

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CLINTON NORRIS BUCKINGHAM and)
NORMA A. BUCKINGHAM,)

Plaintiffs-Appellants,)

vs.)

FEDERAL LAND BANK ASSOCIATION,)

Defendant-Appellee.)

Filed August 27, 1986

6-158
85-1149

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Appeal from the Iowa District Court for Shelby County (No. 15892) - Leo
F. Connolly, Judge.

Plaintiffs appeal from the trial court's order which dismissed their petition
under the doctrine of issue preclusion. **AFFIRMED.**

Robert Kohorst of the Kohorst Law Firm, Harlan, for plaintiffs-appellants.

Patrick T. Deren and Richard C. Schenck of Salvo, Deren, Schenck &
Lauterbach, P.C., Harlan, for defendant-appellee.

Heard by Donielson, P.J., and Snell and Hayden, JJ.

DONIELSON, P.J.

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Plaintiffs appeal from a ruling by Judge Leo Connolly, District Court of Shelby County, dismissing their petition pursuant to Iowa Rule of Civil Procedure 222. Plaintiffs contend that the trial court erred in dismissing their petition under the doctrine of issue preclusion. We affirm.

In 1962, Harriot Buckingham, now deceased, entered into an agreement with her children, Helen, John, and plaintiff Clinton Buckingham, to leave certain property to each upon her death. Harriot agreed to leave plaintiff certain farm real estate and in return plaintiff agreed to pay the first mortgage "presently due" in 1962 upon the real estate. In 1976, Harriot increased the mortgage indebtedness to \$63,000 with the defendant Federal Land Bank, receiving permission from plaintiff to do so. In 1979, Harriot further increased the mortgage indebtedness to \$115,000, without plaintiff's permission.

After Harriot's death, plaintiff filed a claim against the executor of Harriot's estate for \$150,000, based upon a claim of a breach of contract for the additional indebtedness and interest incurred by Harriot without his consent and also claimed that the additional indebtedness was for the benefit of his brother. The executor denied the claim, and the claim was brought to trial before Judge Leo Connolly, who also presided in the instant case. The jury found for the estate and determined plaintiff was not entitled to his claim. Plaintiff appealed, and, while the matter was on appeal, the parties reached a settlement wherein plaintiff was paid \$20,000.

Plaintiffs then instituted the current proceedings against the defendant Federal Land Bank. Alleging the same factual issues previously raised in the earlier probate proceeding, plaintiffs in the present case sought a determination that the amounts paid by plaintiffs had fully paid off the amounts owing for the 1976 note and mortgage and that if the court should hold that the 1976

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note and mortgage had been fully paid, that they be awarded compensatory damages for any excess payment to the Federal Land Bank, plus interest. In its amended answer, the defendant included various documents from the Pottawattamie County probate case and filed a motion for judgment on the pleadings under Iowa Rule of Civil Procedure 222. After a hearing, the trial court held that the material and relevant issues presented in this controversy are identical to those raised in the previous probate dispute. The court observed that the jury's decision on the issues in the prior controversy were necessary and essential to the resulting judgment and that the plaintiffs in this case were also the plaintiffs in the probate action. As such, plaintiffs were so connected in interest as to have had a full and fair opportunity to litigate the issues presented therein. The court concluded that the defendant demonstrated all the necessary elements for the defense of issue preclusion and dismissed plaintiffs' action.

Plaintiffs maintain that the previous probate action did not end with a jury verdict, but rather ended with a settlement in which plaintiff was paid. Plaintiffs additionally argue that the defendant Federal Land Bank was neither a party to, nor in privity with, any party to the previous case. Therefore, plaintiffs submit that the trial court's finding from the pleadings alone that there is absolute identity was error.

The defendant Federal Land Bank contends that a prior settlement does not preclude the defense of issue preclusion. The defendant also contends that the jury instructions in the probate matters, when compared with the facts of the present case, evidence an identity of material issues. Since the jury in the probate matter must have found either that plaintiff Clinton had no right under the agreement, or that he consented to the additional debt, defendant argues that plaintiffs would have no claim against the bank based on the additional debt.

Our review of the trial court action is limited to errors of law. H & S Ltd. v. Andreola, 363 N.W.2d 592, 595 (Iowa Ct. App. 1984). The trial court is vested with wide discretion and its findings on the facts are entitled to the same weight as a jury verdict. Id. Such findings of fact are binding if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Even where no findings of fact were made, the trial court decision will be upheld if any proper grounds appear on the record. Hastings v. Espinosa, 340 N.W.2d 603, 608 (Iowa Ct. App. 1983).

