THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Jul 19 2024
S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2024-001004

Saundra R. Hoffman, ... Petitioner-Respondent,
v.
State Farm Fire and Casualty Company, ...Respondent-Petitioner.

RESPONDENT'S REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

WHELAN MELLEN & NORRIS, LLC

Robert W. Whelan, Esquire
89 Broad Street
Charleston, SC 29401
(843) 998-7099

Attorneys for Respondent

I. Hoffman's Return concedes, at least implicitly, the issue of equitable estoppel was not raised to and ruled upon by the Circuit Court.

With respect to State Farm's first Question Presented, Hoffman's Return apparently concedes the Court of Appeals' estoppel ruling must be overturned absent preservation below, but argues estoppel <u>was</u> preserved through <u>deposition</u> <u>testimony</u>. (Hoffman's Return, p. 1-2) ("Both the Defendant and the Plaintiff **testified** she continued to submit information and the Defendant continued to investigate…)(emphasis added). Hoffman cites several pages of deposition *testimony* to allegedly support this position. *Id.* However, she never cites any page of briefing or any line of argument in which she argued an estoppel theory to the Circuit Court.

That the record as a whole may somewhere contain a statement allegedly supporting a theory is not sufficient to preserve that theory for appellate review, unless the party has raised the theory to the lower court, providing her adversary and the court with the opportunity to consider and address that theory.[1] *See State v. Prioleau*, 345 S.C. 404, 410–11, 548 S.E.2d 213, 216 (2001) (reversing court of appeals on preservation grounds and noting arguments should "bring into focus the precise nature of" the matter alleged as error so that it could be considered by the trial judge). Here, Hoffman's Return illustrates she never brought into focus an estoppel theory to her opponent or to the Circuit Court; therefore, the Court of Appeals' ruling as to estoppel must be reversed.

II. Hoffman's Return illustrates the lack of evidence to support a finding of estoppel in the record.

State Farm explained, at pages 5-13 of its Petition, that the record was devoid of evidence of reliance necessary to support an estoppel theory. Hoffman's response to this argument was five sentences. (Hoffman's Return, p. 3) The deposition question and answer she chose to include in

---

[1] State Farm does not concede the testimony cited by Hoffman supports the application of estoppel—as discussed in section II, it does not—but even if it did, it could not justify the Court of Appeals basing its reversal on a theory not brought to the Circuit Court's attention.

this portion of the Return proves State Farm's point—Hoffman did not rely upon State Farm but relied instead upon her own assumptions: "Q. Did you talk with **anyone at State Farm** concerning the statute of limitations **at anytime**? A: **No**. Like I said**, I just assumed** that since she told me about the opening of the claim, that she would tell me if the claim was coming near the closing." *Id.* (emphasis added). The record establishes Hoffman did not talk with anyone from State Farm at anytime regarding the statute of limitations—much less did she rely upon them—and instead relied upon her own assumptions. Thus, the Court of Appeals' finding of estoppel was not supported by the record and must be reversed.

III. Hoffman has not directly responded to State Farm's third ground for a writ of certiorari.

State Farm also asked this Court to review the Court of Appeals' ruling that State Farm is "precluded from" raising the statute of limitations due to equitable estoppel. It was improper for that court to eliminate the use of a substantive, legislatively enacted, defense (the statute of limitations) due to a doctrine (estoppel) which was never raised below and which State Farm did not have the opportunity to argue below. Hoffman's Return sidesteps these fundamental issues, instead arguing that because she contends State Farm's and Judge Dickson's interpretation of the statute of limitations is allegedly "absurd," State Farm should be precluded from asserting it. She cites no case law or authority to support her position that a party may be deprived of substantive rights if its opponent believes the argument is "absurd," because there is no such case law or authority. *See, First Sav. Bank v. McLean,* 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue.") Thus, the Court of Appeals' finding that State Farm is precluded by estoppel from asserting the statute of limitations must be reversed.

WHELAN MELLEN & NORRIS, LLC

By: s/*Robert W. Whelan*
Robert W. Whelan
SC Bar No. 71174
E-Mail: robbie@whelanmellen.com
89 Broad Street
Charleston, SC 29401
(843) 998-7099

Attorneys for Respondent

Charleston, South Carolina

July 19, 2024