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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000500

The School of Hope Christian Academy, Jacqueline McKie Burden, and Eugene Burden, Sr., ...Appellants,

v.

South Carolina Department of Education, Ronald Jones, and Shirley Jenerette, ...Respondents.

INITIAL BRIEF OF RESPONDENT RONALD JONES

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TABLE OF AUTHORITIES

Pursuant to Rule 208(b)(6) of the South Carolina Appellate Court Rules, Respondent Jones adopts by reference the Table of Authorities by the Respondent South Carolina Department of Education. Additionally, Respondent Ronald Jones cites the following:

Cases

Statutes

Rules

TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL

I. PURSUANT TO RULE 208(b)(6) OF THE SOUTH CAROLINA APPELLATE COURT RULES, RESPONDENT RONALD JONES ADOPTS BY REFERENCE THE STATEMENT OF ISSUES ON APPEAL BY THE SOUTH CAROLINA DEPARTMENT OF EDUCATION IDENTIFIED AS ISSUE II., ISSUE III., AND ISSUE IV IN THEIR RESPONDENT BRIEF.

II. DID THE CIRCUIT COURT CORRECTLY FIND RESPONDENT RONALD JONES WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE THE LAW OF THE CASE DOCTRINE BARRED APPELLANTS' CIVIL CONSPIRACY CLAIM AS THE ADMINISTRATIVE ORDER ESTABLISHED THE DENIAL OF APPELLANTS' AUGUST 2017 REIMBURSEMENT CLAIM WAS CAUSED BY APPELLANTS' OWN ACTIONS, AND THAT APPELLANTS FAILED TO PRESENT ANY EVIDENCE ESTABLISHING A GENUINE ISSUE OF MATERIAL FACT ON THE ISSUE?

III. DID THE CIRCUIT COURT PROPERLY REFERENCE THE DOCTRINES OF COLLATERAL ESTOPPEL AND RES JUDICATA AS BARRING APPELLANTS' CIVIL CONSPIRACY CLAIM BECAUSE THE UNDERLYING ISSUES FOR THIS CLAIM WERE PREVIOUSLY LITIGATED AND NECESSARILY DECIDED AGAINST APPELLANTS?

IV. WHETHER THE STATUTE OF LIMITATIONS AND SERVICE RULES BAR APPELLANTS' DEFAMATION AND CIVIL CONSPIRACY CLAIMS BECAUSE APPELLANTS DID NOT FILE THEIR COMPLAINT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS OR SERVE IT ON RESPONDENT JONES WITHIN 120 DAYS OF FILING?

V. WHETHER S.C. CODE ANN. SEC. 15-78-70(a) BARS THE APPELLANTS FROM NAMING RESPONDENT RONALD JONES INDIVIDUALLY AS THE STATUTE PROVIDES IMMUNITY FOR AN EMPLOYEE OF A GOVERNMENTAL ENTITY WHO ACTS WITHIN THE SCOPE OF HIS OFFICIAL DUTY?

STATEMENT OF THE CASE

Pursuant to Rule 208(b)(6) of the South Carolina Appellate Court Rules, Respondent Jones adopts by reference the Counterstatement of the Case by the Respondent South Carolina Department of Education in its Respondent Brief.

Additionally, Respondent Ron Jones ("Jones") served as Director of the Office of Health and Nutrition for the SC Department of Education ("Department") and administered the Summer Food Service Program on behalf of the Department.

Further, although Appellants filed the Summons and Complaint on March 3, 2021, they did not serve this Summons and Complaint on Respondent Jones until seven months later on October 18, 2021.

STATEMENT OF FACTS

Pursuant to Rule 208(b)(6) of the South Carolina Appellate Court Rules, Respondent Jones adopts by reference the Statement of Facts by the Respondent Department in its Respondent Brief.

Further, Appellants filed this action in 2021 asserting claims against the Respondent Jones for defamation and civil conspiracy. (Complaint).

STANDARD OF REVIEW

Pursuant to Rule 208(b)(6) of the South Carolina Appellate Court Rules, Respondent Jones adopts by reference the Standard of Review by the Respondent Department in its Respondent Brief.

ARGUMENT

I. PURSUANT TO RULE 208(b)(6) OF THE SOUTH CAROLINA APPELLATE COURT RULES, RESPONDENT JONES ADOPTS BY REFERENCE THE ARGUMENTS BY THE RESPONDENT DEPARTMENT IN ISSUE NOS. II, III, AND IV, ADDRESSED BELOW.

A. ISSUE II.

Appellants brought a defamation claim against both Respondent Department and Respondent Jones. Respondent Jones adopts by reference the arguments presented by the Department in its Respondent Brief, Argument Section II., and incorporates them on his behalf.

