stay of Proceedings Pending Appeal and Security.

NOTES OF DECISIONS

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1. In general

Applied in Howell v. Gibson (S.C. 1946) 208 S.C. 19, 37 S.E.2d 271.

Applications to Supreme Court or any justice thereof to stay proceedings of sale and delivery of possession of real property under decrees in foreclosure appealed from will be refused, since proper relief may be had under this section [Code 1962 Section 7‑417]. Ex parte Andrews (S.C. 1929) 152 S.C. 325, 150 S.E. 313. Mortgages And Deeds Of Trust 2205

Rule permitting Supreme Court or any justice thereof to make order in any cause pending in Supreme Court staying proceedings in court from which appeal comes in proper cases, is not intended to interfere in any way with provisions of this section [Code 1962 Section 7‑417]. Ex parte Andrews (S.C. 1929) 152 S.C. 325, 150 S.E. 313. Appeal And Error 477

Cited in Alston v. Limehouse (S.C. 1901) 61 S.C. 1, 39 S.E. 192.

2. Undertaking

When defendant surrenders possession of the premises, at a foreclosure sale, it constitutes “delivery of possession pursuant to the judgment,” and the undertaking is then payable. Gerald v Gerald (1889) 30 SC 348, 9 SE 274. Gerald v Gerald (1889) 31 SC 171, 9 SE 792.

Unless a bond is given on appeal from an order of sale in foreclosure, as required by this section [Code 1962 Section 7‑417], the sale is not stayed. Muckenfuss v Fishburne (1903) 68 SC 41, 46 SE 537. City Council of Charleston v Caulfield (1883) 19 SC 201. Gerald v Gerald (1889) 30 SC 348, 9 SE 274.

Necessary for appellant to give bond in order to stay sale under decree ordering property sold to satisfy mortgage. Carsten v. Wilson (S.C. 1963) 241 S.C. 516, 129 S.E.2d 431.

When there is not an affirmance of the judgment appealed from, and for which an appeal bond is given to stay the execution, there can be no recovery on said bond. Holly Hill Lumber Co. v. McCoy (S.C. 1945) 207 S.C. 428, 36 S.E.2d 140.

Where appellant, under this section [Code 1962 Section 7‑417] appealing from mortgage foreclosure decree directing sale of premises, has failed to procure stay of sale or delivery of possession by execution of undertaking therein provided for, master is to have duty to proceed with sale, and purchaser, on complying with terms thereof, is entitled to possession, notwithstanding appeal from decree is pending in Supreme Court. Ex parte Andrews (S.C. 1929) 152 S.C. 325, 150 S.E. 313.

Appellant’s undertaking, under this section [Code 1962 Section 7‑417], to stay sale under mortgage foreclosure decree applies only to that particular appeal, and cannot operate to stay sale ordered under second decree, from which appeal has also been taken; first appeal being finally determined on reversal and remand of cause by Supreme Court. Ex parte Andrews (S.C. 1929) 152 S.C. 325, 150 S.E. 313. Mortgages And Deeds Of Trust 2205

This section [Code 1962 Section 7‑417] is imperative, requiring a written undertaking to be executed on the part of the appellant. Stanley v. Stanley (S.C. 1891) 35 S.C. 94, 35 S.C. 584, 14 S.E. 675.

Where an undertaking was given by a purchaser from the mortgagor on appeal from a judgment of foreclosure, and the appeal resulted in an affirmance, the lower court properly ordered the amount due on the undertaking, for use and occupation, to be paid into court, instead of to the plaintiff; there being at that time no means of ascertaining how much, if any, of that amount plaintiff would require to make up the deficiency remaining after sale of the premises. Gerald v. Gerald (S.C. 1889) 30 S.C. 348, 9 S.E. 274. Mortgages And Deeds Of Trust 2093(1)

3. Application of section

This section [Code 1962 Section 7‑417] plainly embraces appeals from judgments of foreclosure, and the amount accruing from the use and occupation of the mortgaged premises pending appeal is to be applied, so far as may be necessary, to the payment of any deficiency remaining after the sale. Gerald v Gerald (1889) 30 SC 348, 9 SE 274. Gerald v Gerald (1889) 31 SC 171, 9 SE 792.

Statute providing that execution of judgment for sale or delivery of possession of real property shall not be stayed on appeal unless losing party obtains bond did not apply to trial court’s order confirming arbitration award in favor of general contractor in action to foreclose mechanic’s lien, and thus property owners were not required to obtain bond to stay execution of order during their appeal; order did not require sale of property but rather referred case to master for foreclosure proceedings, and foreclosure proceedings contemplated order for sale of property and setting terms and conditions of sale. C‑Sculptures, LLC, No. 3 v. Brown (S.C.App. 2011) 393 S.C. 27, 709 S.E.2d 705. Alternative Dispute Resolution 372

This section [Code 1962 Section 7‑417] inapplicable to judgment which directs sale of land to satisfy mortgage thereon. Carsten v. Wilson (S.C. 1963) 241 S.C. 516, 129 S.E.2d 431.

