

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-213278

Patricia A. Frierson Appellant,

v.

Kimberly S. Clark Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN RULING THAT THE DOCTRINE OF RES JUDICATA BARRED APPELLANT'S LAWSUIT DISMISSED IN MAGISTRATE'S COURT WITHOUT PREJUDICE?
2. DID THE CIRCUIT COURT ERR IN NOT CONSIDERING THAT THE AMOUNT OF THE CLAIM EXCEEDED THE MAGISTRATE'S JURISDICTION AND COULD NOT BE ADJUDICATED IN THAT COURT?

STATEMENT OF THE CASE

On January 14, 2011, Appellant Patricia A. Frierson brought this action for the return of her personal property against Respondent Kimberly S. Clark. Respondent answered alleging Appellant's claim was precluded by a judgment in a prior action between the parties. The prior action was tried on November 3, 2009, in the Dutch Fork Magistrate's Court and judgment was entered for Appellant that Respondent was to deliver property to the Dutch Fork Courthouse parking lot on November 14, 2009 at 8:00 a.m. (R. p. 16). The transfer did not happen and the Court dismissed the case without prejudice. (R. p. 17).

On May 29, 2012, Respondent filed a Summary Judgment claiming that the case was precluded by the doctrine of res judicata. (R. p. 7). The Honorable G. Thomas Cooper, Jr. heard the matter on August 7, 2012 and both parties appeared. On August 22, 2012, Judge Cooper signed an Order granting Respondent's summary judgment. (R. p. 1). On September 21, 2012, Appellant served Notice of Appeal on Respondent.

FACTS

On August 6, 2009, Respondent and her boyfriend took possession of Appellant's personal property to store in a 5X10 storage closet off the patio of her apartment at 1803 Bentley Ct., Columbia, SC 29210. On September 5, 2009, Appellant rented a commercial storage unit and moving truck to retrieve her property. Respondent's boyfriend refused. Appellant filed a Claim and Delivery with the Dutch Fork Magistrate on September 17, 2009. At the hearing held on November 3, 2009, the Magistrate Ordered Respondent to deliver Appellant's property to the Dutch Fork Courthouse parking lot on November 14, 2009, at 8:00 a.m. (R. p.16). The date, time and location were chosen by Respondent because she allegedly had previous obligations until that date and that she had moved and didn't want Appellant to know where she lived. Appellant made many attempts to contact Respondent to pick up property sooner and change the location, but her phone was disconnected. The transfer didn't happen and the Magistrate dismissed the case **without** prejudice. (R. p. 17). In spite of repeated demands by the Appellant, Respondent failed and refused to return Appellant's personal property claiming res judicata.

ARGUMENT I

BECAUSE DISMISSAL OF PRIOR LAWSUIT WITHOUT PREJUDICE DOES NOT UNDER THE DOCTRINE OF RES JUDICATA MEAN ADJUCATED, THE CIRCUIT COURT ERRED IN GRANTING RESPONDENT'S SUMMARY JUDGMENT.

The doctrine of res judicata is well established in South Carolina Law. For res judicata purposes, a dismissal of a claim without prejudice is not an adjudication on the merits of the controversy and has no preclusive effect as a matter of law. International Fidelity v. China Const. 650 S.E. 2d. 677, 375 S.C. 175 (app. 2007). In Garris v. Governing Bd. Of South Carolina Reinsurance Facility. 511 S.E. Ed. 2d 48, 333 S. C 432, rehearing denied. The Court held that Dismissal of a

prior lawsuit without prejudice for failure to exhaust administrative remedies does not under the doctrine of res judicata or claim preclusion, mandate dismissal of an identical suit. In McEachern v. Black, 496 S.E.2d 659, 329 S.C. 642, rehearing denied, and certiorari denied, the Court stated: “for res judicata purposes, dismissal of case without prejudice means that the plaintiff can reassert same cause(s) of action by curing the defects that led to dismissal.” Res judicata requires three elements be met: 1) a final, valid judgment on the merits; 2) identity of parties; and 3) the second action must involve matters properly included in the first suit. Stone v. Roadway express, 367 S.C. 575, 580, 627 S.E.2d. 695,697. (2006).

A final, valid judgment on the merits was not made in the Magistrate’s Court.

ARGUMENT II

BECAUSE THE AMOUNT OF THE CLAIM EXCEEDED THE MAGISTRATE’S COURT JURISDICTION AND COULD NOT BE ADJUDICATED IN THAT COURT, THE CIRCUIT COURT ERRED IN RULING APPELLANT’S CLAIM WAS BARRED BY RES JUDICATA.

The amount of the claim filed in the Fifth Judicial Circuit Court of Common Pleas on January 14, 2011 was \$ 99,954.68 and was not addressed in Magistrate’s Court. R.O.A. p. -+ In Plott v. Justin Enterprises, 374 S.C. 504 (App. 2007), the Court held that, “Although res judicata may apply even though the plaintiff in the first suit proceeded under a different legal theory, where the second suit is upon a different claim, the former judgment is conclusive only as to those issues actually determined. Further, the court held in Plott that prior trespass action between land owners and neighbors did not bar landowners, under res judicata, from bringing subsequent declaratory judgment action as to the rights of the parties to easement, although landowners had attempted in prior action to assert claim for interference with their use of easement: resolution of claims in prior action did not necessarily involve a determination of where landowners could

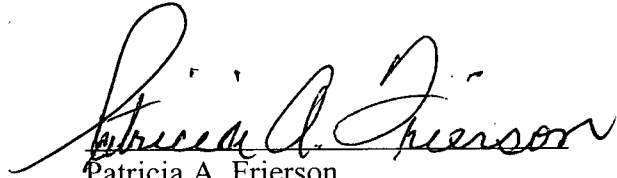
access their property from the right-of-way, trial court's refusal to allow landowner's late attempt to amend their complaint, and declaration of easement rights was not a compulsory counterclaim in the prior action.

The jurisdictional amount of this claim could not be adjudicated in the Magistrate's Court.

CONCLUSION

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

Respectfully submitted,



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December 5, 2012

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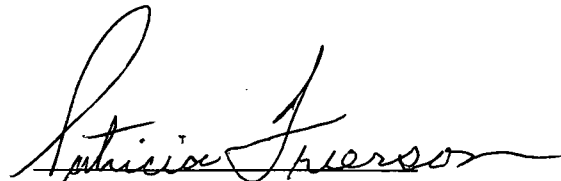
Kimberly S. Clark,

Respondent,

PROOF OF SERVICE OF FINAL BRIEF AND REPLY BRIEF

I certify that I have served a copy of The Final Brief and Reply Brief on December 10, 2012 on Kimberly S. Clark by hand delivering it to her attorney of record, Stephen L. Hudson, 2008 Marion St., Suite G, Columbia, South Carolina 29201.

December 10, 2012



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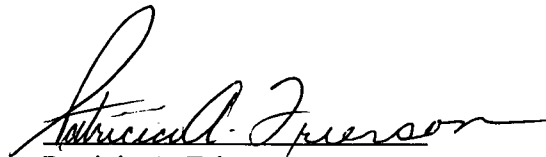
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

December 13, 2012



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