

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO: 2019-CP-10-0113

Dana Mazyck, Guardian Ad Litem For  
Tyler M., A Minor Child Under The Age  
Of (14),

Plaintiffs,

ORDER GRANTING CHARLESTON  
COUNTY SCHOOL DISTRICT'S

vs.

RECEIVED

MOTION TO DISMISS  
(WITH PREJUDICE)

Charleston County School District,

JUL 24 2019

Defendant.

SC Court of Appeals

FILED  
JUL 24 2019  
JULIE A. BRISTOL  
CLERK OF COURT  
2019 JUL -3 PM 3:43

This matter came before the Court on Friday, June 14, 2019 for a hearing on Charleston County School District's (hereinafter the "District") Motion to Dismiss based upon the doctrines of *res judicata*, collateral estoppel, and Rules 12(b)(5) and (6), SCRC. Plaintiff was represented at the hearing by her attorney, Tiffany Wilder-Spann; the District was represented by W. Coleman Lawrimore on behalf of Lisa A. Reynolds. Based upon a review of the Court's file, the arguments of counsel presented at the hearing, and the supporting memoranda and case law provided at the hearing, I make the following findings of fact and conclusions of law.

**BACKGROUND FACTS**

Plaintiff brought this action under the South Carolina Tort Claims Act for damages allegedly sustained as a result of a fall which allegedly occurred on April 22, 2015 on the playground at Jennie Moore Elementary School in Charleston County, South Carolina. Plaintiff alleges that the minor child, Tyler M., either fell on or off the playground equipment.

The instant matter is the second action involving the above-captioned parties and the April 22, 2015 incident. The first action, C/A 2017-CP-10-1970 (hereinafter "Mazyck I"), was dismissed by Order of The Honorable Roger M. Young, Sr. based upon Plaintiff's failure to properly file and serve the Summons and Complaint in Mazyck I within the Statute of Limitations set forth in the South Carolina Tort Claims.

DBA  
1-1075

Plaintiff neither moved to alter or amend Judge Young's Order, nor appealed from the same. The Court takes notice of Judge Young's Order dismissing Mazyck I, and the findings contained therein.

Plaintiff filed the instant matter on January 9, 2019, approximately six months after the dismissal of Mazyck I. The instant matter involves identical parties and nearly-verbatim allegations. The District filed its Answer and Motions to Dismiss on February 8, 2019.

### CONCLUSIONS OF LAW

The District's Motions to Dismiss under Rules 12(b)(5) and (6), SCRCF were based upon the doctrines of *res judicata* and collateral estoppel. In light of the following, the Court grants the District's Motions to Dismiss on those grounds.

Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992). *Res judicata* precludes parties from relitigating issues actually litigated and those that might have been litigated in a prior action. S.C. Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 249, 551 S.E.2d 274, 278 (Ct. App. 2001).

"Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits." Rule 41(b), SCRCF. In applying Rule 41(b), FRCP, which is "the same" as the South Carolina Rule, the United States Supreme Court has found that the rules of finality treat a dismissal on statute of limitations grounds as a judgment on the merits no different than a failure to prove liability or failure to prosecute. Plaut v. Spendthrift Farm, 514 U.S. 211, 228, 115 S. Ct. 1447, 1457 (1995).

---

<sup>1</sup> See Note to Rule 41, SCRCF.

DCB  
1.28.19

~~Collateral estoppel, or issue preclusion, prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action.~~ Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 251, 481 S.E.2d 706, 707 (1997). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Carolina Renewal, Inc. v. S.C. DOT, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suits are the same." Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009).

**I. THIS ACTION IS BARRED BY THE DOCTRINE OF RES JUDICATA.**

In the case at bar, it is apparent on the face of the Complaint that the parties are identical to those in Mazyck I. It is further apparent that the subject matter of the instant action is similar, if not identical, to that of Mazyck I<sup>2</sup>.

As above, Rule 41(b), SCRCP, which "makes clear when involuntary dismissal operates as an adjudication on the merits," treats an involuntary dismissal as an adjudication on the merits unless the order for dismissal specifies otherwise, or the dismissal is for lack of jurisdiction, improper venue, or failure to join a party under Rule 19. In the context of the nearly-identical Rule 41, FRCP, the United States Supreme has ruled that a dismissal based upon the statute of limitations is an adjudication on the merits.