4. Justiciability

Owner’s appeal from denial of motion to vacate foreclosure sale was not rendered moot by master‑in‑equity’s issuance of deed to purchaser of property at sale during pendency of appeal following foreclosure of lien for delinquent homeowner regime fees. Wachesaw Plantation East Community Services Ass’n, Inc. v. Alexander (S.C. 2015) 414 S.C. 355, 778 S.E.2d 898, on remand 2017 WL 2797898. Appeal and Error 781(4)

**SECTION 18‑9‑180.** Stay of proceedings upon execution of bond or perfection of appeal.

 Whenever the defendant executes the bond mentioned in Sections 18‑9‑130, 18‑9‑150 and 18‑9‑170 or the appeal is perfected as provided by Sections 18‑9‑150 or 18‑9‑160, it shall stay all further proceedings in the court below upon the judgment appealed from or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from.

HISTORY: 1962 Code Section 7‑418; 1952 Code Section 7‑418; 1942 Code Section 789; 1932 Code Section 789; Civ. P. ‘22 Section 654; Civ. P. ‘12 Section 392; Civ. P. ‘02 Section 353; 1870 (14) 364; 1873 (15) 501.

Library References

Appeal and Error 484.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 549 to 552.

NOTES OF DECISIONS

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1. In general

This section [Code 1962 Section 7‑418] and Code 1962 Section 7‑412, being supersedeas provisions of the general law relating to appeals, must yield to the provisions of Code 1962 Section 72‑356, a subsequent law, special in nature, with which they are in conflict. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

Applied in McDonald v. Palmetto Theaters (S.C. 1940) 196 S.C. 38, 11 S.E.2d 444.

The question of debtor’s right to a homestead exemption in funds, a part of which debtor had assigned as attorneys’ fees, and the remainder of which was sufficient to cover an exemption claim, was not affected by an appeal of debtor’s receiver from a judgment declaring the assignment valid; and hence that appeal was not, under this section [Code 1962 Section 7‑418], a supersedeas upon proceedings involving that question. Ex parte Arthur (S.C. 1924) 128 S.C. 396, 122 S.E. 498. Appeal And Error 490

Cited in Alston v. Limehouse (S.C. 1901) 61 S.C. 1, 39 S.E. 192.

**SECTION 18‑9‑190.** Dispensing with or limiting security required.

 The court below may, in its discretion, dispense with or limit the security required by Sections 18‑9‑130, 18‑9‑150 and 18‑9‑170, when the appellant is an executor, administrator, trustee or other person acting in another’s right; and may also limit such security to the amount of less than fifty thousand dollars in the cases mentioned in Sections 18‑9‑150 and 18‑9‑170, when it would otherwise, according to those sections, exceed that sum.

HISTORY: 1962 Code Section 7‑419; 1952 Code Section 7‑419; 1942 Code Section 789; 1932 Code Section 789; Civ. P. ‘22 Section 654; Civ. P. ‘12 Section 392; Civ. P. ‘02 Section 353; 1870 (14) 364; 1873 (15) 501.

CROSS REFERENCES

Bonds in judicial proceedings, generally, see Section 15‑1‑230 et seq.

Library References

Appeal and Error 460(4), 465(2).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 534, 542.

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases. 100 L Ed 2d 947.

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In general 1

1. In general

Discretion of court as to security not exercised without proper showing to justify it. Stanley v. Stanley (S.C. 1891) 35 S.C. 94, 35 S.C. 584, 14 S.E. 675.

**SECTION 18‑9‑200.** Undertakings may be in one instrument or several; service on adverse party.

 The undertakings prescribed by Sections 18‑9‑130, 18‑9‑140 and 18‑9‑170 may be in one instrument or several, at the option of the applicant, and a copy, including the names and residences of the sureties, must be served on the adverse party with notice of the appeal unless a deposit is made as provided in Section 15‑1‑250, and notice thereof given.

HISTORY: 1962 Code Section 7‑420; 1952 Code Section 7‑420; 1942 Code Section 790; 1932 Code Section 790; Civ. P. ‘22 Section 655; Civ. P. ‘12 Section 393; Civ. P. ‘02 Section 354; 1870 (14) 365; 1873 (15) 501.

CROSS REFERENCES

Bonds in judicial proceedings, generally, see Section 15‑1‑230 et seq.

Library References

Appeal and Error 467, 471.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 540 to 541, 545 to 546.

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases, 100 L Ed 2d 947.

**SECTION 18‑9‑210.** Justification by sureties; subsequent justification on new sureties.

 An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties that they are each worth double the amount specified therein. The respondent may, however, except to the sufficiency of the sureties within ten days after receipt of the notice of appeal; and unless they or other sureties justify before a judge or clerk of the court below, as prescribed by Sections 15‑17‑270 and 15‑17‑280, within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon notice of not less than five days. No clerk shall take the justification of any surety or sureties in a case in which he may be interested or when either of the parties or such surety or sureties shall be connected with him by affinity or consanguinity within the sixth degree, and in all cases in which the clerk may have approved or disapproved of the sufficiency of a surety or sureties his action may be reviewed, on motion, after notice before a circuit judge. And in case at any time in any action a respondent shall be of opinion that the surety or sureties on any bond already approved are insufficient and shall make affidavit of the fact, setting out the grounds of such belief and serving a copy thereof upon appellant’s attorney, then the sureties or other sureties shall justify anew thereon in the same manner and with the same effect as though such new justification were an original justification on such bond.