I.

The subjects of issue and claim preclusion are part of the doctrine of res judicata. "The doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue as to the parties and their privies, in all other actions in the same way or any other judicial tribunal of concurrent jurisdiction." Jorge Const. Co. v. Weigel Exc. & Grading Co., 343 N.W.2d 439, 443 (Iowa 1984) (citing In re Ramsay's Estate, 240 Iowa 50, 59, 35 N.W.2d 651, 656 (1949)). In recent years, the Iowa courts, for reasons of clarity, have used the terms "issue preclusion" and "claim preclusion" in place of the generic historical term "res judicata." Bryan v. Hall, 367 N.W.2d 251, 252 (Iowa Ct. App. 1985).

In general, the doctrine of issue preclusion prevents parties to a prior action in which judgment has been entered from relitigating in a subsequent action issues raised and resolved in the previous action. Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981). The doctrine may be utilized in either a defensive or offensive manner. Id. "Defensive" use of the doctrine of issue preclusion means that a stranger to the judgment, ordinarily a defendant in the second action, relies upon a former judgment as conclusively establishing

in his favor an issue which he must prove as an element in his defense. Goolsby v. Derby, 189 N.W.2d 909, 913 (Iowa 1971). An "offensive" or "affirmative" use of the doctrine is similar to a "defensive" use, except in an "affirmative" use a non-party plaintiff relies upon a former judgment as conclusively establishing in his favor an issue which he must prove as an essential element of his cause of action. Id.

Traditionally, three prerequisites had to be met before the doctrine of issue preclusion could be applied: (1) identity of issues raised in the successive proceedings, (2) determination of these issues by a valid final judgment to which such determination is necessary, and (3) identity of the parties, or privity. Goolsby, 189 N.W.2d at 913. Concerning privity, under the traditional rule a person not a party to or in privity with a party to the judgment was not entitled to rely on that judgment in a subsequent suit. Bryan v. Hall, 367 N.W.2d at 253. However, Iowa courts today apply a four-factor standard to be utilized in determining the applicability of issue preclusion:

- (1) The issue concluded must be identical;
- (2) The issue must have been raised and litigated in the prior action;
- (3) The issue must have been material and relevant to the disposition of the prior action; and
- (4) The determination of the issue in the prior action must have been necessary and essential to the resulting judgment.

Hunter, 300 N.W.2d at 123.

In addition to these four prerequisites, the Iowa courts have adopted a limited exception to the requirement of privity or mutuality. Where the four prerequisites delineated above are met and where the party against whom the doctrine is invoked defensively "was so connected in interest with one of the parties in the former action as to have had a full and fair opportunity to litigate

the relevant claim or issue and be properly bound by its resolution," issue preclusion may properly be invoked. Bertran v. Glenn Falls Insurance Co., 232 N.W.2d 527, 533 (Iowa 1975). ²¹

In addition, Professor Allan Vestal, in his article Res Judicata/Preclusion: Expansion, 47 S. Cal. L. Rev. 357, 373-74 (1974), has identified six factors commonly found in decisions addressing the issue of preclusion:

- (1) the second suit is closely related to the first;
- (2) the point of view of the precluded party was adequately represented;
- (3) often the same judge presided over both cases;
- (4) a second trial was considered to be a waste of time;
- (5) the party precluded participated in the first suit;
- (6) frequently the sequence of litigation was deliberately arranged by the litigants for tactical reasons.

II.

The trial court ruled that the issues in the present case had been fairly and fully litigated in the previous probate action and that therefore plaintiffs were precluded from relitigating those issues. In determining whether the doctrine of issue preclusion could properly have been applied defensively in this case, we must consider whether the four prerequisites necessary for the utilization of the doctrine were sufficiently established.

A. The issue concluded must be identical. Plaintiffs' present petition against the defendant contains the following factual allegations:

3. That she further made a property agreement with her children, including Clinton Norris Buckingham, which was duly filed and recorded and which gave Clinton Norris Buckingham certain rights in real estate of Harriott Buckingham, namely that subject only to the 1962 loan, he was to own the property at her death.
4. That in 1976 with the agreement of the Plaintiffs, said Note and Mortgage was increased to \$63,000.00

by a new Note and Mortgage signed by Harriott Buckingham, deceased, and the Plaintiff with the Defendant.