The Court finds, based on the plain language of the Order dismissing Mazyck I, that the dismissal was based upon the Plaintiff's failure to properly file and serve the matter within the South Carolina Tort Claims Act's statute of limitations. The Order noted, under "Law/Analysis," that "[t]he South Carolina Tort Claims Act provides a two year statute of limitations period for actions against a governmental entity..." such that Plaintiff "had two (2) years, until April 22, 2017, in which to commence this action." (Order of Dismissal at pages 1-2). Further, the Order dismissing Mazyck I found that Defendant's Motion to Dismiss

<sup>2</sup> Plaintiff's counsel noted that there were allegations of additional damages in the instant matter; however, the causes of action and allegations are similar if not identical to Mazyck I.

DCB  
p. 3075

~~was granted based upon Rules 12(b)(1), (4), and (5), SCRPC and the South Carolina Tort Claims Act.~~

(Order of Dismissal at page 5).

In light of the foregoing, the Court finds that: (1) the identity of the parties in this action are the same as in Mazyck I; (2) the identity of the subject matter in this action is the same in Mazyck I; and (3) the statute of limitations issue present in both actions was adjudicated on its merits in Mazyck I. Accordingly, the Court finds that the doctrine of *res judicata* applies to Plaintiff's claims in the instant action. Therefore, this matter must be dismissed with prejudice.

**II. THE INSTANT MATTER IS BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL.**

Here, the District contends that the issue of the statute of limitations was conclusively determined in Mazyck I; Plaintiff contends that this issue was not taken to a final judgment. As above, the doctrine of collateral estoppel requires a showing that an issue was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.

With regard to the "actually litigated" element, the Court takes notice of Plaintiff's arguments in Mazyck I, contained in Plaintiff's Memorandum in Opposition of Defendant's Motion to Dismiss, wherein Plaintiff argues both Mazyck I was timely filed and served; Plaintiff additionally argued that the applicable statute of limitations had not run as to the minor child. These arguments were raised again in the case at bar.

Additionally, the Court takes notice of the determination of when the statute of limitations ran in Mazyck I. The Order of Dismissal in Mazyck I specifically sets out the length of the statute of limitations and calculates the date on which the statute ran as to the claims set out in Mazyck I. (Order of Dismissal at page 2). Accordingly, the Court finds that the statute of limitations was directly determined in Mazyck I.

Finally, the Court notes that the Order of Dismissal in Mazyck I was based in whole or in part on the South Carolina Tort Claims Act's two-year statute of limitations. The Order of Dismissal includes the Tort Claims Act among the grounds for dismissal and includes an extensive discussion of the Act's

DCT  
1-4-05

applicable statute of limitations. Accordingly, the Court finds that the statute of limitations was a necessary source of support to the Order of Dismissal in Mazyck I.

As such, the Court finds that the statute of limitations issue was actually litigated, directly determined, and necessary for the support of the dismissal of Mazyck I. Accordingly, the doctrine of collateral estoppel applies to the issue of the statute of limitations in this action. Therefore, Plaintiff is barred from readdressing the issue of the statute of limitations. Accordingly, this action must be dismissed based upon the Court's prior determination of this issue in Mazyck I.

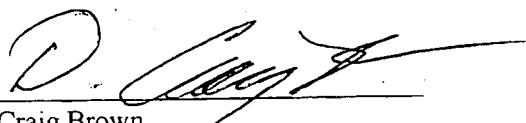
**CONCLUSION**

Based upon the foregoing, the Court finds that the doctrines of *res judicata* and collateral estoppel apply to the instant matter. The effect of this application is that Plaintiff's causes of action against the District, as well as the issue of the statute of limitations, are barred from re-litigation. As such, Plaintiff's Complaint must be dismissed. Accordingly;

**IT IS ADJUDGED, ORDERED, AND DECREED** that the District's Motion to Dismiss is **GRANTED**.

*Judy*  
June 1, 2019

*F. Lorraine*, South Carolina

  
D. Craig Brown  
Presiding Judge  
Charleston County Court of Common  
Pleas

*DCB*  
*1-595*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been served upon the following parties by placing a copy of same in the United States mail, first class postage prepaid, and/or via email addressed to the following as shown below 3 day of JULY, 2019.

Tiffany R. Spann-Wilder, Esquire  
Spann Wilder Law, LLC  
P.O. Box 70488  
North Charleston, SC 29415  
**Counsel for Plaintiff**

  
ANDERSON REYNOLDS & STEPHENS, LLC

BY \_\_\_\_\_  
JUL 4 AM 3:10 PM  
CLERK OF COURT  
2019 JUL -3 PM 3:43