HISTORY: 1962 Code Section 7‑421; 1952 Code Section 7‑421; 1942 Code Section 791; 1932 Code Section 791; Civ. P. ‘22 Section 656; Civ. P. ‘12 Section 394; Civ. P. ‘02 Section 355; 1901 (23) 697.

Library References

Appeal and Error 464.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 541.

**SECTION 18‑9‑220.** When notice of appeal stays proceedings below.

 In cases not provided for in Sections 18‑9‑130 and 18‑9‑150 to 18‑9‑180, the notice of appeal shall stay proceedings in the court below upon the judgment appealed from, except that when it directs the sale of perishable property, the court below may order the property to be sold and the proceeds of the property to be deposited or invested in bonds of this State or of the United States, to abide the judgment of the appellate court.

HISTORY: 1962 Code Section 7‑422; 1952 Code Section 7‑422; 1942 Code Section 792; 1932 Code Section 792; Civ. P. ‘22 Section 657; Civ. P. ‘12 Section 395; Civ. P. ‘02 Section 356; 1887 (18) 837; 1889 (20) 355; 1999 Act No. 55, Section 31, eff June 1, 1999.

CROSS REFERENCES

Judgments directing the sale of perishable property are not subject to automatic stay upon service of a notice of appeal, see Rule 241, SCACR.

Notice of appeal in criminal cases staying execution of sentence, see Section 18‑1‑70.

Stay and supersedeas in civil actions, see Rule 241, SCACR.

Library References

Appeal and Error 460(2).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 519.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 54, Exceptions to the Automatic Stay.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

Forms

South Carolina Litigation Forms and Analysis Section 40:2 , Stay of Proceedings Pending Appeal and Security.

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1. In general

Cited in Mattison v Palmetto State Life Ins. Co. (1941) 197 SC 256, 15 SE2d 117. Wilson v Southern R. Co. (1902) 64 SC 162, 36 SE 701.

Applied in Alston v Limehouse (1901) 61 SC 1, 39 SE 192. Southern R. Co. v Sheppard (1894) 42 SC 543, 20 SE 481.

Thirty‑day time period allowed for applying for appraisal in mortgage foreclosure action was not stayed by mortgagors’ appeal of deficiency judgment; appraisal of property was not matter decided in order of appeal. South Carolina Nat. Bank v. Devine Blossom (S.C.App. 1996) 321 S.C. 110, 467 S.E.2d 767. Mortgages And Deeds Of Trust 2205

Since an order canceling the notices of lis pendens is appealable, the appeal acts as an automatic stay of further proceedings under the order. Lebovitz v. Mudd (S.C. 1986) 289 S.C. 476, 347 S.E.2d 94. Appeal And Error 460(1)

The Supreme Court need not consider defendants’ argument that the Circuit Court erred by ordering that the ends of justice would be subserved by proceeding to trial, since the appeal in fact effectively stayed the action, rendering the issue moot. Vaughan v. Kalyvas (S.C.App. 1986) 288 S.C. 358, 342 S.E.2d 617.

After notice of intention to appeal from the order of the Circuit Court was served, the Circuit Court lost jurisdiction as to this order, and the motions pertaining thereto should not have been heard without the permission of the Supreme Court; proceedings had after notice of intention to appeal, relative to appealed‑from order, were void, later app 272 SC 6, 249 SE2d 486. Bradley v. Hullander (S.C. 1976) 266 S.C. 188, 222 S.E.2d 283.

An appeal from an order dissolving an attachment stays proceedings upon the order until it is decided, dismissed or abandoned. Melton v. Walker (S.C. 1946) 209 S.C. 330, 40 S.E.2d 161.

Associate justice may suspend restraining order pending appeal. State v. Rice (S.C. 1903) 67 S.C. 236, 45 S.E. 153.

Appeal from order confirming sale in action for foreclosure stays purchaser from being put in possession. Le Conte v. Irwin (S.C. 1885) 23 S.C. 106.

2. Demurrer

Where the order of the trial judge overruling a demurrer to an amended complaint did not show that he found that the ends of justice would be subserved by proceeding with the trial, nor did he order the trial of the cause to proceed to judgment, the appeal stayed any further hearing in the cause, and it was error for the trial judge to take any further steps in the action during the continuance of the stay. Costas v Florence Printing Co. (1961) 237 SC 655, 118 SE2d 696, citing Steele v Atlantic C. L. R. Co. (1914) 96 SC 460, 81 SE 144. Melton v Walker (1946) 209 SC 330, 40 SE2d 161.

