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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

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-001088

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

v.

South Carolina Department of Social Services,..... Respondent.

INITIAL BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES

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I. Is Appellants' appeal barred by the two-issue rule because Appellants failed to challenge the circuit court's ruling properly finding the doctrines of collateral estoppel and res judicata barred Appellants' breach of contract and defamation claims because the underlying issues for both claims were previously litigated and necessarily decided against Appellants?

II. Did the circuit court correctly find DSS was entitled to judgment as a matter of law because the law-of-the-case doctrine barred Appellants' breach of contract and defamation claims because they failed to appeal the administrative law court's orders necessarily deciding the underlying issues for both claims against Appellants and because Appellants presented no evidence establishing a genuine issue of material fact on the issues?

COUNTERSTATEMENT OF THE CASE

This appeal arises out of the circuit court's grant of summary judgment for Respondent South Carolina Department of Social Services (DSS) on Appellants School of Hope Christian Academy (School of Hope), Jacqueline McKie, and Eugene Burden Sr.'s barred claims for breach of contract and defamation.

Under a contract with DSS, School of Hope—led by McKie and Burden—participated in the federally funded Child and Adult Care Food Program (CACFP). (Summ. J. Order at 1). Through the CACFP, School of Hope was to provide meals in after-school care programs within South Carolina. *Id.* But when DSS learned of circumstances showing School of Hope failed to comply with federal regulations and its contract, DSS terminated School of Hope from the CACFP and denied School of Hope's January through March 2018 reimbursement claims. *Id.* at 2. These circumstances led to two requests for administrative hearings and two appeals to the administrative law court (ALC). (ALC Orders I & II).

In the first appeal, School of Hope challenged DSS's termination of Appellants from participation in the CACFP and its denial of School of Hope's January through March 2018 reimbursement claims, which was based on School of Hope's termination from another federally funded program and failure to substantiate reimbursement claims. (ALC Order I at 2). The ALC affirmed DSS's Final Administrative Order and upheld DSS's termination of Appellants from the CACFP and denial of School of Hope's January through March 2018 reimbursement claims. *Id.* In the second appeal, School of Hope again challenged DSS's termination of Appellants from participation in the CACFP, which was based on School of Hope's failure to comply with CACFP performance standards. (ALC Order II at 2). The ALC affirmed DSS's Final Administrative Order and upheld DSS's termination of Appellants from the CACFP. (ALC Order II).

School of Hope never appealed any findings from ALC Order I or II. (Summ. J. Order at 4–5). Instead, before the ALC issued its orders, Appellants filed this action, asserting breach of contract and defamation claims against DSS. *See* (Compl.). DSS moved to dismiss. (Mot. to Dismiss). While the motion was pending, the parties partially resolved the case. As relevant here, Appellants dismissed with prejudice the claims against Defendants Dyretta Fashion and Mary Abney Young—two DSS employees. (Stip. Of Dismissal). Appellants then moved for and the Court ordered dismissal of the case under Rule 40(j), SCRCP. (Rule 40(j) Order).

Nearly a year later, at Appellants' request, the Court restored the case to the general docket. The next day, Appellants' initial counsel moved to withdraw, and the Court granted that motion on September 26, 2022. (Withdrawal Order). DSS moved for summary judgment on May 24, 2023, and filed a memorandum in support on January 17, 2024. (Mot. for Summ J.); (Memo. in Supp. of Mot.). The circuit court held a virtual hearing on January 22, 2024. Appellants filed no brief in opposition to the motion and presented no evidence in support of their claims before, during, or after the hearing. *See generally* (Tr.).

The circuit court granted summary judgment for DSS and issued a formal order on June 5, 2024. (Summ. J. Order). This appeal followed.

STATEMENT OF THE FACTS

In 2012, School of Hope signed a contract with DSS to participate in the CACFP. *See* (Contract). Through the CACFP, School of Hope was to provide meals in after-school care programs within South Carolina. (*Id.* at 2). In 2018, however, DSS discovered that School of Hope was not compliant with federal regulations governing the CACFP or its contract with DSS.

