

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2020-CP-10-2678
Appellate Case No.: 2020-001232

Jeffrey Wilder.....Appellant,

v.

Charleston County Board of Voter Registration &
Elections, Charleston County Democratic Party,
Dorchester County Board of Voter Registration &
Elections, Dorchester County Democratic Party, SC
Democratic Party, South Carolina Election Commission,
Deon Tedder & Deon Tedder, LLCRespondents.

**BRIEF OF RESPONDENT DEON TEDDER AND
RESPONDENT DEON TEDDER FOR SC HOUSE, LLC**

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STATEMENT OF ISSUES ON APPEAL

- I. Appellant's failure to follow the procedure prescribed by law to contest the results of the primary and primary run-off for House District 109 precludes him from seeking relief from the courts.**
- II. Appellant's Issues on Appeal were not preserved for appellate review.**
- III. The lower court properly granted Respondent's Motions to Dismiss pursuant to the doctrine of collateral estoppel.**

STATEMENT OF THE CASE

This is an appeal from the circuit court’s grant of the motions to dismiss filed by Respondent Deon Tedder (“Tedder”) and Respondent Deon Tedder for SC House, LLC (“LLC”), respectively, by written order filed September 1, 2020. (R. pp. 14 – 16). On June 19, 2020, Appellant Jeffrey Wilder (“Wilder”) filed a Summons and Complaint in the Charleston County Court of Common Pleas seeking a declaration from the court that Tedder was not a resident of South Carolina State House District 109 (“House District 109”) on March 23, 2020 when he filed his notice of intent to seek the nomination of the Democratic Party for House District 109. (R. pp. 19 - 27). The complaint did not state a cause of action nor seek an order or judgment against the LLC but did seek an order or judgment against all other Defendants, none of which are the subject of this appeal.

On July 17, 2020, Tedder and the LLC filed motions to dismiss Wilder’s Summons and Complaint. (R. pp. 34 – 37). On August 21, 2020, Tedder and the LLC submitted memoranda in support of their respective motions to dismiss. (R. pp. 305-313). On August 25, 2020, a hearing was held before the Hon. R. Ferrell Cothran, Jr., and on September 1, 2020, Judge Cothran issued a written order granting both motions on the ground that Wilder was collaterally estopped from litigating the issue of Tedder’s domicile. (R. pp. 14-16). Wilder did not file a motion to reconsider or amend the judgment. Appellant filed his appeal of Judge Cothran’s order directly with this Court on September 14, 2020.

STATEMENT OF FACTS

On February 28, 2020, Tedder entered into a sub-lease agreement with Edward Pasoquen (“Roommate”) and moved into 2629 Orchid Avenue, North Charleston, South Carolina, a property located within House District 109. (R. pp. 284-294). On March 1, 2020, Tedder notified his

employer that his primary residence had changed to the above address. (R. pp. 284, 295). Tedder properly updated his voter registration to reflect same on March 17, 2020. (R. p. 296). On March 19, 2020, Tedder filed Articles of Organization with the South Carolina Secretary of State and established the LLC for purposes of opening a campaign account to accept campaign contributions. (R. p. 68). On March 23, 2020, Tedder filed his Statement of Intention of Candidacy & Party Pledge for the Democratic party nomination for House District 109 with the Charleston County Board of Voter Registration and Elections (“Election Board”). (R. p. 297). On April 5, 2020, pursuant to S.C. Code Ann. § 7-13-40, the Charleston County Democratic Party (“CCDP”) certified Tedder to be a qualified candidate for the upcoming party primary for House District 109. On May 20, 2020, Tiffany Spann-Wilder (“Challenger”), in her individual capacity, submitted to the Election Board a written challenge to the qualifications of Tedder to run in the Democratic Party Primary for House District 109. (R. p. 1). Following a pre-hearing conference on May 27, 2020, attended by Election Board representatives, the Challenger, and counsel for Tedder, Challenger submitted an Amended Challenge, which was further amended the same day, more directly challenging Tedder’s voter registration qualifications under S.C. Code Ann. §§ 7-5-120, -230. (R. p. 1-2). At the Election Board hearing on May 29, 2020, counsel for the Election Board informed the Election Board that their role was to determine, pursuant to S.C. Code Ann. § 7-5-230, whether Tedder meets, or fails to meet, the voter registration qualifications set forth in S.C. Code Ann. § 7-5-125 and factors of subsection (D), more specifically, whether Tedder is a resident in the county and in the pooling precinct in which he offers to vote. (R. pp. 1-8, 10-11, 142, lines 5 - 12). After hearing testimony, reviewing documentary evidence, and returning from executive session, the Election Board determined that they could not “find that the (*sic*) 2629 Orchid Avenue is Mr. Tedder’s domicile” and granted the challenge. (R. pp.7-8, 187, lines 21 – 25, p. 188, lines 1

- 24). After explaining the appellate process, Counsel for the Election Board informed the parties that a written order would be issued and served at a later date. (R. p.189, lines 5 - 16).

