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May 27 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
DANIEL D. HALL, CIRCUIT COURT JUDGE

Appellate Case No. 2021-000084

Vidhyaben R. Patel,Appellant,

v.

Hardik R. Patel,Respondent.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case2

Argument4

Conclusion 8

TABLE OF AUTHORITIES

CASES

B&B Hardware Inc. v. Hargis Industries Inc.,
135 S.Ct. 1293, 191 L.Ed.2d 2222 (2015)..... 7

Brown v. Singleton,
337 S.C. 74, 522 S.E.2d 816 (Ct.App. 1999)..... 4

Builder’s Mutual v. Bob Wire Elec. Inc.,
424 S.C. 161, 817 S.E.2d 807 (Ct.App. 2018)..... 6

Myat v. Toumey Regional Medical Center,
427 S.C. 601, 832 S.E.2d 306 (Ct.App. 2019)..... 6

Pittman v. Pittman,
395 S.C. 209, 717 S.E.2d 88 (Ct.App. 2011)..... 6

Shaw Components Inc. v. National Bank of South Carolina,
304 S.C. 114, 403 S.E.2d 153 (Ct.App. 1991)..... 6

Therrell v. Jerry’s Inc.,
370 S.C. 22, 633 S.E.2d 893 (2006). 6

Warren v. Raymond,
17 S.C. 163, 189 (1882)..... 6

Wilder Corp. v. Wilke,
330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). 4

Constitutional provisions and STATUTES

S.C. Const. art. V, 5 5

S.C. Const. art. V, 7. 5

S.C. Code Ann. §14-3-330..... 5,6

S.C. Code Ann. §14-3-330(1)..... 5,7

OTHER AUTHORITIES

Rule 241, SCACR..... 7,8

Rule 241(b)(2), SCACR..... 7

Rule 241(b)(4), SCACR..... 7

Rule 241(c), SCACR 8

STATEMENT OF ISSUES ON APPEAL

1. Appellant Vidhya Patel (hereafter “Vidhya”) asserts the trial court erred in granting summary judgment to her son, Hardik Patel (hereafter “Hardik”) on her complaint seeking damages for abuse of process against Hardik. The trial court’s ruling was correct and the decision should be affirmed. Additionally, the issue raised on appeal was not preserved for appellate review.

STATEMENT OF THE CASE

This lawsuit was filed by Vidhya (in Laurens County) against Hardik during the pendency of an earlier action (also pending in Laurens County) filed by Vidhya and her younger son Darshak (hereafter “Darshak”) against Hardik, his wife Anal Patel (hereafter “Anna”) and a corporation owned by Anna called AAHARVID LLC. (hereafter “the convenience store”).¹

The first action was filed February 20, 2019 by Vidhya and Darshak, both individually and as co-personal representatives of the Estate of Ramesh Patel, Vidhya’s late husband and the father of Hardik (older son) and Darshak (young son). That action sought to impose equitable trusts over property owned by Hardik, Anna and the convenience store under a theory that Vidhya and Ramesh’s funds had actually been used to purchase the assets, so a trust should be imposed over the assets owned by Vidhya, Anna and the convenience store. (Complaint 2019-CP-30-0140).

Hardik, Anna and the convenience store filed an answer and counterclaim, then an amended answer and counterclaim. (Amended Answer and Claim dated April 22, 2019). The parties agreed to try the first action non-jury and Circuit Court Judge Eugene Griffith denied all relief sought following four days of trial. (Judge Griffith order dated August 28, 2020). Judge Griffith’s order provides a detailed background of the dispute and it is incorporated herein by reference (as well as included in designations) for a full recitation of the relevant facts.

During the pendency of the first action, Vidhya was arrested by law enforcement in Laurens county for lottery fraud, arising from her former employment at the convenience store. (Arrest Warrant dated April 1, 2019).

¹ The second action was also filed in Laurens County. However, Hardik was and is a resident of York county, so Hardik moved to change venue to York County. His motion was granted without opposition. The original Laurens county case number, 2019-CP-30-0598, was changed to a York county number, 2019-CP-46-03009, after transfer to York County. All proceedings other than the filing of the original complaint in this action occurred in York County.