First, DSS learned that the South Carolina Department of Education (DOE) had terminated School of Hope from the Summer Food Service Program (SFSP), another federally funded

program. (ALC Order I at 2). Title 7, Subsection 226.6(c)(3)(ii)(S) of the Code of Federal Regulations states that an agreement for participation in the CACFP may be terminated if "the institution or any of the institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements." Because of this, DSS issued a "Serious Deficiency Notice" informing School of Hope it was deficient in its operations under the CACFP and denying the January through March 2018 reimbursement claims because of failure to provide sufficient documentation to substantiate them. (ALC Order I at 2).

School of Hope requested an administrative hearing to review the termination and reimbursement denial, and after a hearing, a hearing officer with DSS upheld both decisions. (ALC Order I at 3). Appellants appealed to the ALC, which affirmed, finding substantial evidence that School of Hope "should be terminated from participation in the CACFP based upon termination from another federally funded feeding program." (*Id.* at 5). Because School of Hope failed to fully pursue an appeal of its termination from the SFSP and presented no evidence DOE's termination was improper, the ALC found DOE's "unappealed final agency decision terminating the School from the SFSP" was sufficient evidence on which DSS could base its termination. (*Id.* at 6–7).

The ALC also found substantial evidence to support DSS's denial of School of Hope's January through March 2018 reimbursement claims. (*Id.* at 7). As the ALC noted, "[t]here were multiple instances (too many to include) of the School overstating its claims including one instance where the claim was overstated by 994 meals. There were numerous other problems with the School's program and recordkeeping." (*Id.* at 8). School of Hope's director even conceded some discrepancies. *Id.* As to the reimbursement claims, the ALC concluded, "[n]ot only did the School fail to maintain its records in accordance with federal law but also and more importantly, failed to provide documentation verifying its claims as required by law." (*Id.* at 9).

Second, DSS learned from one of School of Hope's food distributors—The Merchants Company—that School of Hope had an outstanding debt of $446,772.12. (ALC Order II at 2). In fact, in October 2017, School of Hope's executive director Jacqueline McKie executed a Confession of Judgment for that amount in favor of Merchant Food. (*Id.* at 2). This was the third complaint within two years DSS had received from School of Hope's vendors, and it established School of Hope's debt far exceeded any outstanding reimbursement claims with DSS or DOE. *Id.*

As a result, DSS issued another "Serious Deficiency Notice" requesting School of Hope complete a "Corrective Action Plan" to include, among other things, "documentation that it was financially viable and maintained fiscal accountability." *Id.* Title 7, Subsection 226.6(c)(3)(ii)(C) states an agreement for participation in the CACFP may be terminated if the participant is not operating in compliance with the performance standards in Subsections 226.6(b)(1)(xviii) and (b)(2)(vii), which require "financial viability and financial management," "administrative capability," and "program accountability." Because School of Hope failed to submit a satisfactory plan, DSS notified School of Hope of its termination and disqualification from the CACFP. *Id.*

School of Hope requested an administrative hearing to review this termination, too, which the hearing officer upheld. (*Id.* at 3). School of Hope appealed again, and the ALC affirmed, finding substantial evidence supported the finding that it "is not financially viable and that the parties failed to maintain fiscal integrity to include a financial system with accountability to control all funds and property received and disbursed." (*Id.* at 7). School of Hope could not pay its employees during certain periods, had satisfied only $100,000.00 of its debt to Merchants Food in over a year, and had at least $200,000.00 in debts owed to other vendors. (*Id.* at 8).

The ALC stated the purpose of the hearing was for School of Hope to show its compliance with federal regulations and performance standards, yet it "was unable to do so, and substantial

evidence exist[ed] . . . [to show] the School was lacking in internal controls and effective management to insure accountability." *Id.* Simply put, "no testimony" showed "how the School planned to resolve its outstanding financial obligations as well as ensure its ongoing financial viability." (*Id.* at 9). ALC Order II affirmed DSS's termination of Appellants from the CACFP.

Appellants failed to appeal findings from ALC Orders I or II. (Summ. J. Order at 4–5). Instead, Appellants filed this action, asserting claims against DSS for breach of contract and defamation. (Compl.). This matter comes before the Court on the circuit court's order granting summary judgment for DSS. (Summ. J. Order).

STANDARD

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the [circuit] court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); *see also Gibson v. Epting*, 426 S.C. 346, 350, 827 S.E.2d 178, 180 (Ct. App. 2019) (noting an appellate court uses "the same yardstick as the [circuit] court" in reviewing an order granting summary judgment). Summary judgment is proper when no genuine issue of any material fact exists, and the moving party is entitled to judgment as a matter of law. *Ellis v. Davidson*, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004).

