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SC Court of Appeals

REPLY BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2019-CP-26-01113
Appellant Case No. 2020-00061

Essie Ford,

Appellant,

v.

Ralph Kline, Respondent.

REPLY BRIEF OF APPELLANT

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I. THE ISSUES RAISED IN THE INITIAL APPELLANT'S BRIEF WERE PRESEVED WHEN THE ARGUMENTS WERE MADE AT THE HEARING AND THE COURT RULED AGAINST THE APPELLANT.

The Appellant properly preserved issues on appeal when the issues were argued at the hearing which resulted in a final order granting the Respondent' motion based on the doctrine of res judicata.

In Herron v. Century, the Court said, "A party is not required to use the exact name of a legal doctrine in order to preserve the issue. . . Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (citations omitted). "The Courts have been mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner." Id. at 470.

Respondent cites Queen's Grant for the proposition that "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." Queen's Grant II Hoizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2004)(citations omitted) This Court has been mindful that "In order for an issue to be properly preserved for appeal, it must have been both raised and ruled upon by the trial court." Id at 373.

In Queen's Grant, the Court found that the issue was not properly preserved. In that case, Greenwood appealed an order. The Court found that there was nothing in that record that contained a transcript of any proceeding nor did the record even show where the road at issue was located. Queens's Grant at 368 S.C. 342, 373. In fact, the Court held that the order was clearly not intended to be a final ruling on any of the issues raised. Id. at 373. The court declined to hear those issues.

Id. at 373.

This case is different than Queen's Grant. Here, the Appellant raised the issues on appeal to the lower court at the December 17, 2019 hearing on Respondent's Motion for Judgement on the Pleadings. At the hearing, the Appellant objected stating that the Respondent "has not provided any proof in his attachment to this motion showing the actual order saying that the judge granted it for the directed verdict. There's no order. There's no filing." Tr. at 3-4.

The Appellant further argued:

1. That the admission to Paragraph 23 of the Respondent's Answer was incorrect because "we do not know, in fact, if it was a directed verdict." Tr. at 4. "There was no indication on the public record if the hearing was done with or without prejudice." Id. at 4. "There is no order stating the judge's intention." Id. at 4.
2. "So at this time, we only have two parties' interpretation of what happened for that directed verdict. The Defense is alleging a directed verdict, but my client is alleging that the judge permitted her an opportunity to come back with an attorney to have that hearing, and because there is a lack of written evidence or a judgement in this case, there cannot be an adjudication based on the merits based off of Rule 52 and 58 of the South Carolina Rules of Civil Procedure." Id. at 5-6.
3. "There is no order that the Defendant did in that previous case and there's no order exactly stating what the judge found in that previous case as well... we're asking that the ... Defendant's motion for a judgement based off of the pleadings be denied because there is no evidence ... that either party can present besides their own testimony to dictate on whether or not it was actually decided based on the merits, which is a requirement for res judicata." Id. at 6.

The Appellants argument at this hearing was twofold; 1) the judge should not consider the admissions in the reply because of the mistake and 2) there is no evidence showing that a judgement on the merits was done as is required for res judicata.

The judge granted the Respondent's motion. The judge limited his decision "only to the pleadings." Tr. at 7. In the discussion, the judge ruled that the doctrine of res judicata requires three elements. (Final Order p. 3). "Based on the pleadings filed in this matter, specifically Plaintiff's admissions to the allegations contained in Paragraphs 20, 21, 22, and 23 of Defendant's Answer, this Court finds that the doctrine of Res Judicata operates to bar Plaintiff's prosecution of the claims set forth in her Complaint. This Court further finds that the operation of the doctrine of Res Judicata to the matter at hand is consistent with the underlying reasons for claim preclusion." Id. The judge found that the admissions in the Reply, which were acknowledged at the hearing to be at mistake, were enough to satisfy all three elements of res judicata which requires a prior adjudication of the issue by a court.

