RECEIVED
Jun 26 2024
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Teasa Kay Weaver, Master-In-Equity

Unpublished Opinion No. 2024-UP-052 (S.C. Ct. App. filed February 14, 2024)
Appellate Case No.: 2024-000775

Vicki Lynn Vergeldt, Individually and as Successor
Trustee of the John Vergeldt Jr. Revocable Living Trust
Dated September 27, 1978,.....Respondent,

v.

John Edward Vergeldt .....Petitioner.

**REPLY TO RETURN
TO PETITION FOR
WRIT OF CERTIORARI**

Petitioner John Edward Vergeldt (hereafter "John") hereby files this Reply to the Respondent's Return to John's Petition for a Writ of Certiorari filed and served on June 11, 2024. John's Petition for Certiorari seeks review and reconsideration of the Court of Appeals' decision in this matter, issued on February 14, 2024, which affirmed the master-in-equity's order granting Vicki Vergeldt, individually and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust a money judgment (hereafter "Vicki") against John.

ARGUMENT

I. John's Petition specifically addressed the reasons why a Writ of Certiorari should be granted.

Vicki incorrectly asserts that John has not set for the reasons or character of the reasons for this Court to grant a Writ of Certiorari as required by Rule 242(b), SCRCP. Rule 242(b), SCRCP

lists five circumstances or character of reasons that "neither control nor fully measure the Supreme Court's discretion or power to grant review in general," including "[w]here the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court. In his Petition, John specifically asserted that the ruling for the Court of Appeals is inconsistent with multiple prior decisions of this Court and cited those decisions to support the assertation. *See Eades v. Palmetto Cardiovascular and Thoracis PA*, 422 S.C. 196, 810 S.E.2d 848 (2018) (finding that an issue is preserved for appellate review and addressing the merits of the issue on appeal); *see also Historic Charleston Holdings LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009) (deciding an issue that is preserved for appellate review is in the interest of judicial economy), citing *I'On LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d. 716, 724 (2000). Accordingly, John's Petition sets forth a sufficient character of reason for which this Court can grant a Writ of Certiorari.

II. The Petition clearly demonstrates why the Court of Appeals erred in its ruling.

As set forth in detail in the Petition, the Court of Appeals found that the issues regarding issue preclusion and res judicata were not properly preserved for appellate review, specifically finding that John raised the issue of res judicata for the first time in his Motion to Reconsider. The ruling from the Court of Appeals is improper because the Record on Appeal clearly demonstrates multiple instances in which John raised the issues of res judicata issue and the preclusive effect of Judge Kimball's order in trial court pleadings and during trial.

This Court has spoken repeatedly and explicitly on the requirements for preserving issues on appeal. *Blanding v. Long Beach Mortgage Co.*, 379 S.C. 206, 665 S.E.2d 608 (2008). "It is well settled that an issue cannot be raised for the first time on appeal but must have been raised and ruled on by the trial judge" *Id.* It is understood that issue preservation rules will be applied

consistently by appellate courts, however this Court has also made clear that "issue preservation rules should not be applied in a rigid, hyper-technical manner…elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." See *State v. Morales*, 439 S.C. 600, 889 S.E.2d 551 (2023) (quoting *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011)). Accordingly, this Court has specifically held that "a party is not required to use the exact name of a legal doctrine in order to preserve the issue. *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011) (citing *State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001)).

This is the exact scenario presented by this case. While John did not use the term "res judicata," as he was a pro se litigant, he did expressly assert to the trial court that the issues raised in Vicki's Amended Petition had already been addressed and ruled on in the prior litigation from 2014. (R. pp. 619-622, ¶¶ 13-24). In his Answer and Counterclaim filed March 7, 2016, John pleaded that the previous case:

> [T]erminated in [John's] favor, as it resulted in an Order declaring that [John] owned no duties as Successor Trustee of the trust until May 6, 2013, the date the Court concluded the Settlor became mentally incapacitated…The Court's order in the [2014 case] determined that [John] owed no such duties…[Vicki] did not appeal the Order.

(R. 401, ¶¶ 52-53).

Even though John did not raise *res judicata* in his Response to Amended Petition for Removal of Trustee filed August 21, 2019, he previously and sufficiently raised the issue in the original Answer, therefore it was not necessary to raise the issue again. Furthermore, John preserved the issue by raising it during the trial of this matter. As demonstrated by the Record, John repeatedly raised the issue of the effect of Judge Kimball's order in the 2014 case as barring Vicki's claim for damages. Specifically, John argued:

> Judge Kimball ruled that my father became incapacitated and that he was, in fact, in charge of all of his finances until May 6th…2013. So anything prior to that, it's already been ruled, my father was in charge of. So a lot of things that [Vicki's] lawyer brought up are things from 2008 or 2009.

(R. p. 719, lines 14-20) (Emphasis added).

Issue preservation rules require that "the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). John did not use the term "res judicata" explicitly, however it is apparent from the Record that he articulated the nature of the error so that it was reasonably understood by the trial court. The Court of Appeals' refusal to recognize that John preserved the issue regarding the preclusive effect of Judge Kimball's ruling in the 2014 case is clear error in light of this Court's previous decisions on issue preservation. Accordingly, granting a Writ of Certiorari is appropriate.

CONCLUSION

John respectfully requests that this Honorable Court grant the Writ of Certiorari, dispense with further briefing, and reverse the decision of the Court of Appeals, with direction to address the issue it found unpreserved.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

June 26, 2024

ATTORNEYS FOR PETITONER