

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

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MAY 07 2016

SC Court of Appeals

Case No. 2014-CP-45-377

Lauren Goodman,

Respondent,

v.

Willie Marion Brown,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT ON THE ISSUE OF WHETHER, UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL, A GUILTY VERDICT AGAINST APPELLANT IN A RELATED CRIMINAL PROCEEDING IS CONCLUSIVE ON THE ISSUE OF APPELLANT'S LIABILITY TO RESPONDENT IN THE PENDING CIVIL PROCEEDING WHEN THE CRIMINAL PROCEEDING IS ON APPEAL?

STATEMENT OF THE CASE

This case is a civil action which was filed by Respondent Lauren Goodman (“Goodman”) on July 28, 2014. In her Complaint, Goodman alleges that Appellant Willie Marion Brown (“Brown”) committed certain sexual acts against Goodman between April 20, 2002 and January 26, 2006, while Goodman was a minor. (Compl. ¶¶ 8-10). Goodman claims she was injured as a result of these alleged acts, and she seeks an unspecified amount of actual and punitive damages. (*Id.* at ¶¶ 15, 19, 23, 28, 31, 33).

By way of background, on October 25, 2012, Brown was indicted on two counts of first degree criminal sexual conduct with Goodman and one count of committing a lewd act on Goodman. (Ex. A: Indictment). Brown pleaded not guilty, and a jury trial was held in the Williamsburg County Court of General Sessions beginning May 20, 2014. On May 23, 2014, the jury returned a verdict finding Brown guilty on each charge. (Ex. B: Trial Tr. p. 519-20). The trial court sentenced Brown to thirty-five years imprisonment for the CSC counts and fifteen years for the lewd act count, with all sentences to run concurrently. (Ex. C: Sentencing Sheets). A judgment to this effect was entered on May 23, 2014.¹ Brown filed a notice of appeal of his conviction on August 1, 2014. (Ex. D: Notice of Appeal).

The pending civil action against Brown arises out of the same allegations of sexual assault that were presented in the criminal trial. (Ex. A; Compl. ¶¶ 8-10). After the criminal appeal was filed, on October 8, 2014, Goodman filed a motion for summary judgment in the civil matter, arguing that pursuant to the doctrine of collateral estoppel, Brown’s convictions

¹ Brown filed a motion for reconsideration of the sentence on June 2, 2014, and in a July 21, 2014 order, the trial court reduced Brown’s sentence to twenty-eight years imprisonment for the CSC counts and fifteen years for the lewd act count, with all sentences to run concurrently.

in the related criminal matter were conclusive in the pending civil action because the underlying facts and issues of both matters were the same, the issues were actually litigated and determined by a valid and final judgment, and Brown had a full and fair opportunity to litigate these issues in the criminal matter. (Mot. for Summ. J. p. 2-3). Brown filed a response in opposition to the motion for summary judgment on October 23, 2014. (Resp. in Opp'n to Mot. for Summ. J.).

The trial court held a hearing on the motion on October 30, 2014 at the Williamsburg County Courthouse in Kingstree, South Carolina. Thereafter the trial court issued an Order granting Goodman's motion for summary judgment, which was filed on December 17, 2014. (Order, Dec. 12, 2014). On January 12, 2015, Brown filed a timely motion for reconsideration pursuant to Rule 59(e), SCRPC. (Mot. for Recons.). On February 13, 2015 the trial court issued a Form 4 Order which denied Brown's motion for reconsideration. (Order, Feb. 13, 2015). Brown received written notice of entry of this order on or about February 19, 2015. Subsequently, Brown served a timely notice of appeal from the denial of the motion for reconsideration on March 4, 2015.

ARGUMENT

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THE ISSUE OF WHETHER, UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL, A GUILTY VERDICT AGAINST BROWN IN A RELATED CRIMINAL PROCEEDING IS CONCLUSIVE ON THE ISSUE OF BROWN'S LIABILITY TO GOODMAN IN THE PENDING CIVIL PROCEEDING IS NOT RIPE FOR CONSIDERATION.

As noted in the trial court's December 12, 2014 order, "[u]nder the doctrine of collateral estoppel, also known as issue preclusion, when an issue has been actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action whether on the same or different claim." (Order, Dec. 12, 2014). Although this is a correct

statement of the law, this issue is not ripe for consideration in this case because the judgment in Brown's criminal matter is not "final", as an appeal of the criminal convictions is pending in the South Carolina Court of Appeals. (Ex. D). After an exhaustive review of the case law in South Carolina, it appears that none of the appellate courts in our state have decided the precise issue of whether collateral estoppel applies in a subsequent civil proceeding when a criminal conviction is under review. Moreover, Doe v. Doe, 346 S.C. 145, 551 S.E.2d 257 (2001), which Goodman cites in support of her motion for summary judgment, provides no guidance on this issue because the Doe case was decided following the appellate court's denial of the defendant Doe's appeal of his criminal convictions.²

The issue of whether collateral estoppel applies in a subsequent civil proceeding when a criminal conviction is under appellate review is a novel issue in South Carolina; nevertheless, persuasive authority from the Restatement (Second) of Judgments and other jurisdictions support reversal of summary judgment. The Restatement (Second) of Judgments, upon which the appellate courts of this state have historically relied, states in part:

The pendency of a motion for new trial or to set aside a judgment, or of an appeal from a judgment, is relevant in deciding whether the question of preclusion should be presently decided in the second action. It may be appropriate to postpone decision of that question until the proceedings addressed to the judgment are concluded.

