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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

THE HONORABLE BENJAMIN H. CULBERTSON
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2016-000251
CIVIL ACTION NO. 2009-CP-22-0325

Willie Singleton and Julia Thomas, Heirs at Law of Victoria Gadson, deceased

PLAINTIFFS

v.

City of Georgetown Building Official Stephen Stack, Mayor Lynn Wood Wilson, Mayor Pro Temp Brendon M. Barber, Sr., Council Member Peggy P. Wayne, Council Member Clarence Smalls, Council Member Paige B. Sawyer, III, Council Member Rudolph A. Bradley, Council Member Jack Scoville, Director of Building Planning Sabrina Morris, Steve Thomas, City Administrator and The City of Georgetown,

DEFENDANTS

Of whom Willie Singleton is the

APPELLANT/RESPONDENT

And

The City of Georgetown is the

RESPONDENT/APPELLANT.

REPLY BRIEF OF APPELLANT/RESPONDENT

October 31, 2016

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ARGUMENTS

I. The Appellant has submitted Evidence of bias and Prejudice on the Part of Judge Culbertson.

The City contends that Appellant has failed to show prejudice and bias. However, the purpose of recusal and the Cannon's governing judicial conduct are in place to protect the interest of the public not just the individuals involved in that particular proceeding. *Canon 3(B)(1) of the Code of Judicial Conduct, Rule 501, SCACR.* The Cannons specifically state that "judge shall hear and decide matters assigned to the judge except those in which disqualification is required." *Canon 3(E)(1) of the Code of Judicial Conduct, Rule 501, SCACR.* "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a person bias or prejudice against a party." *Mortgage Electronic Systems, Inc. v. White*, 682 S.E. 2nd 492, 503, 384 S.C. 606 (Ct. App. 2009). *Koon v. Fares,* 379 S.C. 150, 156 666 S.E.2d 230, 234(2008). The Court requires that the moving party show evidence of bias or prejudice. The Respondent relies on *Jackson*; however, the Jackson case is substantially different from the present case as the only evidence provided in that case was the judge who handled the trial was the also the deputy solicitor for the county when Jackson was arrested. *State v. Jackson,* 353 S.C. 626, 626-627, 578 S.E. 2d 744 (S.C. App. 2003). *Jackson* is significantly different than the case involved here as there is an extensive history between Singleton, the Appellant and Judge Culbertson. In *Jackson*, the Defendant admitted to committing the crimes and the Court determined that the outcome in that case was warranted.

When reviewing decisions, the Court has addressed the issue of bias or prejudice. The

Court is specific that an individual requesting recusal should show evidence of bias or prejudice. *Patel v. Patel,* 359 S.C. 515, 524, 599 S.E.2d 114, 118(2004). When reviewing the instance case, Judge Culbertson's prejudice was clear towards Mr. Singleton. Despite the evidence that Mr. Singleton had an interest in the house because he was the only heir he dismissed all cause of action related to Mr. Singleton's ownership of the home. Judge Culbertson allowed the Attorney's for the City to question Singleton on cross examination and failed to even consider the evidence of the house's value. Judge Culbertson stated that Singleton could not testify as to a structure he did not own but allowed testimony regarding him buying the property in a tax sale and allowing him to testify that he had actually paid the taxes for several years.

The decision of Culbertson should be vacated as it shows an appearance of bias and prejudice. In *Liljeberg*, the Court determined that a violation of Section 455 (a) "which requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned—is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. The Federal Court's have determined that if the impartiality may reasonably be questioned than the judge should recuse themselves. The purpose of 455 is to promote public confidence in the integrity of the judicial process. *Liljeberg v. Health Services Acquisition Corp,* 486 U.S. 847, 859, 108 S.Ct, 2194, 100 L.Ed. 2d 855(1988). In *Patel,* the Court refused to adopt this standard. *Patel v. Patel,* 359 S.C. 515, 524, 599 S.E.2d 114, 118(2004). However, the fact is that the appearance of the judicial process should hold the ultimate integrity and not even give any appearance of impropriety.