In tort and contract actions for bad faith refusal to pay first party benefits under an insurance policy, the trial court properly exercised its discretion under Section 18‑9‑220 in ordering the parties to proceed to trial, despite the pendency of an appeal from an order overruling the insurer’s demurrer to the tort action, since the trial judge was justified in overruling the demurrer on the basis that questions of novel impression should not be decided on demurrer, and since, by ordering the parties to proceed to trial on all causes of action, the trial judge avoided the administrative waste of a second trial and the possiblity of two appeals involving the same parties and the same facts. Nichols v. State Farm Mut. Auto. Ins. Co. (S.C. 1983) 279 S.C. 336, 306 S.E.2d 616.

An interlocutory appeal may be taken from an order overruling a demurrer to a complaint on the ground that it failed to state a cause of action. Costas v. Florence Printing Co. (S.C. 1961) 237 S.C. 655, 118 S.E.2d 696. Appeal And Error 70(2)

It is error for the trial court to grant plaintiff leave to amend his complaint while an appeal from an order overruling a demurrer by defendant is pending since the appeal stays further proceedings in the case. Costas v. Florence Printing Co. (S.C. 1961) 237 S.C. 655, 118 S.E.2d 696.

It is true that an interlocutory appeal may be taken to the Supreme Court from an order overruling a demurrer, but the failure to make or perfect such an appeal does not affect the right of the Supreme Court to review the matter in connection with an appeal from the final judgment. Crotts v. Fletcher Motor Co. (S.C. 1951) 219 S.C. 204, 64 S.E.2d 540. Appeal And Error 870(5)

Appeal from order sustaining demurrer to one of several specific defenses in answer, leaving other issues to be tried, which does not result in an immediate final judgment, does not act as a supersedeas of the entire proceedings of the case under this section [Code 1962 Section 7‑422], and hence court properly ordered case to trial as to other issues. Waring v. Johnson (S.C. 1929) 152 S.C. 317, 149 S.E. 840. Appeal And Error 449

The “presiding judge” who must be satisfied that the ends of justice will be subserved by proceeding with the trial within the meaning of this section [Code 1962 Section 7‑422] is the judge who hears the demurrer, and not the judge presiding at a subsequent term of court. Steele v. Atlantic Coast Line R. Co. (S.C. 1914) 96 S.C. 460, 81 S.E. 144.

Where the decision on a demurrer to the complaint was reserved until after adjournment of the term, and an order was then made overruling the demurrer, requiring defendant to answer by a specified date, and transferring the cause to the calendar for trial at the next term of court, there was no order requiring the trial to proceed to judgment pending an appeal from the order overruling the demurrer; it not appearing that the judge was satisfied that the ends of justice would be subserved by proceeding with the trial, and the order made after adjournment of court necessarily having the effect of a continuance until another term. Steele v. Atlantic Coast Line R. Co. (S.C. 1914) 96 S.C. 460, 81 S.E. 144. Appeal And Error 458(2)

Notice of appeal from an order sustaining a demurrer to an answer operates as a supersedeas until the appeal is disposed of. Liles v. Harris‑Grimes Co. (S.C. 1912) 76 S.E. 115. Appeal And Error 460(2)

3. Supersedeas

Fact that plaintiff noticed appeal from order of first trial striking specification of negligence alleging intoxication because of failure of proof was of no consequence in determining whether issue was still before trial court at second trial following mistrial due to failure of jury to agree upon verdict, since appeal was premature and did not confer jurisdiction on Supreme Court. Central of Georgia Ry. v. Walker Truck Contractors (S.C. 1978) 270 S.C. 533, 243 S.E.2d 923.

An appeal from an intermediate or interlocutory order does not divest the trial court of jurisdiction to proceed in matters not involved in the appeal. Johnson v. Brandon Corp. (S.C. 1952) 221 S.C. 160, 69 S.E.2d 594. Appeal And Error 449

An appeal from an order denying plaintiff stockholder the right to pre‑trial examination of defendant corporation’s president stayed the proceedings in the court below only in so far as they involved the order appealed from, and did not preclude the court below from hearing defendant’s motion to dismiss the action upon the ground that plaintiff had lost her status as a stockholder in the corporation. Johnson v. Brandon Corp. (S.C. 1952) 221 S.C. 160, 69 S.E.2d 594. Appeal And Error 330(1); Appeal And Error 449

Nor is an appeal from an order of injunction and in such case this section [Code 1962 Section 7‑422] does not apply. Jennings v. Jennings (S.C. 1916) 104 S.C. 242, 88 S.E. 527, rehearing denied 104 S.C. 242, 88 S.E. 740.

Where order appealed from is not appealable, it does not act as a supersedeas. McDaniel v. Atlantic Coast Line R. Co. (S.C. 1907) 76 S.C. 189, 56 S.E. 956.

Appeal from refusal of motion to strike out is not a supersedeas. Bonner v. Western Union Tel. Co. (S.C. 1905) 71 S.C. 303, 51 S.E. 117.

Appeal from return of homestead appraisers operates as a supersedeas upon all the proceedings in the court below, and thereby stays the hand of the sheriff until the appeal is disposed of. Simonds v. Haithcock (S.C. 1887) 26 S.C. 595, 2 S.E. 616.

