

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
FOR THE 11TH JUDICIAL CIRCUIT

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 )  
Erick George Johnson, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Abigail Marie Williams, )  
 )  
Defendant. )  
\_\_\_\_\_ )

C/A No.: 2017-CP-32-01333

FINAL ORDER

**RECEIVED**  
MAY 11 2018  
SC Court of Appeals

This matter comes before the Court by way of a Motion to Dismiss filed by the Defendant on August 31, 2017 pursuant to Rule 56 of the South Carolina Rules of Civil Procedure based on the assertion that this case should be dismissed under the doctrine of Collateral Estoppel, Judicial Estoppel or *Res Judicata* since the parties herein had a full and fair hearing addressing all of the issues raised herein. A hearing on the motions was held on October 24, 2017, in Lexington County, South Carolina. Present at the hearing were the Plaintiff and the Defendant, Richard Bolen, attorney for Defendant, Herbert Buhl, attorney for Plaintiff and Jim O'Connor who was the attorney for the Defendant in the previous family court proceeding between the parties. A Summons and Complaint was filed by the Plaintiff on April 20, 2017 for relief under the theory of Constructive Trust, Resulting Trust, Unjust Enrichment and *Quantum Meruit* based on the Plaintiff's assertion that he has either an equitable interest in the subject property or he is entitled to compensation for improvements he made to the subject property. Defendant filed an Answer on June 8, 2017 denying these claims. In its Answer Defendant asserted that this case was

precluded under the doctrine of Collateral Estoppel, Judicial Estoppel or *Res Judicata* since the parties herein had a full and fair hearing addressing all of the issues raised in the complaint in this matter on June 12, 2017 in the family court in the case styled "Abigail Williams v. Erick Johnson" 2016-DR-32-1847. A final order in that case was issued by Judge Smithdeal on June 14, 2017 in which the court found that the parties were never married and all other issues and controversies between the parties were settled and resolved pursuant to the order.

The Plaintiff contends that the family court did not have subject matter jurisdiction over the real property matters because the litigants were determined to have never been married and that South Carolina Code Section 63-5-630 makes no provision for jurisdiction over real property matters in family court. Therefore the order issued by the family court cannot adjudicate the issues in dispute in this matter since it lacked jurisdiction over those matters notwithstanding the parties consent to such jurisdiction.

The issue before the Court is whether the family court has jurisdiction to decide matters relating to real property and if so, does the final order of the family court preclude this action between the same parties on the same issues decided in family court under the theory of Collateral Estoppel, Judicial Estoppel or *Res Judicata*.

After considering the motions, memoranda, oral arguments, and other information presented by counsel for the parties, the Court hereby finds as follows.

#### **SUBJECT MATTER JURISDICTION**

The applicable law in this matter is South Carolina Code Section 63-3-530 which provides in pertinent part that "(A) The family court has exclusive jurisdiction: ... (2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and

in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees, if requested by either party in the pleadings; ..." (emphasis added).

In the particularly relevant case of Rodman v. Rodman, 361 S.C. 291, 604 S.E.2d 399 (Ct.App. 2004) where the parties were not married because the husband was married to another woman at the time he attempted to marry the Respondent which voided their marriage *ab initio*, the parties entered into a "written agreement that constituted a final permanent settlement between them with respect to the division of all their property, both real and personal, and with respect to any and all rights of support and all other rights and obligations." *Id.* at 293. The husband asserted that the family court lacked subject matter jurisdiction to adopt the property agreement as part of the final order in relation to a marriage that was void *ab initio* and thus its order was void. The Court of Appeals disagreed and found that:

Because the property agreement was adopted by the family court in response to Wife's petition for annulment and decree of separate support and maintenance, we find Husband's argument to be without merit. It has long been established that S.C.Code Ann. § 20-7-420(6) (1976 & Supp.2003) grants the family court exclusive jurisdiction over annulment proceedings. White v. White, 283 S.C. 348, 349, 323 S.E.2d 521, 522 (1984). Furthermore, this jurisdiction extends, not just to the issue of the actual annulment, but to "all matters in an annulment action, as in a divorce proceeding," including the equitable distribution of property. *Id.*, 283 S.C. at 350, 323 S.E.2d at 522; *see also* S.C.Code Ann. § 20-7-420(30) (1976 & Supp.2003) (granting the family court exclusive jurisdiction "to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction.").

