

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE NEWBERRY COUNTY
Court Of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

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SC Court of Appeals

CASE ACTION NO.: 2013-CP-36-332
APPELLATE CASE NO.: 2013-002434

Raymond D. Hobby.....Respondent,

v.

Mary T. Hobby.....Appellant.

INITIAL BRIEF OF RESPONDENT

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Statement of the Issues

- I. Do magistrates have subject matter jurisdiction to hear ejectment claims and set appropriate bonds under S.C. Code Ann. § 15-67-610 to 640?
- II. May a party challenge the magistrate's jurisdiction to decide an ejectment claim after she has argued successfully in a prior proceeding for the Circuit Court to dismiss the ejectment claim on grounds that the Magistrate's Court had exclusive original jurisdiction of it?
- III. Do findings in an order denying a motion for a temporary injunction constitute an adjudication for purposes of the doctrine of res judicata?
- IV. Are findings a Circuit Court makes in an order denying a motion for a temporary injunction binding on subsequent judges who hear the matter?

Statement of the Case

This is an appeal from an ejectment action in the Newberry County Magistrate's Court. The parties to this appeal were married for over twenty-five years and are now divorced. In conjunction with a settlement they reached in the divorce proceedings in 2010, the parties established the Hobby Family Liquidating Trust ("Liquidating Trust") to facilitate equitable distribution of marital property. One of the assets used to initially fund the Liquidating Trust was the former marital home located at 544 Crowder Road in Kinards, South Carolina ("the House"), in which the Appellant was living. In December 2011 and January 2012, both parties submitted bids to purchase the Property from the Liquidating Trust. Mr. Hobby outbid the Appellant. On April 19, 2012, Mr. Hobby closed on the House and received a quitclaim deed from the trustee. The Appellant, however, refused to move out of the House. She claimed that Mr. Hobby's offer to purchase the House included a term that would allow her to continue living in the House

rent-free. Despite two years of litigation, and several actions pending in various courts, she still lives there today.

The subject of this appeal is the judgment for ejectment that Mr. Hobby obtained in the Magistrate's Court. Under S.C. Code Ann. § 15-67-610,

If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, the owner of the land so trespassed upon may apply to any magistrate to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such magistrate shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary.

Mr. Hobby commenced this ejectment action on May 2, 2012. For over one year, the case bounced from court to court until the Newberry County Court of Common Pleas (hereinafter, "Circuit Court") issued a ruling that magistrates have exclusive original jurisdiction over ejectment claims brought under S.C. Code Ann. § 15-67-610. After receiving that ruling, Mr. Hobby returned to the Magistrate's Court to pursue his ejectment claim. His claim for damages (which by that time exceeded \$7,500) remained in the Circuit Court. Thus, the only claim before the magistrate was Mr. Hobby's claim to recover possession of the House.

On June 28, 2013, the parties tried the ejectment claim before the Newberry Magistrate. The magistrate found in favor of Mr. Hobby and entered judgment against the Appellant. On appeal to the Circuit Court, The Honorable Frank R. Addy, Jr. affirmed. The Appellant now appeals the Circuit Court's September 26, 2013 order affirming the Magistrate.

Statement of the Facts

On April 19, 2012, Raymond D. Hobby closed the purchase of the House. (Quitclaim Deed dated April 19, 2012.) He purchased the House from the Liquidating Trust, which he and Appellant created as part of their divorce settlement to accomplish equitable division of marital property. Mr. Hobby paid \$325,000.00 for the House. (Quitclaim Deed, Pl's Exhibit 1, Trial Tr. pp. 40, 70.)

At the time the parties created the Liquidating Trust, Appellant was living there. She continued to live there after conveying the House into the Liquidating Trust. After Mr. Hobby closed his purchase of the House on April 19, 2012, the Appellant continued living in the House. (Trial Tr. pp. 70, 77.) She refused to move out, claiming that Mr. Hobby's offer included a term that allowed her to keep living in the House rent-free after he bought it. (Trial Tr. p.71.) Mr. Hobby then commenced this ejectment action on May 2, 2012 pursuant to S.C. Code Ann. § 15-67-610, *et seq.* (Notice to Quit.) Based on several jurisdictional challenges, the dispute pinballed through the Family Court and Circuit Court over the following year.