**SECTION 18‑9‑230.** Undertaking must be filed.

 The undertaking must be filed with the clerk with whom the judgment or order appealed from was entered.

HISTORY: 1962 Code Section 7‑423; 1952 Code Section 7‑423; 1942 Code Section 793; 1932 Code Section 793; Civ. P. ‘22 Section 658; Civ. P. ‘12 Section 396; Civ. P. ‘02 Section 357; 1870 (14) 368.

CROSS REFERENCES

Where undertakings shall be filed, generally, see Section 18‑1‑160.

Library References

Appeal and Error 471.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 546.

**SECTION 18‑9‑240.** Security provisions apply to appeals in special proceedings.

 The provisions of this chapter as to the security to be given upon appeals and as to the stay of proceedings shall apply to appeals taken under item (3) of Section 14‑3‑330.

HISTORY: 1962 Code Section 7‑424; 1952 Code Section 7‑424; 1942 Code Section 793; 1932 Code Section 793; Civ. P. ‘22 Section 658; Civ. P. ‘12 Section 396; Civ. P. ‘02 Section 357; 1870 (14) 368.

Library References

Appeal and Error 460(2).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 519.

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases. 100 L Ed 2d 947.

**SECTION 18‑9‑270.** Judgment of Supreme Court or Court of Appeals.

 The Supreme Court or the Court of Appeals may reverse, affirm, or modify the judgment, decree, or order appealed from in whole or in part and as to any or all of the parties, and the judgment shall be remitted to the court below to be enforced according to law.

HISTORY: 1962 Code Section 7‑427; 1952 Code Section 7‑427; 1942 Code Section 27; 1932 Code Section 27; Civ. P. ‘22 Section 27; Civ. P. ‘12 Section 12; Civ. P. ‘02 Section 12; 1896 (22) 7; 1904 (24) 389; 1999 Act No. 55, Section 32, eff June 1, 1999.

CROSS REFERENCES

How judgment enforced, see Section 15‑35‑180.

Judgment on appeal, generally, see Section 18‑1‑140.

Judgment roll under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

Judgments, generally, see Section 15‑35‑160 et seq, SCRCP, Rule 54.

Recording judgments of Supreme Court under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

Library References

Appeal and Error 1110 to 1185.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 872, 911 to 912, 937, 953, 964, 966, 970, 1010 to 1016, 1022 to 1119.

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Substantial evidence, standard and scope of review 10

1. In general

The inherent power of the Supreme Court to modify or vacate its decision during the term in which it is made, and before its judgment is remitted to the circuit court is not doubted. Citizens’ Bank v. Heyward (S.C. 1926) 144 S.C. 365, 142 S.E. 651.

2. Reversal

The Court of Appeals may reverse where the decision is affected by an error of law. Olmstead v. Shakespeare (S.C.App. 2002) 348 S.C. 436, 559 S.E.2d 370, rehearing denied, certiorari granted, affirmed as modified 354 S.C. 421, 581 S.E.2d 483. Appeal And Error 846(1)

A telephone company’s rate increase application should have been remanded to the Public Service Commission with instructions to order the company to refund with interest the monies collected pursuant to the illegally approved order, where the Supreme Court had “reversed” the circuit court’s order affirming the commission’s order granting the increase, and had found that a remand for the purpose of making findings of fact was unnecessary as there was no factual basis in the record which the commission could point to in support of its decision; returning the case to the commission for it to act in accordance with the opinion of the Supreme Court would have been the only reasonable interpretation of the law. Hamm v. Southern Bell Tel. & Tel. Co. (S.C. 1991) 305 S.C. 1, 406 S.E.2d 157.

Although under the Administrative Procedures Act, the Supreme Court may not substitute its judgment for that of a state agency as to the weight of evidence on questions of fact, the Supreme Court may reverse or modify decisions which are clearly erroneous in view of the substantial evidence on the whole record. Welch Moving and Storage Co., Inc. v. Public Service Com’n of South Carolina (S.C. 1990) 301 S.C. 259, 391 S.E.2d 556. Administrative Law And Procedure 791; Administrative Law And Procedure 793

While the Supreme Court will assume that when the record is settled, all corrections have been made, except upon appeal from an order settling the record, the Supreme Court will take notice that something within the record was clearly not introduced into evidence below. To hold otherwise would encourage litigants to attempt to supplement the record with evidence they failed to introduce below, and it would be utterly inappropriate for an appellate court to reverse a trial court’s decision in reliance on evidence never submitted to the trial court for its consideration. Hofer v. St. Clair (S.C. 1989) 298 S.C. 503, 381 S.E.2d 736.

Reversal of judgment for plaintiff because of failure to establish cause of action in fraud and deceit held not to preclude subsequent cause of action for contract damages. Woodward v. Todd (S.C. 1978) 270 S.C. 82, 240 S.E.2d 641.