The Circuit Court properly found the law of the case barred Appellants' defamation claim and Respondent Jones, and Respondent Jones respectfully requests this Court affirm this ruling.

B. ISSUE III.

Appellants brought a defamation claim against both Respondents South Carolina Department of Education and Ronald Jones. Respondent Jones adopts by reference the arguments presented by the Department in its Respondent Brief, Argument Section III, and incorporates them on his behalf.

The Circuit Court properly relied on collateral estoppel and res judicata in granting Summary Judgment in favor of Respondent Jones on this defamation claim because the hearing officer previously adjudicated those issues, and her rulings bar Appellants' claim. Respondent Jones respectfully requests this Court affirm this ruling.

C. ISSUE IV.

Appellants brought a defamation claim against both Respondent Department and Respondent Jones. Respondent Jones adopts by reference the arguments presented by the Department in its Respondent Brief, Argument Section IV., and incorporates them on his behalf.

Further, Respondent Jones was not served with the Summons and Complaint until October 18, 2021, over seven months after Appellants filed their Summons and Complaint. Therefore, the Respondent Jones respectfully requests this Court affirm the Circuit Court's ruling that Respondent Jones is entitled to judgment as a matter of law on the defamation claims because it is barred by the two year statute of limitations in S.C. Code Ann. §15-3-550(1) and Appellants did not serve the Summons and Complaint on Respondent Jones within 120 days of filing, as required by Rule 3(a)(2), SCRCP.

II. THE CIRCUIT COURT PROPERLY APPLIED THE LAW OF THE CASE TO BAR APPELLANTS' CIVIL CONSPIRACY CLAIM.

As ruled by the Circuit Court, Appellants' civil conspiracy claim against Respondent Ronald Jones is barred by the law of case. The Court referenced *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) for the necessary elements for a Plaintiff to state a claim for civil conspiracy. A Plaintiff must establish (1) the combination or agreement of two or more person, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the Plaintiff. *Id.*

The evidence in the record clearly shows no employee of the Department conspired with Respondent Jenerette or the USDA—or anyone else for that matter—to deprive Appellants of reimbursements. A s the hearing officerheld, "sabotage of a program from within is insufficient to justify payment of claims that have nosubstantiation." Hearing Officer Order p. 18.

The Court cited the hearing officer's findings that there was "no question" they "failed to maintain accurate records substantiating their claims for reimbursement," and the "records were in total disarray." Hearing Officer Order p. 17. Further, the Court cited the hearing officer's findings that there was "no evidence on the record that any leaks [regarding the audit]

occurred or that School of Hope had been prevented from presenting any evidence otherwise admissible in defense of this matter." Additionally, the hearing officer found the Department "took extremecare to protect the integrity of this audit," as it "invoke[ed] security procedures such as requiring nondisclosure agreements of its staff; maintain[ed] documents in a secure location with access documentation; and recus[ed] any member of its staff with known connections to School of hope from the audit." Hearing Officer Order p. 18.

The Court cited the hearing officer that the denial of Appellants' August 2017 reimbursement claim was caused by Appellants' own actions, not by any alleged conspiracy on the part of Respondent Jenerette and Respondent Jones. The Court then ruled that the Appellants failed to prove the necessary element that any damages proximately resulting to the Appellants. To this point, Appellants did not even offer so much as an Affidavit to support any alleged claim for damages as proximately caused by any civil conspiracy. Thus, Plaintiffs' civil conspiracy claim fails as a matter of law as they have failed this crucial element of the cause of action and Respondent Jones requests this Court affirm the Circuit Court's granting of Summary Judgment on this issue.

III. ALTERNATIVELY, THE CIRCUIT COURT PROPERLY APPLIED THE DOCTRINES OF COLLATERAL ESTOPPEL AND RES JUDICATA TO BAR APPELLANTS' CIVIL CONSPIRACY CLAIMS.

Respondent Jones argued alongside the Respondent Department, and the Circuit Court referenced in its Order, that the doctrines of collateral estoppel and res judicata similarly bar Appellants' civil conspiracy claims. (Summary Judgment Order pp. 5–6).

"[C]ollateral estoppel prevents the relitigation of issues . . . necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 556, 684 S.E.2d

779, 783 (Ct. App. 2009). Our appellate courts have repeatedly held collateral estoppel applies to "the decision of an administrative tribunal [and] precludes the relitigation of the issues addressed by that tribunal in a collateral action." *Bennett v. S.C. Dep't of Corr.*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) (emphasis omitted); *see also Crosby v. Prysmian Commc'ns Cables & Sys. USA, LLC*, 397 S.C. 101, 108, 723 S.E.2d 813, 817 (Ct. App. 2012) ("Our courts have applied the doctrine of issue preclusion to the factual determinations of administrative tribunals.").

