

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo

Trial Case No. 2016-CP-21-02533
Appellate Case No. 2017-000746

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NOV 22 2017

SC Court of Appeals

Edward Spears.....Appellant,

v.

R&R Cleaning Services and Natalie Harris.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID JUDGE RUSSO CORRECTLY RULE THAT THE APPELLANT FAILED TO APPEAL OR REQUEST RECONSIDERATION OF THE ORDER OF FINAL DISPOSITION OF JUDGE LANGLEY WHICH DISMISSED CASE NUMBER 2015CV2110108515?
2. DID JUDGE RUSSO CORRECTLY RULE THAT CASE NUMBER 2016CV2110103875 CONTAINED THE SAME ALLEGATIONS, AGAINST TWO OF THE SAME PARTIES, AS DID CASE NUMBER 2015CV2110108515?
3. DID JUDGE RUSSO CORRECTLY RULE THAT APPELLANT'S FILING OF A SECOND CASE, AGAINST TWO OF THE SAME DEFENDANTS ALLEGING THE SAME CAUSES OF ACTION AS CONTAINED IN THE FIRST CASE THAT WAS DISMISSED WITH PREJUDICE, WAS IN VIOLATION OF THE DOCTRINE OF RES JUDICATA AND MUST THEREFORE BE DISMISSED?

STATEMENT OF THE CASE

On December 31, 2015, the Appellant filed a civil action in the Florence County Magistrate's Court against R & R Cleaning Service, Natalia Robinson and Matt Rogers. This case was assigned Case Number 2015CV2110108515. The allegations were harassment, favoritism, supervisory negligence, retaliation and wrongful termination. Appellant later learned that he had incorrectly identified one of the Defendants and the name Natalia Robinson was changed to Natalie Harris and appeared on all subsequent pleadings as such in all relevant cases.

The Defendants filed Motions to Dismiss and a hearing was held before Judge Roger Neron Langley on April 7, 2016. Judge Langley filed an Order of Final

Disposition dated June 8, 2016 which dismissed the case with prejudice. Counsel for the Respondents served a copy of Judge Langley's Order on the Appellant by letter of June 23, 2016 and a Certificate of Service of even date. No Notice of Appeal or Motion for Reconsideration was filed by Appellant.

On June 22, 2016, Appellant filed a second case in Magistrate's Court against R & R Cleaning Service and Natalie Harris. The allegations were harassment, favoritism, supervisory negligence, retaliation and wrongful termination, identical allegations as to the first Complaint. This case was given Civil Action Number 2016CV2110103875. A default hearing was scheduled for August 15, 2016 before Judge Pete Becker. Counsel for the Respondents filed a Motion to be Relieved from Default and Motion to Dismiss. The hearing was held and Judge Becker indicated from the bench that he would dismiss the case under the doctrine of *res judicata*, however, no written order was ever filed. A second hearing was scheduled before Judge Jerry Rivers on September 15, 2016. At this hearing, Judge Rivers ruled from the bench that a jury trial would be scheduled and that he would allow the Respondents to be relieved from default and file an Answer. No written order was filed in regard to this hearing.

Both parties appealed to the Circuit Court and a hearing was held before the Honorable Thomas A. Russo in the Florence County Court of Common Pleas on February 16, 2017. In his Order of March 2, 2017, Judge Russo dismissed the appeal of the Appellant herein, granted the appeal of the Respondents herein and dismissed Case Number 2016CV2110103875 with prejudice pursuant to the doctrine of *res judicata*. The Appellant filed a Notice of Appeal to this court dated March 27, 2017 but with a

Certificate of Service indicating it was served on March 22, 2017. Counsel for the Respondents received a copy by hand-delivery on March 24, 2017.

ARGUMENTS

I. JUDGE RUSSO CORRECTLY RULED THAT THE APPELLANT FAILED TO APPEAL OR REQUEST A REHEARING ON THE ORDER OF FINAL DISPOSITION OF JUDGE LANGLEY WHICH DISMISSED CASE NUMBER 2015CV2110108515 WITH PREJUDICE.

In the case of *Townes Assoc, LTD. v. City of Greenville*, 226 S.C. 81, 86 (1976), 221 S.E.2d 773, the South Carolina Supreme Court discussed various standards of review. In the *Townes* case, the Court stated as follows:

In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings.

Respondents believe, therefore, that is the appropriate standard of review in the present case.

The trial judge reviewed the Order of Final Disposition filed by Judge Langley in Case Number 2015CV2110108515. (Order of Judge Langley). The court also reviewed the letter from Respondents' counsel and Certificate of Service dated June 23, 2016 (Letter from Michael S. Hopewell to Edward Spears dated June 23, 2017 and Certificate of Service) indicating service of the Order on Appellant, and noted that Appellant did not file a Notice of Appeal of Judge Langley's Order or a Motion to Reconsider. The court, therefore, correctly concluded that Judge Langley's Order was the law in that case. See S.C. Code Ann. §18-7-20. See also Rule 59(e) SCRPC, Rule 12(b) SCRMC and Rule 18, SCRMC. (Order of Judge Russo, Page 3, 4).

