

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY

S.C. SUPREME COURT

Court of Appeals

The Honorable Judges Geathers, Hill and Lockemy (acting)

Appellate Case No. 2022-000881

Court of Appeals Case No.: 2020-000511

Circuit Court Appellate Case No.: 2020-CP-23-05996

Case No. 2020-CV-23-10201384

Return to Petition for Writ of Certiorari

Raymond A. Wedlake, as Member of
Woodington Homeowners' Association, Inc.

Appellant,

v.

Board of Directors of Woodington
Homeowners' Association, Inc., comprised
of Mona Craigo, Edward Decker, and Sandra
Lacroix at the time of filing, and McCabe,
Trotter & Beverly, P.C. and State Farm Fire
and Casualty Company

Respondents.

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STATEMENT OF THE CASE

The Petitioner commenced this action on June 10, 2020 by filing a Summons and Complaint in the Greenville County Magistrate's Court. This action arises out of Petitioner's belief that the 2020 incarnation of the Respondent, Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra Lacroix at the time of filing ('The Board'), breached its fiduciary duty to the members of the Woodington Homeowners Association ("WHOA") by accepting a legal invoice from the law firm McCabe, Trotter & Beverly, P.C., who represented The Board in a previous lawsuit filed by the plaintiff, *C.A. No.: 2017-CP-23-06301*, which was a suit for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. The Petitioner also alleges that The Board violated its fiduciary duty by improperly counting votes from WHOA members in violation of the WHOA bylaws and covenants.

Petitioner had brought a previous lawsuit in the Greenville County Circuit Court (Case No: 2019-CP-23-01501)¹, in which he alleged that The Board violated its fiduciary duties to the WHOA by 1) accepting the legal invoice from McCabe, Trotter & Beverly, P.C. for legal services rendered; 2) violated the WHOA bylaws and covenants by sending out ballots and the method used to subsequently count those ballots in passing an assessment to pay for the said legal fees; 3) allege that The Board was in violation of the South Carolina Non-Profit Act in counting the ballots pertaining to the proposed assessment vote, all of which are the same claims

¹ The Court of Appeals affirmed the Circuit Court's decision (Court of Appeals Case No.: 2020-000506), after which Petitioner filed his Petition for a Writ of Certiorari (Appellate Case No.: 2022-000882), which is currently pending before the Supreme Court.

he made in the case he brought in Magistrate Court. The same causes of action that were previously litigated in *CA No.: 2019-CP-23-01501*, and which the Petitioner subsequently brought before the Magistrate Court, were dismissed via Summary Judgment in an Order by the Hon. Edward Miller on March 13, 2020.

The Board's Motion to Dismiss was heard by the Honorable Laura M. Saunders on November 24, 2020. By an Order date December 28, 2020, Judge Saunders granted The Board's motion to dismiss. On December 28, 2020, the Petitioner file a Notice to Appeal with the Greenville County Court of Common Pleas. Judge Saunders' decision was affirmed by the Honorable Letitia H. Verdin on May 8, 2021.

On May 17, 2021, Petitioner file a Notice of Appeal with the Court of Appeals. Judge Verdin's decision was affirmed by a unanimous opinion of the Court of Appeals in an unpublished decision filed April 27, 2022. The Petitioner moved to reconsider upon the following grounds:

1. That the Judge erred by denying Constitutional rights of Appellant.
2. The Judge erred by not recognizing Errors of Law.
3. The Judge erred by concluding that collateral estoppel applied to dismiss the case in its entirety.
4. The Judge erred by totally dismissing all Causes of Action.
5. The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract.
6. The Judge erred by apparently ignoring CPS [Complaint Plus Supplement] and all exhibits.
7. The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA.
8. The Judge erred by ignoring Appellant's request for the Court to dismiss in part.

9. The Judge erred by usurping matters that must be determined by a jury ... Premature dismissal denied Appellant's right to a jury trial.
10. The Judge erred by not addressing nor hearing pending motions, dismissing prematurely without issuing Orders to dispose of pending motions.
11. The Judge erred by granting premature dismissal that precluded requested discovery and ADR.
12. The Judge erred by denying Appellant a right to bring a "...preponderance of evidence..."
13. The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy.
14. The Judge erred regarding aspects related to extortion.
15. The Judge erred by not accepting nor acting upon Appellant's MOPO [Memorandum in Opposition to Defendant's Proposed Order.

The Petition for Rehearing was denied by an Order filed June 23, 2022, and the Petition for Writ of Certiorari was filed thereafter.

I. THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED SINCE THE PETITION DOES NOT RAISE ANY SPECIAL AND IMPORTANT REASONS FOR GRANTING THE PETITION

Rule 242, SCACR, governs the granting of Petitions for Writ of Certiorari and provides, "[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will granted only where there are special or important reasons." The Rule provides a list of non-exclusive reasons why a Petition for a Writ of Certiorari might be granted. Although the Supreme Court will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be issued when exceptional circumstances exist. *In re Breast Implant Product Liability Litigation*, 331 S.C. 540, 503 S.E.2d 445 (1998).

