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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Shannon M. Phillips, Master in Equity
Gordon Cooper, Master in Equity

Appellate Case No. 2021-000880

Michael E. Williams,

Respondent,

v.

Raymond Arnold a/k/a Raymond Arnold, Jr,

Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER ERR IN FINDING THAT THE DEFENDANT/APPELLANT WAS PRECLUDED FROM PUTTING UP HIS DEFENSE IN THE PRESENT ACTION UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL BECAUSE THE DEFENDANT/APPELLANT VOLUNTARILY DISMISSED A PREVIOUS ACTION AGAINST THE PLAINTIFF/RESPONDENT WITH PREJUDICE WHEN NO ISSUES WERE LITIGATED OR DECIDED IN THE PRIOR ACTION?

STATEMENT OF THE CASE

This is a Quiet Title action after a Tax Sale.

During 2010 and 2011, the Defendant, Raymond Arnold's *ad valorem* taxes went unpaid for several of his properties located in Spartanburg County.

On December 3, 2012, the Spartanburg County Tax Collector sold three (3) properties owned by the Defendant (hereinafter Arnold). The three Arnold properties sold by Spartanburg County on December 3, 2012 were as follows:

- a. Item # 12-09182, a lot on South Center Street to Ramon Mendez for \$700.00 by Tax Deed dated March 11th, 2014 and recorded in Book 105N at Page 557
- b. Item # 12-09183, a lot on High Street sold to (the Plaintiff/Respondent herein) Michael E. Williams for \$5,300.00 by Tax Deed dated May 12th, 2014 and recorded in Book 106A at Page 194
- c. Item # 12-09184, 617 Crescent Street sold to US Bank as custodian for South Carolina Sandy Tyger LLC for \$11,500.00 by Tax Deed dated June 4, 2014 and recorded in Book 106E at Page 965.

On December 2, 2014, Arnold filed suit against Spartanburg County and the three Tax Deed Grantees (including Michael E. Williams, the Plaintiff in the present matter, hereinafter Williams) and others¹ seeking to overturn the December 3, 2012 Tax Sale and to set aside the resulting Tax Deeds. Arnold's argument in the prior litigation was that the County had violated South Carolina Code Section 12-51-50 by committing an excessive levy when it sold more of Arnold's property than necessary to satisfy his outstanding tax obligations².

South Carolina Code Section 12-51-50, provides (in pertinent part):

SECTION 12-51-50. Sale of property; procedures; defaulting taxpayer or grantee with more than one item to be sold.

“... If the defaulting taxpayer or the grantee of record of the property has more than one item advertised to be sold, as soon as sufficient funds have been accrued to cover all of the delinquent taxes, assessments, penalties, and costs, further items must not be sold.”

The Plaintiff herein, Williams, was never served with process in the prior litigation and did not appear in the matter nor otherwise participate therein.

During the pendency of the prior lawsuit, the Defendant herein, Arnold settled with the Tax Deed grantees on two (2) of the three (3) properties which had been sold for taxes on December 3, 2012.

Through suit and settlement, Arnold recovered two (2) of his parcels which had been sold by Spartanburg County for delinquent taxes on December 3, 2012.

¹ Raymond T. Arnold Jr., a/k/a Ray Arnold, Jr. vs. Spartanburg County, et al. 2014-CP-42-04750. Arnold brought suit against individuals and entities other than the three (3) Tax Deed grantees but further discussion of those parties and claims would not be helpful to the understanding of the matters presented here.

² Arnold made other claims in the prior litigation, but those claims are not relevant to this appeal.

On July 7, 2015, after reaching a settlement with some of the Defendants in the previous suit, Arnold's counsel filed with the court a dismissal of certain Defendants with prejudice.

On May 9, 2016, Arnold's counsel, the County's attorney and others who had appeared in that case, stipulated to the dismissal of "all Defendants and all claims with prejudice" thereby ending the prior litigation.

It is important to re-iterate that the Plaintiff in the present matter, Williams, was a Defendant in the prior litigation but was never served with process and did not appear, nor participate therein.

On August 3rd, 2019, Williams brought the present action against Arnold to quiet the title to the property located on High Street and to confirm the Tax Sale Deed in the name of the Plaintiff herein.

Arnold, through counsel, filed an Answer in the current matter asking this Court for "other legal and equitable relief as the Court deems just and proper".

On July 7th, 2020, the Defendant herein, Raymond Arnold, died.