While the pleadings in the first action did not reference the arrest or the circumstances surrounding it, both Vidhya and Darshak testified, without objection, in detail about Vidhya's arrest for lottery fraud, and offered their views on why the arrest was probably instigated by Hardik in retaliation for them having filed the first action. (Transcript 2.6.2020, p. 161, lines 10-17; p. 184, line 1 – p. 186, line 14; p. 268, line 16 – p. 269, line 22; p. 272, lines 1-6).

Anna testified she notified the lottery commission and law enforcement of the theft of lottery tickets after seeking legal advice and learning she was required to do so under the terms of her lottery contract with the lottery commission. (Tr. June 2020, p. 310, line 14 – p. 311, line 2; p. 354, line 17 – p. 355, line 10). The attorney with whom Anna consulted confirmed he reviewed the contract the convenience store had with the lottery commission in December 2018, and confirmed he told Anna she had to report Vidhya's theft of lottery tickets to the lottery commission. (Tr. June 2020, p. 9, line 19 – p. 11 line 5; p. 12, line 1 – p. 15, line 15)

In his final order in the first matter, Judge Griffith made specific findings about how Vidhya's theft of lottery tickets had been discovered and concluded that neither Hardik nor Anna was responsible for Vidhya's arrest. (Order dated 8.28.2020 p. 22, paragraph 90 – page 23, paragraph 94).

Neither Hardik nor Anna requested, arranged or facilitated the arrest; in fact they knew nothing about it until after it had occurred . . . Someone called Anna after hearing a news report about [Vidhya's] arrest.

Id. page 23, line 94.

The single issue raised by Vidhya in this litigation was a claim by Vidhya against Hardik for abuse of process, alleging that Hardik had sought Vidhya's arrest for lottery fraud in April

2020 in retaliation for Vidhya and Darshak having filed this lawsuit. (Complaint dated July 11, 2019, Paragraphs 8-15).

Following the final order in the first action, Hardik moved for summary judgment in this action, asserting issue preclusion prevented a second action to litigate issues that were, or could have been, litigated in the first action. (Motion for Summary Judgment filed Oct. 30, 2020). Vidya opposed the motion, asserting she had appealed Judge Griffith's order so there was no preclusive effect from Judge Griffith's order that barred her from proceeding with this action. Hardik replied, pointing out that the order from the final case was final despite the appeal, and preclusive insofar as Vidhya was attempting to litigate the issue for a second time in this action. The trial judge granted summary judgment in favor of Hardik, finding "issue preclusion prevents Vidhya from attempting to relitigation. . . issues that were litigated and finally decided in the prior action." (Order dated December 29, 2020).

Vidhya did not file a motion for reconsideration or ask the trial judge to amend his decision. Instead, she filed this appeal.

ARGUMENT

The trial judge did not err in granting summary judgment in favor of Hardik.

By way of preliminary procedural consideration, there are no issues preserved for appeal. As noted, after the trial judge issued his order granting summary judgment in favor of Hardik, there was no motion for reconsideration or amendment; instead this appeal was filed without further inquiry to the circuit court. The issue argued on appeal is not preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *Brown v. Singleton*, 337 S.C. 74, 522 S.E.2d 816 (Ct.App. 1999).

Additionally, the issue lacks merit. Vidhya does not dispute that the issue presented in this case was presented in the prior action, or could have been presented in the prior action. Instead, she argues that summary judgment should not have been granted because she has appealed Judge Griffith's order in the first action, which appeal somehow makes the judgment in the first action not final.

As pointed out by Judge Hall in granting summary judgment in Hardik's favor, the pendency of the appeal by Vidhya of Judge Griffith's order does not prevent that order from being a final order. (Order dated December 29, 2020, footnote 1). Indeed, it is only because Judge Griffith's order is a final appeal is Vidhya able to take the appeal from his order. S.C.Code Ann. Section 14-3-330(1).

