

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

Case No. 2017-CP-04-02099
Appellate Case No. 2020-000421

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Jan 14 2021

SC Court of Appeals

John Harbin,

Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.,
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe,

Respondents,

**FINAL REPLY BRIEF OF APPELLANT
TO RESPONDENT APRIL BLAIR**

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January 14, 2021

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STATEMENT OF ISSUES

- I. **WHETHER THE CIRCUIT COURT ERRED IN GRANTING BLAIR'S MOTION TO DISMISS THE AMENDED COMPLAINT.**
- II. **WHETHER THE CIRCUIT COURT DISMISSED APPELLANT'S COMPLAINT BASED ON RES JUDICATA AND/OR COLLATERAL ESTOPPEL.**
- III. **WHETHER THE COMPLAINT WAS PROPERLY DISMISSED FOR FAILURE TO ESTABLISH THE REQUISITE ELEMENTS FOR AN ACTION FOR TORTIOUS INTERFERENCE WITH A CONTRACT**

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief. This appeal is brought pursuant to the dismissal by the trial court of Appellant's Complaint against April Blair on April 7, 2020. Appellant timely filed his Notice of Appeal and filed his Initial Brief on September 21, 2020. Respondent filed its Initial Brief on November 16, 2020.

ARGUMENTS

I.

APPELLANT'S ARGUMENTS WERE PROPERLY PRESERVED FOR APPEAL.

As a general rule, an issue may not be raised for the first time on appeal but must have been raised to the trial judge to be preserved for appellate review. Issues not raised in the trial court will not be considered on appeal. Anonymous v. State Board of Medical Examiners, 323 S.C. 360, 473 S.E.2d 870, 879 (Ct. App. 1996).

"Issues on which the trial judge never ruled, and which were not raised in a post-trial motion are not preserved for appeal." Dixon v. Besco Engineering, 320 S.C. 174, 463 S.E.2d 636, 638 (Ct. App. 1995); see also Bivens v. Watkins, 313 S.C. 228, 437 S.E.2d 132 (Ct. App.1993).

Contrary to Blair's contentions, Appellant has specifically cited extrinsic fraud as an example of Blair's unethical conduct in his Motion to Reconsider. (R., p. 217). Also, in discussing extrinsic fraud in his Initial Brief, Appellant did not raise an independent issue for determination of this Court but as the result of Blair's act of interference with Appellant's contract with his counsel.

It should be noted Appellant has consistently submitted to the trial court that the deal between Blair and Dunn which was brokered by her counsel, was the reason Dunn changed his statement regarding the shooting incident. (R., p. 98). Appellant maintains such acts by Respondents was tantamount to suborning perjury and conspiring to fix the trial. *Ibid.* As such, the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003) as cited in *Aaron v. Mahl*, 381 S.C. 585 (S.C. 2009).

Thus, having been raised to and ruled upon by the trial judge, the unethical conduct of Respondents, which can be characterized as extrinsic fraud is an issue that has been preserved for appeal. *Ex Parte McMillan, In re Parkin v. Morris*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995).

II.

THE TRIAL COURT DID NOT DISMISS APPELLANT'S COMPLAINT BASED ON THE DOCTRINE OF RES JUDICATA AND/OR COLLATERAL ESTOPPEL.

Blair has raised the affirmative defenses of res judicata and/or collateral estoppel in her Motion to Dismiss, and Appellant has addressed this issue in his Reply in Opposition. However, in his Order, dated April 7, 2020, Judge Maddox ruled based on the merits of the case and did not make a finding that the instant case was barred by res judicata nor collateral estoppel. (R., pp. 5-8). Since the trial court did not rule on the matter, this issue was not preserved on appeal.

Furthermore, the principle of res judicata may not apply where extrinsic fraud has been practiced in procuring the judgment. *Mahl, supra.*

III.

THE COMPLAINT WAS IMPROPERLY DISMISSED AS APPELLANT SUFFICIENTLY ESTABLISHED THE REQUISITE ELEMENTS FOR AN ACTION FOR TORTIOUS INTERFERENCE WITH A CONTRACT.

Appellant submits the trial court judge erred in finding Appellant failed to satisfy the requisite elements for an action for Tortious Interference.

Contrary to Blair's claims, Appellant asserts he has cited specific acts or omissions by Blair that can be considered as interfering with the attorney-client relationship between Appellant and his counsel. Plaintiff has alleged through circumstantial as well documentary evidence that Blair sought Dunn's help to absolve her of any part in the shooting of herein Appellant (this despite the fact Blair goaded Dunn into racing to her house to confront Appellant by telling the latter she was raped by him).

