

IN THE COURT OF APPEALS OF IOWA

No. 3-442 / 93-12

FILED

OCT 05 1993

CLERK SUPREME COURT

MELISSA HARSH, TONYA HARSH, TIMOTHY HARSH, by their Next
Friend, Iowa Department of Human Services,

000195

Petitioner-Appellee,

vs.

RICHARD HARSH,

Respondent-Appellant.

Appeal from the Iowa District Court for Jasper County,
William H. Joy, Judge.

Respondent appeals a ruling of the district court
denying his motion to quash. **REVERSED; MOTION TO QUASH
SUSTAINED.**

Richard E. H. Phelps II, Newton, for appellant.

Bonnie J. Campbell, Attorney General, John M.
Parmeter, Assistant Attorney General, Christina F. Hansen,
Assistant Attorney General, M. Elise Pippin, Assistant
County Attorney, for appellee.

Considered by Oxberger, C.J., and Hayden and Sackett,

JJ.

SACKETT, J. 000196

The question in this appeal is whether there is a valid and collectible judgment against respondent-appellant Richard Harsh for child support accrued during a period of time when Richard was living with his wife and children and providing the support for the children for whom the child support was accruing. The State resisted a motion by Richard to have a child support judgment for this time frame quashed. The trial court refused to quash the judgment and Richard appeals. We find under the specific facts of this case that the motion to quash should have been sustained.

Richard and his late wife, Linda, are the parents of three children. In April 1984, Richard and Linda separated. Linda, who had custody of the children, began receiving AFDC benefits. Richard signed a stipulation prepared by the Department of Human Services agreeing to pay child support of \$50 per month for each of the three children and \$300 as reimbursement for AFDC benefits that had been paid earlier. The stipulation was then approved by the district court. Linda assigned her support rights to the state.

In June 1984, Richard and Linda reconciled. The state prepared and filed a termination of the assignment of support rights effective June 1, 1984. Written on the assignments was the word "reconciled", but nothing was done with the support order which had been obtained by the

state. There is no showing Richard was represented by counsel in signing the stipulation.

Richard then proceeded to live with and support his family until September 1989, when Linda and the children again separated from Richard and Linda again applied for AFDC. At that time, Linda again signed a form prepared by the Department assigning her child support rights to the state. Then on November 30, 1989, Linda signed a release of the judgment against Richard for the period from June 1984 to September 1989, the period they had lived together and Richard had supported the family.

The state attempted to collect from Richard the child support judgment that accrued from June 1984 to September 1989 and Richard filed a motion to quash. The case was submitted on stipulated facts. The trial court refused to sustain the motion and this appeal followed.

Richard contends he does not have an obligation to pay the support and the trial court improperly held he did. He also contends the overruling of an earlier motion to quash that he filed is not preclusive in this litigation.

The parties stipulated and it is not disputed that Richard lived with and supported his wife and children from June 1984 to September 1989. Also, Linda released Richard from the obligation of the judgment for child support that accrued during that period. The state contends the case of In re the Marriage of Caswell, 480 N.W.2d 38, 39-41 (Iowa 1992), does not allow the support to be satisfied by

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the release and satisfaction signed and filed by Linda. Factually Caswell is distinguishable from this case. I Caswell, a non-custodial parent sought to have a child support judgment credited with sums he had paid that did not go directly to the clerk of court. This is not a question of payment, rather, it is a case of release.

The state contends Linda's release was not valid because Linda, before releasing Richard, had assigned her right to support accruing from June 1984 to September 1989 to the state. The State does not refer us to where in the record an assignment of this specific right appears nor do they tell us what language they rely on in proving the assignment. Rather, the State advances there was an understanding between Linda and the state that the support was assigned. We have carefully reviewed the assignment prepared by the state that Linda signed in September 1989. It contains the following language:

You are further advised the Department of Human Services, pursuant to the assignment previously, remains entitled to any delinquency which is accrued as of the effective date of this termination and the Department specifically reserves its right to said delinquency.

All this language says is the state is still entitled to delinquencies accrued pursuant to the earlier assignment. There are no delinquencies for the time period of the earlier assignment. There was nothing owing under the 1984 assignment to the state when Linda signed the September 1989 assignment. It is not ambiguous and should

be enforced as written, see Spilman v. Board of Directors, 253 N.W.2d 593, 596 (Iowa 1977), and, if there are ambiguities, they are strictly construed against the state, the drafter. See Iowa Fuel & Minerals, Inc. v. Iowa State Board of Regents, 471 N.W.2d 859, 863 (Iowa 1991). The state had no assignment of the judgment when Linda released it in October 1989.

The judgment accruing from June 1984 to September 1989 was not assigned to the state and was clearly released by Linda. We agree with Richard on these points.

The second question we must address is whether the claims Richard now makes are barred because they have been decided in a prior action. On November 20, 1989, the state filed an "Order for Mandatory Income Withholding". The order claimed Richard had a support delinquency of \$8922 as of that time and, because Richard's total support delinquency was greater than the amount he owed for one month, his employer was mandated to withhold from his wages. Richard filed a motion to quash that order contending Linda had satisfied the support and he was current in his support obligations. The state resisted the motion contending support was assigned to the state and Linda's satisfaction was void on its face because when it was signed, the assignment had been effectuated and Linda had no capacity to execute such release. Without a reported hearing, the trial court made a calendar entry on December 19, 1989, saying Richard's motion to quash was overruled for the reasons stated in the resistance on file.

The question is whether this ruling has preclusive effect on the issues Richard raises here. Res Judicata which includes both claim and issue preclusion adds finality to judicial decisions. See Young v. O'Keefe, 248 Iowa 751, 755, 82 N.W.2d 111, 114 (1957). The burden to prove an issue or a claim should not be relitigated because it has been litigated before is on the party asserting it; in this case, the State. See Bloom v. Steeve, 165 N.W.2d 825, 827 (Iowa 1969). To sustain its burden, the State has to show the former case involved the same parties or parties in privity, the same cause of action and the same issues. Id. These elements seem to have been satisfied. However; there may be cases when there is a need for a new determination of the issue if, among other things, "the party sought to be concluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity to obtain a full and fair adjudication in the initial action". In re Marriage of Delmege, 501 N.W.2d 562, 563 (Iowa App. 1993); see also Hunter v. City of Des Moines, 300 N.W.2d 121, 124-25 n.4 (Iowa 1981) (citing Restatement (Second) of Judgments § 68.1 (Tent. Draft No. 1977)).

Richard contends the only issue before the court in the motion to quash the mandatory withholding order was whether he was ordered to pay support and whether he was delinquent one month.

We agree with Richard that the only issue that needed to be decided in ruling on his 1989 motion to quash was whether Richard had a legal obligation for child support and whether he was delinquent for more than one month, see Iowa Code § 252 D.1(3), and whether there should be mandatory withholding. Therefore, the issue of the validity of the release and assignment was not a necessary issue to be resolved and the short calendar entry denying Richard's motion to quash gave no clear direction of what findings the trial court made on the issues before it. We cannot find Richard has previously had an adequate opportunity to obtain a full and fair adjudication of the validity of the judgment the state is trying to enforce.

We reverse. The motion to quash should have been sustained. Richard's obligation to Linda was satisfied by Linda's release. The state had no assignment of the challenged child support.

REVERSED; MOTION TO QUASH SUSTAINED.