The Appellant subsequently raised these two issues on appeal. First, that the lower court should have only looked to the Complaint in accordance with case law. (Appellant Initial Brief p. 4). Second, that res judicata requires a final order to determine exactly what issues were adjudicated at the lower court. Id. at 7. These were the two issues the Appellant argued at the hearing which the judge ruled against.

The essential purpose of issue preservation was satisfied. The lower court heard arguments on the issues and ruled on them. Therefore, the appellate court may review these issues.

II. THE RESPONDENTS' INITIAL BRIEF FAILS TO RECOGNIZE THAT IN RULING ON A 12(C) MOTION, COURTS IN PRACTICE HAVE NOT RELIED UPON A REPLY.

Respondent's argument is misplaced because he argues that "none of the cases cited by the

Appellant hold that a trial court must look solely to the Complaint when determining whether to grant a motion for judgement on the pleadings." Respondent's Initial Brief p. 4. However, the Appellant's brief argues that the "courts have looked solely to the four corners of the Complaint." Appellant's Brief p. 5.

Respondent states that neither Faulk nor Diminich include a Reply. (Respondent's Brief p. 5). His argument is misplaced because there is no reference to a Reply in the opinions. *See* Faulk v. Sadler, 341 SC 281, 533, S.E.2d 350. *See also* Diminich v. 2001 Enters., Inc., 292 S.C. 141 355 S.E.2d 275. The cases only discuss looking to the Complaint. Id. Further, the Respondent's brief fails to cite any cases where the reply has been considered in determining a Rule 12(c) Motion. *See* Respondent's Initial Brief. There seems to be a lack of authority between the plain language of the rule and case law within South Carolina.

Ignoring the Appellant's general denial of res judicata, the Respondent relied solely on the mistaken admission to the allegation of res judicata in the Appellant's Reply as the ground for dismissal under South Carolina Rules of Civil Procedure 12(c). Tr. at p. 4. (respondents brief pp 3-4). The court subsequently relied on this Reply in deciding in favor for the Respondent. (Final Order at pp 2-3.) This reliance upon a Reply was improper. The Reply contained competing allegations as to the application of res judicata to the facts of the case when there was a clear overall denial to res judicata. Reply p. 1. Given this overall denial of res judicata, the lower court should not have ended the case on the pleadings but should have allowed for more specific evidence.

Therefore, the lower court should not have relied upon a single allegation when it was in opposition to another allegation on the same point. The Rule 12(c) Motion for judgement on the Pleadings should have been denied.

CONCLUSION

For the reasons stated, this Court should reverse the lower court's granting of Respondent's 12(c) Motion and remand this case to the lower court for further proceedings

Respectfully submitted,

_____, 2020

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Hon. Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2020-000061

Essie Ruth Ford

Appellant

v.

Ralph Kline

Respondents

CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Reply Brief by mailing a copy of it to the office for Respondents' counsel of record on June 29, 2020 as follows:

J. Austin Thomas, Esq
440 Oleander Dr. Suite 104
Myrtle Beach, SC 29577

June 29, 2020

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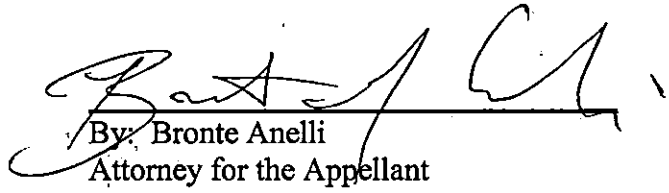

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June 29, 2020

SENT VIA FAX AT 803-734-1839; AND US MAIL
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PO Box 11629
Columbia, SC 29211

Re: Essie Ford v. Ralph Kline
Appellate Case No: 2020-000061

Dear Clerks,

Please find enclosed a copy of the Appellant's Reply Brief and a Certificate of Service. According to the Chief Justice's Order on Operations, we are permitted to fax as well as mail. I have done both for your convenience.

If you have any questions or concerns, please give me a call at 843.381.8182.

Sincerely,

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