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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 SHIRLEY JENERETTE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Respondent Shirley Jenerette adopts by reference and includes the Table of Authorities by Respondent Department of Education as allowed by Rule 208(b)(6), SCACR. In addition, Respondent Shirley Jenerette cites the following:

Cases

Statutes

Rules

STATEMENT OF THE ISSUES ON APPEAL

I. DID THE CIRCUIT COURT CORRECTLY FIND RESPONDENT SHIRLEY JENERETTE 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?

II. 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?

III. 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?

STATEMENT OF THE CASE

Respondent Shirley Jenerette adopts by reference and includes the Statement of the Case asserted by Respondent Department of Education as allowed by Rule 208(b)(6), SCACR.

STATEMENT OF THE FACTS

Respondent Shirley Jenerette adopts by reference and includes the Statement of Facts asserted by Respondent Department of Education as allowed by Rule 208(b)(6), SCACR.

Rather than appealing the final order from the Department of Education, the Appellants filed this action two years later, asserting a claim against Shirley Jenerette for conspiracy. (Compl.). This was more than three years after Appellants' payment request was denied and their contract was terminated. (*See* Final Order). This matter comes before the Court on the circuit court's order granting summary judgment in favor of all Respondents. (Cir. Ct.'s Order Granting Summ. J.).

STANDARD

Respondent Shirley Jenerette adopts by reference and includes the Standard asserted by Respondent Department of Education as allowed by Rule 208(b)(6), SCACR.

ARGUMENT

Respondent Shirley Jenerette adopts by reference and includes the Argument asserted by Respondent Department of Education as allowed by Rule 208(b)(6), SCACR.

The Court should affirm the circuit court's sound order granting summary judgment in favor of Shirley Jenerette because Appellants failed to appeal the hearing officer's final order, which included many adverse and dispositive findings against Appellants that bar their conspiracy claim. Appellants failed to present any evidence to the circuit court.

The claim against Shirley Jenerette arises out of the contract Appellants entered into with the Department of Education. Appellants allege that Jenerette conspired with Respondent Ronald Jones and others to delay, obstruct, and otherwise interfere with the approval process of grant money from August of 2017. (Pls.' Compl. at 31). They allege that Jenerette and others conspired to seek benefits to her own feeding programs. (Pls.' Compl. at 31). Appellants provide no evidence to support these allegations and it was found that Appellants submitted a reimbursement claim in August of 2017. (Final Order at 7). Also, Appellants concede that, it was ultimately the duty of McKie and Burden to manage the program and its employees. (Appellants' Br. at 4). Additionally, the crux of any conspiracy would have been between Appellants and employee Karen Greene to misplace and/or remove documents from view during the review and audit. (Final Order at 6&7).

As the circuit court properly found, this claim is barred by the law of the case doctrine. For these reasons, as well as the alternate sustaining grounds set forth below, the Court should affirm.

I. The circuit court properly applied the law of the case to bar Appellants' civil conspiracy claim.

Appellants civil conspiracy claim against Respondent Shirley Jenerette is barred by the law of the case. In order to state a claim for civil conspiracy, a plaintiff "must establish (1) the combination or agreement of two or more persons, (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." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

Appellants allege that Jenerette conspired with Jones "to seek benefits through the payment of federal and state funds to her own feeding programs and . . . to take sites from the Plaintiffs through contacts that she had made while employed by The School of Hope." What is more, Appellants allege "Individual Defendants" conspired and interfered "with the approval process for

the payment of grant money due the Appellants for the administration of its programs." Appellants, however, raised the same arguments before the hearing officer in support of their position that—despite the record-keeping irregularities—Appellants "provided the meals and should be paid." And the hearing officer wholly rejected these arguments.

First, the hearing officer determined Appellants were not reimbursed for the August 2017 claim—and were terminated from participating in the program—because there was "no question" they "failed to maintain accurate records substantiating their claims for reimbursement," and the "records were in total disarray." Second, the hearing officer found there was "no evidence on the record that any leaks [regarding the audit] occurred or that School of Hope ha[d] been prevented from presenting any evidence otherwise admissible in defense of this matter." The hearing officer also found that the Department, through Jones as the Director of the Office of Health and Nutrition, "took extreme care to protect the integrity of this audit." Specifically, the hearing officer noted the Department "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."

As the hearing officer determined, the denial of Appellants' August 2017 reimbursement claim was caused by Appellants' own actions, not by any alleged conspiracy on the part of Jenerette and Jones. *See Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (stating a plaintiff must show "damages proximately resulting" to establish a civil conspiracy claim). Respondent Jenerette's uncontroverted affidavit confirms as much. (Jenerette Affidavit, Paragraph 4) Plaintiffs cannot replow that field in this Court. *Cf. Shirley Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785; *Bennett*, 305 S.C. at 312, 408 S.E.2d at 231.

The Court found that Jenerette was entitled to judgment as a matter of law on Appellants' civil conspiracy claim. This was proper because there was no evidence in the record in the form of affidavits or otherwise to support the elements of the conspiracy cause of action that was pled by Appellants.

II. Alternatively, the circuit court properly applied the doctrines of collateral estoppel and res judicata to bar Appellants' civil conspiracy claim.

As Respondent Jenerette and the Department argued below, and the circuit court referenced in its order, the doctrines of collateral estoppel and res judicata similarly bar Appellants' civil conspiracy claim. (Order Granting Summ. J. at 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).

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. (Final Order at 19). Thus, these issues were previously litigated and necessarily determined against Appellants in the administrative hearing.

In short, the circuit court properly relied on collateral estoppel and res judicata in granting summary judgment in favor of the Department 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.").

III. Alternatively, Appellants' claims against the Department are barred by the applicable statute of limitations.

In its motion and during the hearing, Jenerette argued Appellants' conspiracy claim was barred by the applicable statute of limitations. While the circuit court did not find it necessary to rule on this issue, *cf. Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999), the Court can affirm based on the statutory limitations as an alternate sustaining ground. *See* Rule 220(c), SCACR.

An action for conspiracy must be filed within three years of the plaintiff being placed on notice of the alleged injury, *see* S.C. Code Ann. § 15-3-530(5) (providing the statute of limitations for an action sounding in tort is three years); *Gibson v. Bank of Am. N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009) ("The standard as to when the limitations period begins to run is objective rather than subjective. Therefore, the limitations period 'begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action

might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.'" (emphasis omitted)).

Here, Appellants' conspiracy claim originates from events related to the denied reimbursement claim between August 2017 and the contract termination on February 14, 2018. (Order Granting Summ. J.). The Department initially withheld the August 2017 reimbursement claim on February 14, 2018 and terminated the contract, but Appellants did not file the complaint in this matter until March 3, 2021. Appellants were well-aware of the alleged injury resulting from the August 2017 reimbursement claim for over three years before initiating this action. The conspiracy claim is therefore barred by the statute of limitations because it was not commenced within three years of Appellants being placed on notice of the alleged injury. *See* S.C. Code Ann. § 15-3-530(5); *see also* Rule 220(c), SCACR. Therefore, Respondent Jenerette requests that this Court affirm the Circuit Court and hold that Respondent Jenerette is entitled to judgment as a matter of law on the civil conspiracy claim because the statute of limitations expired prior to Appellants filing the Summons and Complaint.

CONCLUSION

For the reasons stated in this Brief, the Court should affirm the circuit court's grant of summary judgment in favor of Respondent Shirley Jenerette.

Respectfully submitted,

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