

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2013-CP-04-1700
Appellate Case No. 2018-000289
Unpublished Opinion No. 2020-UP-021
(Rehearing denied March 27, 2020)

Mario Escalante,

Appellant/Petitioner,

v.

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

Respondents.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The Petition for Writ of Certiorari in this matter should be denied. There are several reasons why this is the case. First and foremost, Petitioner raises issues not preserved for appeal. Additionally, none of the factors in Rule 242(b), SCACR exist to justify the issuance of the writ. There is no Court of Appeals dissent, no constitutional issue, no federal question, no novel question of law, and no other “special and important” reason that warrants certiorari. Further, the Court of Appeals’ opinion does not conflict with precedent. The Court of Appeals correctly affirmed the trial court’s Order Granting Respondent’s Motion for Summary Judgment and denied the Petition for Rehearing because it was unable to discover that any material fact or principle of law had been either overlooked or disregarded.

ARGUMENT

I. Petitioner raises issues not properly preserved for appeal.

This Court does not address issues which were not preserved on appeal. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). “Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review. Arguments raised for the first time on appeal are not preserved for our review.” *In re Walter M.*, 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) (internal citations omitted). Petitioner now argues: (1) that the lower court improperly interpreted the phrase “prior action” or “prior proceedings” as it relates to the doctrine of *res judicata*; and (2) that *res judicata* is an affirmative defense and was deemed waived when Respondent failed to properly and timely assert the same. These arguments were not raised in response to Respondent’s Motion for Summary Judgment. *See* Plaintiff’s Reply to Defendants’ Motion for Summary Judgment. Although not dispositive, Petitioner also failed to raise these

arguments in his Notice of Appeal. *See* Notice of Appeal. Because Petitioner first raised these issues in his Petition for Writ of Certiorari, they are not properly preserved for this Court’s review. *See In re Walter M.*, 386 S.C. at 387, 688 S.E.2d at 136. Thus, the Petition for Writ of Certiorari in this matter should be denied.

II. The Court of Appeals’ ruling presents none of the factors generally required to grant certiorari.

The South Carolina Appellate Court Rules provide that a “writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR; *see also State v. Lyles*, 381 S.C. 442, 443, 673 S.E.2d 811, 812 (2009) (“The Court has held it will grant certiorari to the Court of Appeals only where special reasons justify the exercise of that power.”) (citations omitted). Typically, the granting of certiorari is limited to cases where: (1) there are novel questions of law; (2) there is a dissent in the decision of the Court of Appeals; (3) the decision by the Court of Appeals is in conflict with a prior decision of this Court; (4) substantial constitutional issues are directly involved; or (5) a federal question is included, and the decision by the Court of Appeals conflicts with a decision of the Supreme Court of the United States. *See* Rule 242(b), SCACR; *see also Lyles*, 381 S.C. at 444 n.2, 673 S.E.2d at 812 n.2. As explained below, the Court of Appeals’ ruling presents none of these factors and is consistent with longstanding precedent.

This Petition arises out of Respondent’s Motion for Summary Judgment based on *res judicata*. *See* Defendants’ Motion for Summary Judgment. The trial court granted Respondent’s Motion for Summary Judgment and the Court of Appeals affirmed. *See* Order Granting Defendants’ Motion for Summary Judgment; *see also Escalante v. Rodgers*, No. 2018-000289, 2020 WL 469624, at *1 (S.C. Ct. App. Jan. 29, 2020). The Court of Appeals also denied

Petitioner's Petition for Rehearing. *See* Order Denying Petition for Rehearing. In the Petition for Writ of Certiorari, Petitioner presents the following two questions:

- (1) Did the South Carolina Court of Appeals err by affirming the lower court's decision to apply *res judicata* to the State Action?
- (2) Did the South Carolina Court of Appeals err in affirming the lower court's summary judgment when it conflicted with prior rulings on *res judicata*?

See Petition for Writ of Certiorari.