On June 9, 2020, Wilder, Tedder, and James Johnson (“Johnson”) appeared on the party primary ballot for House District 109; Tedder and Johnson received the highest percentages of votes and proceeded to a primary run-off. Wilder did not protest the results of the June 9, 2020 primary. On June 11, 2020, the Election Board served written notice of its decision from the May 29, 2020 hearing on all parties. (R. pp. 1-8). That same day, counsel for Tedder served on the Election Board Tedder’s Notice of Intent to Appeal its decision to the Court of Common Pleas for the Ninth Judicial Circuit pursuant to S.C. Code Ann. § 7-5-230(c). (R. p. 9).

On June 19, 2020, having failed to file a timely protest of the June 9, 2020 primary, and while Tedder’s appeal of the Election Board’s decision regarding his domicile remained pending before the Charleston County Court of Common Pleas, Wilder filed the instant action seeking a declaration from the Ninth Judicial Circuit that Tedder was not a resident of House District 109 when Tedder filed for office on March 23, 2020. (R. pp. 19-33).

While not the subject of this appeal, the complaint additionally sought an order or judgment against many other defendants, which Tedder references below so to provide the Court with additional information and procedural history. Specifically, the complaint sought “a temporary restraining order, a preliminary injunction, and a permanent injunction, including but not limited to, prohibiting (1) the State Election Commission, Charleston County Board of Voter Registration and Elections and/or Dorchester County Board of Voter Registration and Elections from certifying Tedder as a candidate for House District 109; (2) the State Election Commission, Charleston County Board of Voter Registration and Elections and Dorchester County Board of Voter Registration from placing Defendant Tedder’s name on the June 23, 2020 Primary Run-Off Ballot

and from the November 3, 2020 ballot should the Run-Off primary proceed as scheduled and Defendant Tedder receives a majority vote; (3) Charleston County Democratic Party, Dorchester Democratic Party and the and [*sic*] South Carolina Democratic Party from certifying Defendant Tedder as a qualified candidate for SC House District 109 because he did not meet the Constitutional requirements at the time of his filing on March 23, 2020; and (4) the State Election Commission, Charleston County Board of Voter Registration and Elections and/or Dorchester County Board of Voter Registration from proceeding with the June 23, 2020 election for SC House District 109.” Id. Finally, the complaint sought “an order to prevent the South Carolina Election Commission from certifying any votes cast by way of absentee ballot in the primary election or any run-off election.” Id. For purposes of this appeal, however, the relief sought against these additional defendants is not before the Court.

Having received the most votes in the primary run-off on June 23, 2020, Tedder was declared the winner of the Democratic primary run-off for House District 109. The South Carolina State Election Commission (“SEC”) certified Tedder as the winner of the Democratic primary run-off for House District 109 on June 26, 2020, pursuant to S.C. Code Ann. § 7-17-510.

On June 29, 2020, pursuant to S.C. Code Ann. § 7-17-560, Johnson challenged the results of the primary run-off by filing a protest with the Executive Committee of the South Carolina Democratic Party (“SCDP”), alleging that Tedder did not reside within House District 109. The protest was dismissed by the Executive Committee after debate on July 2, 2020. (R. p. 315). Johnson did not appeal the Executive Committee’s decision. Unlike Johnson, Wilder did not protest the results of the June 23, 2020 primary run-off.

On June 30, 2020, a hearing was held in the Charleston County Court of Common Pleas on Tedder’s appeal of the above-referenced decision by the Election Board regarding his domicile.

