

FIFTH DIVISION
June 7, 2013

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SABINA BIELAWSKI,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 L 12396
)	
HOWARD ROSENFELD, ROSENFELD,)	Honorable
ROTENBERG, HAFRON & SHAPIRO,)	Raymond W. Mitchell,
)	Judge Presiding.
Defendants-Appellees.)	

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred
in the judgment.

ORDER

¶ 1 *Held:* The order of the circuit court entering judgment for defendants is affirmed where plaintiff's argument was barred on grounds of collateral estoppel; plaintiff's argument was raised in a prior proceeding and found to be without merit.

¶ 2 Plaintiff Sabina Bielawski appeals from a judgment for

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defendants in a legal malpractice proceeding. Plaintiff filed a legal malpractice case against the attorneys who represented her in dissolution of marriage proceeding. The trial court entered an order in the nature of a motion in *limine* which precluded plaintiff from claiming at trial that she lacked a "meaningful choice" as to how to take her interest in her ex-husband's pension in their earlier divorce proceeding on grounds of collateral estoppel. In the trial court, the parties stipulated that the order prevents plaintiff from prevailing at trial on her claims and by agreement, judgment was entered for defendant. For the reasons set forth below, we affirm the circuit court.

¶ 3

BACKGROUND

¶ 4 On September 29, 1998, a judgment of dissolution of marriage between plaintiff Sabina Bielawski and her ex-husband Donald Rycroft was entered by the circuit court of Cook County. A settlement agreement was incorporated which provided that Rycroft would pay Bielawski \$12,539 per month for unallocated maintenance and support. This monthly payment was to be funded by Rycroft's pension and his consulting contract with CNA Insurance and constituted 45% of his gross income.

¶ 5 Bielawski filed a section 1401 motion (735 ILCS 5/2-1401 (West 1998)) to vacate the judgment for dissolution of marriage on April 24, 2000. In the motion, Bielawski claimed the

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marital settlement agreement is unconscionable because Rycroft's pension should have been designated marital property rather than income and that because of the conduct in the case by her attorneys she was denied a "meaningful choice" to elect to take a share of Rycroft's pension as her marital property.

¶ 6 Judge Elizabeth Rivera denied Bielawski's motion, finding it was untimely filed and that the marital settlement agreement was not unconscionable because she had a "meaningful choice."

¶ 7 In Bielawski's appeal of the order denying the motion to vacate the judgment, we upheld Judge Rivera's finding and in detail cited the opportunities petitioner had to consider how to proceed with regard to the pension issue:

"Although petitioner argues that she did not have a 'meaningful choice' in electing to treat the pension as property, the facts contained in the record belie her statement. Prior to the settlement negotiations, petitioner had discussed the respondent's pension with her attorney as early as July of 1998. She knew that the pension could be considered as marital property as early as April of 1998 because she had discussed it

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with two other attorneys and a financial advisor prior to retaining her divorce attorney." *In Re Marriage of Bielawski*, 328 Ill. App. 3d 243, 252 (2002).

¶ 8 Plaintiff subsequently filed a malpractice complaint against her attorneys, defendants Howard Rosenfeld, Rosenfeld, Rotenberg, Hafron, & Shapiro, in the circuit court of Cook County alleging the attorneys were negligent in their representation of her in the divorce action for failing to inform her that she had a "meaningful choice" on how to take her ex-husband's pension. The defendants filed a section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2000)), claiming Bielawski was collaterally estopped by the findings in Judge Rivera's ruling on plaintiff's motion to vacate the marital settlement agreement in the divorce action.

¶ 9 Bielawski alleged that as a direct and proximate cause of the defendants' advice, she executed a marital settlement agreement with Rycroft that deprived her of a fair share of his pension. Bielawski alleged that but for the negligence of the defendants, she would have received 50% to 60% of the pension and received maintenance and support.

¶ 10 In an order dated March 29, 2002, trial court judge David R. Donnersberger held:

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**** Plaintiff alleges that Defendants were negligent in advising her that her only choice was to accept the pension as income. This allegation is barred by collateral estoppel. Judge Rivera specifically found that Plaintiff knew prior to hiring Defendants that the pension was marital property. As such, any advice by Defendants to the contrary could not have been the proximate cause of Plaintiff's damages."

¶ 11 Bielawski voluntarily dismissed the complaint and refiled the action in Lake County on November 26, 2003. The case was transferred to Cook County in May 2004.

¶ 12 In the refiled complaint, Bielawski alleged the defendants were negligent when they: (1) failed to determine the present cash value of Rycroft's pension, (2) failed to secure the pension as marital property, (3) failed to secure that a portion of the pension would be provided to Bielawski, (4) failed to evaluate the likelihood of Rycroft's earnings loss and its impact on Bielawski, and (5) failed to evaluate the taxable consequences of considering the pension as income.

¶ 13 Prior to trial, the defendants filed a "motion to recognize orders" of court. The record contains neither a copy

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of the defendants' motion nor a transcript of the hearing on the motion. However, in an order dated October 26, 2009, Judge Lee Preston granted defendants' motion, which precluded Bielawski from claiming that she lacked a "meaningful choice" as to how to take her interest in Rycroft's pension in the divorce proceeding.