The final hearing in this matter was set for June 21st, 2021 and was held via Webex or similar online format.³ In his case in chief, Williams introduced an affidavit of a County employee and put up a witness from the County who testified that the Tax Sale was conducted in compliance with all statutory requirements. (Transcript of 6/21/21 Proceedings p. 7)

On cross examination, Arnold's counsel asked the County witness to identify three (3) exhibits. The witness identified the three (3) exhibits as Tax Deeds and was questioned about the

³In those days, trials were being held online due to ongoing concerns of the global pandemic.

common sales date, the defaulting taxpayer's name, and the sales prices. The witness confirmed that the three (3) Tax Deeds were for Arnold's properties and that all three (3) were sold at tax auction on the same date at the same tax sale. (Transcript of 6/21/21 proceedings pp. 11, 12 and 13)

As Defendant's counsel attempted to ask the witness questions regarding the sales price on each Tax Deed, Plaintiff's counsel objected to the line of questioning arguing that because Arnold had dismissed the prior litigation "as to all defendants and all claims with prejudice", he (Arnold through counsel) should not be allowed to further question the witness regarding statutory compliance issues. (Transcript of 6/21/21 proceedings p. 13)

Defendant's counsel argued against Plaintiff's objection; however, the Court sustained the objection and directed Defendant's counsel to NOT ask any further questions of the witness related to the requirements of Section 12-51-50. (Transcript of 6/21/21 proceedings pp. 14 thru 23)

On June 28th, 2021, the Master issued his Order Quieting Title in favor of the Williams finding that Arnold was precluded from putting up his defense based upon an alleged violation of Section 12-51-50 because that argument was made in the previous litigation which was voluntarily dismissed as to "all defendants and all claims with prejudice". (Order 6/28/2021)

On July 5th, 2021, counsel for the Defendant filed a Motion seeking (1) to set aside the Order of June 28th, 2021 and (2) to reconvene the hearing so that the Defendant can present his defense, introduce evidence and ask the witness questions relevant to statutory compliance. (See Motion to Alter or Amend, Memorandum in Support and Exhibits thereto)

Shortly after the June 28th, 2021 Order, Judge Cooper retired and Defendant's motion to reconsider was heard by the new Master, Judge Phillips. At the second hearing, Arnold's counsel

argued that the Defendant should have been allowed to cross-examine the Plaintiff's witness on the issue of whether the County complied with Section 12-51-50 because Williams did not participate in the prior litigation. (Transcript of 7/27/2021 proceedings pp, 2, 3 and 4)

The new Master denied the Defendant's Motion and entered a Short Form (Form 4) Order finding that Arnold was precluded from raising the issue of the County's compliance with section 12-51-50 under the doctrine of Collateral Estoppel. (Transcript of 7/27/2021 proceedings pp. 4 and 5 and Order 7/27/2021)

FACTS

The facts of this case are not in dispute.

STANDARD OF REVIEW

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. BB & T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Id.* at 551, 633 S.E.2d at 503.

ARGUMENT

- I. THE MASTER ERRED IN FINDING THAT THE DEFENDANT/APPELLANT WAS PRECLUDED FROM PUTTING UP HIS DEFENSE IN THE PRESENT ACTION UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL BECAUSE THE DEFENDANT/APPELLANT VOLUNTARILY DISMISSED A PREVIOUS ACTION AGAINST THE PLAINTIFF/RESPONDENT WITH PREJUDICE AND NO ISSUES WERE LITIGATED OR DECIDED IN THE PRIOR ACTION

a. The Dismissal

The Stipulation of Dismissal in the prior action specifically states that the Plaintiff “together with those Defendants who have appeared in this matter” ... “do hereby knowingly and voluntarily stipulate to the dismissal of all Defendants and all claims with prejudice.” (Stipulation of Dismissal)

The Plaintiff in the second case, Williams, was never served with process and did not appear in the first action and was not a party to the stipulation. (Transcript of 6/21/2021 proceedings pp. 17, 18; Stipulation of Dismissal)

The previous litigation was voluntarily ended by stipulation without any trial or motions or hearings of any sort.

b. Collateral Estoppel

It is well established that the party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action and (3) necessary to support the prior judgment. Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 684 S.E.2d 779 (Ct. App. 2009). See also, Beall, 281 S.C. at 371, 315 S.E.2d at 191; see also St. Philip's Episcopal Church v. South Carolina Alcoholic Beverage Control Comm'n, 285 S.C. 335, 338, 329 S.E.2d 454, 456 (Ct.App.1985)

In the prior action (the 2014 case), no issues were “actually litigated” and none were “determined”. There were no finding of facts nor conclusions of law in the prior case. (Transcript of 6/21/2021 proceedings p. 19)

The issue alleged in the prior case (which Arnold was precluded from asserting in his defense of the second/present case) is whether the County complied with the statutory provisions

of Section 12-51-50. Because there was no judgment in the prior case based upon findings of fact or conclusions of law, Williams cannot demonstrate in the present case that the issue was “necessary to support the prior judgment” as would be required to preclude Arnold from presenting his defense under an application of the rule in Carolina Renewal.