Prior to the hearing, Wilder moved to intervene as a party to the Election Board matter, which was granted. (R. p. 9). After a thorough review of the Record on Appeal, to include the transcript of the hearing held by the Election Board, and considering all arguments of counsel, the Hon. R. Markley Dennis, Jr., found Tedder to have established his domicile at 2629 Orchid Avenue, North Charleston, South Carolina on February 28, 2020, three weeks prior to filing his Statement of Intention of Candidacy for House District 109, and issued an order on July 2, 2020 reversing the decision of the Election Board and granting Tedder's appeal. (R. pp. 9-13). As a result, Tedder was certified by the SCDP as its nominee for House District 109 in the November 3, 2020 general election pursuant to S.C. Code Ann. § 7-13-50.

Despite the finding by Judge Dennis in the Election Board matter that Tedder established his domicile at 2629 Orchid Avenue, North Charleston, South Carolina 29405, a property located within House District 109, on February 28, 2020, Wilder continued to seek an order from the court in the instant matter declaring that Tedder failed to reside in House District 109 on March 23, 2020 when he filed his notice of intent to seek the nomination of the Democratic Party for House District 109. As a result of Wilder's attempt to relitigate the issue of Tedder's domicile, Tedder and the LLC filed motions to dismiss Wilder's Summons and Complaint on July 17, 2020. (R. pp. 34 – 37). On August 21, 2020, Tedder and the LLC submitted memoranda in support of same. (R. pp. 305-313). The motions to dismiss were heard by the Hon. R. Ferrell Cothran, Jr. on August 25, 2020. The sole basis for the motions before the lower court was that Tedder's domicile had already been declared by the court in a prior action involving the parties, thus dismissal was proper. (R. pp. 14-16). Upon finding that Wilder was seeking to relitigate an issue which was decided in a previous action by the Hon. R. Markley Dennis, Jr., that being Tedder's domicile, Judge Cothran informed Wilder that he could not reconsider Judge Dennis' ruling and that the prior Order was

“the law of the case. It establishes he meets the qualifications set forth in 7-[5]-120...He’s found...he’s established domicile and that he’s qualified under the statute. I think that’s the law of the case. And so, I think the only avenue you have is to appeal that order.” (R. p. 235, lines 16 – 19). Wilder did not offer any rebuttal, argument, or objection to the lower court’s finding.

In his written order of September 1, 2020, Judge Cothran found Wilder to be precluded from attempting to re-litigate the issue of Respondent Tedder’s domicile pursuant to the doctrine of collateral estoppel and granted the Motions to Dismiss of Tedder and the LLC. (R. pp. 14 – 16). Appellant did not file a motion to reconsider, alter or amend Judge Cothran’s judgment.

On September 14, 2020, Wilder filed this Appeal with the South Carolina Supreme Court via e-mail. Wilder served counsel for Tedder and the LLC via e-mail that same day. To date, however, Wilder has not filed his Notice of Intent to Appeal with the Charleston County Court of Common Pleas as required by Rule 203(d)(1), SCACR.

STANDARD OF REVIEW

In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCR, the appellate court applies the same standard of review as the trial court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). The 12(b)(6) motion may not be sustained if the facts alleged and the inferences therefrom would entitle the plaintiff to any relief on any theory.

Stiles. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

ARGUMENT

I. Appellant's failure to follow the procedure prescribed by law to contest the results of the primary and primary run-off for House District 109 precludes him from seeking relief from the courts.

The Democratic party primary for House District 109 was held on June 9, 2020 and the two candidates who received the most votes, Tedder and Johnson, proceeded to a run-off on June 23, 2020. As a result of the run-off, Tedder was declared the party nominee for House District 109. Wilder, the odd-man out in the 3-way election contest, failed to properly challenge the results of these primaries pursuant to state law, and as a result, is precluded from seeking relief from the Courts.

There is no right to contest an election under the common law. Taylor v. Town of Atl. Beach Election Comm'n, 363 S.C.8, 609 S.E.2d 500 (2005). The right to contest an election exists only under the South Carolina constitutional and statutory provisions, and the procedure prescribed by statute must be strictly followed. Butler v. Town of Edgefield, 328 S.C. 238, 493 S.E.2d 838 (1997). Our state constitution provides that "[t]he General Assembly shall...establish procedures for contested elections and enacts other provisions necessary to the fulfillment and integrity of the election process." S.C. Const. art. II, § 10. In accordance with the same, S.C. Code Ann. § 7-17-560 clearly defines the process by which a person can protest results of a primary, or primary run-off, for State House of Representatives. S.C. Code. Ann. § 7-17-560 states in pertinent part:

"The state executive committee must meet in Columbia...to hear and decide protests and contests that may arise in the case of...State House of Representatives... Any protest or contest *must be filed in writing the chairman of the committee, together with a copy for each candidate in the race, not later than noon on Monday following the canvassing of the*

votes...by the committee. The protest must contain each ground thereof stated separately and concisely. The chairman of the committee must forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the committee for the purposes of hearing the protest.”