There is no legal distinction between a marriage which is annulled and one terminated by reason of bigamy, as they are both void *ab initio*, or "from the inception." Splawn v. Splawn, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993). In fact, the South Carolina Supreme Court has specifically held the family court has subject matter jurisdiction to equitably distribute property in a bigamous marriage. *Id.*, 311 S.C. at 424, 429 S.E.2d at 806. Following the analysis of *White* and *Splawn*, we find the family court had subject matter jurisdiction to adopt the agreement of the parties. *Id.* at 295-296

In the case at bar the Plaintiff asserted that the parties were common law married. The family court determined, with the consent of the parties, that they were not common law married, much like the court in Rodman found that their marriage was void *ab initio*. Both the Rodman court and the family court here maintained jurisdiction over the parties and subject matter jurisdiction over the real and personal property even after it determined there was no marriage between the parties. Based on that determination both courts issued a valid and enforceable order incorporating the parties' settlement agreements. The Court of Appeals agreed with the Rodman court.

In a converse approach to the issues here in dispute the Court of Appeals held in Hammer v. Hammer, 399 S.C. 100, 730 S.E.2d 874 (2012) that the circuit court was correct when it determined that it did not have subject matter jurisdiction to adjudicate a contractual claim between the parties to a divorce where the contractual issues at bar were resolved by the family court in the divorce proceeding since the family court had exclusive jurisdiction over those matters. The Court of Appeals held that "The May 2008 contract was part of the parties' divorce proceeding. Pursuant to section 20-3-690, the family court has exclusive jurisdiction over contracts relating to property in a divorce proceeding. S.C.Code Ann. § 20-3-690 (Supp.2011). Moreover, by merging the May 2008 contract into the family court's order, the family court transformed it from a contract between the parties into a decree of the court." *Id* at 878. Here the settlement agreement relating to the issue in dispute between the parties is a contract as contemplated by the court in Hammer and is enforceable under the subject matter jurisdiction of the family court as explained by the Hammer decision.

Here, in the family court proceeding, Plaintiff Abigail Williams, initially filed for child support only. The Defendant in that action, Eric Johnson, in his answer asserted that the family

court had subject matter jurisdiction to determine the status of the parties' relationship, specifically to determine if they were common law married. That claim clearly brings the provisions of South Carolina Code section 63-3-530 to bear on the issues before the family court including the authority to determine "all legal and equitable rights of the parties in the actions in and to the real and personal property". By asserting these claims, family court Defendant Johnson conceded that the family court properly had subject matter jurisdiction to decide issues relating to real and personal property and asked the family court to finally resolve those issues.

To further underscore Plaintiff's agreement that the family court had subject matter jurisdiction over the property issues, a review of his assertions in a magistrate court action for eviction is useful. Defendant Williams filed an action in the Lexington County Magistrate's Court under docket number 2016-CV-32-1091082, to evict Plaintiff Johnson from the subject property. In response to that action, Johnson filed a motion to dismiss the action in magistrate court alleging that the magistrate court lacked subject matter jurisdiction in the dispute because the dispute involved questions regarding title to real estate that is not within the jurisdiction of the magistrate court generally and specifically because there was a family court action pending in the Lexington County Family Court and the family court had jurisdiction to determine title, equity, use and possession of the real estate. Thus Plaintiff has twice asserted that the family court has subject matter jurisdiction over the property in dispute. He is therefore equitably estopped from now claiming in the common pleas court action on the same issues that there is no subject matter jurisdiction in the family court.

In the family court's final order it addressed all issues related to both the real and personal property between the parties with the consent of the parties. Specifically in paragraph 3 on page 2, the parties agreed that this final settlement agreement resolved all issues and all matters relative

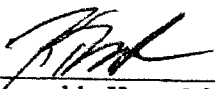
to visitation, child support, common law marriage and all other matter which were raised, or could have been raised between the parties. Further, paragraph 15 on page 10 of the family court order specifically states that “the parties hereby acknowledge and agree that this is a full and complete property and support settlement agreement with respect to all matters raised, or those which could have been raised in the controversy between them.”

For the foregoing reasons, this Court finds that the family court did have subject matter jurisdiction over both real and personal property issues when it made its final order in the case of Abigail Williams v. Erick Johnson, 2016-DR-32-1847 and that the order is valid and enforceable and that the family court maintains jurisdiction over the subject matter of this case. If the parties believe that the issues raised in this action have merit their recourse is to petition the family court under its rules and procedures to address those issues.

Based on the foregoing the Court finds that the parties and the issues presented in the case at bar are identical to those addressed in the family court case of Williams v. Johnson, that they have been properly adjudicated by the family court and that all parties were given a full and fair hearing in the family court proceedings. I therefore find that this action is precluded under the doctrine of Collateral Estoppel and it is hereby DISMISSED.

**IT IS SO ORDERED.**

Lexington, South Carolina  
26 April, 2017.

  
\_\_\_\_\_  
The Honorable Knox McMahon  
Circuit Court Judge  
Eleventh Judicial Circuit

**Herbert E. Buhl, III**

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**Sent:** Friday, April 27, 2018 11:23 AM  
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**The following people were served electronically:**

James Ross Snell, Jr.  
Herbert E. Buhl, III for Erick George Johnson

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Alicia K. Clawson  
Richard L. Bolen for Abigail Marie Williams

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