On May 21, 2013, R. Knox McMahon, circuit Court Judge, held a hearing on three motions pending in C/A No.: 2013-CP-36-193 (hereinafter, "Circuit Court Case"): Mr. Hobby's motion for summary ejectment, his motion for a temporary injunction, and the Appellant's motion to dismiss for lack of subject matter jurisdiction. (Order issued May 31, 2013.) The Appellant argued Mr. Hobby's ejectment claim was "a statutory claim within the jurisdiction of the magistrate court, not the circuit court." (App's Mot. to Dismiss dated May 8, 2013.)

On May 31, 2013, Judge McMahon issued an Order denying both of Mr. Hobby's motions and effectively granting the Appellant's motion to dismiss. (Order issued May 31, 2013.) He held that the language of S.C. Code Ann. § 15-67-610 clearly and unambiguously conferred exclusive original jurisdiction on magistrates to hear claims for ejectment of a trespasser. Accordingly, he held the Circuit Court lacked any jurisdiction to hear the ejectment claim. Id. In the same order, Judge McMahon denied the motion for a temporary injunction reasoning that Mr. Hobby failed to prove he was without an adequate remedy at law and preserving status quo weighed against granting an injunction that would require the Appellant to vacate the House. Id.

Based upon the Circuit Court's order, Mr. Hobby pursued his claim for possession of the House in the magistrate's court; he pursued his damages claims in the Circuit Court Case.

On June 28, 2013, the parties tried the ejectment claim before Ronald C. Halfacre, Magistrate Judge ("Magistrate"). At the trial, Pope D. Johnson, III, Esquire appeared on behalf of the Appellant, and Mr. Hobby appeared *pro se*. During a trial that lasted over an hour and a half, the Magistrate heard arguments from Appellant's counsel and testimony from both parties. After considering the arguments and testimony, the Magistrate determined that Mr. Hobby proved his case for ejectment under the statute. (Trial Tr. p. 80; Judgment dated June 28, 2013; Return of Appeal dated July 19, 2013.) Accordingly, the Magistrate entered judgment in favor of Mr. Hobby. (Judgment dated June 28, 2013.)

On July 1, 2013, Appellant filed a motion to alter or amend the Magistrate's judgment, in which she asked the Magistrate to enjoin the Respondent from executing on

his judgment pursuant to S.C. Code Ann. § 15-67-640, and to determine what bond, if any, was required for that injunction. The same day, Appellant served a Notice of Appeal. (Notice of Appeal dated July 1, 2013.)

On July 19, 2013, the Magistrate held a hearing on Appellant's motion and set bond in the amount of \$10,000 pursuant to S.C. Code Ann. § 15-67-620 and 640. (Return of Appeal dated July 19, 2013.)

Frank R. Addy, Jr., Circuit Court Judge, heard the appeal on September 4, 2013. After the parties presented their arguments on the ejectment appeal, the Court also heard arguments on motions unrelated to this appeal that were pending in the Circuit Court Case. On September 26, 2013, the court issued an order affirming the Magistrate's judgment in this matter. Specifically, the court held, "the magistrate has jurisdiction over ejectments under Section 15-67-610. . . . The court finds that the magistrate properly exercised jurisdiction over the subject matter." (Order Affirming Magistrate, September 26, 2013.) Reviewing the merits of the appeal, Judge Addy held the record fully supported the Magistrate's judgment. Id. Finally, the court determined that the Magistrate did not err by setting bond in excess of the jurisdictional limitations imposed by S.C. Code Ann. § 22-3-10. Id. On Appellant's motion to reconsider, the Circuit Court struck only its finding that Appellant had challenged jurisdiction at every turn in this dispute. (Order on Motion for Reconsideration, October 28, 2013.) The remainder of the Court's Order affirming the Magistrate remained intact. Id.

On November 11, 2013, Appellant served her notice of this appeal.

Standard of Review

The standard of review for an Order of the Circuit Court affirming a judgment of the Magistrate's Court is limited:

[T]he Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law. . .

Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984) (citations omitted); *see also* Hadfield v. Gilchrist, 343 S.C. 88, 93, 538 S.E.2d 268, 271 (Ct. App. 2000). “[W]here the testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the Circuit Court, this Court will assume the Circuit Court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law.” Hadfield, 343 S.C. at 93, 538 S.E.2d at 271 (citing Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913)). “In ejectment proceedings first heard in magistrate's court, the Court of Appeals is without jurisdiction to reverse the findings of fact of the circuit court if there is any supporting evidence.” Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 233, 312 S.E.2d 20, 21 (Ct. App. 1984); Bowers v. Thomas, 373 S.C. 240, 644 S.E.2d 761 (Ct. App. 2007).