S.C. Code Ann. § 7-17-560 (emphasis added).

On June 29, 2020, pursuant to S.C. Code Ann. § 7-17-560, the second-place finisher, Johnson, challenged the results of the primary run-off by filing a timely protest with the Executive Committee of the SCDP, alleging that Tedder did not reside within House District 109. The protest was dismissed by the Executive Committee after debate. (R. p. 315). Johnson did not appeal the Executive Committee’s decision.

Unlike Johnson, however, Wilder did not protest the results of the June 9, 2020 primary, nor the results of the June 23, 2020 primary run-off, but instead, initiated a lawsuit against Tedder and the LLC, among others, seeking a declaration from the circuit court that Tedder did not reside in House District 109 on March 23, 2020 when he filed to be a candidate in the party primary. Wilder did so in an attempt to have the lower court overturn the results of the party primary, knowing full well that he had not followed the proper process outlined by statute. “Plaintiff is without an adequate remedy at law. If a protest was filed pursuant to the process outlined in sections 7-15-520, -530, -540 and -550 of the South Carolina Code, Plaintiff/Candidate Wilder nor Candidate Johnson would have an adequate remedy at law because Defendants Charleston County Democratic Party, Dorchester County Democratic Party and the South Carolina Democratic Party would act as the ‘jury’ and ‘court’ for a protest, thereby preventing a fair hearing.” (R. p. 26).

By unilaterally determining what his adequate remedy at law should be, Wilder attempted to purposely bypass the constitutional and statutory procedures for contesting a primary as intended by our legislature and clearly defined by this Court. He should not be able to ignore the law as a matter of convenience.

Upon failing to follow the methods outlined by S.C. Code Ann. § 7-17-560 and being prevented from relitigating the issue of Tedder’s domicile by the lower court, Wilder now turns to this Court for relief: “Based upon the foregoing, the Court should...require a new primary of the candidates who were constitutionally qualified for the office as of March 30, 2020 when the filing period ended.”¹ (Appellant Br. p. 13). Based on the above, however, even considering the requested relief would be improper since a citizen’s failure to challenge the results of an election pursuant to the methods outlined by the South Carolina law preclude the citizen from challenging the election through a lawsuit. Taylor v. Roche, 271 S.C. 505, 248 S.E.2d 580 (1978).

As evidenced by the facts above, the constitution, South Carolina Code, and controlling case law, Wilder is precluded from challenging the results of the party primary for House District 109. For this reason alone, the Court should dismiss the appeal.

II. Appellant’s Issues on Appeal were not preserved for appellate review.

This is an appeal from the circuit court’s grant of the motions to dismiss filed by Tedder and the LLC, respectively, by written order filed September 1, 2020. At the hearing on the matter before the lower court, the sole issue was whether Appellant should be collaterally estopped from litigating the issue of Tedder’s domicile. (R. pp. 14-16). Upon finding that Wilder was seeking to relitigate an issue which was decided in a previous action by the Hon. R. Markley Dennis, Jr., that being Tedder’s domicile, Judge Cothran informed Wilder that he could not reconsider Judge Dennis’s ruling and that the prior Order was “the law of the case. It establishes he meets the qualifications set forth in 7-[5]-120...He’s found ...he’s established domicile and that he’s qualified under the statute. I think that’s the law of the case. And so I think the only avenue you have is to appeal that order.” (R. p. 235, lines 16 – 25, p. 236, lines 1-3). Wilder did not offer any

¹ Pursuant to S.C. Code Ann. § 7-11-55, the relief requested by Wilder in his Final Brief is improper.

rebuttal, argument, or objection to the Court’s finding at the hearing. Similarly, upon receipt of the written order of September 1, 2020 finding Wilder to be precluded from attempting to re-litigate the issue of Respondent Tedder’s domicile pursuant to the doctrine of collateral estoppel and granting the Motions to Dismiss of Tedder and the LLC, Wilder failed to file a motion to reconsider, alter or amend pursuant to Rule 59, SCRPC.