The Respondent relies on *Eadie* to show that prejudice is required. However, in *Eadie* the only issue was that the Judge only gave 45 days for discovery and that was the only issue that showed prejudice. That professional relationship is significantly different than those presented here. A relationship within the Bar is significantly different as Mr. Singleton was a previous client of O'Donnell and Mr. Singleton sued O'Donnell. Judge Culbertson is a former member of Judge O'Donnell's law firm.

The Respondent argues that the mere professional relationship of the judge to an individual shows no bias. However, the Appellant is not relying on that singular action. The Rulings in the Court were biased toward the City. Mr. Singleton currently has a federal case pending against Judge O'Donnell who is a former partner of Judge Culbertson who has had a professional relationship within the City of Georgetown to almost every member of the bar.

The decision should be vacated as Judge Culbertson in *Davis* the Court set forth Canon 3(E)(1) sets forth that the judicial canons provide direction as when disqualification is necessary, section (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the Lawyer's firm, or the judge has been a material witness concerning the case." *Davis v. Parkview Apartments,* 401 S.C. 266, 289, 762 S.E. 2d 535, 547(2014). When applying this standard it is clear that in order to avoid a vision of bias or prejudice Judge Culbertson should have recused himself.

II. The Two Issue Rule Does Not Apply.

The Respondent further contends that the Singleton has failed to appeal all necessary rulings in order to file an appeal. However, the Respondent's contention is in error. The 'two

issue' rule is when the jury returns a general verdict involving two or more issues and its verdict is supported as to at least one issue, the verdict will not be reversed on appeal. *Todd v. South Caorlian Farm Bureau Mut. Ins. Co.,* 287 S.C. 190, 103, 336 S.E. 2d 472, (322 S.C. 420)473-74 (1985). The Respondent has left out more of the ruling intentionally to refrain from including substantial parts of the legal precedent. In *Anderson*, the Court determined that the "'two issue' rule may be applied by appellate courts in a few situations. In one situation, when a jury's general verdict is supportable by more than one cause of actions submitted to it, the appellate court will affirm unless the appellant appeals all cause of action." *Anderson v. S.C. Dep't of Highways & Pub. Transp.*, 322 S.C. 417, 472 S.E.2d 253, 254-255(1996). The matter appealed here does not included a matter submitted to the jury but only ruled upon by the Court therefore the 'two issue' rule would not apply to this appeal.

The Respondent further makes arguments regarding case law that does not even apply to the appeal as presented here. The Respondent contends that Mr. Singleton's appeal fails to include some significant issue. However, the specific issue including in Singleton's appeal is the granting of directed verdict as to the Plaintiff's Willie Singleton's recovery of damage to the Demolished house includes anything related to the issue of testimony regarding the value and the demolition of the home.

The Respondent argues three points contending that the Appellant has failed to argue two issues. The Respondent relies on several cases regarding this issue. Specifically, in *Lindsay v. Lindsay* the Respondent contends that any order that is not included is affirmed. However, *Lindsay* a family court case in which the wife argued that the husband had failed to present certain issues for appeal. The Court determined that the wife was in error and that the issue