Argument

To succeed in her appeal, therefore, the Appellant must show that there is no evidence in the record to support the Magistrate's judgment or that the affirmance was influenced by an error of law. She can show neither.

Appellant argues the Magistrate lacked subject matter jurisdiction over the ejectment claim. The record in this case shows, however, that Appellant successfully

argued in a prior Circuit Court proceeding for the Circuit Court to dismiss that claim on the grounds that the Magistrate's Court had exclusive original jurisdiction of it. (App.'s Mot. to Dismiss, C/A No. 2013-CP-36-193; Order Denying Mot. For Summary Ejectment, May 31, 2013.) Therefore, she was barred from shifting her position to relitigate that issue before the Magistrate. Furthermore, contrary to Appellant's arguments, magistrates do have jurisdiction to hear statutory ejectment claims and to set an appropriate bond. Finally, Appellant argues Judge McMahon made findings in his order that bound the parties and prohibited Mr. Hobby from pursuing his ejectment claim before the Magistrate. However, findings denying preliminary relief, such as a temporary injunction, are not binding. Nothing in Judge McMahon's order barred Mr. Hobby from pursuing his ejectment claim.

For these reasons, as well as any other grounds appearing in the record pursuant to Rule 220(c), SCACR, the Circuit Court committed no error by affirming the Magistrate's judgment was not influenced by any error of law and should be affirmed.

I. The Appellant is barred from contesting the Magistrate's jurisdiction to decide the ejectment claim because she already litigated that issue and won.

Appellant first argues that the Circuit Court erred in finding that the Magistrate had subject matter jurisdiction over Mr. Hobby's ejectment claim under S.C. Code Ann. 15-67-610, *et seq.* The procedural history of this dispute shows, however, that several doctrines bar the Appellant relitigating whether a magistrate has jurisdiction to hear an ejectment claim.

A. Appellant is barred from reopening the issue of whether the Magistrate had jurisdiction because the Circuit Court's order finding that Magistrates had exclusive original jurisdiction of ejectment claims is the law of the case.

Appellant's challenge to the magistrate's subject matter jurisdiction overlooks her own past success in this case, as well as an Order of the Circuit Court that has become the law of the case.

In Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009), the Supreme Court of South Carolina held that while subject matter jurisdiction may be challenged at any time, a party may not reopen the issue repeatedly. In that case, the appellant had been sued in magistrate's court. Id. at 456, 152. In response, he filed a counterclaim in excess of the magistrate's jurisdictional limits. Id. at 456-57, 152. When he failed to appear at trial, the magistrate proceeded in the appellant's absence and entered judgment against him. Id. at 457, 152. On appeal, the circuit court affirmed, despite the appellant's jurisdictional challenges. The appellant did not appeal the circuit court's order. Id. Instead, he filed a subsequent action asking for a declaratory judgment finding the magistrate's judgment void *ab initio* based on lack of subject matter jurisdiction. Id. The trial court disagreed and entered an order denying the relief sought. Id. at 457, 152-53.

On appeal, the Supreme Court held, "Appellant may not seek relief from the prior unappealed order of the circuit court because the order has become the law of the case." Id. at 458, 153. The Court held the appellant's declaratory judgment action was an attempt "to reopen the question of whether the magistrate had subject matter jurisdiction to hear the merits of the underlying dispute." Id. at 459, 153. "However, [appellant] raised this issue and argued it before the circuit court...the circuit court's unchallenged disposition on the magistrate's subject matter jurisdiction therefore became the law of the case, and this Court declines to reopen that issue in this subsequent action." Id.

