THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2023-000500

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

vs.

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

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT JUDGE ERR IN GRANTING SUMMARY JUDGMENT TO ALL THREE DEFENDANTS UNDER THE LAW OF THE CASE DOCTRINE?

2. DID THE CIRCUIT COURT JUDGE ERR IN APPLYING THE PRINCIPLE OF COLLATERAL ESTOPPEL AND FINDING THAT APPELLANTS WERE BOUND BY THE LAW OF THE CASE DOCTRINE THROUGH AN ADMINISTRATIVE ORDER?

STATEMENT OF THE CASE

Plaintiffs/Appellants The School of Hope Christian Academy (School of Hope), Jacqueline McKie Burden and Eugene Burden filed an action against Defendants/Respondents South Carolina Department of Education ("the Department"), Ronald Jones, and Shirley Jenerette. The Plaintiffs alleged a cause of action against the Department for breach of contract. The individual Plaintiffs filed an action for defamation against the Department and Ronald Jones. All three Plaintiffs alleged a claim of civil conspiracy against Ronald Jones and Shirley Jenerette.

The School of Hope is a charitable corporation organized under the provisions of Section 501 © (3) of the United States Code. The School of Hope operated a feeding program for individuals (primarily children) throughout the State of South Carolina. The feeding program was funded through a Federal grant that was under the umbrella of the United States Department of Agriculture (USDA) and administered in South Carolina by the South Carolina Department of Education. Jacqueline McKie Burden was the founder and Chief Executive Officer of the School of Hope. Eugene Burden was the Board Chairman of the School of Hope. Mr. and Mrs. Burden became husband and wife in February 2020.

The three Defendants each filed Motions to Dismiss the Complaint although Ms. Jenerette had filed a pro se Answer prior to filing a Motion to Dismiss through counsel. A

hearing was held on the Motions through WebEx on February 13, 2023. Materials outside the pleadings were presented to the Court at the WebEx hearing. The parties agreed that the Motions would thus be treated as Motions for Summary Judgment. The Circuit Court issued an Order on March 8, 2023 granting the three Defendants' Motions for Summary Judgment. Appellants then timely filed their Notice of Appeal.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, the appellate court applies the same standard as the circuit court judge under Rule 56 ©, SCRCP. *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Id*.

FACTS

Jacqueline McKie Burden has a heart for serving children. That heart for service led to her founding the School of Hope. The School of Hope is a charitable corporation organized under the provisions of Section 501 © (3) of the United States Code. The School of Hope operated a feeding program for individuals (primarily children) throughout the State of South Carolina. The feeding program was funded through a Federal grant that was under the umbrella of the United States Department of Agriculture (USDA) and administered in South Carolina by the South Carolina Department of Education. Mrs. Burden served as Chief Executive Officer of the School of Hope. Jacqueline met Pastor Eugen Burden and asked him to join her organization. Eugene Burden thus became the Board Chairman of the School of Hope. Mr. and Mrs. Burden became husband and wife

in February 2020.

The School of Hope first became a sponsor in the feeding program in the year 2012 when the USDA program was administered in South Carolina by the South Carolina Department of Social Services. USDA began using the South Carolina Department of Education to administer the Summer Feeding Program in 2015. The School of Hope was a model sponsor and operated efficiently in the Summer of 2015 and the Summer of 2016. The good work that was being done by the School of Hope was recognized by the Department of Education. Therefore, in early 2017, the Department of Education approached the School of Hope because there was a shortage of sponsors and many sites were lacking sponsors to feed the children. The School of Hope agreed to serve approximately one hundred fifty sites in the Summer of 2017 which was triple the number of sites that the School of Hope had served the previous summer. The Department asked the School of Hope to serve approximately 12,000 children in 2017 but the School of Hope did not have that capacity. (R. p. 52). The School of Hope did increase its service by nearly three times the sites served and it served approximately 5400 children in the Summer of 2017 (R. p. 52). The School of Hope operated shifts around the clock at its Hopkins kitchen preparing thousands of meals each day (R. p. 52). The School of Hope was overwhelmed with the number of sites and children being served. The number of children being fed was so much larger than before that it was not possible for the School of Hope to prepare and deliver the food and maintain complete records of the food being delivered with the manpower that was in place.

The Administrative Order issued by hearing officer Malane Pike following four days of testimony was relied upon exclusively by the Circuit Court in granting summary judgment. The Appellants would point this Court to certain pertinent findings in Ms. Pike's

Order that are favorable to the School of Hope and support its claims. The School of Hope certainly lived up to the spirit of the law in feeding children across South Carolina as was demonstrated by the testimony provided at the four day hearing.

