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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No: 2021-000266

Common Pleas Case No: 2020-CP-10-01819

Troy Wilson.....Appellant,

vs.

Carolina Custom Painting & Drywall, LLC, and Jamie Singleton.....Respondents.

RESPONDENTS' INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID WILSON ADEQUATELY PRESERVE HIS ISSUES FOR APPEAL AS HE OBTAINED NO RULINGS ON THOSE IN ISSUES IN THE COURT BELOW?
- II. DID THE TRIAL JUDGE ABUSE HIS DISCRETION BY NOT AWARDING TREBLE DAMAGES NOR ATTORNEYS' FEES?
- III. IS THERE EVIDENCE TO SUPPORT THE TRIAL JUDGE FINDINGS ON THE EMPLOYMENT CONTRACT?
- IV. DOES RES JUDICATA BAR THE JUDGEMENT OF THE JUDGES BELOW?
- V. HAS WILSON PRESERVED HIS APPEAL AS TO EMPLOYER'S COUNTERCLAIMS AS HE HAS NOT RAISED THEM HERE?

STATEMENT OF THE CASE

This matter was tried as a bench trial on July 12, 2018, before Magistrate Judge Seth Whipper in Small Claims Court. Troy Wilson (Wilson), the plaintiff, was represented by David A. Nauheim and the Defendants, Jamie Singleton (Singleton) and Carolina Custom Painting & Drywall, LLC (Carolina) (Collectively referred to as "Employer"), were represented by Harold A. Oberman. Wilson had sued Employer for unpaid wages under the S.C. Wage Payment Act and for Unjust Enrichment. The Complaint was filed on April 18, 2018 (Complaint). Employer answered and counterclaimed on May 21, 2018, alleging that they had tried to pay Plaintiff, that Plaintiff was responsible for his defective work, that deductions or a setoff from his wages was appropriate under a contract, and that there was a bona fide dispute as to whether Plaintiff was owed wages (Answer and Counterclaim). The trial judge found for Wilson in the amount of \$432.00 and found for Defendants on their counterclaims in the amount of \$3,982.00.

The trial judge issued a written order on September 8, 2020, and Wilson appealed that Order to the Circuit Court. Judge McCoy affirmed the Magistrate by form Order of February 11, 2021 and amended form Order of February 16, 2021. Wilson did not file a motion under Rule 59(e), SCRPC, or any other document asking for the basis for Judge McCoy or the lower court's ruling. Wilson timely appealed the Order of February 16, 2021 by filing his Notice of Appeal on March 11, 2021.

FACTS

Findings of Fact (As Found by the Trial Judge)

As found by the trial judge, the relevant facts in this lawsuit are all but undisputed (Order of September 8, 2020) (Exhibit "A" to Defendants' Memorandum filed December 3, 2020). Wilson did not file any post trial motions to dispute or clarify this Order. Immediately before Wilson quit his job with Employer, there was a dispute concerning wages (Magistrate's Return). Employer testified that Wilson did defective work at 1108 Ocean Club. He only put one (1) coat of paint on the wall and didn't sand the door frames. Because of this, paint peeled off. This dispute arose before Wilson quit and before he claimed wages. Employer withheld wages from Wilson because of this defective work.

Wilson does not convincingly dispute this account. In fact, he alleges in his Complaint (Complaint) as follows:

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10 Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 12, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

13. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

14. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Wilson states in his Trial Brief (Trial Brief) as follows:

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

Further, there were writings where deductions would be taken from Wilson's payment for defective work. Employer testified that at the initial hire of an employee, he would give all employees a written document that contained the following language " I understand that I am responsible for materials and labor of any faulty work discovered during inspection" (Exhibit "D" to Defendants' Memorandum filed December 3, 2020). Employer testified Wilson received this document like all other employees. The written interactions between Wilson and Employer confirm

that this was the contract. On March 30, 2015, Wilson signed a document that stated he would pay for damaged work: "I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15." (Exhibit "E" to Defendants' Memorandum filed December 3, 2020).

Wilson testified as follows:

Worked with Defendants for several years; did agree to pay for damages caused at a job site by his actions; did not receive his pay for the period ending on October 12, 2017; his children "probably" mishandled his notice of certified mail from the Defendants; he did resign because of the disagreement about "poor workmanship" and his payment being reduced; he was the foreman for the work being performed at 47 Waterway Island; 1509 Jennings was one of his work sites.

(Magistrate's Return; Witness Summary)

Because of this bona fide dispute over wages, Wilson quit. Employer withheld Wilson's last paycheck in the amount of \$432.00 because of the deficient work he had performed and the cost to correct it. The trial judge found Employer was justified to do this (Order of Magistrate).

