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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Presiding Judge

Appellate Case No. 2021-000084

Vidhyaben R. Patel,Appellant,

v.

Hardik R. Patel,Respondent.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR IN HOLDING THAT THE ABOVE-REFERENCED ACTION IS BARRED BY THE DOCTRINE OF *RES JUDICATA*

STATEMENT OF THE CASE

On July 11, 2019, Plaintiff/Appellant Vidhyaben R. Patel (“Appellant”) brought this action in the Laurens County Court of Common Pleas against Defendant/Respondent Hardik R. Patel (“Respondent”) alleging causes of action for abuse of process. (R. pp. 46-47). Respondent answered asserting numerous affirmative defenses and counterclaims. (R. pp. 48-70). *Res Judicata* and/or issue preclusion were not plead as affirmative defenses. Respondent subsequently moved for Change of Venue to York County which was granted. (R. pp. 154-155; 42-43).

On October 30, 2019, Respondent moved before the Court for Summary Judgment on the grounds that the Appellant’s action against Respondent was barred by the doctrine of collateral estoppel on the grounds that Appellant’s action was adjudicated in Respondent’s favor in the case of *Vidhyaben Patel, Individually and as PR, et. al. v. Hardik Patel, et. al.*, Case No. 2019-CP-30-0140. (R. pp. 97-100). Judge Hall took judicial notice of the proceedings in the prior action. (R. pp. 1-4). Judge Hall’s Order incorrectly holds that Appellant did not respond to the Motion. (R. pp. 1-4; 95-96).

On or about December 29, 2020, the Honorable Daniel D. Hall, Presiding Judge of the Sixteenth Judicial Circuit, issued his Order granting Respondent’s Motion. (R. pp. 1-4). Appellant timely filed and served her Notice of Appeal. (R. p. 179).

STANDARD OF REVIEW

When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to

a judgment as a matter of law.” Rule 56(c), SCRPC. “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860; *Harris v. Tietex International, Ltd.*, 417 S.C. 533, 790 S.E.2d. 411 (Ct. App. 2016).

FACTS

Appellant Vidhyaben R. Patel is Respondent’s mother. (R. p. 46). Respondent Hardik R. Patel is her son. (R. p. 46). Appellant and her late husband, owned several properties in Laurens County, South Carolina. Following his father’s death, Respondent claimed ownership of two of these properties, a family residence and a convenience store. (R. pp. 46-47).

In February of 2019, Appellant filed a lawsuit against Respondent and others, seeking to declare an interest in these properties. (R. p. 46). Approximately three months later, after the lawsuit was filed, Respondent reported to law enforcement that Appellant, his mother, had stolen lottery tickets from the convenience store and fraudulently benefitted from the winnings of these allegedly stolen lottery tickets. (R. p. 46). This resulted in the Appellant being arrested for alleged Lottery Fraud in Laurens County, South Carolina. (R. pp. 46-47). There has been no final resolution/adjudication of the criminal proceedings brought against Appellant.

Subsequent to the Appellant’s arrest, the Laurens County case was tried before the Honorable Eugene C. Griffith, Jr., Presiding Judge of the Eighth Judicial Circuit. (R. pp. 8-41). On or about August 28, 2020, Judge Griffith issued his Order holding in part that Appellant was not entitled to either a Resulting or Constructive Trust as to either property. (R. pp. 8-41). Respondent immediately moved for Summary Judgment as to the present action, alleging that the Appellant’s claims in this case were barred by the doctrine of Collateral Estoppel. (R. pp. 97-100). Respondent’s Motion rested solely on Judge Griffith’s August 28, 2020, Order. (R. pp. 97-100;

8-41). Contrary to Judge Hall's Order, Appellant responded to Respondent's Motion arguing that Judge Griffith's Order, which was under appeal to this Court, was not a final judgement. On December 29, 2020, Judge Hall, without an oral argument, granted Respondent's Motion on the grounds that Appellant's action was barred by the doctrine of *res judicata*. Appellant's appeal followed.

