

IN THE COURT OF APPEALS OF IOWA

CITY OF DUBUQUE, IOWA,

Petitioner-Appellee,

vs.

HOLIDAY OIL DISTRIBUTING, INC.; GOLIATH, INC.;
FRED K. CHEUNG, D.D.S.; JEROME P. and PATRICIA L.
SCHILTZ; DANIEL and MARY JANE DRISCOLL; CHARLES
B. and MARILYN A. OBEREMBT; MARY JANE PIER;
PATRICK and NANCY CHEW; JOHN A. and CAROL L.
FLYNN; MIDWEST DEVELOPERS, INC.; LYLE F. and
GRACE M. KOPP; SECURITIES BLDG. CORP.; R & S
INVESTMENT CORP.; WILMA A. McNAMARA; AMERICAN
TRUST & SAVINGS BANK OF DUBUQUE; SIEG-DUBUQUE)
COMPANY; FIRST NATIONAL BANK OF DUBUQUE;
MARION REALTY INC.; HOWARD JOHNSON CO.;
KEY CITY INVESTMENT CO.; ALFRED and EDNA MARY
HAMMERRAND; J.D. STREET & CO. INC.; and BIRD
CHEVROLET CO.

Respondents-Appellants.

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CLERK SUPREME COURT

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Filed August 29, 1985

5-238
84-1484

Appeal from the Iowa District Court for Dubuque County - Carroll E.
Engelkes, Judge.

Respondents appeal from adverse judgment in an action brought seeking a
decree confirming the proceedings of the petitioner with respect to assessments
for a street paving. AFFIRMED.

Robert M. Bertsch, Gary K. Norby, and Chad C. Leitch of O'Connor &
Thomas, P.C., Dubuque, for respondents-appellants.

Barry A. Lindahl, City Solicitor, Dubuque, for petitioner-appellee.

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

This action concerns a special assessment by the City of Dubuque for improvement of John F. Kennedy Road. The project was to be completed in two phases, both of which, defendants allege, were to be financed by federal and municipal funds and not by special assessment. The first phase was completed without special assessment. The council voted to partially finance the second phase with a special assessment.

Respondents, certain owners of assessed property, filed a petition seeking an injunction to prevent the assessments. The city filed an answer and moved for judgment on the pleadings. On May 29, 1984, the trial court sustained the motion and plaintiff's petition was dismissed. We affirmed in Bird Chevrolet Co. v. City of Dubuque, No. 84-1043 (Iowa Ct. App. May 28, 1985).

After the trial court's ruling, but before our disposition on appeal, the city filed a petition against respondents seeking confirmation pursuant to Iowa Code section 384.54 of the special assessment for the second phase. Respondents answered and asserted numerous affirmative defenses which were essentially the same claims asserted in their previous request for injunctive relief. The city amended its pleading to assert res judicata as a bar to respondents' affirmative defenses. The trial court granted the city judgment on the pleadings and respondents appealed.

The action is at equity and our review is de novo. Iowa R. App. P. 4.

Respondents contend the trial court's application of res judicata was improper, inappropriate and prejudicial. Res judicata or issue preclusion is the doctrine which prevents parties from relitigating matters which have already been decided. Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981). To invoke the doctrine, four prerequisites must be established:

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- (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 made of the issue in the prior action must have been necessary and essential to the resulting judgment.

In the Matter of Evans, 267 N.W.2d 48, 51 (Iowa 1978).

Respondents challenge only the second requirement, arguing Bird Chevrolet was never litigated. They contend a judgment on the pleadings is not a judgment on the merits; and in addition, the decision cannot be final because it is still on appeal.

Both of the actions involved judgment on the pleadings. In this action, respondent asserted seven theories as affirmative defenses to petitioner's confirmation petition, namely:

- (1) fraud/estoppel,
- (2) violation of the due process clauses of the United States and Iowa Constitutions,
- (3) arbitrary, unreasonable and capricious actions by the City resulting in a taking of Respondents' properties without just compensation,
- (4) special assessment of Respondents' properties in an amount that was grossly disproportionate to the benefit to be conferred on said properties by the improvement of JFK Road,
- (5) nonuniform taxation of taxpayers in the same class,
- (6) ultra vires acts by the City, and
- (7) breach of contract/estoppel.

Although the wording is slightly different, these are the same claims asserted as the basis for injunctive relief in Bird Chevrolet.

In Bird Chevrolet, the trial court granted the city's motion for judgment on the pleadings and denied West Side Businesses' leave to amend their petition. The purpose of the motion¹ is to determine whether the pleadings properly present

¹ Iowa R. Civ. P. 222 states: JUDGMENT ON THE PLEADINGS, ETC. Any party may, at any time, on motion, have any judgment to which he is entitled under the uncontroverted facts stated in all the pleadings, or on any portion of his claim or defense which is not controverted, leaving the action to proceed as to any other matter of which such judgment does not dispose.

issues to be litigated at trial. Hurd v. Odgaard, 297 N.W.2d 355, 356 (Iowa 1980). The court determined no issues were presented, and the city was entitled to judgment. This was a final judgment which adjudicated the rights of the parties and was subsequently appealed. See Denney v. City of Sioux City, 292 N.W.2d 131, 133 (Iowa 1980). Where no issues are presented, litigation is impossible.

Now West Side Businesses assert these same claims as affirmative defenses. The prior ruling is res judicata while the issues are on appeal. Johnson v. Ward, 265 N.W.2d 746, 749 (Iowa 1978). Res judicata may be raised and considered where it appears on the face of the petition. Id. Judgment on the pleadings is appropriate where no matters outside the pleadings need be considered. Hurd, 297 N.W.2d at 356.

The city, in their amended petition, asserted the prior judgment in Bird Chevrolet precluded relitigation of the same claims in this action. We conclude the trial court properly determined the doctrine of res judicata applied to bar respondent's affirmative defense claims.

AFFIRMED.