Under the related but slightly different doctrine of res judicata, later actions are also barred when brought "by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). Res judicata applies when there is "(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Judy v. Judy*, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011) (citation omitted).

Here the hearing officer made factual findings that established that the denial of Appellants' August 2017 reimbursement claim was caused by Appellants' own actions, and not by any alleged conspiracy on the party of Respondent Jenerette and Jones. Hearing Officer Order p. 19. Thus, these issues were previously litigated and necessarily determined against Appellants in the administrative hearing. Further, Respondent Jones served as the Director of the Office of Health and Nutrition for the Department and all actions undertaken were in furtherance of his official duties in this capacity for the Department.

In short, the Circuit Court properly relied on collateral estoppel and res judicata in granting summary judgment in favor of Respondent Jones because the Hearing Officer previously adjudicated those issues, and her rulings bar Appellants' claims. The Court can thus affirm on the

basis of these doctrines too. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

IV. ALTERNATIVELY, APPELLANTS' CLAIMS AGAINST RESPONDENT JONES FOR DEFAMATION AND CIVIL CONSIPIRACY CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS AND SERVICE RULES.

Pursuant to Rule 208(b)(6) of the South Carolina Appellate Court Rules, Respondent Jones adopts by reference the arguments offered by Respondent Department in Issue IV of their Respondent Brief as to the defamation claim against Jones, as set forth below.

Respondent Jones requests that the Court find the defamation claim is barred by the statute of limitations. Appellants believe the alleged defamatory statement here was the referral of the criminal investigation to the FBI**. (**Appellants' Brief p. 9). In explaining that statement in their Complaint, Appellants noted that "no criminal charges have been brought in over three years" since those statements were made that triggered a federal criminal investigation. (Complaint, Par. 22). Thus, Appellants themselves admit more than two years had passed. And they still reference the fact that "an FBI agent sat through the entire four days of the administrative hearing" in early January 2019. (Appellants' Brief pp. 4–5). That means that the alleged defamatory statement referring Appellants to a criminal investigation with the FBI *had to have been made before* the hearing. But Appellants still did not file their Complaint until March 3, 2021. Because Appellants did not bring their defamation claim within two years of the alleged statement, it is barred by the statute of limitations. *See* S.C. Code Ann. § 15-3-550(1); *see also* Rule 220(c), SCACR.

Further, as the statute of limitations for civil conspiracy is three years, Plaintiffs' claim is time-barred as a matter of law as the baseless conspiracy claims arise from events in August 2017 through February 14, 2018 when the Department terminated Appellant's contract for participation in the SFSP. Appellants filed the Summons and Complaint on March 3, 2021. *See* S.C. Code

Ann. Sec. 15-3-550(5).

Finally, even if Appellants were not already past the statute of limitations on both claims against the Respondent Jones, they still failed to serve the Summons and Complaint within 120 days after the statute of limitations expired. *See* Rule 3(a)(2), SCRCP; *see also Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 347, 732 S.E.2d 395, 398 (2012) ("When service occurs outside the statute of limitations[,] it must occur within 120 days of filing the complaint."); *see also* S.C. Code Ann. § 15-3-20(B) ("A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing."); Rule 5(d), SCRCP ("Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party.").

Appellants filed the Complaint on March 3, 2021, but did not serve Respondent Jones until October 18, 2021—over seven months later. Nor was Respondent evading or otherwise playing games with service. Indeed, Appellants' counsel recognized during the hearing before the circuit court that the service issue the Respondents raised was valid. (Tr. at 20:12–25). Therefore, Respondent Jones requests that this Court affirm the Circuit Court and hold that Jones is entitled to judgment as a matter of law on the breach of contract and defamation claims because of Appellants' untimely service of the Complaint. *See* Rule 220(c), SCACR.

V. APPELLANT'S NAMING OF RESPONDENT JONES AS AN INDIVIDUAL DEFENDANT IS IMPROPER UNDER S.C. CODE ANN. §15-78-70(a).

S.C. Code Ann. §15-78-70(a) holds that "an employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefore except as expressly provided for in subsection (b)." Section b then holds that "an employee does not have

immunity if Plaintiff proves that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude."

The evidence in the record unquestionably shows all actions performed by Respondent Jones were within the scope of his official duties in his capacity as Director of the Office of Health and Nutrition for the Department of Education in administering the Summer Food Service Program funded by the U.S. Department of Agriculture. Other than baseless allegations in their Complaint, Appellants provided no affidavits or other evidence that Respondent Jones acted outside of his official duties.

Respondent Jones then respectfully requests that this Court affirm the Circuit Court's ruling granting him summary judgment.

CONCLUSION

Therefore, for the reasons stated in this Brief, Respondent Jones respectfully asks this honorable Court to affirm the trial court's grant of summary judgment.

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