Our supreme court recently confirmed that the "'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ,

summary judgment should be granted." *BPS, Inc. v. Worthy*, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

In the face of a properly supported motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e), SCRCP. If the opposing party "does not so respond, summary judgment, if appropriate, shall be entered against him." *Id.* "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ARGUMENT

The Court should affirm the circuit court's sound order granting summary judgment to DSS because Appellants failed to appeal ALC Orders I and II, which included adverse and dispositive findings that barred their breach of contract and defamation claims. And because Appellants presented no evidence to survive summary judgment, the Court would not be applying "form over substance," Appellants' Br. at 2, by affirming the circuit court.

I. The two-issue rule bars Appellants' challenge to the circuit court's order.

The circuit court found Appellants' breach of contract and defamation claims against DSS were barred by the law-of-the-case, collateral estoppel, and res judicata doctrines. *See* (Summ. J. Order at 7) ("Because [Appellants] waived their right to challenge Orders I and II, [Appellants'] breach of contract claim is barred by the law of the case, collateral estoppel, and res judicata."); (Summ. J. Order at 12) ("Thus, the law of the case, collateral estoppel, and res judicata bar [Appellants'] defamation claim.").

In their brief, however, Appellants challenge only the circuit court's ruling on law of the case. They do not address the circuit court's rulings as to collateral estoppel and res judicata. Appellants' appeal therefore fails under the two-issue rule. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." (quoting *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010))). So the Court should affirm without further consideration.

Even so, the Court can affirm on the merits too. "[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); *see also Pampu v. Wingo*, Op. No. 6112 (S.C. Ct. App. filed June 11, 2025) (Howard Adv. Sh. No. 21 at 14).

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 ALC necessarily determined Appellants breached their contract with DSS by failing to comply with the duties imposed on them by the contract and federal regulations. *See infra* Section II. The ALC also made factual findings that established the statements Appellants allege to be defamatory were in fact true. *See infra* Section II. Thus, these issues were previously

litigated and necessarily determined against Appellants in the ALC Orders. Further, the identity of parties are identical, and Appellants' claims directly involve and arise out of DSS's termination of their participation in the CACFP for failure to comply with federal law and denial of their reimbursement claims.

In short, the circuit court properly relied on collateral estoppel and res judicata in granting summary judgment to DSS because the ALC (and before that, the DSS hearing officer) necessarily decided these issues, its rulings were unappealed and final, and they bar Appellants' claims.

II. The circuit court correctly granted summary judgment for DSS on Appellants' breach of contract and defamation claims because they are barred by the law of the case.

In all events, the circuit court properly granted summary judgment to DSS on Appellants' breach of contract and defamation claims based on the law of the case.

As the circuit court found, the ALC Orders presented lengthy and thorough analyses of School of Hope's noncompliance with the contract and federal regulations, affirming DSS's ability to terminate the contract and their participation in the CACFP. (Summ. J. Order at 7). Yet Appellants failed to appeal ALC Orders I and II to our appellate courts. *See* S.C. Code Ann. § 1-23-380 ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1."). The unappealed findings in ALC Orders I and II therefore became and remain the law of the case. *See Shirley Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case."). Appellants waived their right to challenge those findings. *See Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right.").

Appellants breach of contract claim is based on the unfounded allegation that DSS breached its now-terminated contract with Appellants by refusing to pay their January through

March 2018 reimbursement claims.[1] (Pls.' Compl. at 4–5). As the circuit court noted, that claim necessarily rests on "the notion that [Appellants] 'fully performed' their duties under the contract 'in accordance with all of the requirements and conditions thereof.'" (Summ. J. Order at 8). But the ALC Orders expressly rejected that claim.

Specifically, ALC Order I explained DOE's "unappealed final agency decision terminating the School from the SFSP" was sufficient evidence on which DSS could base its termination of Appellants' contract for participation in the CACFP. (ALC Order I at 6–7). And ALC Order II found DSS was entitled to terminate Appellants' agreement for participation in the CACFP because "substantial evidence exist[ed] . . . [to show] the School was lacking in internal controls and effective management to insure accountability." (ALC Order at 8). Both ALC Orders upheld DSS's termination of their contract for participation in the CACFP. The circuit court correctly found these unappealed rulings were the law of the case and barred Appellants from relitigating the same issues here through a breach of contract claim. (Summ. J. Order at 7–10).