¶ 14 In the order, Judge Preston stated defendants' motion is essentially a motion *in limine*. Judge Preston's order recited that the attorney for Bielawski represented that his ruling would prevent plaintiff from proceeding with her claim, but no judgment was entered for defendant and plaintiff's case remained pending. The order contained section 304(a) language (Ill. Sup. Ct. R 304(a) (eff. Jan. 1, 2006)).

¶ 15 Bielawski appealed Judge Preston's October 26, 2009, order. On September 9, 2011, we issued a summary order dismissing Bielawski's appeal for lack of jurisdiction. Although the trial court's order contained a Rule 304(a) finding, we found that the order was not a final or appealable order because it did not dispose of any claim of the parties or dismiss any of the case. *Bielawski v. Rosenfeld*, 2011 IL App (1st) 093043-U.

¶ 16 On March 6, 2012, Judge Raymond W. Mitchell issued an agreed order stating, in part:

"Plaintiff previously acknowledged that
the Court's ruling on Defendants' Request to

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Recognize Orders of Court precludes Plaintiff's ability to proceed with the prosecution of her professional negligence claim. In order to eliminate any jurisdictional questions, Plaintiff now voluntarily dismisses any pleaded count and theory of her professional negligence claim that would not otherwise be extinguished by the Court's ruling herein.

For the reasons stated above, the Court now enters final judgment in favor of Defendants and against Plaintiff as to every pleaded count and theory of Plaintiff's professional negligence action. No count or theory of Plaintiff's professional negligence claim survives.

¶ 17 This is a final judgment pursuant to Supreme Court Rules 301 and 303."

¶ 18 On April 9, 2012, Bielawski filed a notice of appeal seeking "Reversal of Order granting Defendants' Request to Recognize Orders of Court."

¶ 19 ANALYSIS

¶ 20 The sole issue in this appeal is whether Bielawski is

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collaterally estopped from arguing in her legal malpractice lawsuit that her attorneys failed to provide a meaningful choice on how to take her ex-husband's pension on the basis of the adverse ruling on that issue in the 1401 proceedings to vacate.

¶ 21 Whether the doctrine of collateral estoppel applies in a particular case is a question we review *de novo*. *Hope Clinic for Women Ltd. v. Adams*, 2011 IL App (1st) 101463, ¶69.

¶ 22 Collateral estoppel is an equitable doctrine that prevents a party from relitigating an issue that had already been decided in a prior proceeding. *Dearborn Maple Venture, LLC v. SC. Illinois Services, Inc.*, 2012 IL App (1st) 103513, ¶24.

¶ 23 "The doctrine of collateral estoppel applies when a party, or someone in privity with a party, participates in two separate and consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction." *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389-90 (2001). "The adjudication of the fact or question in the first cause will, if properly presented, be conclusive of the same question in the later suit, but the judgment in the first suit operates as an estoppel only as to the point or question actually litigated and determined and not as to other matters which might have been

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litigated and determined." *Id.* at 390 (citing *Housing Authority v. Young Men's Christian Association*, 101 Ill. 2d 246, 252 (1984)).

¶ 24 The party seeking to invoke the doctrine, has the burden of meeting three requirements: (1) the specific issue decided in the prior suit must be identical with the one presented in the current suit, (2) the determination of this issue or fact must have been a critical and necessary part of the final judgment in the prior suit, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior suit. *Hope Clinic for Women Ltd.*, 2011 IL App (1st) 101463, ¶72.

¶ 25 In respect to the first element of collateral estoppel, Bielawski argues that the issues in both cases are different because her claim here is that her attorneys were negligent in advising her on how to take her share of her ex-husband's pension while in the other case the issue was whether the marital settlement agreement was unconscionable because she did not have a meaningful choice in electing to treat the pension benefits as "stream of income" versus marital property.

¶ 26 Bielawski's argument is not persuasive because the question of whether her attorneys were negligent rests upon the ultimate issue from both cases -- whether she lacked a meaningful

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choice as to how to take her interest in her ex-husband's pension. The trial court found that the issue was settled and granted the defendants' motion to preclude her from making the argument at trial. There is no question that the issue from the previous case is whether she had a meaningful choice in electing to treat the pension benefits as "stream of income" versus marital property. Therefore, we find that the issue from the earlier and instant cases are the same.

¶ 27 The second element of collateral estoppel is whether the determination of this issue or fact must have been a critical and necessary part of the final judgment in the prior suit. As previously mentioned, Bielawski's argument in the prior suit that her dissolution of marriage settlement agreement was unconscionable rested on this issue of whether she had a meaningful choice on how to take her share of her ex-husband's pension. Thus, the issue clearly was a critical and necessary part of the final judgment in the dissolution of marriage case.

¶ 28 The third and final element of collateral estoppel is whether the party against whom estoppel is asserted was a party or in privity with a party to the prior suit. The defendants here are asserting estoppel against Bielawski who was the plaintiff in the prior suit - thus, the third element is satisfied.

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¶ 29 We find that the elements of collateral estoppel have been satisfied here and this case meets the ultimate purpose of the rule, which is to prevent a party from relitigating an issue that had already been decided in a prior proceeding. *Dearborn Maple Venture, LLC v. SC. Illinois Services, Inc.*, 2012 IL App (1st) 103513, ¶24. This question of whether Bielawski had a "meaningful choice" was decided in the earlier divorce action. Therefore, Bielawski is estopped from relitigating the issue for a second time here.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the trial court's judgment.

¶ 32 Affirmed.