

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2018-000653

Common Pleas Case No.: 2013-CP-10-1877

The RMUE through its General Officers Barbara B. Clark, Warren E. Hatcher, Cassie Keeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley, and Willie B. Oliver,Respondents

vs.

Herman Bolds, Richard Brown Cecil Parker, Theodore Miller, Carl Miller, Joan S. Roper, Martha Mathews, Thomasina G. Walker, Marilyn S. Washington, Jaree R. Stanley, Audrey Wilder, Derrick Lucas, Willie Parker, Jr., James Cromwell, James A. Roper, III, Elizabeth R. Parker, Jacqueline R. Miller, and Payne Church,Appellants

APPELLANTS' REPLY TO
RESPONDENTS' INITIAL BRIEF

RECEIVED

DEC 10 2018

SC Court of Appeals

Eduardo K. Curry
Post Office Box 42270
North Charleston, SC 29423
(864) 767-5284
Attorney for Appellants

TABLE OF CONTENTS

Table of Authorities..... ii

Statement of Facts..... 1

Argument..... 1

Conclusion..... 5

TABLE OF AUTHORITIES

Case Law

Bailey v. Segars, 346 S.C. 359, 550 S.E.2d 910, 913 (Ct.App. 2001).....	5
Elam v. South Carolina Dept. of Transp., 361 S.C. 9,602 S.E.2d 772, 780 (2004).....	4
Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413, 418, n.2 (Ct.App. 2001).....	5
Foran v. USAA Cas. Ins. 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).....	2
Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E. 2d 106 (1999).....	2
Rogers v. Kunja Knitting Mills, 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999).....	2
Siau v. Kassel, 369 S.C. 631,632 S.E.2d 888, 894 (Ct.App. 2006).....	5
Spreeuw v. Barker, 385 S.C. 45, 682 S.E.2d 843, 856 (Ct.App. 2009).....	5
Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E. 2d 569 (1992).....	2
Treadaway v. Smith, 325 S.C.367, 479 S.E.2d 849 (Ct. App. 1996);	2

STATEMENT OF FACTS

Appellants hereby respectfully submit this reply to Respondents' Initial Brief. Respondents are attempting to discredit Appellant's facts and arguments of the case by leaving out facts that are key to this case and Appellants stand by their initial brief submitted to this Court. The Respondents were not the historical owners of the church or the land which is in dispute. The land was sold to the Trustees of Payne RMUE Church. In 1978, the Trustees of Payne RMUE Church joined the union of the Reformed Methodist Union Episcopal. But due to lack of financial support from the Union, the Appellants chose to withdraw from the Union, which includes taking with them the congregation and the property.

Following trial, the Appellants filed an appeal. The Court of Appeals affirmed the lower court's Order and the case was remitted to the Court of Common Pleas.

On April 4, 2018, the parties appeared before Judge Nicholson and all issues were reopened for argument. (Motion Tr. ROA ___) After hearing the arguments that the ruling by the lower court on the Church property was improper as the evidence presented only pertained to the cemetery and that the Defendants were denied due process on the bifurcated trial, Judge Nicholson ruled that the full church property belongs to the union and that the counterclaims would be dismissed without trial. The Appellants dispute this new ruling and an appeal was filed. This case was not fully vindicated as described by the Respondents in their initial brief.

ARGUMENTS

- A. Respondents assert that Appellants' claims are barred by res judicata and that the case has been fully decided by a settlement among the parties, the Circuit Court's Order enforcing the settlement and the Court of Appeals' decision affirming the Circuit Court Order.*

Respondents raise res judicata on the basis of the prior settlement agreement and Court of Appeals Order dated March 5, 2018. Respondents argue that the parties are precluded from relitigating an issue decided in one case in a subsequent case and that “Appellants simply seek to continue to litigate matters which were settled by mediation, ruled upon by Judge Nicholson and then affirmed by this Court”.