None of the reasons apply in this case, nor are there any "exceptional circumstances" that would warrant the granting the petition for writ of certiorari. The unpublished decision of the Court

of Appeals does not involve a novel question of law. It does not conflict with a prior decision of this Court. It was unanimous. There is no argument the decision involves a substantial constitutional issue or federal question. The Court of Appeals certainly found nothing special or important about the case. Its decision was unanimous, unpublished and of no precedential effect. No special or important reason is presented for this Court to exercise its discretion to grant a Writ of Certiorari. As such, the Petition for Writ of Certiorari should be denied.

II. THE PETITIONER’S CASE WAS NOT PREMATURELY DISMISSED

The Petitioner argues that certiorari should be granted because the Magistrate Court dismissed his case prior to any discovery being conducted. However, unlike in Circuit Court, discovery is not required in Magistrate Court. Rule 15 of the South Carolina Rules of Magistrate Court (SCRMC) states that the “exchange of information and documents prior to trial is encouraged, but in no event shall the court require such exchange.” As such, discovery is not mandated in Magistrate Court and Petitioner’s claim that his case was “prematurely” dismissed and that he was “denied pending discovery” is without merit. This issue provides no basis for the issuance of a Writ of Certiorari.

III. PETITIONER WAS NOT DENIED HIS CONSTITUTIONAL RIGHTS

The Petitioner argues that certiorari should be granted because his case was dismissed by the Magistrate Judge, and therefore he was denied his Constitutional rights to a jury trial. In South Carolina, a Court order, by motion or on the court's initiative, on the ground that no right to a jury trial on some or all of the issues does not exist (note that this is not truly the loss of a right, because no right ever existed). Rules 38(d) and 39(a), SCRCP.

The claims Petitioner brought against The Board, were dismissed on collateral estoppel grounds. Under doctrine of collateral estoppel, once final judgment on the merits has been

reached in a prior claim, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim.

Richburg v. Baughman, 290 S.C. 431, 351 S.E.2d 164 (1986).

Petitioner's claims against The Board were dismissed with prejudice as a matter of law. Due to the fact that the same claims Petitioner brought against The Board in Magistrate Court had been previously litigated, and a judgment on the merits issued by the Circuit Court, by law, the Petitioner was barred from relitigating these claims against The Board in Magistrate Court. Judge Saunders dismissal of Petitioner's case based on estoppel grounds was proper. Due to the doctrine of collateral estoppel that barred Petitioner's claims in Magistrate Court, no right to a jury trial existed. Judge Saunders correctly decided this issue on the law and her decision was correctly affirmed by both the Circuit Court and the Court of Appeals. This issue provides no basis for the issuance of a Writ of Certiorari.

IV. PETITIONER'S CLAIM OF DISCRIMINATION HAS NOT BEEN PROPERLY PRESERVED FOR APPEAL

Petitioner makes bald assertions that because he is a *Pro-Se* litigant, he has been discriminated against by the Courts due to not being a member of the "legal brethren buddy buddy club." However, this is the first time throughout the entirety of Petitioner's multiple lawsuits brought against the various incarnations of The Board that he has raised the issue of being discriminated against due to his *Pro-Se* status. As such, this issue has not been preserved by appeal and should not be addressed by this Court.

It is well settled that in order for an issue to be preserved for appellate review, the issue must have been raised and ruled upon by the trial judge. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). Issues not raised and ruled upon by the trial court will not be considered on appeal. *Id.* at 142, 587 S.E.2d at 694. See also *State v. Dial*, 838 S.E.2d 501 (2020) ("To be

preserved for appellate review, an issue must be both presented to and passed upon by the trial court.”). As the court of appeals recognized, this established rule applies in appeals from magistrate court to circuit court. *See State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001) (“In criminal appeals from magistrate ... court, the circuit court ... reviews for preserved error raised to it by appropriate [objec]tion.” (citing *City of Columbia v. Felder*, 274 S.C. 12, 13, 260 S.E.2d 453, 454 (1979))).

Here, the Petitioner failed to raise this issue in his appeal before the Greenville County Court of Common Pleas, and also failed to raise the issue in his appeal before the Court of Appeals. The first time that Petitioner has raised the issue of being discriminated against as a *Pro-Se* party because he is not a member of the “legal brethren buddy buddy club,” was in his Petition for a Writ of Certiorari to this Court. Therefore, this issue should not be addressed by this Court, and provides no basis for the issuance of a Writ of Certiorari.

CONCLUSION

Judge Saunders did exactly what a judge should do. She followed and applied the law. Judge Verdin of the Greenville County Circuit Court was correct in affirming Judge Saunders’ Order. The Court of Appeals was correct in unanimously affirming Judge Saunders’ Order. Five experienced, seasoned judges have now held that the dismissal of the Petitioner’s case was proper. There is no basis for the issuance of a Writ of Certiorari. The Petition should be denied.

Respectfully Submitted by:

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