Similar to the appellant in Judy, the Appellant in this case may not reopen the question of whether a magistrate has jurisdiction to decide the ejectment claim. She already raised that issue to the Circuit Court and won. In the Circuit Court Case, she argued for dismissal “upon the grounds that the claim for summary ejectment...is a statutory claim within the jurisdiction of the magistrate court, not the circuit court.” (App’s Mot. to Dismiss, May 8, 2013.) The Circuit Court agreed and held the magistrate had sole and exclusive subject matter jurisdiction of the ejectment claim under S.C. Code Ann. 15-67-610, *et seq.* (Order Denying Mot. for Summary Ejectment, May 31, 2013, C/A No. 2013-CP-36-0193 pp. 3-4.) Neither party appealed the Circuit Court’s May 31, 2013 Order. As a result, the ruling that the magistrate had exclusive jurisdiction to hear the ejectment claim became the law of the case.

The Appellant, therefore, was barred from reopening that issue and contesting the Magistrate’s jurisdiction at trial. She must live with her victory.

B. *Res judicata* and collateral estoppel bar the Appellant from relitigating whether the Magistrate had jurisdiction to hear the ejectment claim.

“Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action.” Catawba Indian Nation v. State, 407 S.C. 526, 536, 756 S.E.2d 900, 906 (2014) (quoting S.C. Prop. & Cas. Ins. Guaranty Ass’n v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991)). “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.” Id. (quoting

Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009)).

In this case, the parties previously litigated whether a magistrate had jurisdiction to hear the ejectment claim. Judge McMahon's ruling that the Circuit Court has only appellate jurisdiction over ejectment claims not only became the law of the case, it became an issue actually litigated, directly determined, and necessary to support the May 31, 2013 Order. The Circuit Court explicitly held that the clear and unambiguous language of the statute confers exclusive original jurisdiction on magistrates. (Order Denying Mot. for Summary Ejectment, May 31, 2013, C/A No. 2013-CP-36-0193 pp. 3-4.) That holding was the only basis the court gave for denying Mr. Hobby's motion for summary ejectment. Id. Therefore, all three elements of collateral estoppel are present, and the Appellant may not relitigate whether the magistrate had jurisdiction of the ejectment claim.

Similarly, the doctrine of res judicata bars the Appellant from relitigating whether the Magistrate had jurisdiction to decide the ejectment case. "Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." Catawba Indian Nation, 407 S.C. at 537, 756 S.E.2d at 907 (citing Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994)). The parties in this case are the same as in the Circuit Court Case, as is the subject matter. Finally, the circuit court previously adjudicated the precise issue the Appellant attempts to relitigate in this case: whether the ejectment claim was

within the exclusive original jurisdiction of the magistrate's court. Judge McMahon answered that question in the affirmative.

Notably, this application is distinct from the argument the Appellant offers. The issue of whether the Magistrate had jurisdiction of the claim is a legal issue that was decided and not appealed. By contrast, no court made any determination on the merits of the ejectment claim prior to June 28, 2013. Therefore, while the Appellant's res judicata argument is misplaced, *see* Section III below that doctrine bars her from contesting the Magistrate's jurisdiction in this case.

C. The doctrine of judicial estoppel bars the Appellant from arguing that the Magistrate lacked subject matter jurisdiction over the ejectment claim.

Based upon the record, the doctrine of judicial estoppel also bars the Appellant from challenging the magistrate's jurisdiction. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). In order for the doctrine to apply, the following elements must be present:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent."

Cothran, 357 S.C. at 215-16 592, S.E.2d at 632. All five elements are present in this case.

First, Appellant has taken inconsistent positions as to the magistrate's jurisdiction. She convinced Judge McMahon to dismiss the ejectment claim before him on the basis that magistrates have exclusive original jurisdiction of ejectment claim under S.C. Code Ann.

§ 15-67-610. After prevailing at the May 21, 2013 hearing, she has taken an entirely different position in this case. She argues no magistrate has jurisdiction of Mr. Hobby's ejectment claim. Second, the May 21, 2013 hearing in the Circuit Court Case and the June 28th, 2013 trial before the Magistrate were related because they involved precisely the same claim. Third, the Appellant was successful in maintaining her position to the Circuit Court and received a benefit because the court denied Mr. Hobby's motion and effectively dismissed the ejectment claim from the Circuit Court Case. As to the fourth element, the Circuit Court's order affirming the Magistrate illustrates the Appellant's continuing efforts to prolong this dispute no matter the cost, no matter the means, in an effort to continue living in the House rent-free. This dispute bounced between no fewer than four different courts over more than one year before Mr. Hobby finally had his day in court. Now, after successfully convincing the Circuit Court that the magistrate had jurisdiction, she refuses to take "yes" for an answer. Considering the lack of evidence in the record supporting the Appellant's belief that she has a right to continue living in the House rent-free, coupled with the irreconcilable positions she has taken, the only reasonable conclusion is that the Appellant's constant shift in positions is part of an intentional effort to mislead the court and delay ejectment from the House. Finally, the fifth element is satisfied because the Appellant's position that the magistrate now lacks jurisdiction is totally inconsistent with her argument to the Circuit Court that the magistrate had exclusive original jurisdiction. For these reasons, the doctrine of judicial estoppel bars Appellant from challenging the magistrate's jurisdiction.