Instead, on September 14, 2020, Wilder appealed directly to this Court. To date, however, Wilder has not filed his Notice of Intent to Appeal with the Charleston County Court of Common Pleas as required by Rule 203(d)(1), SCACR.

“A losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.” I’On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). “This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.” Id. (citing Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995)). “If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgement in order to preserve the issue for appellate review.” Id. An appellate court cannot raise and rule upon an issue an appellant never advanced to the trial court. Repko v. Cty. of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018).

As referenced in his Final Brief, Wilder’s Issues on Appeal are “(1) whether the lower court erred in determining Tedder was a resident of House District 109 and thus a constitutionally qualified candidate; (2) whether the lower court erred in finding that Tedder established his domicile at 2629 Orchid Avenue, a property in South Carolina District 109 on February 28, 2020; (3) Whether the lower court erred in finding that Tedder was a qualified elector in House District

109 and met the qualification of S.C. Code Ann. §§ 7-1-25(D) and 7-5-120; (4) whether the lower court erred and incorrectly dismissed the declaratory action by adopting the findings of fact and conclusions of law from the order of the voter challenge appeal issued by Judge R. Markley Dennis on July 2, 2020; and (5) whether the lower court erred in finding the matter was barred by collateral estoppel.” (Appellant Br. p. 1).

Wilder’s issues on appeal (1) – (4) are duplicative and can be encompassed into a single issue: whether the lower court erred in finding Tedder to be a resident of House District 109 on or before March 23, 2020 when he filed to be a candidate for the party primary. The arguments as to why the lower court erred in deciding this issue do not merit a response by Tedder, since the lower court did not hear arguments, much less make a factual finding or rule on Tedder’s domicile. As revealed in the hearing transcript and order granting the motions to dismiss, the sole issue before the lower court was whether the issue of Tedder’s residency had already been litigated and decided in a previous action, thereby precluding Wilder from relitigating the issue. After reviewing the pleadings, memorandum and hearing argument from Tedder’s counsel, the lower court decided that Judge Dennis had indeed previously decided this issue and ruled on same in a written order of July 2, 2020, which included a specific finding that Tedder established his domicile in District 109 on February 28, 2020. As a result, the lower court granted Tedder and the LLC’s motions to dismiss for failure to state a cause of action for which relief could be granted.

Wilder seems to be confused as to which order is on appeal before this Court, the July 2, 2020 order of Judge Dennis that found Tedder to have established his domicile in House District 109 on February 28, 2020 or the September 1, 2020 order of Judge Cothran finding the issue to have been previously litigated and rule upon. “[D]uring the declaratory proceeding, the...court...had before it...property tax records...sublease agreement...and Affidavit of Kenneth

Barnes...” (Appellant Br. p. 9). To the contrary, as this Court is aware, the lower court did not hear a “declaratory proceeding;” the sole issue before Judge Cothran, that is now on appeal before this Court, were the motions to dismiss. While the documents listed above were submitted to the lower court with Wilder’s “Plaintiff’s Opposition to All Defendants Motion to Dismiss, Motion for Sanctions & Motion for Protective Order,” they were not referenced, argued, nor introduced at the motion to dismiss hearing and whatever they purportedly referenced was not presented or ruled upon by the lower court. Further, and without citing any support for same, Wilder argues in his final brief that “the lower court should have reviewed de novo.” (Appellant Br. p. 9). Wilder did not present or argue for a de novo review at the motion to dismiss hearing. Finally, Wilder contends that “the matter was not reviewed under Rule 12(b)(6).” (Appellant Br. p. 11). Despite this being patently false and further proof of his confusion of the issue before this Court, nonetheless, Wilder did not raise that issue to the lower court.

Even if this Court were to find that any or all of the above were the subject of argument, objection or rebuttal by Wilder in the hearing on the motions to dismiss in the lower court, Wilder did not file a motion to alter or amend or in any way preserve them for appellate review. Accordingly, this Court lacks appellate jurisdiction over the issues on appeal (1) – (4) as stated by Wilder.

