STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) Docket No. 2018-CP-10-4907
)
Karyn Cavanaugh,)
)
Appellant,) **ORDER**
)
vs.)
)
New Age Contractors, LLP,)
)
Respondent.)

Presiding Judge:	Hon. Deadra L. Jefferson
Date of Hearing:	July 31, 2019
Appellant's Attorney:	Ransome H. Helmly, Esq.
Respondent's Attorney:	William Kalivas, Esq.
Court Reporter:	Cheri Milligan

This matter comes before the court on a notice of appeal by Appellant Karyn Cavanaugh ("Appellant") filed October 10, 2018. Appellant filed her complaint in the Charleston County Small Claims Court on March 26, 2018 against New Age Contractors, LLP ("Respondent"). The case was heard on September 10, 2018 before the Honorable Henry W. Guerard. Appellant appeared *pro se* and presented no additional witnesses. Respondent was represented by Steven L. Smith, Esq. After careful consideration of the arguments of counsel and a review of the record, including the Magistrate Court's Return, filed March 4, 2019, this Court hereby dismisses Appellant Karyn Cavanaugh's appeal and affirms the Magistrate Court's Judgment.

FACTS

On June 17, 2015, the parties entered into a contract for residential home repairs for water damages to Appellant's home located at 31 Krier Lane, Mt. Pleasant, South Carolina 29464. Appellant claimed that Respondent breached the contract by failing to perform fully under the

contract after Appellant paid Respondent in full. Appellant sought reimbursement for the uncompleted work in the amount of $7,500.

At the hearing, Appellant testified that the contract was based on an insurance estimate for the repair of leaking or failing roof drains that ran down the side of Appellant's home. The estimate was based on the leaking or failing roof, which was believed to be the original problem. She further testified that the contract specifically listed every item that the Respondent was responsible for repairing or replacing. Respondent was to remove the stucco siding in the immediate area of each drain, make repairs, and reinstall the siding. However, as soon as Respondent began to remove the siding, Respondent discovered the home was suffering from serious wood rot and termite damage. The damages was far more extensive that either party expected.

After discovering the additional damage, the parties had multiple conversations regarding how to proceed and financing. The Appellant and her husband asked Respondent to continue to assist them with completing the repairs and obtaining additional insurance proceeds. Respondent agreed, and continued to do so until the unpaid balance owed by the Appellant reached $9,852.08, at which time Respondent ceased repairing the home. Appellant then initiated these proceedings.

CONCLUSIONS OF LAW

On an appeal from the Magistrate's Court, the Circuit Court, acting as the appellate court, reviews the matters raised in the notice of appeal. S.C. CODE ANN. § 18–3–70 (2013) ("The appeal must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses."). "Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits." S.C. CODE ANN. § 18–7–170 (2013).

"In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact." Id. See Bowers v. Thomas, 373 S.C. 240, 244, 644 S.E.2d 751, 753 (Ct. App. 2007) (citing S.C. CODE ANN. § 18–7–170 (2014), *et seq.*); See also S.C. CODE ANN. § 14–25–95 (2014) (Municipal Court Appeals to Circuit Court).

This Court's review of this appeal is limited to matters, which were raised and ruled upon by the trial court. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733–34 (1998) (citing Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. . . Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector")).

> As the circuit court noted in its order, the circuit court, pursuant to S.C. CODE ANN. § 18–7–170 (1985), in appeals from the magistrate court, 'may affirm or reverse the judgment of the [magistrate], in whole or in part, as to any or all the parties or for errors in law or fact.' Nonetheless, the circuit court is restricted regarding which issues it may entertain in determining whether a judgment should be affirmed or reversed, either in whole or in part. See Sanders v. Hayes, 128 S.C. 181, 122 S.E. 572 (1924) (where the defendant failed to object at the trial that the magistrate was related to the plaintiff although his attention was called to it, that objection cannot be raised on appeal); Hill v. Garrett, 83 S.C. 572, 65 S.E. 821 (1909) (wherein the court held the objections, on appeal from a magistrate court, were not available unless raised below). Also, the parties to an appeal from the magistrate court are restricted to the theory on which the case was tried in the magistrate court. 51 C.J.S. *Justices of the Peace* § 141, at 299 (1967); see White v. Livingston, 231 S.C. 301, 306, 98 S.E.2d 534, 537 (1957) ("It is well settled that one cannot present and try his case on one theory and thereafter advocate another theory on appeal.").