At the time of the trial Dunn was prohibited from interacting with Blair due to bond conditions associated with the charge of Criminal Domestic Violence of a High and Aggravated Nature, which had been brought by Blair. Dunn was unable to meet the bond (which was significant as a result of the shooting found herein) and remained in jail until the disposition of the case. Blair was able to circumvent this by engaging her attorney to visit Dunn in his Abbeville County Detention Center, to convey her offer to withdraw her CDV charges against Dunn, in exchange to the latter clearing her of her participation in the shooting incident.

As evidence of this, Appellant submitted Incident Report showing Dunn's initial denial of his involvement to Appellant's shooting. Appellant also presented a document to prove that prior to his deposition and the trial, Dunn was visited by Blair's counsel. (R., pp. 329-330). Immediately after this visit, Dunn's deposition was conducted where he changed his narrative,

this time admitting his intention to shoot Appellant. (R., p. 336). He also denied Blair had any responsibility over the shooting. *Ibid.* To prove this, Appellant offered excerpts of Dunn's Deposition Transcript, highlighting the inconsistencies and differences from his initial account of the events that led to the shooting of Appellant. For her part, Blair used Dunn's admission and statement regarding Blair's lack of liability to ultimately influence the jury in reaching the verdict depriving Plaintiff of a fair trial.

To prove this unethical deal, Appellant tendered Tillman's Affidavit to show it was carefully planned by the Respondents. (R., p. 326). To prove the deal was sealed, Appellant submitted the excerpts of the hearing transcript of Dunn's CDV charges, where his public defender Kami Granade disclosed Blair declared her intent to withdraw the CDV case against Dunn. (R., p. 346, 24.25 & p. 347, 1.4). Tillman's Affidavit was executed six (6) months prior to Granade announcing to the Court of Blair's wish to dismiss the charge she had previously brought against Dunn *for holding a gun to her head*.

The discussion above clearly shows Blair's active participation in denying Appellant his right to a fair trial and opportunity to be heard by corrupting the process. By entering into a *quid pro quo* agreement with Dunn, Blair ensured the defeat of Appellant's action against her, and with it, disrupted Appellant's counsel from performing his duty to herein Appellant. There can be no other conclusion than Blair's conduct was made with intention to injure Appellant, depriving him and his counsel of the prospective economic advantage entailed from his attorney-client contract.

Appellant submits the law does not require an actual separation or severance of attorney-client relationship to claim tortious interference with a contract. The Restatement (Third) of Torts, §§ 16-17, sets out the elements of the intentional interference with a contract. It

defines what conduct creates liability:

- (1) A defendant is subject to liability for interference with contract if:
 - (a) a valid contract existed between the plaintiff and a third party;
 - (b) the defendant engaged in wrongful conduct as defined in Subsection (2);
 - (c) the defendant intended to cause a breach of the plaintiff's contract or disruption of its performance; and
 - (d) the defendant's wrongful conduct caused a breach of the contract or disruption of performance.

- (2) Conduct is wrongful for purposes of this Section if:
 - (a) the defendant acted for the purpose of appropriating the benefits of the plaintiff's contract; or
 - (b) the defendant's conduct constituted an independent and intentional legal wrong; or
 - (c) the defendant engaged in the conduct for the sole purpose of injuring the plaintiff.

(Restatement (Third) of Torts: Liability for Economic Harm § 16).

In this case, Blair caused a breach of contract between Appellant and his counsel when by her conduct, she deprived and/ disrupted Appellant's counsel from performing his professional duties to his client. Blair's action resulted in depriving Appellant of the compensation for damages he suffered. As a result of the intentional interference with Plaintiffs' contract, all named Respondents prevented Harbin from getting the damages for which he was entitled due to the shooting. It should be noted Respondents knew the value of the case without depriving Appellant of his day in court-having offered \$100,000.00 pre-trial. On the same token, Appellant believed the case to be worth more based on Blair's incitement of Dunn with the rape allegation.

In sum, Appellant has sufficiently established the requisite elements of the claim for tortious interference with contract.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the Initial Brief, Appellant respectfully requests this Honorable Court to grant Appellant's appeal, to reverse and vacate

the judgment of the trial court and order the trial of this case by Appellant's peers.

Anderson, SC
January 14, 2021

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I HEREBY CERTIFY that this Final Reply Brief of the Appellant in the above-captioned case complies with Rule 211 (b) SCACR.

January 14, 2021

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