On the other hand, Tedder and the LLC concede that the issue on appeal (5) raised by Wilder in his Final Brief, that being whether Wilder was precluded from relitigating the issue of Tedder’s domicile pursuant to the doctrine of collateral estoppel, was in fact presented and argued before the lower court, but only by counsel for Tedder and the LLC, who used it as the sole basis for the motions to dismiss. Wilder, however, failed to object or offer any counterargument to the issue of collateral estoppel during the hearing before the lower court, and further, failed to file a

motion to alter or amend the judgment in order to preserve the issue for appellate review. Additionally, Wilder failed to address the issue of collateral estoppel in his final brief, thereby abandoning the argument on appeal. See Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006) (finding issue abandoned where it was raised in the statement of issues on appeal but not addressed in the brief). Accordingly, and similar to issues on appeal (1) through (4), this Court lacks appellate jurisdiction over issue on appeal (5) as stated by Wilder.

III. The lower court properly granted Respondent's Motions to Dismiss pursuant to the doctrine of collateral estoppel.

The sole issue before the lower court in the instant matter was Tedder and the LLC's motions to dismiss for failure to state a claim for which relief could be granted, the basis of which, was that the issue in which Wilder was attempting to litigate had already been decided in a prior action in which Wilder was a party. (R. pp. 34-37). "Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action." S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E. 2d 625, 627 (1991). "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 a different claim." Id. The doctrine of collateral estoppel is also known as "issue preclusion." In re Crews, 389 S.C. 322, 698 S.E.2d 785 (2010). Issue preclusion bars the re-litigation of only the particular issues that were actually litigated and decided in the prior suit. Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997). To succeed on collateral estoppel, the party asserting collateral estoppel must "demonstrate that the issue in the past lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Wal-Mart Stores, Inc. at 627.

The issue of Tedder’s domicile was preliminarily decided by the Election Board’s decision of May 29, 2020. (R. pp. 1-8). Tedder properly appealed the Election Board’s decision to the Circuit Court, pursuant to S.C. Code Ann. §§ 7-5-230. (R. p. 9). A hearing on Tedder’s appeal of the Election Board’s decision was held before the Hon. R. Markley Dennis, Jr. on June 30, 2020.

At the hearing on Tedder’s appeal of the Board’s decision, the lower court stated clearly that the issue the Board ruled upon was whether Tedder was domiciled in House District 109 pursuant to S.C. Code Ann. § 7-1-25. (R. p. 202, lines 19-21). Judge Dennis heard arguments from Tedder and Wilder. At the hearing, Tedder summarized the evidence that was presented to the Board. In response, Wilder argued that Tedder was not a resident of House District 109. (R. pp. 211 – 215). In fact, Wilder went to so far as to argue that Tedder was not qualified to run for House District 109. (R. p. 212, lines 4 -7, lines 13 – 15, lines 23 – 25, p. 213, lines 10 – 12).

On July 2, 2020, the Hon. R. Markley Dennis, Jr. issued an order granting Wilder’s Motion to Intervene as a party and granting Tedder’s appeal. (R. pp. 9 - 13). The lower court found that “after a thorough review of the Record on Appeal...and considering all arguments of counsel...the Election Board erred in finding that Wilder failed to meet the qualifications set forth in S.C. Code Ann. § 7-5-120.” (R. p. 10). The lower court went on to find that that “on February 28, 2020, Mr. Tedder established his domicile at 2629 Orchid Avenue, North Charleston, SC 29405.” (R. p. 11). The lower court further found that “on March 23, 2020, Mr. Tedder filed his Statement of Intention of Candidacy (“SIC”) and Party Pledge for State House of Representatives, District 109...Following the filing of his SIC, Mr. Tedder was qualified by the South Carolina Democratic Party and certified to be a qualified candidate for State House of Representatives, District 109 in the June 2020 Primary and November 2020 general election.” (R. p. 12). The lower court held that “because Mr. Tedder meets the provisions set forth in S.C. Code Ann. § 7-1-25(D) and has

established his domicile at 2629 Orchid Avenue...this Court finds him to meet the qualifications set forth in S.C. Code. Ann. § 7-[5]-120.” (R. p. 13). Wilder attempted to file a motion to alter or amend Judge Dennis’s order but failed to fully comply with the requirements as stated in Rule 59(g), SCRCPP, thereby failing to stay the time to file an appeal.²

On June 19, 2020, Wilder filed a summons and complaint the Circuit Court, wherein he requested a declaration from the lower court that Tedder was not a resident of House District 109 on March 23, 2020. (R. p. 24). In his complaint, Wilder alleges that “Defendant Tedder is not qualified...because he did not meet the criteria of SC Constitution Article III, Section 7 that be[ing] domiciled in the District at the time of filing.” (R. p. 23). On August 21, 2020, Tedder filed a Memorandum in Support of Motion to Dismiss pursuant to Rule 12(b)(6), SCRCPP, on the basis that Wilder failed to state a claim upon which relief could be granted, due to Wilder being collaterally estopped from further litigating the issue of Tedder’s domicile.