Important findings of fact to support the causes of action alleged in the Complaint were made by Hearing Officer Pike related to former employee Shirley Jenerette. Ms. Jenerette was hired by the School of Hope after retiring from the South Carolina Department of Social Services where she had worked in the feeding program because of her programmatic knowledge (R. p. 56 footnote). The Order further noted that numerous witnesses testified that the meal count sheets were provided to Jenerette and the duties that Jenerette described for herself were inconsistent with emails introduced into evidence. (R. p. 56). Based on these findings of fact, the hearing officer concluded that "although the truth and veracity of Jenerette's testimony at the hearing is certainly questionable", it was ultimately the duty of McKie and Burden to manage the program and its employees". (R. p. 64).

Testimony was presented by drivers, kitchen staff, managers responsible for ordering food, site representatives, and a vendor representative to prove that food was ordered, meals were prepared, and meals were delivered to the site. (R. p. 55). This finding supports the Plaintiffs' claims and certainly supports their compliance with the spirit of the law.

Another crucial matter was a one sentence determination that "the presence of altered records presents more serious concerns of a criminal nature, however, these concerns are being addressed outside the auspices of this appeal" (R. p. 63). That statement alludes to the fact that an FBI agent sat through the entire four days of the administrative hearing. A year after the hearing, the FBI returned the records to the

School of Hope just before the COVID pandemic. As noted at the hearing before Circuit Judge McIntosh, Appellants did not call the FBI to see how the investigation was going but the return of its records was a good indication that the criminal investigation had ended without any charges being levied against the School of Hope or the Burdens.

False statements were made by Ronald Jones to third parties (R. p. 20, Paragraphs 22 and 23). A criminal investigation was recommended by a person or persons within the Department of Education. The Plaintiffs/Appellants have reason to believe that Ronald Jones was one of the people responsible for the initiation of the FBI's investigation. That investigation caused great strife to Mr. and Mrs. Burden for many months.

Ms. Jenerette's testimony was not found to be credible by the hearing officer. The hearing officer ultimately held Jacqueline Burden and Eugene Burden responsible for the actions and/or neglect of Ms. Jenerette while employed at the School of Hope. However, the findings in Ms. Pike's Order at pages 10 and 18 (R. p. 56 and R. p. 64) support the claims alleged in the Complaint against Ms. Jenerette.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN HE APPLIED THE LAW OF THE CASE DOCTRINE TO PARTIES WHO WERE NOT INCLUDED IN THE ADMINISTRATIVE CASE.

The Plaintiffs/Appellants brought this action following the favorable termination of an FBI investigation against them. The Circuit Court Judge relied on the law of the case doctrine in reaching his decision granting summary judgment to all three Defendants. The Circuit Court stated that "an unappealed ruling is the law of the case" citing *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). The law of

the case doctrine applies to an order or ruling which finally determines a substantial right. *Id*. Certainly, the Circuit Court Judge stated the law of the case doctrine as described by the South Carolina Supreme Court. However, the Circuit Court erred in the application of the doctrine. Here, the School of Hope, Jacqueline Burden and Eugene Burden alleged defamation claims against the Department of Education and its employee Ronald Jones. As with the prior Orders in *Shirley's Iron Works*, the defamation claims were not addressed by the hearing officer Malane Pike at all. "We also note that pleadings are to be liberally construed, and the purpose of raising mode of trial issues at the earliest opportunity is to place the opposing party on notice of the issues at stake in the case." *Gates at Williams-Brice Condo. Ass'n v. DDC Constr., Inc.*, 418 S.C. 282, 792 S.E.2d 240 (Ct. App. 2016). At page 7 of its Order (R. p. 7), the Circuit Court cited findings a.-g. of Hearing Officer Pike's Order. However, even a cursory review of those findings shows that only the breach of contract claim against the South Carolina Department of Education was being addressed by Ms. Pike. The Circuit Court's Order is based on a determination that all causes of action in the Complaint are addressed in the Hearing Officer's Order. The Circuit Court Judge erred in determining that the claims of Plaintiffs and the damages sought by them arose from their contractual claim. In actuality, the most significant and lasting damage to all three Plaintiffs/Appellants was through the tort claims for defamation and civil conspiracy. Those tort claims against the three Defendants were not addressed at all by Hearing Officer Pike's Order.

Shirley Jenerette's testimony was found to be questionable by the Hearing Officer as noted above. The Plaintiffs alleged a cause of action against her for civil conspiracy based on what they learned in the hearing held before Hearing Officer Pike. There was no finding whatsoever in Hearing Officer Pike's Order that could be seen as precluding a

claim against Shirley Jenerette. The Circuit Court clearly erred in its determination at page 11 of its Order (R. p. 11) that “Plaintiffs cannot replow that field in this Court”.