The State Constitution establishes the appellate courts and outlines certain elements of its jurisdiction, but leaves to the General Assembly the responsibility for delineating the jurisdiction of those courts for appeals in law and equity matters. South Carolina Constitution Article V, Section 5, which creates the appellate courts but establishes the areas which the appellate courts may review final order “. . . under such regulations as the General Assembly may prescribe.”). *Id.* This Article of the State Constitution predated the legislative creation of the South Carolina Court of Appeals, which was then recognized as a constitutional court in 1985. Article V, Section 7. S.C. Code Ann. § 14-3-330 also provides for appeals from certain interlocutory orders, but the appeal being pursued by Vidhya from the Laurens county order is an appeal from a final order.²

² The State Constitution establishes the appellate courts and outlines certain elements of its jurisdiction, but leaves to the General Assembly the responsibility for delineating the jurisdiction of those courts for appeals in law and equity matters. South Carolina Constitution Article V, Section 5, which creates the appellate courts but establishes the areas which the appellate courts may review final order “. . . under such regulations as the General Assembly may prescribe.”). *Id.* This Article of the State Constitution predated the legislative creation of the South Carolina Court of Appeals, which was then recognized as a constitutional court in 1985. Article V, Section 7. S.C. Code Ann. § 14-

Vidhya cannot dispute that the issue she raises in this issue is not only precluded because it *might* have been litigated in the prior action. The issue Vidhya attempts to litigate here has actually been litigated and decided by Judge Griffith.

As she did before Judge Hall, Vidhya cites to cases which hold that an order that has been vacated or reversed has no preclusive effect. She is correct about that; however, that is not the case here.

The cases Vidhya relies on address situations in which the order sought to serve as issue preclusion has already been vacated. In *Builder's Mutual v. Bob Wire Elec. Inc.*, 424 S.C. 161, 817 S.E.2d 807 (Ct.App. 2018), the Court of Appeals correctly cited prior precedent for the proposition that “issue preclusion cannot be based on a reversed judgment.”³ See *Shaw Components Inc. v. National Bank of South Carolina*, 304 S.C. 114, 403 S.E.2d 153 (Ct.App. 1991).⁴ In *Builder's Mutual*, the Court of Appeals also referred to a Sixth Circuit case for the proposition that a vacated judgment is “deprived of all conclusive effect. . .” While Vidhya may have appealed the order in the Laurens county case, that decision has not been reversed.

3-330 also provides for appeals from certain interlocutory orders, but the appeal being pursued by Vidhya from the Laurens county order is an appeal from a final order.

³ In *Builders Mutual*, the Court of Appeals pointed out that the long-standing recognition of doctrines of *res judicata* in our jurisprudence. “Both sides would agree, as our supreme court has, with the view of the nameless but ‘distinguished English judge: “Human life is not long enough to allow matters once disposed of being brought under discussion again. . .”, *Id.*, citing *Warren v. Raymond*, 17 S.C. 163, 189 (1882).

⁴ Both *Builders Mutual* and *Shaw Components* discussed the distinction between the preclusive effect of a prior vacated order in subsequent proceedings in the same case, referencing the “law of the case” doctrine, versus the issue preclusion effect of a prior judgment in a separate matter. Here, the issues are precluded from litigation in the instant matter because they were actually litigated and decided in the prior Laurens County action. That is the definition of issue preclusion, *i.e.*, to prevent a “second bite at the apple” which the appellate court of this state universally condemn. *Therrell v. Jerry's Inc.*, 370 S.C. 22, 633 S.E.2d 893 (2006); *Myat v. Toumey Regional Medical Center*, 427 S.C. 601, 832 S.E.2d 306 (Ct.App. 2019). See also *Pittman v. Pittman*, 395 S.C. 209, 717 S.E.2d 88 (Ct.App. 2011).

The rule is not unique to South Carolina. As Justice Alito recently stated in a majority opinion in the United States Supreme Court:

[s]ometimes two different tribunals are asked to decide the same issue. When that happens, the decision of the first tribunal usually must be followed by the second. . . allowing the same issue to be decided more than once wastes litigants' resources and adjudicators' time and it encourages parties who lose before one tribunal to shop around for another. The doctrine of collateral estoppel or issue preclusion is designed to prevent this from occurring.

B&B Hardware Inc. v. Hargis Industries Inc., 135 S.Ct. 1293, 191 L.Ed.2d 2222 (2015).

Indeed, the only reason Vidhya has been able to appeal the judgment in the Laurens county case is because that order is a final order. Appeals may be taken only as provided by law, which requires appellate proceedings be limited to review of final orders. S.C. Code Ann. §14-3-330(1).

Vidhya is attempting, through citation to cases that address the preclusive effect of orders that have already been reversed, to suggest to this Court that it must allow her the opportunity to complete her appeal in the Laurens County before she is bound by the legal consequences of that order. Her argument really is that the effect of the final order in Laurens county is stayed by her appeal. However, she is in error.