Indigo Assocs. v. Ryan Inv. Co., 314 S.C. 519, 523, 431 S.E.2d 271, 273 (Ct. App. 1993) (citations omitted).

A party seeking to preserve an issue at trial for appellate review must raise it to the lower court. Wilder, 330 S.C. at 76, 497 S.E.2d at 273–74. See also Staubes v. City of Folly Beach, 399

S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the court to be preserved for appellate review."); Burke v. AnMed Health, 393 S.C. 48, 54, 710 S.E.2d 84, 87 (Ct. App. 2011) ("A contemporaneous objection is typically required to preserve issues for appellate review.").

"If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420–22, 526 S.E.2d 716, 723–24 (2000) ("This approach is in keeping with the view, as expressed in Rule 220(c), SCACR, that an appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal. An affirmance promotes judicial economy and finality in private and public affairs, which are important public policies.").

Appellant raises the following issues on appeal: that the Magistrate erred in considering evidence barred by the parol evidence rule; that the Magistrate erred in ruling Defendant established that a material change in the terms of the contract occurred; that the Magistrate erred in preventing the Appellant from introducing relevant evidence during the course of her testimony; and that the Magistrate erred in considering evidence precluded by the collateral source rule.

Appellant raised no issue that forms the basis of her appeal to the Magistrate Court during the hearing, nor did she make any post-trial motions to address any of these issues. Therefore, Appellant's arguments are not preserved for appellate review. Accordingly, this Court affirms the Magistrate Court's decision and dismisses Appellant's appeal. Moreover, "[a] *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." State v. Burton, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9

n. 5 (2003). That Appellant opted to proceed *pro se* rather than seek representation by a licensed South Carolina attorney does not relieve her from the technical requirements of the law.

However, alternatively, the Court addresses the merits of the Appellant's arguments on appeal. There exists no evidence in the record to support a finding that parol evidence was introduced, because the interpretation of the contract was not at issue. There is also more than adequate evidence in the record to support a finding that the terms of the original contract were materially altered by the conduct of the parties. Specifically, the original contract was for the replacement of a series of drains, which scope was ultimately enlarged by agreement of the parties resulting in extensive additional repairs to the entire side of the home because of moisture and termite damage. Moreover, while evidence of Appellant's insurance and prior settlement was introduced, the evidence was germane to the underlying basis of the contract terms, especially in light of the fact that Appellant sought to have Respondent assist Appellant with procurement of additional insurance funds as an inducement to continue working without additional compensation. Moreover, the Appellant introduced insurance documentation as a main component of her claim through her testimony. Further, Appellant filed these documents with her Summons and Complaint as exhibits and documentation of her claims. Having raised the issue the Appellant cannot limit the Respondent from inquiry on the matter on cross-examination or inquiry for clarification by the Court.

The Appellant likewise contends that the Magistrate erred in preventing the Appellant from introducing relevant evidence during the course of her testimony. There is no support for this contention in the record on appeal. The record reflects that Appellant had a full and fair opportunity to make a complete presentation of her claims. The record fails to reflect any denied attempts by Appellant to introduce additional evidence or documents. In fact, the record clearly reflects that

the lower Court considered every document asked of it by the Appellant. Appellant's counsel has characterized Judge Guerard's questioning of the parties as inappropriate. The Court finds this assertion wholly without merit. The record, more specifically the transcript, is clear that any inquiry made of the Appellant by the Court clearly inured to her benefit. It is clear from the record that Judge Guerard's questions were an attempt to assist the Appellant and clarify the issues before him and not an attempt to interfere in any way with the Appellant's presentation of her case.

"Section 18-7-170 of the South Carolina Code (1985) articulates the standard of review to be applied by the Circuit Court in an appeal of a magistrate's judgment: Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact." Bowers v. Thomas, 373 S.C. 240, 244, 644 S.E.2d 751, 753 (Ct. App. 2007).

THEREFORE, this Court having found more than adequate evidentiary support in the record, no error of law, and finding no abuse of discretion, AFFIRMS the decision of the lower court.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

August 9, 2019
Charleston, South Carolina