appealed was correct and included the issues for appeal. The Appellant disagrees with the Respondent's contention as with Lindsay the two rulings are so interrelated and the issue appealed includes both ruling by the Court. In *Bailes,* the Court specifically set forth "Biales alleges Gwin breached his fiduciary duty as an escrow agent in disbursing funds to his client, Virginia Property, instead of holding the money in "Litchfield Plantation purchase escrow," as required by the escrow agreement signed by both Biales and Young. The trial court found that, taking the presented facts in the light most favorable to Biales, the only reasonable inference was that Biales waived and ratified the breach of this requirement by not responding to the letters sent by Gwin. Alternatively, the trial court found Biales was estopped by his conduct from enforcement of this requirement. On appeal, Biales does not appeal the finding of waiver, ratification, or estoppel. Failure to argue is an abandonment of the issue and precludes consideration on appeal. S.C.A.C.R. Rules 207(b)(1)(B), (D) and 210(b). See also *Howell v. Pacific Columbia Mills*, 291 S.C. 469, 354 S.E.2d 384 (1987) (under former rules). Accordingly, we affirm the trial court's ruling on this issue." Specifically, the Appellant only alleged appealed that the trial court had dismissed breach of contract and dismissal of a Securities Act Violation. The Appellant failed to include waiver, ratification or estoppel and that was specific to his conclusion of law. However here the Appellant has not failed to include anything but as with Lindsay has included it and not waived the issue as they are so interrelated.

The Respondent relies on a single statement from *Buckner* which is taken out of context in the Respondents brief as the Court's actual statement is "The appellant excepted to the Court's in the brief. Therefore, the finding below that sub-section (255 S.C. 161) (h) does not bar recovery for lack of causal connection, right or wrong, is the law of this case and requires

affirmance. It would be pointless to consider the exceptions which do not reach this dispositive finding." *Buckner v. Preferred Mut. Ins. Co.,* 255 S.C. 159, 177 S.E.2d 544, 544(1970). *Buckner* actually had nothing to do with appealed issues and only addressed whether an insurance company was liable under a medical payment provisions of a homeowner's insurance policy. *Buckner v. Preferred Mut. Ins. Co.,* 255 S.C. 159, 177 S.E.2d 544, 544(1970). The attempt to sue this ruling out of context has no effect on the present case. As the Appellant, has no abandoned any issue and has included an interrelated issue for appeal.

The two-issue rule does not apply to the instant case. The case should be remanded for trail to address the issue of damages and the value of the home at the time it was demolished considering Mr. Singleton's interest in the home due to the fact that he had purchased the property at a tax sale, paid the taxes on the home for several years, made improvements to the home, the home was not probated through James Gadson, and Singleton was the only remaining heir.

III. The Trial Court Erred Granting Directed Verdict for the Respondent and Failing to allow testimony Singleton to testify Regarding Damages.

The Court incorrectly determined that Singleton was not the owner of the property. Considering the significant amount of testimony concerning Singleton's involvement with the property and his actions in attempting to rehabilitate the property the Court should have determined that he owned the property and had significant interest in the Property considering his actions. The Court permitted an irregular deed to be presented to jury which the City relies on evidence that Mr. Singleton did not own the home. (Transcript page 479-480)

The respondent addresses the ownership of the property from a purely lay person

testifying to the value of the building. The Respondent fails to consider Mr. Singleton's testimony regarding his work history. The Appellant, Willie Singleton is a licensed contractor in the State of South Carolina. (Transcript page 18). The Plaintiff is limited in his license to contract on projects less than one million dollars. (Transcript page 19). The Appellant, Willie Singleton received training regarding building codes and how they applied. (Transcript page 114-115). At the time of the City's illegal demolition of the home Mr. Singleton had applied for permits to perform work on the home and actually performed work.

The Respondent continues with their argument that because Gadson died intestate and therefore James Gadson owned the property. However, as determined by probate the Court did not probate the 1929 Front Street Property as Mr. Gadson never transferred the property into his own name. No one protested the property ownership by Mr. Singleton. The Appellant's sister and brother are both deceased and neither of them left a spouse or children. (Transcript page 134). The only surviving relative of the family is the Appellant, Willie Singleton. (Transcript page 135). Considering that all of the individuals are dead the only surviving heir is Mr. Singleton. The Respondent again argues that Singleton's failure to address the deed in his appeal brief is yet another failure. However, no mention is required of the deed because it is clear that Mr. Singleton was the only owner. The only testimony provided was that the home was not probated and therefore was not subject to the Deed of distribution as the property was never in Mr. Gadson's name he could not transfer the property to the children as argued by the Respondent.

