

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Knox McMahon, Circuit Court Judge

Case No. 2018-000887

Erick George Johnson,

Appellant,

vs.

Abigail Marie Williams,

Respondent.

FINAL BRIEF OF RESPONDENT

Abigail M. Eiler (Williams)
2019 San Sus Drive
West Columbia, SC 29170
(803) 414-0701
Respondent

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TABLE OF CONTENTS

| | |
|-----------------------------------|----|
| Table of Authorities | i |
| Statement of the Issues on Appeal | ii |
| Statement of the Case | 1 |
| Argument | 4 |
| Conclusion | 8 |
| Certificate of Counsel | |
| Certificate of Service | |

TABLE OF AUTHORITIES

CASES

Hammer v. Hammer, 399 S.C. 100, 730 S.E.2d 874 (2012)7
Rodman v. Rodman, 361 S.C. 291, 604 S. E.2d 399 (Ct.App. 2004)5
Splawn v. Splawn, 311 S.C. 423, 425, 429 S.E. 2d 805, 806 (1993)6
White v. White, 283 S.C. 348, 349, 323 S.E. 2nd 521, 522 (1984)6

STATUTES

S.C. Code Ann. § 20 – 3 – 690 (Supp.2011)7
S.C. Code Ann. § 20-7-420(6) (1976 & Supp. 2003)5
S.C. Code Ann. § 20-7-420(30) (1976 & Supp. 2003)6
S.C. Code Section 63-3-530.....8

OTHER AUTHORITIES

SCRCP 56.....3

STATEMENT OF THE ISSUES ON APPEAL

1. Did the Trial Court correctly grant the Respondent's Motion to Dismiss case under the Doctrine of Collateral Estoppel?
2. Did the Trial Court correctly find that Family Court maintains subject matter jurisdiction over the subject matter of this case, and that the order is valid and enforceable?

STATEMENT OF THE CASE

The Appellant, Erick Johnson, and the Respondent, Abigail Williams, were involved in an on – off dating relationship and have two children together. The relationship lasted approximately four years. Officially beginning in February of 2013 and reaching the final separation in July of 2016. Respondent wanted to purchase a home in order to provide a secure residence for her children. When Respondent purchased the residence, she was the sole financial provider for the household. Appellant pushed for the Respondent to purchase this residence instead of continuing to search for alternate residences even though repairs needed to be done. Appellant urged that he would help with repairs of the residence if Respondent purchased supplies needed since Respondent was pregnant with their second child and unable to physically make repairs herself at that time. Respondent purchased 2019 San Sus Drive, West Columbia, South Carolina on October 10, 2014. Appellant was present at the closing of the residence to care for the children and signed as a witness of the transaction between the Respondent and the seller. The Respondent placed an initial eviction notice to Appellant on the front door of the subject property on August 1, 2016 and filed an action in the Lexington County Magistrate’s Court under docket number 2016-CV-32-1091082 (R. P.67), to evict Appellant from 2019 San Sus Drive, West Columbia, South Carolina. Additionally, the Respondent filed an action in Family Court for Lexington County on August 4, 2016. Williams v Johnson, 2016-DR-32-1847(R. PP. 52-62). The Appellant requested a hearing for a Motion to Dismiss the eviction on October 10, 2016 (R. P. 68) (R. P. 69) due to the pending case in Lexington County Family Court. In the Family Court case titled, Williams v Johnson, 2016-DR-32-1847. The Respondent sought an award of custody of the parties’ minor children, child support, attorneys’ fees, and a restraining

order against Appellant. The Respondent did not raise issues regarding the property in her initial complaint because the property, 2019 San Sus Drive, West Columbia, SC was solely purchased by the Respondent and therefore had no reason to be addressed (R. PP. 52-60).

The Appellant filed an Answer and Counterclaim (R. PP. 63-66) alleging common law marriage with the Respondent, and sought equitable division of property and debt, custody, child support, visitation and attorney fees. All of the matters raised were resolved in a full and fair hearing in the family court proceedings that resulted in the Final Order on June 14, 2017 (R. PP. 8-26). Appellant filed the instant action on April 20, 2017 by filing Lis Pendens (R. PP. 32-33), Summons (R. P. 34), and Complaint (R. PP. 35-40) in the Court of Common Pleas asserting claims of an equitable interest in the real estate located at 2019 San Sus Drive, West Columbia, South Carolina. Appellant claimed an interest in the real estate pursuant to the establishment of a constructive trust, resulting trust, and seeking an equitable lien upon the property alleging that the Appellant and Respondent had entered into a common law marriage on or about June 2013. On June 12, 2017 during the pre-trial conference the Appellant withdrew his claim of common law marriage and agreed on a settlement with the Respondent to avoid going to trial. The Appellant's claim of Common Law Marriage was dismissed with prejudice by the Family Court (R. P. 11) (R. P.78). The Respondent, through counsel, filed an Answer (R. PP. 42-48) on June 6, 2017. The Respondent, through counsel, filed a Motion to Dismiss pursuant to SCRCP 12(b)(1) and (6) on August 23, 2017 on the grounds that the claims pled by the Appellant were barred by the Doctrines of Res Judicata, collateral estoppel, and judicial estoppel because the parties had resolved all issues in the Family Court case Williams v Johnson, 2016-DR-32-1847 (June 15, 2017) and by Final Order and Approval of Agreement (R. PP. 8-29). The Circuit Court heard