Likewise, the tort claims raised against Defendant Jones were not addressed in any manner by Hearing Officer Pike. Summary judgment is a drastic remedy to be invoked cautiously and must be denied if (Plaintiffs) demonstrate a scintilla of evidence in support of their claims. *Gibson v. Epting*, 426 S.C. 346, 827 S.E.2d 178 (Ct.App. 2019). The Circuit Court went on citing *Gibson* to say that a "scintilla" of evidence is a perceptible amount. *Id.* This Court further elaborated in *Gibson* citing old authority that there still must be a verifiable spark, not something conjured by shadows. *Bethea v. Floyd*, 177 S.C. 521, 529, 181 S.E. 721, 724 (1935). ("'Scintilla' means, according to 56 C. J. 863, 'a gleam,' 'a glimmer,' 'a spark,' 'the least particle,' 'the smallest trace.'"); *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31–32, 61 S.E. 1064, 1067 (1908). ("[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.").

Again, the Circuit Court cited the law but misapplied it to the material facts presented by the School of Hope and the Burdens. There is certainly a trace of material evidence presented against the Defendants to withstand summary judgment. The School of Hope and the Burdens were investigated by the FBI for well over a year before the School of Hope’s records were returned in February 2020 and some semblance of order was restored to the lives of Mr. and Mrs. Burden and to the School of Hope. Appellants urge this Court to examine the Order of Malane Pike and see that the Order does not extend to its claims other than possibly to the School of Hope’s breach of contract claim against the Department of Education.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN HE APPLIED THE LAW OF THE CASE DOCTRINE TO ISSUES THAT WERE NOT LITIGATED IN THE ADMINISTRATIVE CASE.

The Circuit Court Judge cited the principle of collateral estoppel in his second paragraph under **Analysis** at page 5 of his Order (R. p. 5). The Circuit Judge's grant of summary judgment is based solely on the law of the case doctrine. Apparently, the Circuit Judge recognized that the parties to the action in Circuit Court were not the same parties as were included in Hearing Officer Malane Pike's Order. The School of Hope was the only party in the matter that was heard regarding the South Carolina Department of Education's administrative matter. Therefore, the Circuit Judge attempted to bolster his decision by referencing the principle of collateral estoppel in his Order.

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App. 2009); *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App.2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189-90 n. 1 (Ct.App.1984). "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008).

The doctrine of collateral estoppel should not be rigidly or mechanically applied. *Carrigg v. Cannon*, 347 S.C. 75, 81, 552 S.E.2d 767, 770 (Ct.App.2001). Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998).

The problem for the Circuit Judge here is that the issues alleged in both the defamation cause of action against the South Carolina Department of Education and Ronald Jones and in the civil conspiracy cause of action against Ronald Jones and Shirley Jenerette were NOT litigated in the administrative matter. Indeed, at page 9 of his Order the Circuit Judge states that the hearing officer did not specifically rule on the defamation claim as none was before her. The Circuit Court attempts to include the defamation issue in his ruling by determining that any statements made by Ronald Jones were necessarily true. However, that determination is negated by the dropping of the FBI's investigation against the School of Hope and the return of its records in February 2020.

The idea that the civil conspiracy issue was litigated is even flimsier than the defamation issue. There was mention of the job description and duties of Shirley Jenerette by witnesses on behalf of the School of Hope. There was also Jenerette's testimony that was found to be questionable by Hearing Officer Pike but certainly no ruling was made on a civil conspiracy issue. Plaintiffs simply seek the opportunity to litigate the issues of defamation and civil conspiracy.

As set forth in their Complaint, the Plaintiffs were substantially damaged by the actions of each of the three Defendants. The School of Hope's reputation was damaged by the false accusations of wrongdoing that resulted in a lengthy FBI investigation that was ultimately closed. The School of Hope depends in part on donations and in large

measure on volunteers in the community. The defamatory statements made it more difficult to obtain donations and to secure volunteers for assistance in the work of the organization. Further, Eugene Burden serves as a minister/pastor in the Lower Richland community. His reputation has suffered due to false statements made against him. Mrs. Jacqueline Burden has been a stalwart presence in the Midlands community serving children. However, the false defamatory statements made by the Defendants have damaged her reputation also. She seeks the opportunity to litigate the defamation claim and to restore her reputation

CONCLUSION

The Circuit Court's granting of summary judgment was contrary to the standard set forth in Rule 56, ©, SCRCP. For the reasons set forth above, Appellants respectfully ask this Court to reverse the Circuit Court's ruling and remand the case for trial.

Respectfully submitted,
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