The Appellate Court Rules specify the kinds of orders that are automatically stayed by appeal, and the Laurens County final order is not one of them. Pursuant to Rule 241, SCACR, the Supreme Court has established the type of cases that are automatically stayed by appeal. That rule expressly provides an exception for orders which direct the assignment or delivery of documents or personal property, Rule 241(b)(2), and judgments directing the sale or delivery of possession of real property, Rule 241(b)(4). The action litigated in Laurens county was an equitable action seeking to impose a trust over real property (a house) and a business (both real and personal property). The final order adjudicated the issue and directed the dissolution of the *lis pendens* that

Vidhya (and her co-plaintiff in that action, Darshak Patel) had placed on the real property owned by non-party Anal Patel. There is, therefore, no automatic stay of the appeal.⁵

The appeal⁶ which Vidhya so strenuously asserts precludes the grant of summary judgment in this case is *almost* fully briefed, with Vidhya and Darshak just having obtained an extension of time for the initial brief of respondent.⁷

CONCLUSION

Vidhya did not seek reconsideration or amendment of the order on appeal, and no issue is preserved for decision by this court on appeal. Additionally, the argument she asserts in support of her position that the trial judge erred in granting summary judgment in favor of Hardik is without merit.

Hardik respectfully requests that the decision of the trial court be affirmed.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard

Harvey M. Watson III

BALLARD & WATSON

⁵ Rule 241, SCACR, provides a procedure for one who files an appeal to seek a stay of the order on appeal. *See* Rule 241(c), SCACR. However, no such order has been sought.

⁶ Appellate Case No. 2020- argues error based upon certain of the factual findings made by Judge Griffith. *See* Appellant's Initial Brief filed January 4, 2021. That brief does not argue any error in Judge Griffith's findings as to whether Hardik had any role in the arrest of Vidhya. (Initial Appellant's brief filed January 4, 2021, p. 18). Thus even if Vidhya wins her appeal of Judge Griffith's order from the first case, she cannot overcome the preclusive effect of the factual findings regarding her arrest (because they are not challenged on appeal), nor can she dispute that the issue regarding her arrest could not have been litigated in the first action, because it was litigated and decided in the first action.

⁷ The pending appeal is a cross-appeal, with Vidhya and Darshak arguing Judge Griffith's order was wrong, and a cross appeal by Hardik, Anna and the convenience store from a later order which denied their request for an award of attorney's fees against Vidhya and Darshak. The issues raised by Vidhya and Darshak on appeal have been fully briefed by both sides.

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STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
DANIEL D. HALL, CIRCUIT COURT JUDGE

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Vidhyaben R. Patel,Appellant,

v.

Hardik R. Patel,Respondent.

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on May 27, 2021, I served a copy of the **Initial Brief of Respondent** and **Designation of Matter** in the above-captioned case on the following individuals by electronic mail, addressed as follows:

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Beth Cogan, Paralegal

May 27, 2021
West Columbia, South Carolina

Beth Cogan

From: Beth Cogan
Sent: Thursday, May 27, 2021 3:02 PM
To: Jake Moore; Diane Corley; jennifer@nicholspricelaw.com; Samuel M. Price, Jr., Esquire
Cc: Desa Ballard
Subject: (Patel v. Patel 2021-000084) Initial Brief of Respondent and DOM
Attachments: 2021 05 27 Ltr to COA encl IB of Respondent.pdf; 2021 05 27 Initial Brief of Respondent.pdf; 2021 05 27 Respondent Designations.pdf; 2021 05 27 POS IB of Respondent.pdf

Good afternoon,

Please see the attached Initial Brief of Respondent and Designation of matter that is being filed today for the above-referenced matter.

Kindest Regards,
-Beth

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Via Email (ctappfilings@sccourts.org)
Honorable Jenny Abbott Kitchings
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May 27 2021
SC Court of Appeals

Re: *Vidhyaben R. Patel v. Hardik R. Patel*
Appellate Case No.: 2021-000084

Dear Ms. Kitchings:

Enclosed for filing please find the **Initial Brief of Respondent's and Designation of Matter** for the above-referenced matter.

By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon counsel for the Appellant. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

Please do not hesitate to contact our office if you should have any questions. With warm personal regards, I am,

Sincerely yours,

Desa Ballard /lkc

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cc: *Via Electronic Mail*
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Samuel Price, Jr., Esquire
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