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Jun 12 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

William H. Seals, Jr., Circuit Court Judge

Civil Action No. 2020-CP-21-00755
SCWCC Claim No. 1222136

Otis Nero,Respondent,

South Carolina Department of Transportation, Employer,
and State Accident Fund, Carrier, Appellants.

MOTION TO DISMISS

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Respondent, Otis Nero, hereby moves to dismiss the June 5, 2020 appeal in the above-captioned matter.

BACKGROUND

On June 5, 2020, the Appellants filed the instant Notice of Appeal from the Judgment of the Circuit Court, Judge William H. Seals, Jr., dated March 11, 2020. Given that no Record on Appeal or Appendix has been filed in the instant appeal, the Judgment, including its Exhibits, is attached hereto as Exhibit A to this Motion pursuant to Rule 240(c)(3).

Page two (2) of the Form 4 Judgment recites the background as follows:

This is a Workers' Compensation matter. By Order of August 5, 2014, the Single Commissioner of the Workers' Compensation Commission Ordered inter alia that the Defendants "shall pay the Claimant benefits at the weekly compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012 until the date of this Order and continuing until further Order of this Commission." (attached). (The Single Commissioner's Order also ordered the payment of certain medical bills. That portion will, if necessary, be addressed by subsequent judgment when those amounts are ascertained).

Thereafter, the case had a long appellate history; culminating in the Court of Appeals reinstating the Order of the Single Commissioner by Order of June 26, 2019. (attached). The Defendants petitioned certiorari to the Supreme Court and certiorari was denied by the Supreme Court by Order dated February 12, 2020. (attached).

The Workers' Compensation Act, S.C. Code §42-17-70 provides: "Any party in interest may file in the court of common pleas of the county in which the injury occurred ... an award of the commission affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties."

The Claimant, therefore, filed the attached Order of the Court of Appeals dated June 26, 2019 reinstating the Order of the Single Commissioner dated August 5, 2014.

(Form 4 Judgment, 03/11/2020).

The Judgment goes on to calculate indemnity benefits, pre-judgment interest, and statutory penalty for non-payment.

Pursuant to Rule 4(d)(5) of the South Carolina Rules of Civil Procedure, the Respondent served the Form 4 Order and its attachments upon the Attorney General as attorney for the South Carolina Department of Transportation and the South Carolina State Accident Fund by separate letters dated March 12, 2020, both of which were received by the Attorney General on March 13, 2020. Attached as Exhibit B are Certificates of Service for each.

Eleven (11) days later, on March 24, 2020, the Appellants filed with the Circuit Court a Motion to Alter or Amend and Motion for Relief with the Circuit Court.

Thereafter, on March 27, 2020, the Appellants filed a Motion for Relief from the Order of Execution and Motion for Stay of Execution.

A hearing was held on the Appellants' Motions before Judge Seals on May 29, 2020. By email of June 4, 2020, Judge Seals' Law Clerk notified the attorneys for the parties that Judge Seals was denying the Appellants' Motions and instructed Respondent's counsel to prepare an Order to that effect. The next day, June 5, 2020, the Appellants filed the instant Appeal.

Respondent moves, herein, to dismiss the Appeal on the grounds of timeliness and res judicata.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED AS UNTIMELY.

Rule 203(b)(1) of the South Carolina Appellate Court Rules provides that:

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. ...

Rule 203(b)(1), SCACR.

Judgment was entered by the Circuit Court on March 11, 2020. The Appellants received written notice of the Judgment on March 13, 2020. (Exh. B). The Notice of Appeal was filed on June 5, 2020, well beyond thirty (30) days of receipt of written notice of the judgment.

Of course, Rule 203(b)(1) goes on to provide that:

When a timely motion for judgment n.o.v. (Rule 50, SCRCPP), motion to alter or amend the judgment (Rule 52 and 59, SCRCPP), or a motion for a new trial (Rule 59, SCRCPP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion....

Rule 203(b)(1), SCACR.(emphasis added).

The Appellants filed a Rule 59(e) Motion to Alter or Amend on March 24, 2020. Rule 59(e) provides:

A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

Rule 59(e), SCRCPP.

The Appellants received written notice of the entry of the Judgment on March 13, 2020, (Exh. B), when the same was delivered to the Attorney General. Rule 4(d)(5), S.C.R.C.P., provides that when computing any period of time, the day of the event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included.