Accordingly, the Appellant is barred from arguing the Magistrate lacked jurisdiction to decide the ejectment claim. Rather, the parties are bound by the Circuit

Court's holding that the ejectment claim lay within the jurisdiction of the Magistrate's Court, not the Circuit Court.

II. The Circuit Court correctly determined that magistrates have jurisdiction to hear an ejectment claim under S.C. Code Ann. § 15-67-610 and to set an appropriate bond.

Appellant's arguments aside, the clear and unambiguous language of the statute shows the General Assembly's intent that magistrates have the authority to decide ejectment claims.

S.C. Code Ann. § 15-67-610 provides,

If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, the owner of the land so trespassed upon may apply to any **magistrate** to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such **magistrate** shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary.

(emphasis added). However, an order of ejectment should not be issued when the trespasser shows a colorable claim to possession of the property *and* if the trespasser posts a sufficient bond. S.C. Code Ann. § 15-67-620. The bond must cover "all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him." *Id.* Furthermore, the Appellant had a right to obtain an injunction, "upon giving the bond required by Section 15-67-620, restraining the execution of such warrant pending the determination of [her] appeal by the circuit court." S.C. Code Ann. § 15-67-640.

First, Appellant argues the Circuit Court erred in affirming the Magistrate's judgment because the ejectment claim required the Magistrate to determine questions of title, i.e., (i) whether Mr. Hobby owned the property, and (ii) whether the Appellant had a bona fide claim to possession. These issues, the Appellant argues, called title to the property into question and are beyond a magistrate's authority under S.C. Code Ann. § 22-3-20. (App.'s Br. at 6 ("The Magistrate...ruled on the question of title to the real estate, finding that Mr. Hobby had proved his case and was the legal owner of the property.")) Appellant's counsel conceded at trial, however, that Appellant was not contesting title.

MR. JOHNSON: I think you're making your ruling based on Mr. Hobby being the owner of the property.

THE COURT: That's correct.

MR. JOHNSON: And I understand that you're finding on that and we haven't really contested that he has title to the property.

(Tr. Transcript 82:20-83:1.) Moreover, Appellant's argument is in derogation of the statute's clear and unambiguous language.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 147, 694 S.E.2d 525, 529 (2010). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. at 148, 530. The language in the statute clearly demonstrates the legislature's intent that magistrates hear motions and issue orders for ejectment cases brought under in S.C. Code Ann. § 15-67-610. The statute refers to "magistrates," not "courts." *See* S.C. Code Ann. §§ 15-67-610 to 640. The Appellant argues that despite the statute's clear and

unambiguous language, magistrates have no authority to determine issues crucial to an ejectment claim such as whether the person seeking ejectment owns the property. However, “[a]s a general rule, a statute of a specific nature is not to be considered as repealed in whole or in part by a later general statute, unless there is a direct reference to the former or the intent of the legislature to repeal is explicitly implied therein.” Spartanburg County Dep’t of Soc. Servs. v. Little, 309 S.C. 122, 125, 420 S.E.2d 499, 501 (1992). Nothing in §22-3-20 contains a direct reference to § 15-67-610, nor does the former contain any indication of the Legislature’s intent to repeal the latter. Furthermore, adopting the Appellant’s interpretation would lead to the absurd result that no magistrate may hear an ejectment claim. See State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.”); Moore v. Moore, 187 S.C. 144, 197 S.E. 507 (1938) (holding the summary ejectment statutes patently confer exclusive original jurisdiction to magistrates).

Second, the Appellant argues that the Magistrate lacked jurisdiction because Mr. Hobby claimed damages in excess of the \$7,500 amount-in-controversy limit. In truth, however, this is a misstatement. The only evidence of damages was presented at a bond hearing on July 19, 2013, upon Appellant’s motion for the Magistrate to issue an injunction and bond pursuant to §15-67-640.¹ (Return of Appeal dated July 19, 2013.)

