THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2018-000289

Mario Escalante,..... Appellant,

v.

David L. Rodgers and Janice W. Rodgers,
d/b/a Whitehall Express Mart ....Respondents.

FINAL BRIEF OF RESPONDENTS

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INTRODUCTION

The circuit court's grant of the motion for summary judgment filed by David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (hereinafter referred to as "Whitehall" or "Respondents") should be affirmed because Appellant's claims are barred by operation of the doctrine of res judicata. While Appellant has tried to raise a host of issues on appeal, many of which are not properly before this Court, the only real issue is whether the circuit court correctly determined that the claims asserted in this action arise out of the same transaction or occurrence as those claims asserted by Appellant against Respondents in a related action filed in the United States District Court for the District of South Carolina. Because the two actions arise out of the same transaction or occurrence and Respondents obtained summary judgment in the federal action (and such decision was affirmed by the Fourth Circuit Court of Appeals), the circuit court correctly granted Respondents' motion for summary judgment in this state court action.

STATEMENT OF THE CASE

This matter arises out of an incident which occurred on Sunday, May 5, 2013, at the Whitehall Express Mart ("Whitehall") owned by David and Janice Rodgers and located 704 Whitehall Road in Anderson, South Carolina. Appellant alleges that on that date Respondents wrongfully accused him of shoplifting a case of beer. As a result of the incident, Appellant was arrested and spent one night in jail. The charges against Appellant were dismissed for failure to prosecute when Respondents did not appear on his court date due to an alleged lack of notice.

On July 22, 2013, Appellant initiated an action in the Anderson County Court of Common Pleas against Respondents ("the State Action"). In the complaint, Appellant asserts false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious

prosecution, conspiracy, conversion, and fraud causes of action. (R. pp. 1-13).[1] Appellant alleges Respondents filed a complaint with the Anderson's County Sheriff's Department and stated that they had video footage of Appellant stealing beer. (R. p. 6 at ¶ 7). Appellant alleges that David Rodgers followed Appellant, aided the Sheriff's Department in locating him, and instructed the police that Appellant had stolen beer from his store. (R. p. 6 at ¶¶ 9-10). As such, the police arrested Appellant for shoplifting. (R. p. 6 at ¶ 12). Further, Appellant alleges that Respondents accused Appellant of stealing the beer in an effort to protect themselves from prosecution for violating local ordinances prohibiting the sale of alcohol on Sundays. (R. p. 7 at ¶ 17).

With the State Action still pending, on January 13, 2015, Appellant filed suit in the United States District Court for the District of South Carolina, Anderson Division, against Respondents, the Anderson's County Sheriff's Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police Department, and James S. Stewart (hereinafter referred to as "the Federal Action"). The complaint in the Federal Action contains nearly identical allegations as in State Action and, with the exception of negligence which was not clearly pled in the Federal Action, asserts the same causes of action against Mr. and Mrs. Rodgers. (R. pp. 219-233). In addition, the complaint in the Federal Action asserts assault, battery, civil rights, and abuse of process claims against the police defendants. (*Id.*)

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[1] Appellant's brief on appeal is replete with many bald assertions disguised as "facts." These purported "facts" find no support in the record and were not considered by the circuit court in any context. *See Becker v. Uhe*, 221 S.C. 334, 339, 70 S.E.2d 346 (1952) ("[F]acts improperly stated in the brief will not be considered."). In addition, Appellant fails to include proper reference to the materials from which many of the statements are included in Appellant's Statement of Fact were taken. *See* Rule 208(b)(4), SCACR.

While Respondents dispute many of the allegations in Appellant's brief, because the issue before the Court is one involving issues of res judicata and/or collateral estoppel, Respondents refer only to the allegations contained in the pleadings.

Respondents and the co-defendants filed separate motions for summary judgment in the Federal Action. While the motions were pending, the State Action was set for a date certain trial on February 16, 2016. The parties held a telephone status conference with Judge Cordell Maddox to discuss the trial of the case. (R. p. 198). Due to the pending motions for summary judgment in the Federal Action, Judge Maddox continued the trial of the State Action until such time as the outcome of the Federal Action was known. (R. p. 198)

By order dated August 16, 2016, U.S. District Judge Mary G. Lewis granted summary judgment in the Federal Action to Respondents and the police defendants as to each cause of action asserted by Appellant, finding that the evidence in the record supported the Magistrate Judge's "central conclusions":

> (1) that Plaintiff has produced no evidence to support his entirely speculative contention that the shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation; and
>
> (2) that probable cause ultimately supported Plaintiff's shoplifting arrest.