The Appellants received notice of the Judgment on March 13, 2020. Under Rule 59(e) and Rule 6(a) the Motion to Alter or Amend was due on Monday, March 23, 2020. The Motion to Alter or Amend was filed on Tuesday, March 24, 2020.

Thus, given that no timely Motion to Alter or Amend was filed, the deadline to appeal ran on April 21, 2020, thirty (30) days from written notice upon which was served on March 13, 2020.

The absence of a timely appeal deprives this Court of jurisdiction and the Appeal should be dismissed on those grounds.

II. THE APPEAL SHOULD BE DISMISSED ON RES JUDICATA GROUNDS.

This case was decided by this Court on June 26, 2019. The Appellants' Motion for Rehearing was denied, as was their Petition for Certiorari. Appellants failed to pay the award; forcing the Respondent to seek and obtain a judgment to enforce the Court's Order. Appellants now seek to re-litigate the case by appealing the Judgment. Their Appeal should be dismissed as res judicata.

As the Judgment finds, this is a Workers' Compensation matter. By Order of August 5, 2014, the Single Commissioner of the Workers' Compensation Commission Ordered inter alia that the Defendants: "shall pay the Claimant benefits at the weekly compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012 until the date of this Order and continuing until further Order of this Commission."

Thereafter, the case had a long appellate history, culminating in the Court of Appeals reinstating the Order of the Single Commissioner by Order of June 26, 2019. The Defendants petitioned certiorari to the Supreme Court and certiorari was denied by the Supreme Court by Order dated February 12, 2020.

The June 26, 2019 Order of this Court reinstating the Order of the Single Commissioner dated August 4, 2014, is a final Order and the law of the case and is not subject to any further appeal. The Appellants' filed a Petition for Certiorari from that Order and the same was denied by the Supreme Court by Order dated February 12, 2020.

The Appellants' refused to comply with the Order of this Court and the Respondent was forced to enforce the Order by obtaining a Judgment pursuant to S.C. Code §42-17-70. Pursuant to §42-17-70, the Respondent filed, in the Court of Common Pleas, this Court's Order of June 26,

2019. Whereupon, as required by statute, the Court of Common Pleas rendered judgment in accordance with the Order of the Court of Appeals.

As was its ministerial duty, the Court calculated the amount of the Judgment, including the statutory pre-judgment interest, and the statutory non-payment penalty, and entered judgment thereon.

In their Motion to Alter or Amend before the Circuit Court, the Appellants challenged the authority of the Court of Appeals to reinstate the Single Commissioner's Order. They argued to the Circuit Court:

¹While the Order of the Court of Appeals indicates that the single commissioner's order is to be "reinstated", this is necessarily limited to the single commissioner's legal ruling as to the notice issue, as that was the only issue before the Court of Appeals. Furthermore, as previously explained by our Supreme Court and Court of Appeals, an appellate court lacks the authority to reinstate "a single commissioner's award ... Only the commission is authorized to do this." Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (1991)(citing Shealy v. Algernon Blair, Inc., 250 S.C. 106, 156 S.E.2d 647 (1967)). The Court of Appeals gave no indication of any intention to overrule or otherwise deviate from this half-century body of precedent in its June 26, 2019 Order. (Exh. C, Mot. to Alter or Amend, 03/24/20, p.3).

The Respondent replied to the Motion to Alter or Amend on March 30, 2020:

The Defendants argue "Furthermore, as previously explained by our Supreme Court and Court of Appeals, an appellate court lacks the authority to reinstate 'a single commissioner's award ... Only the commission is authorized to do this.' Baldwin v. James River Corp., 304 S.C. 4085 (1991)." (Def. Brf. p. 3, FN 1).

The Defendants ask this Court to hold that the South Carolina Court of Appeals lacked the authority to issue its Order of June 26, 2019; reinstating the Order of the Single Commissioner dated August 5, 2014.

With respect to the authority of [the Court of Common Pleas], the only tribunal in this State that has the authority to overrule an order of the South Carolina Court of Appeals is the South Carolina Supreme Court.

The Defendants moved the Court of Appeals to reconsider their June 26, 2019 Order. That motion was denied by the Court of

Appeals. The Defendants appealed the South Carolina Court of Appeals Order of June 26, 2019 to the South Carolina Supreme Court. Their Petition for Certiorari was denied by the Supreme Court. Moreover, nowhere in their Motion for Reconsideration to the Court of Appeals or in their Petition for Certiorari did the Defendants challenge the Court of Appeals' authority to reinstate the Order of the Single Commissioner.