Wilson reported Employer to the Labor Board. At one point, Employer was given three days to gather certain documents (Letter of November 3, 2017). They made the decision that it would be more cost effective to pay Wilson his claimed wage, rather than to contest the action before the Labor Board. Employer testified that he was unaware that Wilson could bring an additional suit against him. He believed this payment would end the matter (Order of Magistrate).

Employer decided to mail Wilson his check and they did so within 30 days. Employer sent Wilson his check via certified mail to 160 Stratton Dr., N. Charleston, SC 29420 and Wilson acknowledged that was his address. The post office tried to deliver the check on many occasions (Envelope) (Exhibit "G" to Defendants' Memorandum filed December 3, 2020) but the check remained unclaimed. Wilson blamed his failure to pick up the check on his children (Magistrate's Return, Witness Summary). Employer stated he would continue to try to give Wilson his check, but Wilson testified he would not accept it.

Employer testified he believed it would be a bad idea if he tried to contact Wilson or deliver the check personally to Wilson. The trial judge found that there was an ongoing dispute and a confrontation could happen and that Employer was also justified in wanting to document his attempt to pay by using certified mail (Order of Magistrate).

Because of Employer's decision not to contest the matter before the Labor Board, it made certain findings. Employer believed his decision to send the check to Wilson would end the matter, but this was not the case. The finding relevant to this wage dispute under S.C. Code § 41-10-40 is that Employer failed to "pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00 (paid in full but paid late)." Wilson's civil action arises under S.C. Code § 40-10-80(c) which is unconcerned with any other violations in which Employer received warnings.

Employer also counterclaimed against Wilson. The counterclaims consist of three jobs on which Wilson worked. Employer testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Wilson's defective work. At 47 Waterway Island, Employer testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Wilson admitted he was the supervisor on this job, that

there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, the trial judge found that Wilson was ultimately responsible for these costs. At 1509 Jenys, Employer showed pictures of Wilson's defective work (Exhibit "H" to Defendants' Memorandum filed December 3, 2020). There was paint on door knobs and other hardware discovered after Wilson quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. The trial judge found these counterclaims persuasive and proven (Order of Magistrate).

STANDARD OF REVIEW

This case has the same standard of review as if tried before a jury. In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to correct errors of law. The factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. Townes Associates v. City of Greenville, 266 S.C. 81, 221 S.E. 2d 773; *See also* Wooten by Wooten v. South Carolina Dep't of Transp., 326 S.C. 516, 485 S.E. 2d 119 (Ct. App. 1997).

In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. In other words, the judge's findings are equivalent to a jury's findings and are made with or without a reference to a master-in-equity or special referee. Townes Associates v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773; *See also* Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E.2d 876 (1975).

The decision to award attorney's fees and award treble damages under S.C. Code Ann. § 41-10-80(c) (Supp.2002) is at the discretion of the trial judge and will not be disturbed unless there is an error of law. In interpreting this section, our Supreme Court has held that the statute's explicit provision that the employee "may" recover treble damages signifies permission, which generally means that the action spoken of is optional or discretionary. The court went on to state as follows:

[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

A ruling on treble damages is at the discretion of the trial judge and should not be overturned unless he abuses such discretion. The burden is on Wilson to show an abuse of discretion "Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling." First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994)

ARGUMENT

- I. WILSON DID NOT ADEQUATELY PRESERVE HIS ISSUES FOR APPEAL AS HE OBTAINED NO RULINGS ON THOSE IN ISSUES IN THE COURT BELOW

Wilson did not file a motion under Rule 59(e), SCRPC, after Judge McCoy's form Order. Thus he has not preserved his issues for appeal. Additionally, Wilson also did not file any motions after the ruling of the Magistrate to preserve issue that were not ruled on.

The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. E.g., Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court).

If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. See Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975) (purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve – intentionally or by chance – in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case. See Brown v. Singletary, 226 S.C. 482, 85 S.E.2d 738 (1955) (party may not neglect or ignore vices in the trial, then expect to assert those vices on appeal in case of disappointment at trial); State v. Warren, 207 S.C. 126, 134, 35 S.E.2d 38, 41 (1945) (same).

On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (Some citations omitted)

Judge McCoy issued a form Order. To preserve any issue, Wilson was obligated to file a Rule 59(e), SCRCF, motion. For the reasons listed in I'On, the lower court must be asked to rule on an issue to preserve it for review.

Additionally, no motions were filed before the trial judge after he issued his Order of September 8, 2020. That Order does not rule on the issue of Res Judicata, and Wilson never filed Rule 59(e), SCRCF motion, to obtain a ruling. Also, that Order does not state, as now argued by Wilson, that it finds for Employer on its counterclaims based solely on “a course of dealings theory,” and not on a contract basis. (In fact, the Order says otherwise). Such, those issues are not preserved at any level as no judge has ruled on them. If presented to a judge by way of a 59(e), SCRCF motion, a judge could have further honed and clarified its ruling for this court’s review. When a trial judge makes a general ruling on an issue, but does not address the specific argument raised by the appellant and the appellant does not make a motion to alter or amend pursuant to Rule 59(e), SCRCF, to obtain a ruling on the argument, the appellate court cannot consider the argument on appeal. Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991).

II. THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION BY NEITHER AWARDING TREBLE DAMAGES NOR ATTORNEYS FEES

Under the Wage Payment Act, though the legislature seeks to protect employees from the unjustified and willful retention of wages by the employer, they do not want to stifle legitimate wage disputes. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

A. The trial judge was within his discretion in ruling there was a bona fide dispute as to employee’s entitlement to wages.

As noted in the facts above, a dispute about Wilson's pay arose before Wilson quit. Wilson quit because of this dispute. Wilson alleges this in his Complaint and Trial Brief, and the magistrate found as such.

Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414, (2009) states that a finding that an employee is entitled to recover unpaid wages (such as the \$432.00) is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages. Citing O'Neal v. Intermedical Hosp. of South Carolina, 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003). Just because employee was entitled to recover his wages, this does not mean there was no bona fide dispute.

Temple further states an employee was not entitled to treble damages and attorneys' fees under Payment of Wages Act in light of bona fide dispute as to whether employer owed wages, citing Futch v. McAllister, 335 S.C. 598, 518 S.E.2d 591 (1999).

Wilson, in his Trial Brief before the trial judge admits, "An award of treble damages is in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing wages were not owed." (Plaintiff's Trial Brief, p. 5).

Because there was a bona fide dispute as to wages, the trial judge did not award treble damages or attorney's fees. He found Employer offered their defenses in good faith. The dispute arose before the claim to the Labor Board. The trial judge found "Even if I would find that Plaintiff would ultimately prevail on the issue of wrongfully withheld wages (which I do not), I still would not award treble damages or attorney's fees as the wage issue was legitimately disputed in good faith. Plaintiff has presented no credible evidence that the dispute was not bona fide and in his Complaint states facts which show it to be bona fide" (Order of Trial Judge). The burden is on Wilson to show an abuse of discretion "Mere allegations of error are not sufficient to demonstrate an abuse of

discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling.” First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994)

B. This ruling not to award treble damages or attorneys’ fees is well within the trial judge’s discretion and cannot be overturned on appeal.

Section 41-10-80(c) of the South Carolina Wage Payment Act provides in part:

In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow.

S.C. Code Ann. § 41-10-80(c) (Supp.2002).

In interpreting this section, our Supreme Court has held that the statute's explicit provision that the employee "may" recover treble damages signifies permission, which generally means that the action spoken of is optional or discretionary. The court went on to state as follows:

[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word `may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

A ruling on treble damages is at the discretion of the trial judge. Regardless of the facts, it is within the trial judge's discretion.

Here, because the trial judge found that there was a bonafide dispute over wages and what Employer could withhold, he declined to award Wilson treble damages and attorneys fees. Additionally, he declined to award treble damages and attorney's fees because Employer tried to pay the wage and believed he had satisfied Wilson. As pointed out in the case law, a finding that the wage was in fact due does not mean that there was no bona fide dispute. See O'Neal v. Intermedical Hosp., 585 S.E. 2d 526 - SC: Court of Appeals 2003 (Reversing the trial judge as to an award of treble damages because of the existence of a bona fide dispute).

III. THERE IS EVIDENCE TO SUPPORT THAT EMPLOYER LEGITIMATELY DEDUCTED AMOUNTS FROM WILSON'S WAGES BECAUSE OF AN EMPLOYMENT CONTRACT. WILSON IS RESPONSIBLE FOR THE MISTAKES HE MADE ON THE JOB.

The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

There is evidence to support the Employment Contract found by the trial judge.

Even if the trial judge were to treble damages and award attorney's fees (which he did not), this amount would be more than offset by legitimate deductions, set offs, and counterclaims. Though he found Wilson to be an employee, the offset from his wages or counterclaim has evidentiary support. Wilson tries to call this a "course of dealings theory", while it is in fact a contract where Wilson is responsible and accountable for the mistakes he made on the job. The writings indicate

that Wilson agreed to the terms as set forth in the document given to workers at the start of their employment, specifically that they would be “responsible for materials and labor on any faulty work” (Exhibit “D” to Defendants’ Memorandum filed December 3, 2020). This is reaffirmed by the document of March 30, 2015. Wilson never contested this document and continued to work (Exhibit “E” to Defendants’ Memorandum filed December 3, 2020). These documents, these “course of dealings,” show there is a contract. There is ample evidence to support the trial judges finding that there was a contract between Wilson and Employer in writing that called for deductions. The specific deductions, set offs and counterclaims follow.

