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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM RICHLAND COUNTY
FAMILY COURT**

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2022-001755

Champion Window Company of Columbia, SC, Respondent,

v.

Keith B. Evans and Brenda C. Evans, Appellants.

INITIAL BRIEF OF RESPONDENT

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QUESTION PRESENTED

Did failure to mediate deprive the circuit court of jurisdiction?

COUNTERSTATEMENT OF THE CASE

Respondent amends and modifies the following portions contained in the appellants' statement of the case:

1. The respondent treated the appellants' *pro se* answer as containing a counterclaim, and generally denied its allegations. Trial on the merits was set for October 4, 2022.

2. Appellant Brenda Evans testified that she did not receive the notice of hearing dated September 23, 2022 until September 28, 2022, six days before trial. She testified that this was because she and her husband were in Charleston for medical treatment until then. [Trial transcript 47, R. ____.] She did not contend that the appellants needed more than six days from their receipt of the notice of trial, in addition to the two years and nine months since the case began, in order to prepare. She did not contend that the appellants were unprepared for trial.

3. More than two years before trial, the appellants were granted a continuance to obtain an attorney. They failed to do so.

STATEMENT OF FACTS

The appellants wished to remodel their home extensively. They consulted respondent after their inquiries in the community satisfied them of the company's reputation. [Trial transcript, 36/15-25, R. ____.] Respondent prepared separate proposals for the three jobs desired. [R. ____, Pl.Ex. 1.] These were a vinyl siding agreement, a windows and patio door agreement, and a sunroom agreement. The three proposals were accepted by the appellants.

Appellants paid half the total contract price to begin the work, but failed to pay the balance after work was completed. This action was commenced on December 19, 2019 to recover the balance.

On August 25, 2020, the court granted the appellants a 30-day continuance in order to retain an attorney. When the case was called for trial two years later, the appellants still had not done so. Although the appellants had failed to answer discovery, the court permitted Mrs. Evans to represent herself and her husband at trial.

The respondent's project manager and its installation supervisor testified that under their supervision the three parts of the work were performed satisfactorily and were approved by inspectors. [Trial transcript, 5-29, R. ____.]

The court granted judgment for the balance due, together with pre-judgment interest and attorney fees.

ARGUMENT

Failure to mediate did not deprive the court of jurisdiction, the only ground upon which this Court could reverse the judgment.

The appellants asked the court on August 25, 2020 for more time to retain an attorney. The request was granted. Two years later the case came to trial with the appellants still unrepresented. The appellants sought no further continuance but went to trial.

It is the responsibility of *both* parties to comply with the Alternate Dispute Resolution rules. By failing to retain counsel as the court urged them to do, the appellants are now able to claim ignorance of the ADR mandate and place the entire blame upon the respondent for failure to mediate.

Pro se litigants are held to the same standards as attorneys. See *State v. Burton*, 356 S.C. 259 n.5, 589 S.E.2d 6, 9 n.5 (2003) (“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”). On appeal, the appellants claim no error in the conduct of the trial. Having raised no objection in circuit court to the fact that the case was called for trial without mediation, the appellants can present no issue thereabout to this Court of Appeals unless the failure was jurisdictional. The appellants contend now that the circuit court had no jurisdiction to try the case when no mediation had taken place.

A similar contention was rejected in *Ross v. Waccamaw Community Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013). There the question was whether the failure to participate in the mediation conference required by section 15-79-125(D)

deprived the court of jurisdiction to try a medical malpractice case. Rejecting this contention, the supreme court stated:

We conclude the time period set forth in section 15–79–125 was not intended to place limitations on the circuit court's subject matter jurisdiction. Indeed, the plain language of subsection (D) refutes such an interpretation, as it unambiguously acknowledges the circuit court's jurisdiction to enforce that section's provisions without limitation. Thus, we hold that failing to comply with the 120–day statutory time period is a non-jurisdictional procedural defect. *Cf. Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93–94, 668 S.E.2d 795, 796 (2008) (noting that the failure to comply with procedural time limits does not affect the circuit court's power to hear and determine cases of the general class to which the proceedings in question belong).

Id. at 63–64, 744 S.E.2d at 551. In *Ross*, the circuit court dismissed the case before trial for failure to mediate. The supreme court reversed and remanded for mediation. In the case at bar, by contrast, the case proceeded to trial and judgment with no party raising any issue about failure to mediate.

The appellants ask this Court to vacate the judgment and remand for mediation and re-trial. “Vacate” here means reversal. If the circuit court had jurisdiction to proceed to trial, its judgment can be reversed and the case remanded only because of lack of jurisdiction or prejudicial error by the trial judge. The trial judge committed no error. The ADR rules impose no duty upon our trial judges to ensure that mediation has taken place before a case is called for trial. If the appellants had retained counsel and had sought mediation, it would have taken place. They seek to take advantage of their deliberate failure to proceed without counsel, blaming the respondent and, apparently, the trial judge.

The trial judge committed no error in calling the case for trial, and the circuit court did not lose jurisdiction on account of failure to mediate.

CONCLUSION

The failure to mediate did not deprive the circuit court of jurisdiction to try the case.

The trial judge committed no error in failing to require mediation before trial since his Honor was not asked to do so. The appellants cannot take advantage of their lack of knowledge of the ADR rules when they deliberately chose to reject the urging of the court to obtain counsel.

For these reasons, the respondent asks the Court to affirm the judgment.

Respectfully submitted,

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May 4, 2023.