5. That in 1979 unbeknownst to the Plaintiffs, the Defendant and Harriott Buckingham, deceased, raised the amount of the Note and Mortgage by a new Note and Mortgage to the sum of \$115,000.00. All of this was done without the consent of the Plaintiffs and behind their backs and in spite of the recorded interest in the property of the Plaintiff, Clinton Norris Buckingham.

We compare the factual allegations to the following jury instruction, which was the core of plaintiffs' right to recovery in the probate action:

In order for plaintiff, C. Norris Buckingham, a/k/a Clinton Norris Buckingham, to establish his claim, he must prove by the preponderance or greater weight of the evidence the following:

1. That there was a written agreement between the decedent and him providing for the passage of title to real estate to plaintiff without indebtedness other than the indebtedness existing presently due at the time of the execution of the agreement.
2. That additional indebtedness was incurred by the decedent secured by a mortgage on that real estate without the consent of plaintiff.
3. The amount of the additional indebtedness incurred without authorization of the plaintiff.

It is evident from a comparison of the factual allegations of the petition which is the basis of the present case and the jury instruction given to the jury in the prior action that plaintiffs have alleged virtually the identical facts and issues in the present case that they raised in the probate action. In order to recover alleged damages in the present case, the plaintiffs would have to prove by a preponderance of the evidence that plaintiffs had a right under the written agreement with Harriot to receive the property without the additional debt and that plaintiffs did not consent to such additional debt--the exact issues raised in the prior probate action.

B. The issue must have been raised and litigated in the prior case. It is abundantly clear from the record that the issues of whether plaintiffs were entitled to the real estate unencumbered by additional debt and whether plaintiffs consented to the additional debt were raised and litigated in the previous probate action, the jury finding that plaintiffs were not entitled to recover on their claim.

C. The issue must have been material and relevant to the disposition of the prior action. The issues litigated in the previous probate action, whether plaintiffs were entitled to the real estate without the additional debt and whether they consented to it, were clearly material and relevant to the disposition of the previous action in that those issues were the crux of plaintiffs' claim.

D. The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. It follows a fortiori from the above discussion that this prerequisite has also been satisfied.

The plaintiffs contend, however, that there is not an "identity" of the parties between the previous probate action and the present case. Norma A. Buckingham, one of the present plaintiffs, was not a party to the probate action, nor was the defendant Federal Land Bank. Therefore, plaintiffs contend, issue preclusion is not applicable. We disagree.

As we noted earlier, the Iowa courts have adopted a modification to the traditional requirement of privity. Under the new test, where, as here, the four prerequisites of issue preclusion have been satisfied and where one of the parties was so connected with the parties in the previous action that his or her claims were fairly and fully litigated, issue preclusion is applicable as to the later plaintiff. Bertran, 232 N.W.2d at 523. In the present case, plaintiff Norma Buckingham is the wife of plaintiff Clinton Buckingham, and therefore

any interests Norma may have held in the present action were fairly and fully litigated by her husband in the previous action.

We additionally note that while the defendant Federal Land Bank was not a party to the probate action, the rights of the Bank regarding the mortgage and the indebtedness thereon were inexorably linked to the probate court's determination of whether or not the real estate in question was subject to the additional indebtedness. The judgment of the probate court that plaintiff Clinton had no right under the 1962 agreement or that he consented to the additional debt effectively solidified the defendant Bank's right to collect the additional indebtedness placed on the real estate through the mortgage. That plaintiffs did not believe the defendant Bank to be a total stranger to this action, but an interested non-party to this litigation, is evidenced by the fact that plaintiffs filed the present suit against defendant not more than three months after accepting settlement in the previous action.

Plaintiffs further argue that because plaintiffs accepted \$20,000 as a cash settlement during the pendency of their appeal of the probate court judgment, issue preclusion cannot occur because settlement leaves "the ultimate outcome of any case . . . at least somewhat in doubt." We believe plaintiffs' arguments to be misplaced.