(Exh. D, Opp'n to Motion to Alter or Amend, 03/30/20).

The Respondent also challenged the Appellant's contention that Baldwin v. James River Corp., 304 S.C. 485 (1991), stands for the proposition that appellate courts lack the authority to reinstate Single Commissioner's awards. (Opp'n to Motion to Alter or Amend, pp. 5-6).

The Circuit Court agreed with the Respondent and denied the Appellants' Motion to Alter or Amend; concluding that the South Carolina Appellate Court reinstated the Order of the Single Commissioner and made the final decision entitling the Claimant to an award. The Court instructed the parties:

Counselors,

It was a pleasure speaking with you last week. The Court appreciates the professionalism and advocacy exhibited on behalf of your clients, as well as your patience in awaiting the Court's Order.

After very careful and deliberate consideration of arguments presented to the Court, memorandums submitted, exhibits, Orders, statutes, case law, and all other relevant evidence, Judge Seals is hereby denying Defendant's Motion for Relief from Order of Execution and Motion for Stay of Execution. The Court finds that the South Carolina Appellate Court reinstated the Opinion of the Single Commissioner and made a final decision entitling the Claimant to an award. Under the authority of S.C. Code Section 42-17-70, this Court properly entered judgment thereon. The Court makes note that the proper avenue to address any specific error made in the calculation of judgment, including errors of interest and penalty awarded, may be by motion for recalculation of damages under South Carolina Rules of Civil Procedure Rule 60 (b).

Mr. Wukela, Judge Seals requests that you prepare a very short, non-argumentative Order to that effect. Once the requested Orders are prepared, please e-file and upload them for the Judge's signature, forward the same to opposing counsel, and notify me by email.

If I may be of any assistance, please do not hesitate to reach out. I hope everyone has an enjoyable rest of the week.

Best,

C. Hunter Holland

Law Clerk to the Honorable William H. Seals, Jr.

Circuit Court Judge, At-Large, Seat 6

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(Exh. E, C. Hunter Holland email, 06/04/2020).

The instant appeal is an attempt by the Appellants to relitigate a case that was argued in the Appellate Courts of this State over the course of five (5) years from the Single Commissioner's Order of August 5, 2014, to the Supreme Court's denial of Certiorari on February 12, 2020.

The Appellants refused to comply with the Order of the Court of Appeals; forcing the Respondent to enforce the Order by obtaining a judgment on that Order and seeking the execution of that judgment.

The Appellants now attempt to reargue their appeal by appealing that judgment here.

The Doctrine of res judicata prohibits the re-litigation of issues previously decided.

“The Doctrine of res judicata in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action.” First Nat'l Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569

(1992); Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

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 these parties. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999). Res judicata prevents a litigant “from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm’n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987); accord Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). “Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of re-litigation of the same issues.” James F. Flanagan, South Carolina Civil Procedure 642 (2d ed. 1996).

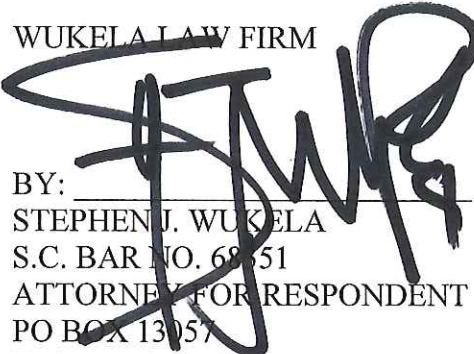
To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993).

The parties to this Appeal have litigated the Respondent’s entitlement to benefits that are the subject of the Commission’s Order of August 5, 2014, upon which the instant Judgment is based. After years of litigation, this Court finally determined the rights of the parties on June 26, 2019 and reinstated the Commission’s August 5, 2014 Order. By virtue of this Court’s June 26, 2019 Order, the Respondent is entitled to the benefits calculated by the Court of Common Pleas in its Judgment of March 11, 2020.

The Appellants seek to avoid this Court's ruling by endless appeals and re-litigation of the same matter. Such is precisely what the Doctrine of res judicata prohibits. Therefore, the Appeal should be dismissed.

Respectfully submitted,

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June 12th, 2020