¹ Appellant argues the bond was set pursuant to S.C. Code Ann. § 15-67-620 and that the setting of a bond itself implies a ruling that Appellant had a colorable claim to possession. However, the Magistrate set bond under S.C. Code Ann. § 15-67-640, which enables a party to post bond *after judgment is entered* to stay ejectment pending her appeal. (Trial Tr. pp. 80-81.) Nothing in the record supports Appellant’s assertion that the Magistrate “implicitly found that Ms. Hobby has a colorable claim to possession of the real property.” (App.’s Br. at 6.) Indeed, that assertion directly contravenes the judgment the Magistrate entered to have her ejected from the House. (See Judgment issued June 28, 2013.)

That hearing occurred well after the Magistrate entered judgment on the ejectment claim. Therefore, even if the Magistrate lacked jurisdiction to set bond in excess of \$7,500, that error is no basis to reverse the Magistrate's judgment, which was entered long before. The evidence of damages about which the Appellant complains was not presented at trial and had no influence on the outcome of the case. The fundamental flaw in the Appellant's argument is that an order setting bond pursuant to §§ 15-67-620 and 640 is not a finding on the merits. At no time in this case has Mr. Hobby prayed for any damages award, nor has he commenced any action on the bond. This appeal concerns only Mr. Hobby's claim for possession of the House. His damages claims are still pending in the Circuit Court Case.

The sole issue before the Magistrate at the bond hearing was to determine the amount of bond required to cover "all such costs and expenses as [Mr. Hobby] may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him." *See* S.C. Code Ann. § 15-67-620. The Magistrate was not asked to determine whether Mr. Hobby is entitled to receive that money, nor did he. Instead, the Magistrate simply set the amount of the bond pursuant to the statute and required the Appellant to pay it to continue living in the House rent-free pending the appeal to the Circuit Court. Therefore, there was no "amount in controversy" for purposes of the bond hearing, and there was no order that the Appellant pay the money to Mr. Hobby. As a result, the Magistrate acted within his jurisdictional authority to set an appropriate bond under § 15-67-620 and 640.

The clear and unambiguous language of the statute shows the Legislature's intent to confer to magistrates the power to hear claims brought under S.C. Code § 15-67-610,

including setting a bond that provides the property owner sufficient security pending an appeal. Thus, similar to her interpretation of §22-3-20, Appellant's interpretation that §22-3-10 applies to appellate bonds set under the ejectment statutes is unreasonable because it impedes a magistrate's ability to effectuate the Legislature's intent to set an appropriate bond. *See State v. Sweat*. Moreover, the Appellant concedes that the statute on which she relies does not specifically mention bonds under the ejectment statutes. *See Spartanburg County Dep't of Soc. Servs. v. Little*. (statute of a specific nature not repealed by later general statute without direct reference or the intent of the legislature explicitly implied). Therefore, the statute upon which the Appellant relies provides no support for her argument to limit a magistrate's ability to set an appropriate bond under S.C. Code Ann. § 15-67-620.

For these reasons, the Circuit Court did not err when it held the Magistrate had jurisdiction to decide the ejectment claim and to set bond in excess of \$7,500.

III. The doctrine of *res judicata* does not bar Mr. Hobby's ejectment claim because there was no prior adjudication of that claim.

The Appellant claims the Circuit Court erred when it held Mr. Hobby's ejectment claim was not barred by the doctrine of *res judicata*. However, nothing in the record supports Appellant's belief that Mr. Hobby's ejectment claim was adjudicated in a prior proceeding.