ARGUMENT

I. THE TRIAL COURT ERRONEOUSLY GRANTED RESPONDENT SUMMARY JUDGMENT ON THE GROUNDS THAT APPELLANT'S ACTION WAS BARRED BY THE DOCTRINE OF *RES JUDICATA*

Respondent moved for Summary Judgment on the grounds that issue preclusion prevents Appellant from relitigating issues that were litigated and finally decided in the prior Laurens County Action. *Sims v. Amisub of South Carolina, Inc.*, 408 S.C. 202, 758 S.E. 2d. 187 (Ct. App. 2014). Respondent specifically relied upon Judge Griffith's findings that neither Respondent (nor his wife, Anna who is not a party to this action), "...neither...requested, arranged or facilitated the arrest; in fact they knew nothing about it until after it occurred." (R. pp. 97-100). Judge Hall held that Appellant's claims in this case were barred by issue preclusion. The Court concluded in its December 29, 2020, Order granting Summary Judgment to Respondent that, "As a result of the prior litigation, **which is final**, Respondent is entitled to Summary Judgment in his favor as a matter of law...." (R. pp. 1-4) (Emphasis added). The Court's Order granting Summary Judgment to the Respondent is fatally flawed and clearly erroneous and should be reversed by this Court.

In support of its conclusion that Judge Griffith's October 30, 2020, Order constituted a final judgement entitling Respondent to Summary Judgment, the Lower Court relied upon Rule 205 South Carolina Rules of Appellate Procedure, and Rules 241 (b)(2) and Rule 241(b)(3) of the South Carolina Rules of Appellate Procedure. Neither of these rules are applicable to this case.

Neither of these rules make Judge Griffith's Order (now on appeal before this Court) a final judgement for purposes of issue preclusion.

Rule 205 of the South Carolina Rules of Appellate Procedure addresses the division of jurisdiction between the appellate court and the lower court on matters on appeal. Nothing in this rule addresses whether or not Judge Griffith's Order is final or has preclusive effect to any other pending actions. Rule 241 of the South Carolina Rules of Appellate Procedure sets forth the rule in South Carolina that a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgement decree or decision while on appeal and to automatically stay the relief ordered in the appealed order, judgement, decree or decision. This principle has several exceptions. Rule 241(b) provides that these exceptions must be strictly complied with to be applicable.

Two of these exceptions were cited by Judge Hall in his Order granting Respondent Summary Judgment. Rule 241(b)(2) and Rule 241(b)(3). Neither exception is applicable to this action. Rule 241(b)(2) provides an exception for, "judgements directing the execution of documents or personal property as provided for in S.C. Code Ann. Section 18-9-130. South Carolina Code Section 18-9-130 addresses the effect of the automatic stay on execution of judgements in South Carolina. Again, this exception has no application to the case before the Court. Likewise, Rule 241(b)(3) provides an exception for judgements directing the execution of conveyances or other instruments as provided for in S.C. Code Section 18-9-160. South Carolina Code Section 18-9-160 provides that "if the judgement appealed from directs the execution of a conveyance or other instrument, the execution of judgement shall not be stayed on appeal until the instrument shall have been executed and deposited with the clerk with whom the judgement is entered...." This exception has no application to the facts before this Court. None of the authority relied upon by Judge Hall overcomes the South Carolina rule that orders under appeal in South

Carolina are final or have any preclusive effect. Judge Hall's Order to the contrary is clearly erroneous and should be reversed by this Court.

The Order which forms the basis of Respondent's Motion and Judge Hall's Order Granting Summary Judgment are on appeal before this Court. A vacated or reversed judgement has no preclusive effect under the doctrine of Collateral Estoppel or Res Judicata. *Shaw Components, Inc. v. Nat. Bank of S.C.*, 304 S.C.114, 403 S.E.2d. 153 (Ct. App. 1991); *Builders Mut. Ins. Co. v. Bob Wire Electric, Inc.*, 424 S.C.161, 817 S.E.2d. 807 (S.C. App. 2018). Appellant has filed an appeal (which is presently pending) seeking to overturn the Order upon which the Respondent's Motion for Summary Judgment is based. If it is reversed, then it will have no preclusive effect and cannot serve as the basis for a judgement in this case. In the interests of judicial economy, the Respondent's Motion for Summary Judgment should not be decided upon until after both parties have had an opportunity to present and argue the issues involved before the Court. Summary Judgment should not be based on an Order which is under appeal and would have no preclusive effect if reversed or altered by the Appellate Court.

CONCLUSION

The Trial Court erred in ruling that Appellant's claims in the present action were barred by the doctrine of *res judicata* and in granting Respondent's Motion for Summary Judgment on grounds of issue preclusion. The Court's Order is clearly erroneous and based on a misinterpretation/misapplication of South Carolina Law and should be reversed by this Court.

Respectfully submitted,

August 3, 2021

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