

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. 2011-CP-40-0232

Patricia A. Frierson,

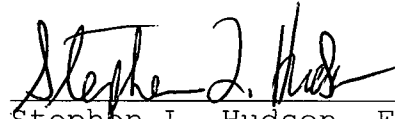
V.

Appellant,

Kimberly S. Clark,

Respondent.

FINAL BRIEF OF RESPONDENT



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STATEMENT OF ISSUES ON APPEAL

1. DOES DISMISSAL OF THE PRIOR LAWSUIT WITHOUT PREJUDICE, MEANS ADJUDICATED UNDER THE DOCTRINE OF RES JUDICATA, SUCH THAT THE CIRCUIT COURT DID NOT ERR IN GRANTING RESPONDENT'S SUMMARY JUDGMENT?
2. DOES CHANGING THE AMOUNT OF THE DEMAND CREATE A DIFFERENT SUBJECT MATTER THAT CREATES A DIFFERENT TRANSACTION OR OCCURRENCE?

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 the ruling in the 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 Fort Courthouse parking lot on November 14, 2009. (R.p.16) The Respondent appeared at the Dutch Fork Magistrate Courthouse parking lot on November 14, 2009; the Appellant failed to appear. The Respondent notified the Magistrate's Office and subsequently the action was dismissed without prejudice. (R.p.17)

On May 29, 2012, Respondent filed a Summary Judgment Motion claiming that the action was precluded by the doctrine of Res Judicata. The Honorable G. Thomas Cooper, Jr. heard the mater on August 7, 2012 and both parties appeared. On August 22, 2012,

Judge Cooper signed an Order granting the Respondent's summary judgment. (R.p.1)

FACTS

On August 6, 2009, Appellant asked the Respondent to take possession of her personal property to store in a 5x10 storage closet off the patio of the Respondent's apartment. The closet was too small to house the items listed on Appellant's Complaint of January 14, 2011. The Appellant attempted once to retrieve her items and was informed to come back when the Respondent was home. The Appellant failed to return and file her action in Magistrate Court instead. (R.p.13) At that time the Appellant alleged that the items in the Respondent's possession were valued at Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars. The January 14, 2011 complaint; filed two (2) years later, the Appellant alleged that there was more property than originally alleged in 2009 and its value in 2011 was One Hundred Thousand Two Hundred thirteen and 98/100 (\$100,213.98) Dollars.

At the hearing held on November 3, 2009, the Magistrate Ordered the Respondent to deliver the property to the Dutch Fork Courthouse parking lot on November 14, 2009. (R.p.16) The ruling was in favor of the Appellant. The location was a natural location that the Appellant was familiar with in that she chose the Magistrate Court to bring the action. The Respondent appeared on the proper date and time with the Appellant's

property, the Appellant failed to appear and failed to retrieve her items. Appellant had indicated at subsequent hearings, that she had transportation problems and that she was not able to get to the location on that date and time.

The Respondent notified that Magistrate Court of the Appellant's failure to comply with its ruling, and the Magistrate Court dismissed the action without prejudice.

(R.p.17)

ARGUMENT I

THE DISSMISSAL OF THE PRIOR LAWSUIT WITHOUT PREJUDICE MEANS A FINAL ADJUDICATED UNDER THE DOCTRINE OF RES JUDICATA, THE CIRCUIT COURT DID NOT ERR IN GRANTING RESPONDENT'S SUMMARY JUDGMENT.

The Respondent would assert that this matter is precluded by the doctrine of Res Judicata. The Respondent argues that the Appellant did not re-file in Magistrate Court nor did she appeal the Magistrate Judge's ruling, which were her options in 2009. The previous Complaint addressed the same issues raised in the present action.

This action is a duplicate of action raised in Magistrate Court the Appellant alleged that the value of the claim was Seven Thousand Five Hundred and 00/100 (\$7,500.00) and does not meet the jurisdictional amount for the Circuit Court.

This litigation involves Appellant's attempt to retrieve household and personal property that she stored with the

Respondent in 2009. The Appellant filed this second action in the Court of Common Pleas on January 14, 2011; she previously filed a first action in Magistrate Court on or about September 17, 2009. The Appellant filed an action with the Dutch Fork Magistrate's Office seeking to retrieve her household and personal property from the Respondent. The Magistrate ruled in the Appellant's favor and ordered the parties to exchange the property on November 14, 2009. The Respondent appeared at the time and place designated by the magistrate, but the Appellant did not appear. Subsequently, the Respondent made the magistrate aware of the Appellant's failure to appear and retrieve her property; thereafter the Magistrate dismissed the Appellant's case. The Appellant did not appeal the Magistrate's dismissal of her complaint. She further failed to file a second action in Magistrate Court to seek a new date and time for deliver of the property. The dismissal of the Appellant's claim without prejudice would allow her to re-file in Magistrate Court which refused to do.

