

FILED

MAY 30 1920

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

JOHN H. HENSEL,

)

Plaintiff-Appellee,

)

Filed May 30, 1920

vs.

)

KATHLEEN HENSEL,

)

0-125

2-63831

Defendant-Appellant.

)

Appeal from Clinton District Court - C. H. Pelton, Judge.

Defendant appeals specific performance order entered in action by plaintiff, John H. Hensel, to enforce an agreement of the parties. - REVERSED.

A. John Frey, Jr., of Jurgemeyer, Frey & Haufe, Clinton, for defendant-appellant.

Donald G. Senneff, of Shaff, Farwell & Senneff, Clinton, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Kathleen Hensel, appeals specific performance order entered in action by plaintiff, John H. Hensel, to enforce an agreement of the parties. We reverse.

The marriage of Kathleen and John was dissolved February 23, 1978. The dissolution decree directed the parties to sell their sixty acre farm and to divide the proceeds. A few months later, the parties agreed John could retain the farm if he paid Kathleen \$24,000. Kathleen rescinded the agreement when John failed to pay the \$24,000 by the date contemplated in the contract. This suit followed and Kathleen appeals the trial court's order compelling her to perform under the parties' contract. On appeal, she raises issues of res judicata, duress, unclean hands, and breach of contract. Our review of this equity matter is de novo. Iowa R. App. P. 4.

Just prior to John's filing of this action, Kathleen applied to the trial court for directions regarding the sale of the farm. Her application fell under the jurisdiction retained by the court in the dissolution decree. In that proceeding, John filed a resistance alleging he had dismissed his appeal of the dissolution decree in reliance on the parties' agreement on his purchase of the farm. He claimed the parties' agreement estopped Kathleen from seeking instructions relative to the forced-sale of the real estate. The trial court rejected John's resistance and gave directions for the sale of the farm. Those directions, however, have not been followed because this action for specific performance intervened. Kathleen moved for summary judgment in this action alleging the trial court's overruling of John's resistance in the previous action constituted res judicata on the issue of the contract's enforceability. The court below rejected that claim and Kathleen raises the res judicata issue here.

The basis of res judicata is that a matter once decided is finally decided and may not be again litigated. Peters v. Peters, 249 Iowa 110, 115, 86 N.W.2d 206, 209 (1957). The doctrine is applicable to suits involving divorce. Id. A judgment rendered by a court of competent jurisdiction constitutes a complete bar and estoppel to a subsequent action between the same parties based on the same claim or demand or cause of action. Jordan v. Stuart Creamery, Inc., 258 Iowa 1, 5, 137 N.W.2d 259, 261 (1965). This is true with reference to matters in issue as well as those matters "incident to or essentially connected with the subject of the action which might have been put in issue and

adjudicated." Id.

John's resistance to Kathleen's request for instructions on the sale of the farm interposed the alleged contract of the parties. His resistance, in addition to claiming the agreement estopped Kathleen from seeking further instructions, specifically sought an order of the court confirming the contract. As well, he sought modification of the dissolution decree to implement the parties' agreement. In ruling on the application for instructions the trial court dismissed John's request for modification of a property division as not warranted by chapter 598, The Code 1977. Additionally, the resistance on estoppel grounds was overruled.

Although John claims this specific performance action may be maintained because that remedy was not available in the previous proceeding, issue preclusion applies. Kathleen's previous action involved the same parties and the same property. John raised the issues of the existence and effect of the parties' contract. Had he prevailed on his estoppel argument, John could have brought this specific performance action and used the prior ruling to preclude litigation on the contract issues or the effect of the dissolution decree. Had the court confirmed the contract as he requested, he could have affirmatively asserted that ruling. The prior ruling, however, was adverse to John. It constituted a final judgment, which John did not appeal, and Kathleen may use it defensively to bar relitigation of the issues of contract validity and effect. Those matters were presented and ruled on in the prior action and thereby "put to rest." See Board of Supervisors Carroll County v. Chicago and Northwestern Transportation Co., 260 N.W.2d 813, 816 (Iowa 1977). John sought a specific performance order contrary to the instructions for sale given in the prior action. Kathleen was entitled to use the ruling of that prior action to defend against his suit. Since the ruling was determinative on John's right to specific performance, summary judgment should have been granted Kathleen.

Accordingly, we find the trial court erred by denying Kathleen's motion for summary judgment and reverse the order of the trial court.

REVERSED.