There are three requirements in Carolina Renewal and Williams cannot demonstrate any of them.

c. Williams was not served and did not participate in the prior action.

Because Appellant cannot locate a case in South Carolina squarely on point, it might be illustrative to look at what the outcome would be if Arnold had obtained a default judgment against Williams in the prior action. Had Arnold served Williams and obtained a Default Judgment in the prior action, the present action (Williams’ action to Quiet Title) could go forward and Arnold’s defense would not be precluded. Where there is judgment by default in the prior action “collateral estoppel or issue preclusion does not apply (in the second action) because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation.” Kunst v. Loree, 404 S.C. 649, 654, 746 S.E.2d 360, 362 (Ct. App. 2013).

d. Dismissals for Failure to Prosecute or Procedural Grounds

Because Arnold voluntarily dismissed the prior case with prejudice without prosecuting his claim against Williams to any resolution, the prior case could be seen as similar to one where the case was dismissed with prejudice for failure to prosecute. In Jones v. Folly Beach, the Court of Appeals stated, “There is no case which has been brought to our attention holding a dismissal with prejudice based on a failure to prosecute a claim will operate to precluded issues which would

have been necessarily decided in an adjudication on the merits of the dismissed cause of action.”
Jones v. City of Folly Beach, 326 S.C. 360, 483 S.E.2d 770 (1997).

In Jones, the final decision in the prior suit was a “procedural action dismissing the claim on a form order containing no findings with regard to factual issues.” “Our Supreme Court has declined to apply the bar of collateral estoppel to speculative comparisons of factual issues not litigated or directly determined in any final decision.” Jones v. City of Folly Beach, 326 S.C. 360, 483 S.E.2d 770 (1997).

Similarly, the Court of Appeals in Nelson v. Coker, cited Jones v. Folly Beach for the rule “If the first case is dismissed with prejudice on purely procedural grounds without a consideration of the underlying merits of the action, then the party is barred from asserting collateral estoppel or res judicata.” (3626). Nelson v. Coker, Opinion No. 3626 (Ct. App. 2003). As in Nelson, the prior action by Arnold against Williams was dismissed without a consideration of the underlying merits of the action and the rule here should be as in Nelson and Jones.

STATUTE OF LIMITATIONS

Respondent argues that the ruling of the trial court should be affirmed because of the two (2) year Statute of Limitations found in Section 12-51-160. The trial Court made no findings of fact nor conclusions of law regarding the Statute of Limitations and that issue is not properly before this Court.

However, if this Court entertains the argument, Appellant would argue that the issue of excessive levy (as set forth above) is one of jurisdictional defect and not one of mere irregularity. The statute of limitations does not apply to jurisdictional defects. Reeping v. JEBBCO, LLC, 402 S.C. 195, 740 S.E.2d 504 (Ct. App. 2013); Donahue v. Ward, 298 S.C. 75. 378 S.E.2d 261 (Ct.

App. 1989). Because, the Statute of Limitations does not apply to jurisdictional defects, Section 12-51-160 does not act as a bar preventing the Appellant from presenting his defense as set forth above.

CONCLUSION

The conclusions of both Masters regarding the application of the doctrine of Collateral Estoppel are not consistent with the law of South Carolina and therefore the Orders should be reversed and this matter should be remanded to the Master with the direction that Arnold is not precluded from presenting his argument and evidence that the County violated section 12-51-50 of the South Carolina code in conducting the Tax Sale.

Respectfully submitted,

November 15, 2021

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Appellant.

PROOF OF SERVICE

I certify that I have served the INITIAL REPLY BRIEF OF APPELLANT on Michael E. Williams by depositing a copy of it in the United States Mail, postage prepaid, on November 15, 2021 addressed to his attorney of record, Richard Rhodes, 260 North Church Street, Spartanburg, SC 29306 and by emailing same to: Richard@btrlawfirm.com.

November 15, 2021



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