(R. p. 235). Appellant appealed the order granting summary judgment to the Respondents in the Federal Action. On October 12, 2017, the Fourth Circuit Court of Appeals affirmed the order granting summary judgment to Respondents for the reasons stated by the district court in its August 16, 2016 order. (R. pp. 236-238).

Following the Fourth Circuit Court of Appeals' affirmation of the order granting summary judgment in the Federal Action, on October 18, 2017, Respondents moved for summary judgment in the State Action on the grounds that Appellants' claims are barred by the doctrines of res judicata and collateral estoppel. (R. pp. 204-238). That motion was granted by the trial court by order dated January 16, 2018. Appellant filed a motion for reconsideration, which was denied by the trial court. Appellant now appeals that ruling.

ARGUMENT

For the reasons outlined below, the circuit court's order was proper and should be affirmed.

I. Appellant Cannot Rely Upon Facts and Arguments Not Properly Before the Court.

Before delving into the merits of the circuit court's decision, it is important to note that many of the issues raised in Appellant's brief are not properly before this court. Specifically, Appellant rests the majority of his arguments on the grounds that Respondents' answer should have been stricken on account of the alleged spoliation of video surveillance evidence. Appellant previously filed a motion to compel (R. pp. 29-30), a complaint for contempt and rule to show cause (R. pp. 60-63), and a motion to strike (R. pp. 241-249) which all involve the issue of the video surveillance. All of these motions were denied. Appellant has not appealed the circuit court's denial of any of these motions as they are not included in the notice of appeal nor are they identified in his statements of issue on appeal. *See* Rule 208(b)(1)(B), SCACR ("ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *Allen v. Pinnacle Healthcare Sys., LLC,* 394 S.C. 268, 715 S.E.2d 362 (2011) (declining to address argument on the merits which was not included in appellant's sole statement of the issue on appeal).

Rather, the only orders from which Appellant now appeals are the circuit court's order granting Respondents' motion for summary judgment and order denying Appellant's motion for reconsideration. The circuit court's order makes no mention of spoliation of evidence but, rather, properly found that Appellant's claims are barred by res judicata.

II. The Circuit Court Properly Granted Summary Judgment to Respondents' Because Appellant's Claims Are Barred By Res Judicata And/Or Collateral Estoppel

While Appellant makes much ado about being deprived of his day in court, such cannot be further from the truth. Rather, Appellant is now attempting to relitigate the same issues before a fourth tribunal. The procedural history of this matter is admittedly convoluted, but the issues related thereto were created by Appellant's decision to simultaneously file suit against Respondents in two separate forums, both of which relate to his May 5, 2013 shoplifting arrest. For the reasons discussed below, Appellant cannot get a second (or fourth) bite at the apple after Respondents obtained judgment in their favor in the Federal Action.

"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 those parties." *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013) (quoting *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)). "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." Id. (citation and quotation marks omitted). "Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding." *S.C. Pub. Interest Found.*, 401 S.C. at 386, 737 S.E.2d at 506 (quoting *Pye v. Aycock*, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997)).

"Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." *S.C. Pub. Interest Found.*, 401 S.C. at 386, 737 S.E.2d at 507 (quoting *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012)). "The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable

principles." *Town of Sullivan's Island v. Felger*, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995) (citing *Watson v. Goldsmith*, 205 S.C. 215, 31 S.E.2d 317 (1944)). In *Watson*, the Supreme Court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

> Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation) . . . Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

205 S.C. at 221-22, 31 S.E.2d at 319-20 (citations omitted) (emphasis added); *see also First Nat'l Bank of Greenville*, 207 S.C. at 24, 35 S.E.2d at 56-57 (citing *Watson*) (contrasting the origins of res judicata and collateral estoppel).

Here, as much as Appellant would like to distinguish the State and Federal Actions, a cursory review of the complaints in the two suits reveals two nearly identical actions. Aside from the addition of the police defendants and a few additional causes of action (§1983, Assault, Battery), the factual allegations of the Federal Action are essentially repeated verbatim from the complaint in the State Action. Moreover, with the exception of negligence, Appellant asserts the same causes of action against Respondents in the complaint in the Federal Action as he does in the State Action.

