FILED
NOV 26 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

115

ROBERT J. HOEFER and WILLIAM H. HOEFER d/b/a THE ADMINISTRATORS,

Plaintiffs-Appellants,

vs

SIOUX CITY COMMUNITY SCHOOL DISTRICT, WOODBURY COUNTY, STATE OF IOWA, and DR. THOMAS PADGETT, MARY BETH SATTERFIELD, DONALD MEISNER, DR. JAMES HARTJE, PATRICIA VAN BRAMER, HAROLD METTENBRINK, and DALE PARKER, as members of the Board of Education of said School District.

Defendants-Appellees.

Filed November 26, 1985

5-274
84-1069

Appeal from the Iowa District Court for Woodbury County - Richard F. Branco, Judge.

Plaintiffs appeal from an order sustaining defendants' motion for summary judgment and claim the trial court erred in ruling that plaintiffs' claim was precluded on the basis of res judicata. **REVERSED AND REMANDED WITH INSTRUCTIONS.**

Paul W. Deck, of Deck & Deck, Sioux City, for plaintiffs-appellants.

James Villone and Daniel T. Cutler, of Klaas, Whicher & Mishne, Sioux City, for defendants-appellees.

Considered by Oxberger, C.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Plaintiffs appeal from the trial court's order sustaining defendants' motion for summary judgment on plaintiff's petition for an injunction. Since the action is in equity, our review is de novo. Iowa R. App. P. 4.

Summary judgment is only proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R Civ. P. 237(c). The trial court granted the summary judgment on the basis of claim preclusion under the doctrine of res judicata. Plaintiffs claim that res judicata principles do not apply and that the trial court should be reversed. The facts leading up to this appeal are as follows.

The same plaintiffs have filed two petitions against the same defendants alleging basically the same cause of action. Plaintiffs' Petition A[1] was dismissed and then appealed.[2] During the pendency of the appeal on Petition A, plaintiffs filed Petition B[3] which was the same as Petition A except for the absence of prayers for writ of certiorari and writ of mandamus. The trial court granted a motion for summary judgment against plaintiffs on Petition B. The summary judgment was granted on the ground of claim preclusion based upon the dismissal of Petition A, which was deemed a final adjudication for res judicata purposes at that time. Since then, the dismissal of Petition A has been reversed and remanded on appeal.[4] Thus, plaintiffs' Petition A will be reinstated on remand.

---

[1] Plaintiffs' Petition for Writs of Certiorari and Mandamus filed in Woodbury County on December 6, 1983 — included prayers for writs of certiorari and mandamus plus prayers for injunctive and other relief.

[2] Hoefer v. Sioux City Community School District, Sup. Ct. No. 84-368.

[3] Plaintiffs' Amended and Substituted Petition for Injunction filed in Woodbury County on March 12, 1984 — petition against same defendants as Petition #1, concerning same issues, and included same prayers for injunctive and other relief.

[4] Hoefer v. Sioux City Community School District, Sup. Ct. No. 84-368, filed October 16, 1985.

Plaintiffs claim on this appeal that because the first action has now been reversed it is no longer a final adjudication for res judicata purposes.

When a litigant has brought an action and adjudication has occurred, the litigant is thereafter foreclosed under the doctrine of claim preclusion from further litigating the claim. Jorge Construction Co. v. Weigel Excavating & Grading Co., 343 N.W.2d 439, 443 (Iowa 1984). A pretrial dismissal of a pleading is deemed a final adjudication. Tigges v. City of Ames, 356 N.W.2d 503, 508-09 (Iowa 1984).

> All dismissals not governed by R.C.P. 215 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise.

Iowa R. Civ. P. 217.

> Every final adjudication of any of the rights of the parties in an action is a judgment.

Iowa R. Civ. P. 219.

However, when a judgment is reversed, it ceases to be a final adjudication for res judicata purposes. In re Hartstack Estate, 250 Iowa 510, 518, 94 N.W.2d 744, 749 (1959); see also Thompson v. Stephenson, 332 N.W.2d 341, 344 (Iowa 1983); Shaw v. Addison, 236 Iowa 720 727, 18 N.W.2d 796, 800 (1945).

> The doctrine of res judicata prevails as long as the judgment used as a basis thereof remains in full and operative effect, and has not been disturbed, reversed, or otherwise set aside. A judgment is inoperative as res judicata where it has been vacated, as by the granting of a new trial, or reversed by an appellate court.

46 Am.Jur.2d Judgments § 465 (1969).

> The reversal of a judgment which is a basis of a claim of res judicata in a later action warrants reversal of the finding of res judicata in the later action.

McDonald v. McDonald, 53 Wis.2d 371, 388, 192 N.W.2d 903, 912 (1972) (citing 46 Am.Jur.2d Judgments § 465-66 (1969); Annot., 9 A.L.R.2d 984, 1014 (1950)).

Therefore, we reverse the order granting summary judgment. We remand this cause back to the trial court for consolidation with plaintiffs' petition for writs of certiorari and mandamus

REVERSED AND REMANDED WITH INSTRUCTIONS