In a case at law the Supreme Court cannot modify the judgment below where there has been no finding by the jury; it can only reverse or affirm such judgment and remand for a new trial if necessary. Hosford v. Wynn (S.C. 1885) 22 S.C. 309.

The Supreme Court is confined to the review of the judgment below with power to affirm, modify or reverse, but has no power to grant leave to answer over when it reverses a judgment that had sustained defendant’s demurrer. Johnson v. Dawkins (S.C. 1884) 20 S.C. 528.

3. Affirmance

In reviewing a postconviction relief grant, the Supreme Court is concerned only with whether there is “any evidence” to support the postconviction relief judge’s decision. If “any evidence” is found, the Supreme Court must affirm the ruling of the postconviction relief judge. Grier v. State (S.C. 1989) 299 S.C. 321, 384 S.E.2d 722. Criminal Law 1158.36

4. Remittitur

The Supreme Court’s control of the judgment ends when the remittitur has been sent down. State v Adams (1909) 83 SC 149, 65 SE 220. State v Merriman (1891) 35 SC 607, 14 SE 394.

The amount found due in the remittitur is res judicata after the case is sent down, and cannot be corrected on a second trial, though it appears that the calculation is erroneous. Carpenter v Lewis (1903) 65 SC 400, 43 SE 881. Sullivan v Speights (1880) 14 SC 358.

Supreme Court cannot entertain a motion for rehearing after remittitur is issued. Sullivan v Speights (1880) 14 SC 358; Ex parte Dial (1881) 14 SC 584.

A motion for new trial nisi remittitur asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice, or prejudice; in contrast, if the amount of the verdict is grossly excessive, so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute, rather than a new trial nisi remittitur. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. New Trial 162(1)

The power of the Supreme Court to entertain petitions for a rehearing, while the remittitur is being stayed, has never been questioned. Citizens’ Bank v. Heyward (S.C. 1926) 144 S.C. 365, 142 S.E. 651.

As long as the remittitur is stayed, the judgment of the Supreme Court is absolutely under the control of that court. Citizens’ Bank v. Heyward (S.C. 1926) 144 S.C. 365, 142 S.E. 651.

After a remittitur is once sent down, the Supreme Court has no further power to order it returned so as to correct errors. Carpenter v. Lewis (S.C. 1903) 65 S.C. 400, 43 S.E. 881. Appeal And Error 1218

Where an applicant in a criminal case moves for a stay of remittitur with leave to make a motion below for a new trial, on the grounds of newly discovered evidence, at least a prima facie case must be made out in support of the motion; otherwise such motion must be dismissed. State v. Jacobs (S.C. 1888) 28 S.C. 609, 6 S.E. 577. Criminal Law 1192

The judgment when remitted cannot be altered or modified in any form by the circuit court but must be enforced to the letter. Pringle v Sizer (1872) 3 SC 335. Ex parte Dunovant (1881) 16 SC 299. Ex parte Knox (S.C. 1882) 17 S.C. 207.

A remittitur which states that the judgment below is affirmed is a sufficient transcript of the judgment above. Ex parte Dial (S.C. 1881) 14 S.C. 584.

A remittitur which orders a new trial in effect sets aside the verdict and judgment appealed from. State v. Stephens (S.C. 1880) 13 S.C. 285. Criminal Law 1192

If the judgment be affirmed, it needs no further action by the circuit court. Adger & Co. v. Pringle (S.C. 1880) 13 S.C. 33.

If the judgment of the circuit court is varied or modified by the Supreme Court and the judgment is remitted to the circuit court, such court may enter an order making the judgment of the Supreme Court the judgment of the circuit court. Adger & Co. v. Pringle (S.C. 1880) 13 S.C. 33.

The action of the circuit court is not affected by any pending motion to recall the remittitur, unless there are stay proceedings. The circuit court is not bound to take notice of pending proceedings to have the judgment of the Supreme Court reviewed. Adger & Co. v. Pringle (S.C. 1880) 13 S.C. 33.

5. Issues on appeal

An issue not raised to or ruled on by the trial court is not preserved for appellate review. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Appeal And Error 169; Appeal And Error 242(1)

Mechanics lien holder failed to preserve for appellate review contention that doctrine of unclean hands precluded mortgage lien holder from having priority under equitable principles, in foreclosure action in which mortgage was satisfied by mistake, where mechanics lien holders failed to plead doctrine as an affirmative defense, and trial court did not specifically rule on the allegation. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Mortgages And Deeds Of Trust 2197

Supreme Court can make no original decision upon a point not ruled upon below. Railroad Com’rs v. Railroad Co. (S.C. 1885) 22 S.C. 220. Appeal And Error 169

Nor can it originally determine the right to counsel fees. Otis v. Brown (S.C. 1884) 20 S.C. 586.