While Appellant argues in this appeal that Respondent Rodgers was included as a party in the Federal Action, merely to establish his involvement in the "conspiracy" to deprive the Appellant of his constitutional rights, such a distinction is not reflected in the pleadings.[2]

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[2] While admittedly not a part of the record in the State Action, Respondents would also represent to the Court that, in seeking to hold Rodgers liable under § 1983 as a private citizen, Appellant submitted in his briefing to both the United States District Court and the Fourth Circuit Court of Appeals that Respondent Rodgers was essentially the driving force behind his arrest.

Appellant also sought to hold Respondents liable for conspiracy in the State Action. (R. p. 12 at ¶¶ 54-57). Appellant did not posit Respondent Rodgers as a mere co-conspirator in the Federal Action but, rather, alleged that Respondent Rodgers was the one who "instigated the unlawful arrest of [Appellant] by, among other fraudulent means, providing false information and misleading still photographs to authorities." (R. p. 223 at ¶ 10(first)).

Moreover, just as is the case in the State Action (R. p. 7 at ¶ 17), the crux of Appellant's case in the Federal Action is the notion "Rodgers and his employees alleged that [Appellant] had stolen the beer, in an effort to protect themselves from prosecution for violating the Sunday alcohol ordinance." (R. p. 221 at ¶ 21). As the District Court held and the Fourth Circuit affirmed:

> [Appellant] has produced no evidence to support his entirely speculative contention that the shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation.

(R. p. 235).

It is clearly apparent that the State and Federal Actions arise out of the same transaction or occurrence, the May 5, 2013 shoplifting incident, and involve the same legal theory against Respondents (i.e. manufacturing a shoplifting crime to cover a Sunday alcohol sale). Because Respondents obtained summary judgment as to all causes of action in the Federal Action, res judicata bars Appellant from re-litigating those causes of action in the State Action.

Nonetheless, Appellant contends that the negligence claim contained in the complaint in the State Action is not barred by res judicata because it was not raised in the Federal Action and, thus, was not adjudicated.[3] Under the doctrine of res judicata, however, a litigant is barred "from

[3] It appears that Appellant is not contesting that his false imprisonment, invasion of privacy, defamation, false arrest, outrage, malicious prosecution, conspiracy, conversion, and fraud

raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *S.C. Pub. Interest Found.*, 401 S.C. at 385, 737 S.E.2d at 506 (emphasis added). As such, even if negligence was not formally adjudicated in the Federal Action, it is barred by res judicata if it could have been raised in the Federal Action. That is clearly the case here. While Appellant wants to construe the negligence claim as one involving conduct inside Respondent's store as opposed to claims in the Federal Action which purportedly involve conduct that occurred after Appellant left the store, the negligence claim asserted in the State Action arises out of the same transaction or occurrence – the May 5, 2013 shoplifting incident. There was nothing prohibiting Appellant from raising the negligence claim in the Federal Action along with the other state-law claims. As such, the negligence claim is also barred by res judicata.

Because the State and Federal Actions arise out of the same transaction or occurrence and Respondents obtained summary judgment as to all causes of action in the Federal Action, this action is barred by the doctrine of res judicata. Accordingly, the circuit court's order granting Respondents' motion for summary judgment should be affirmed.

CONCLUSION

For the foregoing reasons, Respondent requests that the Court deny the appeal and affirm the decision of the circuit court.

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causes of action are barred by res judicata. *See* Appellant's Initial Brief, p. 7 ("Appellant believes that he is not precluded from raising the cause of action for negligence against Respondents.") (emphasis added). In fact, counsel for Appellant admitted at the hearing on Respondents' motion that negligence was the only cause of action which could potentially survive. (R. p. 284).

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June 27, 2018

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RULE 211, SCACR CERTIFICATION
FINAL BRIEF OF APPELLANT

I, Nicholas A. Farr, Esquire, hereby certify that the *Final Brief of Respondents* complies with the requirements of Rule 211(b) of the South Carolina Appellate Court Rules.

Nicholas A. Farr, Esquire

Greenville, South Carolina

June 27, 2018