

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Trial Court Case No. 2019-CP-26-01113
Appellate Case No. 2020-000061

Essie Ford,

Appellant,

v.

Ralph Kline,

Respondent.

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SC Court of Appeals

FINAL BRIEF OF RESPONDENT

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FACTS

On January 11, 2018, Appellant and Respondent entered into a contract wherein Respondent agreed to perform work to the roof of Appellant's residence in exchange for the payment of \$5,520.00 (R. p. 11). After Respondent completed the work, Appellant alleged that the roof was leaking and demanded a refund from Respondent (R. p. 7). Respondent refused to refund the \$5,520.00 (R. p. 7). Later in 2018, Appellant filed a lawsuit against Respondent in Horry County Magistrate Court (R. p. 13). That lawsuit brought claims against Respondent which arose from the same transaction and occurrence that is the subject of the Complaint filed by Appellant in the present case (R. p. 13). The bench trial of that lawsuit was heard before a magistrate court judge and Appellant was afforded an opportunity to present all her evidence at that trial (R. p. 13). After Appellant rested, the magistrate court judge granted Respondent's motion for a directed verdict (R. p. 13).

After a verdict was directed in favor of Respondent by the magistrate judge, Appellant filed a subsequent civil action against Respondent in the Horry County Court of Common Pleas (R. pp. 7-10). Respondent pleaded the affirmative defense of *res judicata* in his Answer (R. p. 13). Appellant admitted to the facts containing the appropriate elements of *res judicata* in her Reply to Defendant's Answer (R. p. 17). Respondent filed a motion for judgment on the pleadings on October 24, 2019 (R. p. 31). After a hearing on Respondent's motion, the trial court found that the doctrine of *res judicata* operated to bar the claims brought by Appellant and a written order was issued granting judgment in favor of Respondent (R. pp. 2-6).

ARGUMENTS

I. THE ISSUES RAISED BY APPELLANT WERE NOT PRESERVED BECAUSE APPELLANT FAILED TO RAISE THEM BEFORE THE TRIAL COURT.

The trial court in this matter granted Respondent's Motion for Judgment on the Pleadings and found that, because Appellant admitted to the allegations contained in paragraphs 20 – 23 of Respondent's Answer in her Reply, the doctrine of *Res Judicata* barred Appellant's claims (R. p. 4). Appellant appealed the trial court's Final Order on two grounds: (1) the trial court erred by relying on pleadings outside of the complaint to grant Respondent's Motion for Judgment of the Pleadings; and (2) the trial court improperly granted Respondent's SCRCP 12(c) motion by relying on extrinsic and contested evidence. Neither of these two grounds were raised before the trial court by Appellant. Despite Respondent's Motion for Judgment on the Pleadings being based solely on allegations set forth in his Answer and Appellant's Reply, Appellant never once objected to those pleadings being considered by the trial court (R. pp. 19-26). The only objection made on record by Appellant at the hearing on Respondent's motion related there being no written order attached to Respondent's Motion for Judgment on the Pleadings (R. pp. 21-22, line 24-3). Appellant's argument before the trial court at the hearing was that Respondent's Motion for Judgment on the Pleadings should be denied because Respondent had not provided extrinsic evidence to prove that the doctrine of *res judicata* should be applied (R. p. 24, line 6-15).

“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 Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2004). At minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is “axiomatic that an issue cannot be raised for the first time on appeal.” *Id.* Because Appellant failed to raise them before the trial court, the issues Appellant now raises on appeal are procedurally barred as a matter of state law.

II. THE TRIAL COURT PROPERLY CONSIDERED ALL PLEADINGS WHEN RULING ON RESPONDENT’S MOTION FOR JUDGMENT ON THE PLEADINGS.

Rule 12(c) of the South Carolina Rules of Civil Procedure states “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Therefore, the following points are clear about motions for judgment on the pleadings: (1) they may be brought only after the pleadings are closed but not so long after that it would delay the trial; and (2) any party may make one.

The rule governing pleadings in South Carolina state courts is Rule 8 of the South Carolina Rules of Civil Procedure. Rule 8(c), SCRPC, mandates that “a party shall set forth affirmatively the defenses...res judicata...and any other matter constituting an avoidance or affirmative defense.” Accordingly, Respondent set forth the affirmative defense of *res judicata* in his Answer (R. p. 13). Rule 8(c), SCRPC, also permits a party to “file a reply to any of the foregoing affirmative defenses.” Appellant decided to utilize this provision and filed a Reply on September 18, 2019 (R. pp. 17-18). Once Appellant filed her Reply, the pleadings at the trial court level closed because Rule 8 does not require or permit any further pleadings. Respondent filed his Motion for Judgment on the Pleadings on October 24, 2019 in accordance

with the Rule 12(c), SCRCF.

Appellant's argument that a trial court is constrained to reviewing only the Complaint when ruling upon a motion for judgment on the pleadings contradicts the plain language of Rules 8(c) and 12(c) of the South Carolina Rules of Civil Procedure. Rule 12(c), SCRCF, does not restrict the trial court to considering the Complaint only when ruling on such a motion. Instead, the plain language of the rule, the timing requirements set forth in the rule and the fact that any party may make a motion for judgment on the pleadings indicate that all pleadings may be considered. There is a motion whereby a trial court is generally limited to reviewing the Complaint, however, that is a motion pursuant to Rule 12(b)(6), SCRCF, not Rule 12(c), SCRCF.

Furthermore, none of the cases cited by Appellant hold that a trial court must look solely to the Complaint when determining whether to grant a motion for judgment of the pleadings. In *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000), this Court reversed the trial court's decision to grant a motion for judgment on the pleadings on the basis an immunity affirmative defense. In that case, this Court found that the Complaint alleged that the Guardian ad Litem exceeded his duties and, therefore, there was a question of fact as to whether immunity should apply. *See Falk* at 290 ("Falk's complaint contains several allegations which, if true, show Sadler acted outside the scope of her duties as guardian ad litem and is thus not entitled to immunity..."). Importantly, the *Falk* case did not include a filed Reply pleading like the case at hand.

Similarly, in *Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 355 S.E.2d 275 (Ct. App. 1987), this Court focused on the Complaint when deciding to reverse the trial court's decision to

grant a motion for judgment on the pleadings. Like *Falk*, the *Diminich* case did not include a filed Reply pleading like the case now before this Court. In the present case, the allegations set forth in Appellant's Complaint do not raise any questions of fact as to whether the doctrine of *res judicata* should apply. Even taking the allegations in Appellant's Complaint as true, Appellant's claims should be barred by the doctrine of *res judicata* because in her Reply she admits that she previously brought a lawsuit against Respondent based upon the same transaction and a directed verdict was rendered against her after she fully presented her case (R. p. 17).

CONCLUSION

For the reasons stated above, this Court should affirm the judgment of the circuit court.

Respectfully submitted,



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July 31, 2020

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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