6. Standard and scope of review—In general

In an attorney disciplinary proceeding the Supreme Court may make its own findings of fact and conclusions of law and is not bound by the Panel’s recommendation. In re Barker (S.C. 2002) 352 S.C. 71, 572 S.E.2d 460. Attorney And Client 57

While the Supreme Court is not bound by the findings of the Commission on Lawyer Conduct, its findings are entitled to great weight, particularly when the inferences to be drawn from the testimony depend on the credibility of witnesses. In re Day (S.C. 2002) 352 S.C. 41, 572 S.E.2d 291. Attorney And Client 57

Appellate court cannot substitute its judgment for that of the school board in reviewing the propriety of a teacher’s termination. Barrett v. Charleston County School Dist. (S.C.App. 2001) 348 S.C. 426, 559 S.E.2d 365, rehearing denied, certiorari denied. Education 603(4); Public Employment 767(1)

The Supreme Court may make an independent review of the record to make findings of fact where the family court’s order fails to make such findings in compliance with Family Court Rule 26(a). Bull v. Smith (S.C. 1989) 299 S.C. 123, 382 S.E.2d 905.

In action at law tried by judge without reference to master, judge’s findings of fact must be sustained unless found to be without evidentiary support; judgment against defendant attorney for malpractice was proper where defendant had duty to prepare deed and mortgage in such way as to protect purchaser, his client, and bank and assure them of valid marketable title, and attorney’s substitution of grantee in deed amounted to negligence as matter of law where it resulted in grantee’s payment of moneys for which he received nothing. Shealy v. Walters (S.C. 1979) 273 S.C. 330, 256 S.E.2d 739.

7. —— Errors of law, standard and scope of review

In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. State v. Patterson (S.C.App. 2006) 367 S.C. 219, 625 S.E.2d 239, rehearing denied, certiorari denied. Criminal Law 1134.27; Criminal Law 1158.1

On review, appellate court is limited to determining whether the trial judge abused his discretion; an abuse of discretion occurs when the trial court’s ruling is based on an error of law. State v. Patterson (S.C.App. 2006) 367 S.C. 219, 625 S.E.2d 239, rehearing denied, certiorari denied. Criminal Law 1147

Appellate court sits to review errors of law only and is bound by the trial court’s factual findings unless they are clearly erroneous. State v. Brannon (S.C.App. 2001) 347 S.C. 85, 552 S.E.2d 773, habeas corpus dismissed 2007 WL 4292489. Criminal Law 1158.1

In appeals from the family court, the Supreme Court has authority to correct errors of law and find facts in accordance with its own view of the preponderance of the evidence. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715. Courts 176.5

In action to review dispute between 2 real estate agents over division of real estate commission burden was upon plaintiff, who obtained listing for property, to establish that it had valid exclusive listing for property at time of sale; in action at law tried by judge without jury, findings of fact by trial judge have force and effect of jury verdict and are conclusive on appeal unless they are found to be without evidentiary support or are controlled by error of law; Supreme Court may review evidence not to determine preponderance thereof, but to determine whether there is any evidence that reasonably supports factual findings by judge; Court is not at liberty to decide appeal on basis of its view of preponderance of evidence; where it was uncontroverted that where resident of real estate was present when extension listing agreement was executed by nonresident heirs to property, but did not sign it, but listing agent failed to establish by preponderance of evidence that resident consented to extension even though she did not sign it, lower court’s finding that she was not bound on extension agreement was within evidence; testimony of listing agent that nonresident heir had authority to sign agreement for other nonresident heirs was hearsay and not entitled to any weight. Snell v. Parlette (S.C. 1979) 273 S.C. 317, 256 S.E.2d 410.

8. —— Preponderance of evidence, standard and scope of review

The appellate court does not re‑evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge’s ruling is supported by any evidence. State v. Patterson (S.C.App. 2006) 367 S.C. 219, 625 S.E.2d 239, rehearing denied, certiorari denied. Criminal Law 1158.9

The Supreme Court’s scope of review for a case heard by a Master‑in‑Equity who entered a final judgment is the same as that for review of a case heard by a circuit court without a jury, i.e., the Supreme Court may review the evidence to determine facts in accordance with its own view of the preponderance of the evidence. While this permits a broad scope of review, the Supreme Court does not disregard the findings of the Master, who saw and heard the witnesses and was in a better position to evaluate their credibility. Tiger, Inc. v. Fisher Agro, Inc. (S.C. 1989) 301 S.C. 229, 391 S.E.2d 538.

As an action for divorce is an equitable action heard by a family court judge alone, the Supreme Court may, on appeal, find facts in accordance with its own view of the preponderance of the evidence. Roberts v. Roberts (S.C. 1989) 299 S.C. 315, 384 S.E.2d 719. Divorce 184(6.1)

A partition action is an equitable action heard by a judge alone and, as such, the Supreme Court on review may find facts in accordance with its view of the preponderance of the evidence. Anderson v. Anderson (S.C. 1989) 299 S.C. 110, 382 S.E.2d 897. Appeal And Error 1122(2); Partition 34

9. —— Abuse of discretion, standard and scope of review

The inartful use of an abuse of discretion deferential standard of review merely represents the appellate courts’ effort to incorporate the two sound principles underlying the proper review of an equity case: the superior position of the master to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the master. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Appeal and Error 949; Appeal and Error 1009(1)

An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Appeal and Error 946

The right to intervene should be liberally permitted, particularly where judicial economy will be promoted by the declaration of the rights of all parties who may be affected. Thus, the pragmatic consequences of a decision to permit or deny intervention must be considered and rigid applications of Rule 24(a)(2), SCRCP must be avoided. In reviewing the granting or denial of a Rule 24(a)(2) motion, the Supreme Court must determine whether the trial judge abused his or her discretion, and each case must be examined in the context of its unique facts and circumstances. Berkeley Elec. Co‑op., Inc. v. Town of Mt. Pleasant (S.C. 1990) 302 S.C. 186, 394 S.E.2d 712.

