

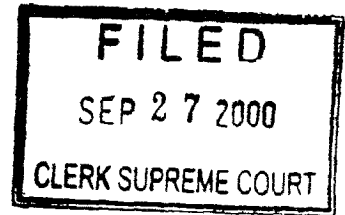
IN THE COURT OF APPEALS OF IOWA

No. 0-267 / 99-1414
Filed September 27, 2000

MARY HAYS,
Plaintiff-Appellee,

vs.

CARL HAYS,
Defendant-Appellant.



Appeal from the Iowa District Court for Dallas County, David L. Christensen, Judge.

Carl Hays appeals following the dismissal of his contempt action on the ground it was barred by the doctrine of res judicata. **AFFIRMED.**

Carl Hays, Adel, pro se.

Ralph R. Brown and Douglas A. Flanders of McDonald, Brown & Fagen, Dallas Center, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

HUTINK, P.J.

Carl Hays appeals the district court decision which dismissed his contempt action on the ground it was barred by the doctrine of res judicata. Carl claims the doctrine of res judicata is inappropriate in this case. We affirm on appeal.

Mary Hays and Carl Hays are siblings. They own adjacent parcels of land in Dallas County. On January 27, 1992, the district court entered a decree granting Mary an easement over a portion of Carl's property. Also, Carl was granted an easement over a portion of Mary's property, and this easement is known as Horton's Lane 3. Mary was required to maintain Horton's Lane 3.

On July 3, 1997, Mary filed an application to have Carl found in contempt for violating the terms of the 1992 decree. Carl filed a counterclaim seeking to have Mary found in contempt for failing to maintain the lane across her property and asking for damages. The district court entered an order on August 12, 1998, finding Mary was not in contempt, but Carl was in contempt. Carl appealed. We determined his appeal was untimely and dismissed the appeal. *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa App. 2000).

Carl filed a new application on July 23, 1999, claiming Mary was in contempt for failing to maintain the lane across her property so as to allow him reasonable access to his property. Mary filed a motion to dismiss on the ground Carl's claims were barred by the doctrine of res judicata. The district court granted the motion to dismiss. Carl appealed.

Our standard of review of a district court order granting a motion to dismiss is for correction of errors of law. *Iowa Tel. Ass'n v. City of Hawarden*,

~~589 N.W.2d 245, 250~~ (Iowa 1999). The court's decision must rest on legal grounds. *Id.*

The doctrine of res judicata includes both claim and issue preclusion. *Robbins v. Heritage Acres*, 578 N.W.2d 262, 265 (Iowa App. 1998). Res judicata may be raised by a motion to dismiss if the prior adjudication appears on the face of the petition or arises from judicially noticed matters. *Cornell v. State*, 529 N.W.2d 606, 610 (Iowa App. 1994). A trial court may take judicial notice of the petitions in pending cases. *Johnson v. Ward*, 265 N.W.2d 746, 749 (Iowa 1978). Where a contempt action raises identical claims to a previous contempt action, the second action may be dismissed under the doctrine of res judicata. See *Clark v. Glanton*, 370 N.W.2d 606, 608 (Iowa App. 1985).

In the present case, Carl alleges:

Nevertheless, Plaintiff Mary Hays has violated the Decree by failing to perform her obligations regarding Path #1 and in other respects and is continuing to do so; . . .

His 1997 counterclaim for contempt alleged:

Plaintiff has willfully and wantonly violated the terms of the Decree, and is [in] contempt of Court, as follows:

* * *

c. In failing to maintain the easement awarded to Defendant across "Parcel #2," as provided in the Decree filed on January 27, 1992.

Regarding the 1997 counterclaim, the district court found Carl had failed to show Mary had not maintained the easement awarded to Carl across her property.

We determine dismissal of this case was proper. There is only one easement across Mary's property which she is required to maintain for Carl's benefit, and that is Horton's Lane 3. Although in his present action Carl calls this

~~Path #1, it must~~ refer to the same easement. ~~Carl has not alleged~~ conditions have ~~changed~~ since the district court's ruling on August 12, 1998. Therefore, we conclude ~~the~~ district court did not err in finding Carl's action was barred by the doctrine of res judicata.

We affirm the decision of the district court which dismissed Carl's action. Costs of this appeal are assessed to Carl.

AFFIRMED.