Respondents have misstated some of the facts and most of the substance of this action. *Res judicata*, also known as claim preclusion, bars litigation in a subsequent action of any claims that were litigated or could have been asserted in a prior action. Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E. 2d 569 (1992); Treadaway v. Smith, 325 S.C.367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

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 the parties. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E. 2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999). *Res judicata* ends litigation, promotes judicial economy and avoids the harassment of re-litigation of the same issue. where there is (1) a final judgment on the merits, (2) an identity of claims, and (3) identity or privity between parties. All factors must be met, otherwise, *res judicata* is inapplicable.

The issues previously appealed involved an Order issued on February 10, 2016 in which the Appellants argued that the lower court improperly ruled on ownership of property to the cemetery as set out in a deed. The Court of Appeals’ ruling did not end the case. On March 5,

2018, the Court of Appeals affirmed Judge Nicholson's Order dated February 10, 2016 and remanded the case back to Charleston County Court of Common Pleas. This did not end the case.

Following the Appeal Court ruling, on April 4, 2018, the lower court held a status conference with the parties and reopened all issues of the case. The ruling was inconsistent. Specifically, Appellants raised arguments that the lower court failed to determine proper ownership of the physical church building and fellowship hall as the prior ruling was on a deed to the cemetery (which is located at a different address and not within the premises of the church).

In addition, Appellants raised objections to the lower court dismissing their counterclaims without due process or trial. Immediately prior to the non-jury trial, an agreement between the lower court and the parties stipulated that the Appellants' Counterclaims would be bifurcated to be tried separately before a jury at a later date so that the focus could be on the non-jury issues. This stipulation was on the record prior to the start of the non-jury trial. However, following the case being remanded to the lower court a new hearing was held and a ruling was entered wherein Judge Nicholson dismissed the counterclaims and instructed the parties that the new order may be appealed.

A motion to enforce settlement agreement is not what was in the order. When the Court of Appeals remitted the case back to the lower court, the Court took it upon themselves to rule on separate issues and dismiss the counterclaims despite having previously agreed to bifurcate the counterclaims to a later date to be tried before a jury. The causes of action which were bifurcated were not related to the previous appeal and the judge ruled to dismiss the counterclaims without giving the Appellants due process and their right to a fair trial. The dismissal was improperly made by the judge's own accord and discretion without the opposing party filing a motion to dismiss, a motion for summary judgment or settlement on the issues of the counterclaims. To

allow the Court to issue an order without due process deprives the Appellants of their right to a jury trial.

There were no new cases or new causes of actions filed as this matter continued forward in the Court of Common Pleas. Despite the fact that one Order was appealed and ruled on does not prevent a party their rights to appeal a ruling on a separate Order in the same case. The issues are not the same and are subject to review. Therefore, Respondents' Motion to Dismiss should be denied.

B. Respondents allege that Appellants failed to raise either issues on appeal before the Circuit Court or in a Rule 59 motion.

Respondents allege in their Initial Brief that Appellants failed to raise their issues before the Circuit Court or on a Rule 59(e) and therefore, should not have been preserved for an appeal. Appellants disagree. During the hearing held on April 4, 2018, Appellants vehemently objected to the Court's ruling. (ROA ____). In addition, the objection was denied and the Appellants were instructed by the Court that they may appeal the ruling. (ROA ____).

South Carolina Rules of Civil Procedure, Rule 59(e) is not required prior to filing an appeal with the Court of Appeals. SCRCR Rule 59(e) allows a motion to alter or amend to be served not later than 10 days after receipt of written notice of the entry of the order. With the filing of a Rule 59(e) motion, the time to appeal the issues is stayed until the motion is heard. However, without the filing of a Rule 59(e) motion, the parties must file their appeal within thirty (30) days from receipt of written notice of the entry of judgment. If the appeal is not timely filed, then the appeal may be dismissed by the Court of Appeals. The failure to file a Rule 59(e) post-judgment motion does not prevent a party from filing an appeal.

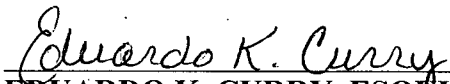
In addition, a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*,

361 S.C. 9,602 S.E.2d 772, 780 (2004). “[I]ssues not raised and ruled upon in the trial court will not be considered on appeal.” *Spreeuw v. Barker*, 385 S.C. 45, 682 S.E.2d 843, 856 (Ct.App. 2009). To be preserved, the issue must be *explicitly* ruled upon. *Siau v. Kassel*, 369 S.C. 631,632 S.E.2d 888, 894 (Ct.App. 2006). In this case, Appellants’ issues and arguments were raised during the hearing held before the Court on April 4, 2018 at which time was ruled upon by the Court.

“Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not ruled upon.” *Bailey v. Segars*, 346 S.C. 359, 550 S.E.2d 910, 913 (Ct.App. 2001). “The raised to and ruled on rule of error preservation requires only a ruling, not necessarily a favorable one.” *Eubank v. Eubank*, 347 S.C. 367, 555 S.E.2d 413, 418, n.2 (Ct.App. 2001). As the issues were addressed and ruled upon in the April 4, 2018 hearing, Appellants were not required to meet the burden of filing a Rule 59(e) motion prior to filing a Notice of Appeal. Appellants timely filed and served their Notice of Appeal and therefore, have protected their right to the appeal process.

CONCLUSION

Wherefore, the Appellants renew their argument that the Order of April 5, 2018 should be overturned ruling that the church real property, personal property and fellowship hall belong to the local church, Payne Chapel Church, and that the Appellants should be afforded the opportunity to a jury trial on their counterclaims.


EDUARDO K. CURRY, ESQUIRE
The Curry Law Firm, LLC
Post Office Box 42270
North Charleston, SC 29423
(843) 767-5284
(843) 767-5286 (Fax)
ATTORNEY FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

DEC 10 2018

The Honorable J. C. Nicholson, Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2018-000653
Case No.: 2013-CP-10-1877

The RMUE through its General Officers Barbara B. Clark, Warren E. Hatcher, Cassie Keeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley, and Willie B. Oliver,Respondents

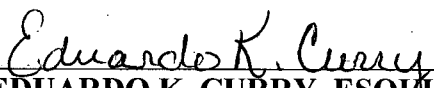
vs.

Herman Bolds, Richard Brown Cecil Parker, Theodore Miller, Carl Miller, Joan S. Roper, Martha Mathews, Thomasina G. Walker, Marilyn S. Washington, Jaree R. Stanley, Audrey Wilder, Derrick Lucas, Willie Parker, Jr., James Cromwell, James A. Roper, III, Elizabeth R. Parker, Jacqueline R. Miller, and Payne Church,Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Reply to Respondents' Initial Brief to The RMUE through its General Officers Barbara B. Clark, Warren E. Hatcher, Cassie Keeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley, and Willie B. Oliver by depositing a copy of it in the Unites States Mail, postage prepaid, on December 7, 2018, addressed to their attorney of record, Darrell Thomas Johnson, Jr., PO Box 1125, Hardeeville, SC 29927.

December 7, 2018


EDUARDO K. CURRY, ESQUIRE
The Curry Law Firm, LLC
Post Office Box 42270
North Charleston, SC 29423
(843) 767-5284
(843) 767-5286 (Fax)
ATTORNEY FOR APPELLANTS

THE
CURRY LAW FIRM

Attorneys at Law

Eduardo K. Curry (SC,PA)
Cindy R. Pinckney Graham (SC)

6518-D Dorchester Road (29418)
Post Office Box 42270
North Charleston, South Carolina 29423
currylawfirm@bellsouth.net

Tel: (843) 767-5284
Fax: (843) 767-5286
1-888-54CURRY (28779)

December 7, 2018

Clerk of Court – South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: RMUE vs. Herman Bolds, et al.
Appellate Case No.: 2018-000653

RECEIVED

DEC 10 2018

SC Court of Appeals

Dear Appeals Court Clerk:

Enclosed please find the original and two (2) copies of the following:

1. Reply to Respondents' Initial Brief; and
2. Proof of Service

Please file the original and return two clocked copies to me in the self addressed stamped envelope provided for you.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Eduardo K. Curry
Curry Law Firm, LLC
Eduardo K. Curry, Esquire

Enclosures

cc. **Darrell Thomas Johnson, Jr. Esquire**

Curry Law Firm, LLC
PO Box 42270
North Charleston, SC 29423

RECEIVED
DEC 10 2018
SC Court of Appeals

Clerk of Court – South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211