"Res judicata bars subsequent actions 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." *Catawba Indian Nation v. State*, 407 S.C. at 537, 756 S.E.2d at 906-07 (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109

(1999). In order for res judicata to apply the proponent must show: “(1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction.” *Id.* (citing Johnson v. Greenwood Mills, Inc., at 250–51, 833. The adjudication contemplated is a final, valid determination on the merits. Catawba Indian Nation, 407 S.C. at 539, 756 S.E.2d 908 (res judicata does not apply to issues not actually raised and decided in prior suit); Stone v. Roadway Express, Employer, 367 S.C. 575, 580, 627 S.E.2d 695, 697 (2006) (res judicata requires final, valid judgment on the merits); Griggs v. Griggs, 214 S.C. 177, 51 S.E.2d 622 (1949) (same); Latimer v. Farmer, 360 S.C. 375, 385, 602 S.E.2d 32, 37 (2004) (same); S. Carolina Pub. Interest Found. v. Greenville Cnty., 401 S.C. 377, 386, 737 S.E.2d 502, 507 (Ct. App. 2013) (res judicata applies to final adjudication on the merits); Plott v. Justin Enterprises, 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct. App. 2007) (same); Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995) (same); Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993) (same). “The doctrine of res judicata is not an ‘ironclad bar,’ however, to a later lawsuit. Catawba Indian Nation, 407 S.C. at 537, 756 S.E.2d at 908.

In this case, res judicata does not apply because there was no prior adjudication of Mr. Hobby’s summary ejectment claim. Judge McMahon’s May 31, 2013 Order, on which the Appellant relies, falls short of deciding the merits of the claim. Rather, the court dismissed the claim for lack of subject matter jurisdiction and denied Mr. Hobby’s motion for a temporary injunction. Neither holding was a final adjudication on the merits of the ejectment claim. The Circuit Court *could not* have decided the merits of the

summary ejectment claim because it had no jurisdiction and, therefore, was not a court of competent jurisdiction.

Moreover, the language which the Appellant claims constituted an adjudication of the ejectment claim is within the court's reasoning for denying the motion for a temporary injunction, not the summary ejectment motion. It has long been the law in South Carolina that "the findings and conclusions of a judge on motions for preliminary or temporary injunctions are not binding on the Court when it comes to decide the case on its merits." G-H Ins. Agency, Inc., v. Travelers Ins. Co., 270 S.C. 147, 173, 241 S.E.2d 534, 546 (1978) (quoting Montgomery v. Robinson, 93 S.C. 247, 76 S.E. 188, 190 (1912)), *distinguished on other grounds* 283 S.C. 11, 320 S.E.2d 495 (Ct. App. 1984). In G-H Ins. Agency, Inc., the Supreme Court of South Carolina explained,

A circuit judge in an application for a temporary injunction cannot try the case on its merits and make a final order that disposes of the case on its merits. The question for him to determine is solely whether in the exercise of his discretion he will grant or refuse the application for the temporary restraining order, and for this purpose he can inquire sufficiently into the merits of the case to say how his discretion will be exercised, whether he will grant or refuse the order.... His order necessarily could not prejudice the plaintiff or defendant on the final hearing of the case on its merits.

Id. at 174, 547. When deciding a motion for a temporary injunction, "[t]he court may examine the merits of the case to the extent necessary to determine whether the application has set forth facts sufficient to justify a temporary injunction. However, the court may not make a final determination or decide the ultimate merits." 27 S.C. Jur. *Injunctions* § 9 (citing Transcontinental Gas Pipe Line Corp. v. Porter, 252 S. C. 478, 167 S. E. 2d 313 (1969); Roberts v. Union County Bd. of School Trustees, 284 S. C. 299, 326 S. E. 2d 163 (Ct. App. 1985)). "The purpose of the temporary injunction is not to decide the controversy, but only to protect a party from immediate and irreparable harm until the

action may be heard and resolved in an orderly and deliberate fashion, affording all parties an opportunity to be heard.” Id. “A temporary injunction is therefore made without prejudice to the rights of the parties; when the issues are ultimately brought to trial, they must be determined without reference to any findings or conclusions made when the temporary injunction was decided.” Id. (citing Helsel v. N. Myrtle Beach, 307 S. C. 29, 413 S. E. 2d 824 (1992)).

Here, Appellant contends the following statement in Judge McMahon’s order bars Mr. Hobby’s ejectment claim: “To preserve the status quo during the pendency of the litigation requires the Defendant to remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff’s Motion for a Temporary Injunction is DENIED.” (App.’s Brief at 10.) Appellant’s argument overlooks the well-established law in this state that an order denying a temporary injunction is not a binding decision on the merits. The Magistrate recognized that flaw in Appellant’s argument at trial:

I'll speak on that first and the reason I did that and that's why I put it on record the time frame from May of 2012 until today, and, of course, I try to be reasonable with everyone, been going on for over—over a year, and, you know, it's been moved from different courts and finally back here and I feel like if—if the fact that the Circuit Court or somebody would have made a ruling to say that she could stay there, they made no ruling saying that she could stay. All they say was it was denied. And they denied the motion.