For similar reasons, Appellants' defamation claim fails. To start, the circuit court did not find "both causes of action in the Complaint [were] addressed in the Administrative Law Judge's

[1] Although Appellants contend their breach of contract claim "extend[ed] beyond the claims that were addressed in the October 4, 2019, Order (claims for January-March 2018)," they presented no evidence of that—or any reimbursement claims or denials—to the circuit court. Nor did they argue DSS "failed to follow its own rules and the USDA guidelines." Appellants' Br. at 8. And DSS respectfully objects to Appellants' belated attempt to inject "deposition testimony," Appellants' Br. at 8, into the Court's consideration or the record on appeal that they failed to present below. *See* Rule 210(c), SCACR. In any event, the circuit court found Appellants "failed to exhaust their administrative remedies on the denial or payment of any other 2018 reimbursement claims" because they "never pursued those administrative remedies to challenge partial payments or denials of their April, May, August, or September 2018 reimbursement claims." (Summ. J. Order at 10–11). Appellants did not challenge that ruling and abandoned any argument on that front. *See, e.g.*, *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an appellant abandons an issue when he fails to "provide arguments or supporting authority" in his initial brief); *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439, S.E.2d 283, 285 (Ct. App. 1993) (stating one "may not use the reply brief to argue issues not argued in his brief in chief").

Orders." (Appellants' Br. at 6). Rather, it expressly held Appellants' defamation claim was barred because they could not relitigate, through a defamation claim, their "mismanagement and failures to comply with federal regulations while participating in the CACFP," which "were extensively litigated and resulted in adverse rulings against them by the ALC." (Summ. J. Order at 11). After all, "[t]he law of the case applies both to those issues explicitly decided and *to those issues which were necessarily decided* in the former case." *Argoe v. Three Rivers Behavioral Health, LLC*, 419 S.C. 459, 464, 799 S.E.2d 73, 75 (Ct. App. 2017) (emphasis added) (citation omitted).

As the circuit court concluded, the factual findings in the ALC Orders established the purported false and defamatory statements DSS (or Young) allegedly made were in fact true. (Summ. J. Order at 12). Given that truth is an absolute defense to a defamation claim, *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976), the circuit court held DSS was entitled to judgment as a matter of law because Appellants failed to appeal those adverse findings in the ALC Orders.[2] (Summ. J. Order at 12–13). Notably, as the circuit court acknowledged, another circuit court "previously found the same statements alleged to be defamatory [in this case] were in fact true as they related to [Appellants'] former dealings and contract with DOE." (Summ. J. Order at 13). That order granting summary judgment to DOE—which addressed nearly identical claims against it—is also pending on appeal in this Court. *See Sch. of Hope v. S.C. Dep't of Educ.*, App. Case No. 2023-000500.

Still, Appellants claim they presented a "scintilla" of evidence to survive summary judgment. Appellants' Br. at 6–7. For one, a scintilla is insufficient to defeat summary judgment.

[2] Appellants contend the truth of the statements were "negated by the dropping of the FBI's investigation against the School of Hope and the return of its records in February 2020." Appellants' Br. at 7. Even if this were true, Appellants presented no evidence of this to circuit court. "Arguments of counsel [] are not evidence." *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991).

Kitchen Planners, LLC, 440 S.C. at 463, 892 S.E.2d at 301. For another, Appellants "presented no evidence at the hearing that DSS—or any of its agents or employees—made any statements, much less any false statements, about them. Rather, counsel for [Appellants] simply stated that he believed there was a genuine issue of material fact." (Summ. J. Order at 12–13). Even now, they refer only to their complaint to argue the circuit court erred. *See* Appellants' Br. at 7–8. Of course, as the circuit court found, "[t]hat is insufficient." (*Id.*); *see also* Rule 56(e), SCRCP ("an adverse party may not rest upon the mere allegations or denials of his pleading:").

The Court should thus reject Appellants' belated efforts to conjure an issue of material fact. *See First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514; *Fields*, 312 S.C. at 106, 439 S.E.2d at 285. Instead, the Court should find the circuit court correctly granted summary judgment to DSS.

CONCLUSION

For these reasons, the Court should affirm the circuit court's order granting summary judgment for DSS.

Respectfully submitted,

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