A judgment is final when it fully decides and disposes of the whole merits of the cause and leaves no further questions therein for the future judgment of the court. Nuzum v. State, 300 N.W.2d 131, 133 (Iowa 1981); Iowa R. Civ. P. 219. The decree must be complete and certain, and to qualify as a final decision, the decision must put it beyond the power of the court which made it to restore the parties to their original positions. Denney v. City of Sioux City, 292 N.W.2d 131, 133 (Iowa 1980). Under Iowa law, res judicata bars further relitigation of a claim or issue where a final judgment has been rendered on

the merits by a court of competent jurisdiction. Smith v. Updegraff, 744 F.2d 1354, 1362 (8th Cir. 1984). As we noted earlier, the test for determining whether an action is barred under res judicata is whether the same evidence the trial court considered in rendering its prior final judgment would maintain a present action. Clark v. Glanton, 370 N.W.2d 606, 608 (Iowa Ct. App. 1985).

Concerning the issue of finality with regard to issue preclusion, the Restatement (Second) of Judgments § 13, Comment g (1982), discusses the criteria for determining finality in the application of issue preclusion. According to the Restatement, the requirement of finality of judgment is no less strict when the question is one of issue preclusion. Restatement (Second) of Judgments § 13, Comment g, at 136. The wisest course when considering a judgment on appeal would appear to be that the prior decision of the issues is final for the purpose of issue preclusion. Id. "Before doing so, the court should determine that the decision to be carried over was adequately deliberated and firm, even if not final in the sense of forming a basis for a judgment already entered." Id. The Restatement's final view was that if the parties were fully heard, the court supported its decision with a reasoned opinion, and the decision was subject to appeal, that these factors support a conclusion that the decision was final for purposes of preclusion. Id.

The plaintiffs cite the case of Butler v. Butler, 253 Iowa 1084, 114 N.W.2d 595 (1962), in support of their argument that the settlement was the actual outcome of the case. The Butler case, however, is factually distinguishable from the present case. In Butler, the plaintiffs, husband and wife, had sued the trustee of the family trust alleging the existence of the trust and claiming entitlement to the trust. 253 Iowa at 1091, 114 N.W.2d at 599. However, before final adjudication, the plaintiffs settled with the trustee for a cash payment. Id. Years later, the trustee died and the wife, now a widow, sued the trustee's

estate alleging the trust and claiming entitlement to its assets. Id. at 600. The Iowa Supreme Court affirmed the trial court dismissal of the second suit, holding that the prior case was clearly res judicata as to the later cause of action. Id. at 611. The Iowa Supreme Court opined that "[a] consent judgment or, like the one present, one which is a 'dismissal with prejudice' has the same effect as a bar as if the case had gone to trial and the judgment rendered thereafter." Id. (citing Lawlor v. National Screen Service Corp., 211 F.2d 934, 935 (3rd Cir. 1954), reversed on other grounds, 349 U.S. 326, 327, 75 S. Ct. 865, 868, 99 L. Ed. 1122, 1127 (1955)).

In the present case, we are not faced with the situation where a settlement was reached before a final adjudication on the merits. Rather, in the present case, plaintiff Clinton Buckingham participated in a fair and full trial on the merits of plaintiffs' claim, after which a jury, upon consideration of all the evidence, rendered a clear, concise, and definite judgment against the plaintiff on the merits. After the final judgment, plaintiff, for whatever reason, chose to forego his right to appeal, accepting instead a cash payment "merely to buy peace and avoid further litigation." The trial court found, and we agree, that this settlement did not in any way nullify the final judgment rendered by the probate court. We believe that a judgment rendered in a court of competent jurisdiction, once entered of record, is final and must stand as the judgment until set aside or vacated and that even an appeal does not annul the judgment until it is modified or reversed. Therefore, the prior probate judgment holding that plaintiff Clinton Buckingham was not entitled to the real estate unencumbered by the additional debt was final and therefore precluded the plaintiffs from raising the exact same issues against another defendant in a later proceeding, whether on the same or different claim. Restatement (Second) of Judgments § 27 (1982).

Based upon the uncontroverted facts contained in the pleadings, we believe the trial court was correct in dismissing plaintiffs' claim pursuant to Iowa Rule of Civil Procedure 222. The identical factual issues alleged in the probate action were alleged in the present action. The issues were fairly and thoroughly litigated by plaintiff Clinton Buckingham in the prior action. Judge Connolly, the trial court judge in the present case who also presided over and rendered final judgment in the prior action, concluded that a second trial on the same issues would be a waste of judicial time. As a result, plaintiffs are barred from relitigating issues which have been litigated and adjudicated.

AFFIRMED.