argument of counsel on October 26, 2017. The Respondent argued that the Circuit Court lacked subject matter jurisdiction as the issues had been resolved in the Family Court case. The Appellant argued that the Family Court had lacked subject matter jurisdiction to determine equitable division of property since the Appellant dismissed with prejudice his Counterclaim alleging common law marriage (R. P. 10) (R. P. 78). The Circuit Court Final Order 2017-CP-32-01333 (R. PP. 1-7) was filed on April 27, 2018. The Honorable Knox McMahon found that “this action is precluded under the doctrine of Collateral Estoppel and is hereby DISMISSED.”

ARGUMENT

- I. BECAUSE THE PARTIES HAD A FULL AND FAIR HEARING ADDRESSING ALL OF THE ISSUES HEREIN, THE COURT CORRECTLY DISSMISSED THIS CASE UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL.

On June 12, 2017 in the Family Court in the case styled Abigail Williams v. Erick Johnson, 2016-DR-32-1847, the parties had a full and fair hearing addressing all of the issues raised in the complaint in this matter (R. PP. 75-110). A final order in that case was filed by Judge Smithdeal on June 15, 2017 (R. PP. 8-28). Specifically, the language contained in paragraph 14 (emphasis added) states “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.” And the language on page 15 (emphasis added) states “Each party understands that the terms involving common law marriage, property and debt are final and cannot be modified in the future or be brought back to the Court for reconsideration and is permanent”.

- II. THE TRIAL COURT CORRECTLY FOUND THAT FAMILY COURT MAINTAINS SUBJECT MATTER JURISDICTION OVER THE SUBJECT OF THIS CASE, AND THAT THE ORDER IS VALID AND ENFORCEABLE.

South Carolina Code Section 63-3-530 provides in pertinent part that “(A) The family court

has exclusive jurisdiction: ... (2) to hear and to determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other 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;..."

In the relevant case of Rodman v. Rodman, 361 S.C. 291, 604 S.E. 2nd 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 and with any and all rights of support and all other rights and obligation." *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 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 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.

In the case at bar Appellant asserted that the parties were common law married. The family court determined, with 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.

In a converse approach to defend why the court correctly dismissed this case and Family Court maintains subject matter jurisdiction of the matters at hand. In Hammer v. Hammer, 399 S.C. 100, 730 S.E.2d 874 (2012) the Court of Appeals held 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 already 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.

III. APPELLANT HAS TWICE ASSERTED FAMILY COURT HAS SUBJECT MATTER JURISDICTION OVER THE PROPERTY IN DISPUTE, HE IS THEREFORE EQUITABLY ESTOPPED FROM NOW CLAIMING THERE IS NO SUBJECT MATTER JURISDICTION IN THE FAMILY COURT.

In the family court proceeding the Respondent initially filed for custody, child support, attorney’s fees and a restraining order against the Appellant. (R. PP. 52-60). The Appellant, 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 (R. PP. 63-66). That claim clearly brings the provisions of S.C. Code section 63-3-530 to bear on the issues before the family court including 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,

Appellant 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 Appellant'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. Respondent filed an action in the Lexington County Magistrate's Court under docket number 2016-CV-32-1091082, to evict Appellant from the subject property (R. P. 67). In response to that action, Appellant filed a motion to dismiss (R. P. 68) (R. P. 69) 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. Consequently, Appellant 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.

Conclusion

In the family court's final order (R. PP. 8-28), it addresses all issues related to both the real and personal property between the parties with consent of the parties. Specifically stating in paragraph 14 on page 10 (R. P. 17), "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." The Circuit Court

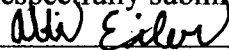
correctly found that the Family Court did have subject matter jurisdiction over both real and personal property issues when it made its final order in the case of Abigail Williams v. Erick Johnson, 2016-DR-32-1847 (R. PP. 8-28) and that the order is valid and enforceable and that the Family Court maintains jurisdiction over the subject matter in this case. The Court correctly found that the parties and the issues presented at bar were addressed in the Family Court case of Williams v. Johnson, that they were properly adjudicated by the Family Court and that all parties were given a full and fair hearing in the family court proceedings (R. P. 7).

The Circuit Court granted a Dismissal under the doctrine of Collateral Estoppel; the concept of this doctrine being the prevention of legal harassment and the overuse or abuse of judicial resources. Collateral Estoppel pertains to the matter at hand perfectly as the Appellant continues to pursue different results when the issue has already been fully resolved. The Trial Court did not err in their decision and the Motion to Dismiss should stand. Respondent is entitled to an order affirming the Motion to Dismiss and banning the Appellant from further frivolous litigation.

West Columbia, South Carolina

August 8, 2019

Respectfully submitted,


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CERTIFICATE OF COUNSEL

I, Abigail M. Eiler (Williams), Respondent, do certify to the best of my knowledge that the Final Brief complies with Appellate Rule 211 (b).

West Columbia, South Carolina

August 8, 2019


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