Restatement (Second) of Judgments §13, cmt. f (1982).³ Additionally, state courts in other

² Notably, Goodman's counsel stated at the October 30, 2014 hearing that the Supreme Court in Doe "adopted the rule that once a person has been criminally convicted *and exhausted all appellate remedies* or means of post-conviction relief, he is bound." (Tr. Hearing p. 6) (emphasis added). This statement actually supports Brown's position on this issue.

³ In S.C. Prop. and Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625 (1991), the South Carolina Court of Appeals adopted the doctrine of collateral estoppel formulated by the American Law Institute in the Restatement (Second) of Judgments. It

jurisdictions have held that a pending appeal prevents a prior judgment from constituting a final judgment for purposes of issue preclusion (collateral estoppel). See Manco Contracting Co. (W.W.L.) v. Bezdikian, 195 P.3d 604, 611 (Cal. 2008) (“[A] judgment is not final and conclusive between the parties when it is on appeal.”); Rantz v. Kaufman, 109 P.3d 132, 141 (Col. 2005) (citing Colorado law that a pending appeal prevents a prior judgment from constituting a final judgment for purposes of issue preclusion); Grider v. USX Corp., 847 P.2d 779, 784 (Okl. 1993) (“[A] final adjudication is either one in which no appeal has been taken and the time for appeal has run or one in which an appeal has been filed and acted upon by the appellate court.”); Ark. Best Freight System, Inc. v. H.H. Moore, Jr. Trucking Co., Inc., 421 S.E.2d 197, 199 (Va. 1992) (“[A] judgment, to be relied upon for the application of the doctrine of *res judicata*, must be final, and a judgment which is being appealed is not final for *res judicata* purposes.”) (citations omitted); Cups Coal Co., Inc. v. Tenn. River Pulp & Paper Co., 519 So.2d 932, 934 (Ala. 1988) (“Although a prior criminal conviction can be used in a subsequent civil suit arising out of the same transaction as substantive, though not conclusive, evidence that the acts underlying the crime were committed, such a conviction is inadmissible as substantive evidence if an appeal of the conviction is pending.”) (citations omitted); CS–Lakeview at Gwinnett, Inc. v. Retail Dev. Partners, et al., 602 S.E.2d 140, 142 (Ct. App. Ga. 2004) (“Under Georgia law, the fact that a prior court judgment has been appealed suspends the operation of any preclusive effect pending appeal.”). Based upon persuasive authority, Brown posits that until his pending criminal appeal has been decided, there is no final judgment for

logically follows that comment f of section 13 of the Restatement (Second) of Judgments would provide guidance on the issue as to whether a pending appeal of a judgment precludes the use of collateral estoppel in a subsequent proceeding.

which collateral estoppel would apply in this civil action.

Finally, if the trial court's order granting summary judgment stands, and an appellate court subsequently grants Brown's criminal appeal and his convictions are overturned, he will have already been required to pay a considerable amount of monetary damages to Goodman in this case. In that scenario, Brown will be unduly prejudiced because he will have already paid a judgment on the civil claims before a final determination is made as to his guilt in the criminal proceeding. Furthermore, the time and resources of the court will be wasted in having to go back and relitigate the issue of liability in the civil case. For all intents and purposes, it may even be too late at that point to "unring the bell." On the other hand, if the this Court reverses summary judgment, there is no harm to either of the parties. As to Brown, he would be able to respond to the allegations regarding civil liability for sexual abuse while his criminal appeal is pending, and as to the Goodman, she could proceed with discovery to provide support for her civil allegations, and in the event an appellate courts denies Brown's criminal appeal, Goodman could revisit the issue of collateral estoppel with the trial court.

CONCLUSION

Based on the foregoing, the Appellant, Willie Marion Brown, respectfully requests that this Court reverse the trial court's Order granting the Respondent's motion for summary judgment.

Respectfully submitted,

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May 5, 2015

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on the Respondent, Lauren Goodman, by depositing a copy of it in the United States Mail, postage prepaid, on May 5, 2015, addressed to its attorney of record, Steven S. McKenzie, Coffee, Chandler & McKenzie, P.A., 2 North Brooks Street, P.O. Box 1292 Manning, SC 29102.

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May 5, 2015

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SC Court of Appeals

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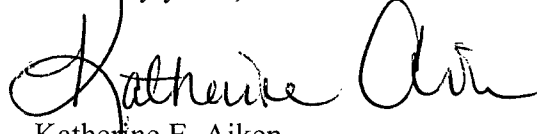
RE: Lauren Goodman, Respondent v. Willie Marion Brown, Appellant
Appellate Case No.: 2015-000546

Dear Ms. Kitchings:

Enclosed please find an original and copy of the Appellant's Initial Brief, Designation of Matter to be Included in the Record on Appeal and Proof of Service in connection with the above-captioned appeal. I would appreciate you filing the originals and returning the filed stamped copies to me in the enclosed self-addressed stamped envelope.

By copy of this letter to Steven Smith McKenzie, I am serving him with a copy of the same. Thanking you in advance for your assistance and, with kindest regards, I remain

Sincerely yours,



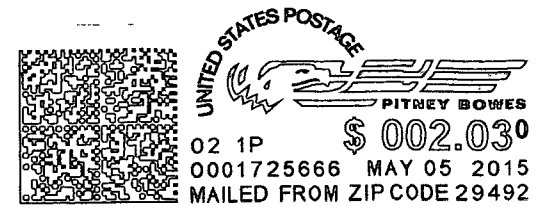
Katherine E. Aiken

Paralegal to Lionel S. Lofton

/kea

Enclosures as stated above

cc: G. Wells Dickson, Jr., Esquire with enclosures
Steven Smith McKenzie, Esquire with enclosures



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