

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2020-000676

RECEIVED

Jul 01 2020

SC Court of Appeals

Alan Nix,.....Appellant,

v.

Sloan Law Firm, P.A. and William H. Sloan,..... Respondents.

DAVID BROWN AND CATHERINE BROWN’S MOTION TO DISMISS

David Brown and Catherine Brown (hereinafter “the Browns”), pursuant to Rule 260, SCACR, and the Clerk of Court’s correspondence dated May 19, 2020, respectfully move the Court for an order dismissing them as parties to this appeal filed by Appellant. The Browns were not parties to the underlying case for which Appellant seeks this Appeal from and therefore, should not be included as parties to this Appeal. In support of their Motion, the Browns show the following unto the Court:

This appeal arises from a case originally filed by Appellant in the Court of Common Pleas for the County of Charleston, Case No.: 2019CP101496 entitled Alan G. Nix v. Sloan Law Firm, PA and William Sloan on March 22, 2019. Without any additional parties being named as either plaintiffs or defendants during the duration of the trial court proceedings, this same matter was

dismissed on February 5, 2020 by the Honorable J. Derham Cole. Subsequently this Appellant filed "Plaintiff's Rule 59 Motion to Judge Cole's Deceptive and/or Non-Order Filed 14 February 2020" and Judge Cole denied the same on March 12, 2020. Upon information and belief, Appellant filed this Appeal as a response to Judge Cole's Order to Dismiss in the underlying action. Specifically, Appellant begins his Notice of Appeal by stating "Alan Nix appeals five orders of the Honorable Derham Cole, Maite Murphy and Earhart Overstreet in the *above cited case*". Notice of Appeal, p. 1, ¶ 1 (emphasis added). The "above cited case" is Case No. 2019CP101496, Nix v. Sloan. The Browns have not been a party to that action at any point in time. The Browns are, however, involved as named defendants in two other appeals brought by this same Appellant: Appellate Case No. 2019-001878 and Appellate Case No. 2019-001951. Due to the Browns' involvement as named defendants in those matters and Appellant's attachments and exhibits in this Appeal, upon information and belief, the Browns have inadvertently been added as parties to this matter although their cases involving Appellant are already under consideration of this same Court.

In Plaintiff's Notice of Appeal for this action he includes, as Exhibit E, "Order Enjoining the Plaintiff from Re-Filing this Matter and Imposing Sanctions Upon the Plaintiff", which is an Order executed by Judge Murphy in civil action no. 2018-CP-10-03315 entitled Alan Nix v. Churchill Park, Churchill Park at Park West, Inc., Churchill Park Homeowner's Association, Inc., David Brown, and Catherine Brown, which was filed in Charleston County Common Pleas. This Order is in reference to the subject case and prohibits Alan Nix from filing pleadings in civil action no. 2018-CP-10-03315. See App. Exhibit E, p. 8. The Order does not reference the case being appealed. The Order does not involve any of the defendants in the case being appealed. Appellant is the only similar party to civil action no. 2018-CP-10-03315 as to this appeal.

Pursuant to Rule 21, SCACR, parties may be dropped or added on motion of any party at any stage of the action. The Browns request this Court drop them as parties to this action as it is not just or necessary to include them in this Appeal. Further, maintaining their involvement in this matter amounts to collateral estoppel, as Appellant's claims against them are concurrently being considered by this Court in Appellate Case No. 2019-001878 and Appellate Case No. 2019-001951.

"Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim." Richburg v. Baughman, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986); see also State v. Bacote, 331 S.C. 328, 330, 503 S.E.2d 161, 162 (1998) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim."); McNaughton-McKay Elec. Co. of N.C. v. Andrich, 324 S.C. 275, 482 S.E.2d 564 (Ct. App. 1996). Any issue or claim of Appellant against the Browns is concurrently on appeal in this court on the two matters previously mentioned herein. Appellant has, and continues to have, his opportunity to address those claims in the Court of Common Pleas as well as this same court; therefore, the Browns should not be subject to the exact same issues and claims within this matter while defending those same claims in the other two pending appeals. See also Carrigg v. Cannon, 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001).

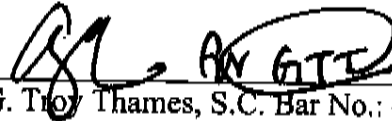
In addition to the fact that David Brown and Catherine Brown were not involved, whatsoever, in the underlying action subject to this appeal, the Browns are parties to appeals by this same Appellant and one of those appeals deals with the exact same "Order Enjoining the

Plaintiff from Re-Filing this Matter and Imposing Sanctions Upon the Plaintiff”, which is Exhibit E in Appellant’s Notice of Appeal and, upon information and belief, the only reason David Brown and Catherine Brown were added as parties to this appeal. Appellate case number 2019-001878 is an appeal of that same Order, among other requests of Appellant. That is a case between David Brown, Catherine Brown, this Appellant, and other parties. This appeal does not involve those same parties nor does this appeal involve the Order referenced as Appellant’s Exhibit E. That Order is already on appeal in this Court under Appellate case number 2019-001878.

Finally, in addition to the reasons stated above, this matter, as a whole, should be dismissed pursuant to Appellant’s failure to comply with the Rules for appeal. Appellant has failed to comply with Rule 207, which states that “appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements...in writing with the court reporter for furnishing the transcript.” See Rule 207, SCACR. Further, Rule 207 specifically sets forth that timeframe as “within ten (10) days after the date of service of the notice of appeal”. Id. Appellant filed a letter on June 19, 2020 with this Court alleging that he is attempting to determine who the court reporter was to order the transcript. The time has passed to determine who the court reporter was. He has failed to comply with the Rule. In addition, the Court’s correspondence to Appellant dated June 10, 2020 explicitly states that he must file a motion requesting permission to order the transcript beyond the deadline. See Letter from V. Claire Allen, Chief Deputy Clerk, South Carolina Court of Appeals, to Alan G. Nix, Appellant (June 10, 2020) (on file with The South Carolina Court of Appeals). The Court’s letter specifically states that his “appeal will be dismissed if no motion is made within ten (10) days of the date of this letter”. Id. Appellant has not ordered the transcript nor has he filed a motion, and therefore, Appellant has not complied with the requirements to appeal the underlying action.

For these reasons, the Browns respectfully request that they be dismissed with prejudice pursuant to Rule 21, SCACR, as parties to this appeal and/or that this action be dismissed with prejudice pursuant to Rule 207, SCACR, and for such other and further relief as the court deems just and appropriate.

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Mt. Pleasant, South Carolina
July 1, 2020

**ATTORNEY FOR DAVID BROWN AND
CATHERINE BROWN**

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

The undersigned certifies that a copy of *David Brown and Catherine Brown's Motion to Dismiss* has been served upon the following counsel of record by mailing a copy of the same by United States Mail, addressed as shown below this 1st day of July, 2020.

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July 1, 2020

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July 1, 2020

VIA US MAIL & FACSIMILE (803) 734-1839

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Alan Nix vs. Sloan Law Firm
Appellate Case No.: 2020-000676
WJC&B File No.: 0375.00218
Claim No.: 633930-GH

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of David Brown and Catherine Brown's Motion to Dismiss in connection with the above-referenced matter. Also enclosed is a check for the required filing fee. Please return a filed copy to me in the enclosed stamped envelope. Please let me know if you have any questions or need any additional information.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


G. Troy Thames

GTT/slb

Enclosures

cc: via US Mail: Mr. Alan G. Nix
Kevin W. Mims, Esquire
Andrew W. Countryman, Esquire