A hearing on Tedder’s Motion to Dismiss was held before the Hon. R. Ferrell Cothran, Jr. on August 25, 2020. At the hearing before the lower court on Tedder’s Motion to Dismiss, Tedder presented argument that the issue of Tedder’s domicile had been argued by Wilder and Tedder and ruled upon by Judge Dennis. (R. p. 223, lines 12 – 23, p. 224, lines 1 – 11). At the hearing, Wilder requested that Judge Cothran reconsider Judge Dennis’s July 2, 2020 order, which he declined to do. (R. p 227, lines 22 – 25, p. 228, lines 1 – 8). Wilder agreed with Judge Cothran that “the only issue in both of these [matters] is whether he was a legal residen[t] at the time he filed.” (R. p. 228, lines 9 – 11). Wilder further agreed with Judge Cothran that Judge Dennis’s order found Tedder to be a qualified elector in House District 109. (R. p. 229, lines 17 - 19). Wilder attempted to

² Wilder inappropriately filed a Notice of Intent to Appeal the July 2, 2020 Order with the South Carolina Supreme Court on September 8, 2020. *See* Appellate Case No. 2020-1209. Tedder and the LLC filed Motions to Dismiss the appeal based on Wilder’s lack of standing and failure to comply with the South Carolina Rules of Civil Procedure, which as of the date of this filing, remains pending before this Court. *Id.*

bifurcate S.C. Const. art. III, § 7, which states, in pertinent part, “a candidate for the...House of Representatives...must be a legal resident of the district in which he is a candidate at the time he files for the office.” (R. p. 228, lines 17 – 25, p. 229, lines 19 – 20). Wilder’s meager attempt to argue that the doctrine of collateral estoppel could not apply because the issue decided by Judge Dennis was based on “the domicile statute,” while the issue before Judge Cothran in the declaratory action was whether Tedder was “a legal resident” of House District 109. (R. p. 228, lines 17 – 25). As pointed out by the lower court, Wilder failed to realize that “the domicile statute” states that “a person’s residence is his domicile.” S.C. Code Ann. § 7-1-25.

At the conclusion of the hearing, Judge Cothran found that the issue of Tedder’s domicile had already been decided by Judge Dennis and was “the law of the case...it establishes he meets the qualifications set forth in 7-[5]-120.” (R. p. 235, lines 16 – 18). On September 1, 2020, Judge Cothran issued a written order on Tedder’s Motion to Dismiss. (R. p. 14 – 15). In its order, the lower court adopted the findings of facts and conclusions of law contained in Judge Dennis’s July 2, 2020 order. (R. p. 15). Judge Cothran further found that the relief sought by Wilder in the declaratory judgment was the same issue previously determined by Judge Dennis in which Wilder was a party, thereby concluding that Wilder is precluded from re-litigating the issue of Tedder’s domicile pursuant to the doctrine of collateral estoppel. (R. p. 15)

The issue of Tedder’s domicile was litigated between Wilder and Tedder in front of Judge Dennis; Tedder’s domicile was determined to be in House District 109; this determination became a valid final judgment; and the determination of his domicile was essential to the judgment of whether Tedder is a qualified elector in House District 109. As a result, the determination of Tedder’s domicile has been made conclusive in all subsequent actions between Wilder and Tedder. Being that the only declaration sought from Wilder in his declaratory judgment action that is the

subject of this appeal was that of Tedder's domicile, Wilder failed to state claim for which relief could be granted by the lower court. Accordingly, this Court should affirm the lower court's ruling, and find that Wilder is collaterally estopped from litigating the issue of Tedder's domicile in any subsequent proceedings between the parties.

CONCLUSION

Based upon the foregoing, the South Carolina Supreme Court should dismiss Wilder's appeal of Judge Cothran's September 1, 2020 Order, or in the alternative, deny the appeal and affirm the ruling of the lower court.

Respectfully Submitted,

s/ Mark. A. Peper

s/ J. Todd Rutherford

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