Petitioner's questions are not novel questions of law and do not involve substantial constitutional issues or federal questions. In addition, there was no dissent when the Court of Appeals affirmed the trial court's Order Granting Respondent's Motion for Summary Judgment. *See Escalante*, No. 2018-000289, 2020 WL 469624, at *1. Further, the Court of Appeals' ruling is consistent with longstanding precedent.

Here, Petitioner presents the question of whether the South Carolina Court of Appeals erred in affirming the lower court's summary judgment when it conflicted with prior rulings on *res judicata*. *See* Petition for Writ of Certiorari. It is well settled that "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." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). "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.* (internal quotations omitted). "Res judicata requires proof of three elements: 1) a final, valid judgment was entered on the merits of the first suit; 2) the parties to both suits are the same; and 3) the subsequent

action involves matters properly included in the first action.” *Judy v. Judy*, 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App. 2009), *aff’d*, 393 S.C. 160, 712 S.E.2d 408 (2011).

On July 22, 2013, Petitioner filed suit against David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (“Mr. and Mrs. Rodgers”) in which he asserted causes of action for false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution, conspiracy, conversion, and fraud (hereinafter referred to as “the State Action”). Thereafter, on January 13, 2015, Petitioner filed suit in the United States District Court for the District of South Carolina, Anderson Division, against Mr. and Mrs. Rodgers, 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”). Both the State Action and Federal Action arise out of Petitioner’s May 5, 2013 arrest for allegedly shoplifting from Mr. and Mrs. Rodgers’ store. Additionally, the complaints in the State Action and the Federal Action are nearly identical and include the same causes of action against Mr. and Mrs. Rodgers, with the exception of negligence which was not clearly pled in the Federal Action.¹

By order dated August 16, 2016, U.S. District Judge Mary G. Lewis granted summary judgment in the Federal Action to Mr. and Mrs. Rodgers and the police defendants as to each cause of action asserted by Petitioner, finding (1) that Petitioner produced no evidence to support his entirely speculative contention that Mr. Rodgers manufactured the shoplifting allegation against Petitioner in order to shield his store from possible punishment for a Sunday alcohol sale

¹ The complaint in the Federal Action also asserts assault, battery, civil rights, and abuse of process claims against the police defendants. Although the complaint in the Federal Action names additional defendants and causes of action against those parties, the factual allegations of the complaint in the Federal Action essentially mirror those contained in the complaint in the State Action.

ordinance violation; and (2) that probable cause ultimately supported Petitioner's shoplifting arrest. *See Escalante v. Anderson Cty. Sheriff's Dep't*, No. CV 8:15-177-MGL, 2016 WL 4367206, at *1 (D.S.C. Aug. 16, 2016), *aff'd*, 698 F. App'x 754 (4th Cir. 2017). On October 12, 2017, the order granting summary judgment to Mr. and Mrs. Rodgers was affirmed by the Fourth Circuit Court of Appeals. *See Escalante v. Anderson Cty. Sheriff's Dep't*, 698 F. App'x 754 (4th Cir. 2017).

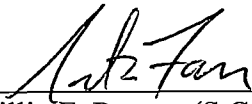
It is clear that the State Action and the Federal Action arise out of the same transaction or occurrence – the plaintiff's May 5, 2013 arrest for allegedly shoplifting from Mr. and Mrs. Rodgers' store. Because the State and Federal Actions arise out of the same transaction or occurrence and the defendants obtained summary judgment as to all causes of action in the Federal Action, the Court of Appeals properly affirmed the trial court's Order Granting Respondent's Motion for Summary Judgment denied the Petitioner's Petition for Rehearing.

The Court of Appeals' ruling presents none of the factors generally required to grant certiorari. As such, there are no special reasons to justify this Court granting certiorari. Therefore, the Petition for Writ of Certiorari in this matter should be denied.

CONCLUSION

For the foregoing reasons, Respondents David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart submit that the Court of Appeals' decision in this suit is consistent with precedent and presents none of the characteristics that justify a grant of certiorari.

Respectfully submitted,



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May 26, 2020