(Tr. Transcr. 84:10-22.) For these reasons, there was no prior adjudication of Mr. Hobby’s ejectment claim, and, therefore, res judicata does not apply. Accordingly, the Circuit Court’s order should be affirmed.

IV. The findings the Circuit Court made when denying Mr. Hobby’s motion for a temporary injunction were not binding and, therefore, did not bar the Magistrate from holding a bench trial on the ejectment claim.

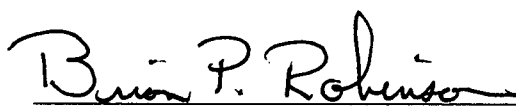
In her final two arguments for reversal, Appellant contends the Circuit Court's affirmance should be reversed because the Magistrate made findings inconsistent with Judge McMahon's May 31, 2013 order and because the Circuit Court's order affirming the Magistrate effectively reversed Judge McMahon's order. As discussed in Section III above, these arguments are based upon the faulty premise that findings Judge McMahon made in denying a temporary injunction were binding. The well-established law in this state says otherwise. *See G-H Ins. Agency, Inc.* None of the findings a court makes when denying preliminary relief are binding. *Id.* At no time did Judge McMahon make any finding about who owned the House or whether the Appellant presented any evidence showing she had a right to continue living there. Therefore, Appellant's argument is misplaced. The Magistrate was free to make findings of facts and conclusions of law on the ejectment claim, and the Circuit Court was free to review the record and give judgment according to the justice of the case.

Accordingly, the Circuit Court committed no error by affirming the Magistrate's judgment.

Conclusion

Appellant claims the Circuit Court's Order affirming the Magistrate should be reversed because the Magistrate lacked subject matter jurisdiction to decide the ejectment claim and because the Magistrate was bound by a finding the Circuit Court made previously. However, the record demonstrates that the Appellant should be barred from relitigating the Magistrate's jurisdiction in this case. Moreover, to the extent the Appellant may relitigate subject matter jurisdiction at any time, the Circuit Court's affirmance was not influenced by any error of law because the statute confers jurisdiction on magistrates to decide ejectment claims and to set an appropriate bond. Finally, the

Appellant's arguments notwithstanding, the Circuit Court's findings related to its denial of a temporary injunction were not binding because they related to preliminary relief, not a final decision on the merits. Therefore, Appellant has failed to identify any error of law which influenced the Circuit Court's order affirming the Magistrate's judgment, and this Court should affirm.

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July 2, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE NEWBERRY COUNTY
Court Of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

CASE ACTION NO.: 2013-CP-36-332
APPELLATE CASE NO.: 2013-002434

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SC Court of Appeals

Raymond D. Hobby.....Respondent,

v.

Mary T. Hobby.....Appellant.

CERTIFICATE OF COUNSEL

I certify that the Designation of Matter to be included in the Record on Appeal by Respondent contains no matter which is irrelevant to the appeal.

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PROOF OF SERVICE

I, Bridget Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, certify that a copy of the attached Initial Brief of Respondent and Designation of Matter to be Included in Record On Appeal by Respondent Raymond D. Hobby was served by U.S. Mail on Pope D. Johnson, Esquire, 1230 Richland Street, Columbia, South Carolina 29201 this 2nd day of July, 2014.


Bridget Steele

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SC Court of Appeals

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July 2, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

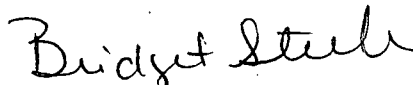
Re: *Raymond D. Hobby v. Mary T. Hobby*
Case No.: 2013-002434
BPWM File No: 1-04.141

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Respondent's Initial Brief and Designation of Matter in the above-referenced matter. Please file the original, clock-in the copies and return them to me via our courier. By copy of this letter, I am serving the same on counsel of record. If you have any questions please do not hesitate to contact me.

With my kindest regards, I am

Sincerely yours,



Bridget S. Steele

Legal Assistant to Benjamin C. Bruner

BCB:gh

/Enclosures

cc: Pope D. Johnson, Esquire (via hand delivery w/ enclosures)

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JUL 02 2014

SC Court of Appeals