The City illegally demolished the home without proper notice and without following the proper procedure despite Mr. Singleton requesting information regarding the problems with the

home. As argued in the Appellant's initial brief:

The City, Respondents, made a four page list of homes that it wanted to tear down due to their dilapidated condition. (Transcript page 344). As a result of the list the City went to the City Council and obtained approval for $1.4 million dollars of City funds to be used to tear down these eye sores. (Transcript page 344). The property that is the subject was on that list and that is when the City began to have problems with the property located at 1929 Front Street. (Transcript, page 111). On May 31, 2006, the City issued a Notice of Unsafe Structure to Victoria Gadson. (Exhibit P-2 to Transcript). The Notice of Unsafe Structure stated that Jason Goude had conducted a general inspection. (Transcript page 111, Exhibit P-2 to Transcript). At the time Goude was a Building Official for the City of Georgetown. (Transcript page 112). The Notice did not include any indication of what Mr. Goude felt was unsafe about the structure or what actions the Appellants should take to remedy the unsafe structure. (Transcript page 112). On July 7, 2006, the City issued a Second Notice of Unsafe Structure. (Exhibit P-3 Transcript). The Second Notice was also issued by Mr. Goude and did not set forth what Mr. Goude considered to be unsafe about the structure nor did it set forth what the Appellants needed to do to make the structure safe. (Transcript page 112). After the Appellant, Willie Singleton was notified of the Second Notice of Unsafe Structure by his brother John Gadson, Mr. Singleton contacted and met with Steven Stack regarding the Structure at 1929 Front Street. (Transcript page 233).

Appellants never received any documentation from Mr. Goude or the City setting forth any information as to why the Structure was unsafe or what the Appellants needed to do to make the structure safe. (Transcript page 112-113). The Notices provided by the City of Georgetown

did not set forth any date by which the Appellants were required to fix the Structure or what to fix on the structure. (Transcript page 113). At no time did the City of Georgetown provide the Appellants with notice of what their concerns were regarding the Appellants property. (Transcript page 114). The Appellant, Willie Singleton received training regarding what is deemed a safe structure. (Transcript page 115). The Respondent failed and refused to follow the proper condemnation process. (Transcript page 115). In August of 2006 the Appellant applied for his first building permit to renovate the home. (D-47) On December 8, 2006, the City issued a Final Notice of Unsafe Structure. (Transcript page 127). The Final Notice incorrectly stated that the Appellant or owner of the property had failed to contact the building office when the Appellant had actually applied for building permit which the building department failed to respond to. (Transcript pages 226-227). The Final Notice that informed the home owner that the property was being condemned was not served on the Appellant or his sister. (Transcript page 118). The City never obtained a court order condemning the property. (Transcript page 119). The City has never provided the Appellant with an inspection report that stated the home was beyond repair. (Transcript page 119). Nothing in the law allows for a building official to declare a home is beyond repair. (Transcript page 347).

The Final Notice further stated that the Building Official would provide the Appellant a list of items which was never done. (Transcript page 230). The Final Notice also stated that the property was going to be taken through the Condemnation process which was also never done. (Transcript page 230). None of the letters written set forth what the issue with the integrity of the building was. (Transcript page 241).

During the trial of the matter a Verified Tort Claim with the value of the home was

proffered into evidence. (Transcript page 215-216). Mr. Singleton filed the Verified Tort Claim pursuant to the Power of Attorney that he had from his sister. *Id.* The Verified Tort Claim set forth the value of the home at the time of demolition.

The Respondent relies on *City of Spartanburg v. Lapinakos*, as precedent that a bare declaration that he knows the value is insufficient. (Respondent Response, 23). However, *Laprinakos* addresses the testimony of an expert and that competency must be shown for a witness to testify regarding the value of property. *City of Spartanburg v. Lapinakos,* 230 S.E.2d 443, 444, 267 S.C. 589 (1976). The Expert is required to show if he someone other than the owner of the property he has some source of knowledge in order to remove his opinion from the realm of mere conjecture. *Id.* at 445. In this case any testimony permitted by Mr. Singleton would not have been mere conjecture as the Respondent opened up the realm for testimony on cross examination.