In his Initial Brief, Appellant denies that he received a copy of Judge Langley's Order from the court directly, however, the e-mail from Judge Sandra Grimsley to the Appellant dated August 11, 2016 would seem to indicate that the order was sent to Appellant. (E-Mail from Sandra Grimsley to Appellant dated August 11, 2016). The e-mail was apparently the result of one or more *ex parte* communications between Appellant and the Magistrate's Court.

II. JUDGE RUSSO CORRECTLY RULED THAT CASE NUMBER 2016CV2110103875 CONTAINED THE SAME ALLEGATIONS, AGAINST TWO OF THE SAME PARTIES, AS DID APPELLANT'S CASE NUMBER 2015CV2110108515.

The trial judge reviewed the Complaint filed by Appellant on December 31, 2015 against, *inter alia*, R & R Cleaning Service and Natalia Robinson (later changed to Natalie Harris), the Respondents herein. In that Complaint, the Appellant alleged harassment, favoritism, supervisory negligence, retaliation and wrongful termination based on a particular incident. (Complaint dated December 31, 2015 in Case Number 2015CV2110108515). The Court also reviewed the Complaint filed by the Appellant on June 22, 2016. Again, the Appellant filed a Complaint against R & R Cleaning Service and Natalie Harris. The allegations were for harassment, favoritism, supervisory negligence, retaliation and wrongful termination in regard to the same incident as in the prior case. (Complaint dated June 22, 2016 in Case Number 2016CV2110103875).

After reviewing these Complaints with identical allegations against identical parties, the trial court properly concluded that the identity of the parties and the identity

of the subject matter of the two Complaints were the same. (Order of Judge Russo, Page 4).

III. JUDGE RUSSO CORRECTLY RULED THAT APPELLANT'S FILING OF A SECOND CASE, AGAINST TWO OF THE SAME DEFENDANTS ALLEGING THE SAME CAUSES OF ACTION AS CONTAINED IN THE FIRST CASE THAT WAS DISMISSED WITH PREJUDICE, WAS IN VIOLATION OF THE DOCTRINE OF RES JUDICATA AND MUST THEREFORE BE DISMISSED.

The trial court reviewed the Motion to be Relieved from Default and Motion to Dismiss that was filed by Respondents in the 2016 Magistrate's Court case (Motion to be Relieved and Motion to Dismiss dated August 4, 2016) as well as Respondents' Notice of Appeal of the ruling of Judge Rivers (Notice of Appeal dated October 17, 2016). The trial judge correctly determined that the Respondents had established the required three elements of the doctrine of *res judicata*. They are: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issues in the former suit. Plum Creek Dev. Co., Inc. v. City of Conway, 334 S.C. 30, 34, 512 S.E. 2d. 106, 109 (1999). The trial judge determined that these elements were met and evidence supporting his decision abounds in the record. (Order of Judge Russo, Page 4).

The 2015 case was dismissed with prejudice pursuant to the Order of Judge Langley which was neither appealed from nor was a Motion for Reconsideration filed. As set forth by the court in Collins v. Sigmon, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989), "a dismissal of a case without prejudice means that the Plaintiff can reassert the same cause(s) of action by curing the defects that led to dismissal. By contrast, dismissals with prejudice are intended to bar re-litigation of the same claim." Further, in


Jones v. City of Folly Beach, 326 S.C. 360, 366, 483 S.E.2d 770, 773 (1997), the court stated that “where an action has been dismissed with prejudice, the judgment operates in subsequent litigation to the same extent as if the action had been tried to a final adjudication.”

The law on this point is clear and the trial court’s opinion is supported by evidence, statutes, court rules and case law.

CONCLUSION

The ruling of the trial court is clear, correct and amply supported by the evidence, therefore, it should be affirmed.

Respectfully submitted,



November 21, 2017

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal on the Appellant, Edward Spears, by depositing a copy of same in the United States Mail, postage prepaid, on November 21, 2017, addressed to 503 W. Roughfork Street, Florence, SC 29501.

November 21, 2017



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November 21, 2017

The Honorable Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
Post Office Box 11629
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Re: Edward Spears
vs. R & R Cleaning Services and Natalie
Harris
Appellate Case #2017-000746
Our File #2016008

Dear Ms. Kitchings:


Pursuant to Rules 208(a)(1) and 209(a), South Carolina Appellate Court Rules, I enclose one (1) copy of the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal. Also enclosed is the Proof of Service reflecting service by mail of the aforementioned documents on the Appellant.

I would very much appreciate your filing the original Proof of Service and stamping as received the enclosed copy of same as well as the enclosed copy of this correspondence, and returning the copies to me in the self-addressed, stamped envelope provided. If you have any questions or concerns, please do not hesitate to let me know.

Thank you for your assistance in this matter.

With kind regards, we are

Very truly yours,



Michael S. Hopewell

MSH/kch
Enclosures

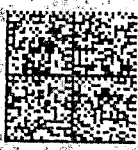
cc: Mr. Edward Spears
Mr. Jamison Hickman (via email)

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SC Court of Appeals

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