In an attorney’s fee case under Section 15‑77‑300, an award of attorney’s fees will not be disturbed unless the trial judged abused his or her discretion in consideration of the applicable factors. Heath v. County of Aiken (S.C. 1990) 302 S.C. 178, 394 S.E.2d 709.

10. —— Substantial evidence, standard and scope of review

The substantial evidence test is the proper standard of review regarding the propriety of a teacher’s termination. Barrett v. Charleston County School Dist. (S.C.App. 2001) 348 S.C. 426, 559 S.E.2d 365, rehearing denied, certiorari denied. Education 600(1); Public Employment 617

“Substantial evidence” is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative board reached or must have reached in order to justify its action. Barrett v. Charleston County School Dist. (S.C.App. 2001) 348 S.C. 426, 559 S.E.2d 365, rehearing denied, certiorari denied. Administrative Law And Procedure 791

11. Jurisdiction

The Supreme Court loses jurisdiction when the remittitur is issued, and not when filed below. Ex parte Dunovant (1881) 16 SC 299. Brooks v Brooks (1882) 16 SC 621.

State’s notice of intent to appeal order terminating defendant’s Community Supervision Program (CSP) and placing him on probation was clerical error, and thus, the Supreme Court was not deprived of subject matter jurisdiction due to the error, where the original notice listed wrong county from which the appeal was taken, but defendant did not allege he was prejudiced by the error, which was corrected within 10 days of notice to defendant; State mistakenly filed in the wrong county because defendant was supervised there, the warrant was initiated there, the hearing took place there, and the circuit court mistakenly cited that county in its order. State v. Scott (S.C. 2002) 351 S.C. 584, 571 S.E.2d 700. Criminal Law 1081(2)

Subject matter jurisdiction is a question of law for decision by the court and includes findings of fact which relate to jurisdiction. Olmstead v. Shakespeare (S.C.App. 2002) 348 S.C. 436, 559 S.E.2d 370, rehearing denied, certiorari granted, affirmed as modified 354 S.C. 421, 581 S.E.2d 483. Courts 39

In equity actions tried by a judge without a reference, the Supreme Court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence. Braswell v. Roche (S.C. 1989) 299 S.C. 181, 383 S.E.2d 243. Appeal And Error 1122(2)

In an action in equity, tried by the judge alone, the Supreme Court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence. Cockrell by Cockrell v. Trustees of Dist. 20 Constituent School Dist. (S.C. 1989) 299 S.C. 155, 382 S.E.2d 923. Appeal And Error 1122(2)

The Supreme Court has jurisdiction in an equity case to inquire if an interlocutory injunction is properly dissolved and if there was an error in refusing to appoint a receiver. Lyles v. Williams (S.C. 1913) 96 S.C. 290, 80 S.E. 470.

**SECTION 18‑9‑280.** Written opinions required; memorandum opinions.

 When a judgment or decree is reversed or affirmed by the Supreme Court every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided and the reason thereof shall be concisely and briefly stated in writing and preserved in the record of the case, except the Court may file memorandum opinions in unanimous decisions when the Court determines that a full written opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of a matter submitted to the Court for decision: (1) that a judgment of the trial court is based on findings of fact which are not clearly erroneous; (2) that the evidence of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; (4) that no error of law appears.

HISTORY: 1962 Code Section 7‑428; 1952 Code Section 7‑428; 1942 Code Section 27; 1932 Code Section 27; Civ. P. ‘22 Section 27; Civ. P. ‘12 Section 12; Civ. P. ‘02 Section 12; 1896 (22) 7; 1904 (24) 389; 1976 Act No. 530.

Library References

Appeal and Error 1122.

Courts 103 to 108.

Westlaw Topic Nos. 30, 106.

C.J.S. Appeal and Error Sections 911 to 912, 937, 953, 964, 1012.

C.J.S. Courts Sections 234 to 236, 240 to 244.

**SECTION 18‑9‑290.** Time for filing decisions.

 The justices of the Supreme Court shall file their decisions within sixty days from the last day of the court at which the cases were heard.

HISTORY: 1962 Code Section 7‑429; 1952 Code Section 7‑429; 1942 Code Section 27; 1932 Code Section 27; Civ. P. ‘22 Section 27; Civ. P. ‘12 Section 12; Civ. P. ‘02 Section 12; 1896 (22) 7; 1904 (24) 389.

Library References

Appeal and Error 1181.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 1109.