This matter is precluded by the doctrine of Res Judicata. The Appellant in the present action previously filed a complaint against this Respondent in Magistrate Court that was dismissed November 17, 2009. The pervious Complaint addressed the same issues raised in the present action.

The parties to the present action are the same parties in the Magistrate matter filed September 17, 2009. The subject matter is the same raised in the September 17, 2009 action; that is the Appellant alleges that the Respondent has property that belongs to her. And finally the previous matter had been fully adjudicated; that is the Magistrate Court initially ruled for the Appellant but when she failed to comply with the Court's instructions and the matter was dismissed. See Riedman Corporation v. Greenville Steel Structures, Inc. 419 S.E.2d 217, 308 S.C. 467.

The doctrine of Res Judicata bars the subsequent action filed by the Appellant in that it involve the same parties, concerns the same issues, and a final adjudication had been reached.

ARGUMENT II

CHANGING THE AMOUNT OF THE DEMAND DOES NOT CREATE A DIFFERENT SUBJECT MATTER, AND DID NOT CREATE A DIFFERENT TRANSACTION OR OCCURRENCE.

Further the subsequent claim filed by the Appellant in Circuit Court complaint; arises out of the same transaction or occurrence that was the subject of the prior action between these parties; such other claims are also barred by the doctrine of Res Judicata. Riedman Corporation v. Greenville Steel Structures, Inc. 419 S.E.2d 217, 308 S.C. 467. The Appellant expended her list of personal property she claimed was in the

possession of the Respondent. The list contained items that she estimated a value of \$100,213.98. The Appellant knew of the items she believed to be in the Respondent's possession and had the opportunity to include the entire list and value when she first filed her complaint. The Appellant chose the Magistrate Court and the allegations she wanted to make against the Respondent.

The Appellant also filed a Motion for Civil Order of Arrest for the Respondent. That motion was argued in Circuit Court before the Honorable Judge Clifton Newman on May 9, 2012. The Circuit Court in its June 28, 2012 Order ruled as follows, "I find that the Plaintiff (Appellant) knowingly and willingly stored her property with the Defendant, (Respondent) that the Plaintiff had the opportunity to retrieve her property, and that the Defendant is not required to store Plaintiff's property for an unreasonable amount of time. IT IS THEREFORE, ORDERED that the Plaintiff's Motion for a Civil Order of Arrest is Denied."

The Circuit Court instructed the Respondent to mail to the Appellant whatever property she may have that belonged to the Appellant. The Respondent did in fact mail the remaining items to the Appellant on June 5, 2012; see Appellant's letter to the Court dated July 10, 2012.

The Appellant also argued the matter before the Honorable J. Ernest Kinard, Jr. on June 7, 2012, who ruled that, ". . . I

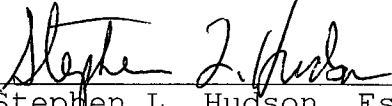
note that the matter has previously been heard in magistrate court and any relief sought by the Plaintiff should probably be pursued in that court as the plaintiff in that court listed the value of the property within Magistrate Court Jurisdiction not the \$100,000 plus now claimed and allegedly the case was ended in magistrates court . . ."

The Appellant failed to appeal either ruling.

CONCLUSION

For the reason stated, this Court should uphold the ruling of the Circuit Court.

Respectfully Submitted,



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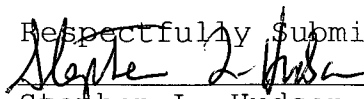
Respondent.

Certificate of Service

I certify that I have served a copy of the Motion for an Extension of Time to file Respondent's Final Brief, Respondent's Return to the Motion of the Appellant to Recover the Cost of Unnecessarily Ordering the Transcript Under the Rule 207 (a)1 and the Final Brief of the Respondent; upon Patricia A. Frierson by placing a copy of the same with postage prepaid, to her address of Post Office Box 1185 Columbia, South Carolina, 29202.

The Respondent asserts that the Final Brief complies with Rule 211(b).

Respectfully Submitted:



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