The Respondent relies on *Santoro* as supporting the contention that the value of the demolished house itself would have been left to the jury's conjecture, guess and speculation. (Respondent Response, page 25). However, *Santoro* is an Intentional Interference with Prospective Contractual Relations, Trespass and an enforcement action for restrictive covenants. *Santoro v. Schulthess,* 681 S.E. 2d 897, 384 S.C. 250 (2009). *Santoro* provides no guidance as to the testimony regarding the value of the illegal demolition of the house owned by Mr. Singleton who is a licensed contractor in the State of South Carolina. In *Santoro*, the issues of damages on appeal are whether the evidence supports the damages award. *Id. at 906.* In this case, there is no evidence which was permitted to go to the jury because of the Court's prejudicial ruling that Mr. Singleton could not present evidence of the damages which was

permissible because of Mr. Singleton's employment and license history in the State of South Carolina.

The Respondent presents several arguments as to why Mr. Singleton should not be permitted to testify as to the damages and his ownership of the home. Each of these arguments is without merit and lacks the support of case law as each of the cases relied upon by the Respondent are not on point regarding facts of Mr. Singleton's case. Specifically, the actions of the City and the fact that they are challenging his ownership without standing.

The City contends that they were not part of the Consent Order regarding Steven Stack and therefore are not estopped. The contention is in error. The complaint was against Steven Stack as a City of Georgetown Building Official. Therefore, the City of Georgetown was on notice that their Building Official was under a complaint for demolishing a home without the proper procedures. *In Carrigg*, the Court determined that "only a party to a prior action or one in privity with a party to a prior action can be precluded from relitigating an issue on the basis of offensive collateral estoppel. *Carrig v. Cannon*, 347 S.C. 75, 80, 552 S.E. 2d 767(Ct. App. 2001). See Also, *Ex parte Allstate Ins. Co.* 339 S.C. 202, 206, 528 S.E.2d 679, 681 (Ct. App. 2000); *Wade v. Berkeley County*, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998). The City of Georgetown was in privity to the action against Steven Stack and is therefore precluded from arguing against it.

CONCLUSION

For the reasons set forth above, Mr. Singleton respectfully requests that the Court remand the case for a new trial as to the matters before Judge Culbertson. The Court determine that Judge Culbertson erred in failing to recuse himself due to the significant prejudice involved in

previous matters with the Appellant.

October 31, 2016

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CERTIFICATE OF SERVICE

I, the undersigned, attorney for Appellant/Respondent, Willie Singleton, do hereby certify that I have this date served the foregoing Appellant/Respondent Brief dated October 31, 2016 on the Attorney for the Respondent/Appellant at the following Address:

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October 31, 2016

The Honorable Jenny Abbott Kitchings
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RE: Willie Singleton, et al. Appellants v. City of Georgetown, Respondents
Appeallate Case. No. 2016-000251
Case No. 2009-CP-220325

Dear Ms. Kitchings:

Please find enclosed Mr. Singleton's Reply Brief. Also, Please find enclosed a Motion for extension. As counsel for Mr. Singleton, we would respectfully request an additional 7-day extension to file our Brief in response to the Respondent-Appellant. As the Attorney for Mr. Singleton I previously requested two extensions due to a family emergency and scheduling issues. As the attorney for Mr. Singleton, I am requesting this extension. With the extension the responses will be due on November 7, 2016. This is our second request for an extension to file the responses. The Attorney for the City of Georgetown has consented to the extension.

Please find enclosed a $25.00 check for the filing fee. If you have any questions, please do not hesitate to contact me at my office. Thank you for your immediate attention to this matter.

Sincerely,

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