The evidence showed the counterclaims consist of three jobs on which Wilson worked. Singleton testified as to 1108 Ocean’s Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Wilson’s defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Wilson admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, the trier of fact found Wilson ultimately responsible for these costs. At 1509 Jenys, Employer showed pictures of Wilson’s defective work (Exhibit “H” to Defendants’ Memorandum filed December 3, 2020). There was paint on door knobs and other hardware discovered after Wilson quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. The trial judge found these counterclaims persuasive and proven. Therefore, he ruled for the Employer in the amount of their counterclaims (Order of Magistrate).

IV. RES JUDICATA DOES NOT BAR THE JUDGMENT BELOW

The doctrine of res adjudicata (or res judicata) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action." First Nat'l Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action.

Nelson v. QHG of S.C., Inc., 354 S.C. 290-304, 580 S.C. 171 (Ct. App. 2003), affirmed in part and reversed in part by Nelson v. QHS of South Carolina, 362 S.C. 421, 608 S.E.2d 855 (S. Ct. 2005). (Some citations omitted.)

To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Even when the defendant meets all of the required elements, res judicata will not be applied "where it will contravene other important public policies; the courts must weigh the competing public policies." Johns v. Johns, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct.App.1992).

Id. At 304 (Some citations omitted.)

Even a contested hearing conducted by the South Carolina Employment Security Commission (ESC) does not preclude relitigation of issues in a subsequent civil suit. Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 481 S.E.2d 706 (1997) (finding that giving administrative hearings held in front of the Employment Security Commission collateral estoppel effect would frustrate the purposes of the Employment Security Commission). Here, there was no contested hearing, and the considerations outlined in Shelton apply here. Employer had little or no incentive to contest the hearing as the consequences were minimal: a \$100 fine.

Wilson's civil action arises under S.C. Code §41-10-80(c) which states:

In case of any failure to pay wages due to an employee as required by § 41-10-40 or § 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due.

In that this is a claim concerning failure to pay wages under § 41-10-40 or § 41-10-50, the only relevant finding is the wage was not paid timely. All other findings are warnings or under other subsections.

None of these were litigated, or decided on the merits. Singleton was only required to pay a fine of \$100.00. He was not even required to pay the wage under this section. The underlying claim was never litigated.

The claim of treble damages and attorneys fees was not raised nor litigated before the Labor Board, nor could it have been as it is a civil cause of action under S.C. Code § 41-10-80(c). The claim of Employer's counterclaims was not raised or litigated before the Labor Board, nor could they have been. Employer paid a \$100.00 fine for late payment of wages and tried to move on.

The Labor Board made no determination as to whether there was a good faith dispute, nor was it asked to do so.

Note that Wilson only argues Res Judicata and not collateral estoppel. There is no doubt that there was no claim under S.C. Code § 40-10-80(c), litigated and ruled on. Wilson's failure to argue collateral estoppel does not preserve this issue for appeal.

V. WILSON DOES NOT APPEAL THE MAGISTRATES AWARD TO SINGLETON ON THE COUNTERCLAIMS

Rule 207(b), SCACR, sets out in detail the required content of the initial briefs. Ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal. The statement of issues must be concise and direct. Broad general statements may be disregarded by the appellate court. Rule 207(b)(1)(B), SCACR; *See Windsor Prop., Inc. V. Dophin Head Constr. Co. Inc.*, 331 S.C. 466, 498 S.E. 2d 858 (1998). However, where an issue is not specifically set out in the statement of issues, the appellate court may nevertheless consider the issue if it is reasonably clear from appellant's arguments. *Southern Welding Works, Inc. v. K&S Constr. Co.*, 286 S.C. 158, 332 S.E.2(d) 102 (Ct. App. 1985) (decided under prior appellate court rules).

The trial judge specifically found for Employer on his counterclaims. "Defendants also counterclaimed against Plaintiff. The counter claims consist of three jobs . . ." (Magistrate Order, p.4). "I find these counterclaims were persuasive and proven. Therefore, I rule for the Defendants in the amount of their counterclaims." (Order of Magistrate, p. 80). Wilson does not address Employer's counterclaims on his issues on appeal, nor does he make the issue reasonably clear in his arguments. He does not address the facts of Employer's counterclaims but only mentions it in reference to his other arguments. He cites no law as to breach of contract nor does he delve into the facts.

Wilson abandoned these arguments on appeal.

CONCLUSION

The trial judge ruled for Wilson in the amount of \$432.00. Employer tried to pay this amount. As was well within his discretion, the trial judge did not treble that amount and he did not award attorney's fees. He ruled for the Employer on their counterclaims and set offs. No post trial

motions were filed such that the trial judge could rule on certain issues and clarify his Order. No motions were filed after the Circuit Court issued a form Order such that issues could be preserved. The Order of the Circuit Court should be affirmed.

Respectfully submitted,



December 13, 2023

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